

Outline of the History and Status of Judea and Samaria (the West Bank)

Brief summary

Judea and Samaria were a central part of the historic homeland of the Jewish people¹ from 1200 BC onwards. During a period spanning more than 1,000 years the Jewish people settled the land and established governmental and religious institutions.

Although largely expelled during the Roman period², and although the territory was renamed Palestina by the Romans, the Jewish people never abandoned their claim and intention to return to their historic homeland.

In the centuries prior to 1918, and after a succession of other rulers, the area was part of the Turkish Empire. Following Turkey's defeat in the First World War, the vast majority of its former territory in the Middle East was allocated for the creation of new Arab States under Mandates adopted by the League of Nations, the forerunner of the UN.

At the same time, the League of Nations Mandate for Palestine recognised the historical connection of the Jewish people with Palestine, allocated the territory of Palestine between the Jordan River and the Mediterranean for the purpose of reconstituting a national home for the Jewish people, and entrusted the UK as mandatory to put this into effect. In particular, the administration of Palestine was required by the Mandate to facilitate Jewish settlement throughout this territory.

The rights of the Jewish people recognised in the League of Nations Mandate were preserved by Article 80 of the UN Charter, which has been accepted by all members of the UN.

Israel declared its independence in 1948 on the departure of British forces, without determining its boundaries. Parts of Judea and Samaria were invaded and occupied by Transjordan (now Jordan), but Transjordan's claim to the territory it occupied (which it called the "West Bank") was only accepted by two other countries (the UK and Pakistan) and was subsequently abandoned. The 1949 armistice agreement between Jordan and Israel expressly stated that the line of demarcation ("the Green Line") between their forces was dictated by military considerations and was without prejudice to boundary lines or territorial claims.³

In 1967 the area of Judea and Samaria occupied by Jordan came under Israeli control when Israel responded to attacks by Jordan in the "Six Day War". Following this war, UNSC Resolution 242 affirmed the requirement to establish a just and lasting peace, which should be based in part on "withdrawal of Israel armed forces from territories occupied in the recent conflict". However, it did not say "from *all the* territories occupied in the recent conflict" or "to the positions they held prior to 5 June 1967" as had been proposed in earlier drafts and discussions, thus signifying that a full

¹ The term "Jewish" is derived from "Judah", one of the twelve tribes of Israel, but has come to refer to the whole of the Israeli people and we use it in this sense

² Beginning circa 63 BCE. Major expulsions followed the unsuccessful Jewish revolts of 67 CE and 132-136 CE

³ <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/israel-jordan%20armistice%20agreement.aspx> Arts II.2 and VI.9

withdrawal by Israeli forces was not expected. In any event, the reference to withdrawal of Israel armed forces was coupled with other conditions in UNSC Resolution 242 that have not yet been fulfilled.

In the Oslo Accords of 1993 and 1995, the Government of Israel and the PLO representing the Palestinian people agreed to divide the administration of Judea and Samaria between a Palestinian Authority (“the PA”) and the Israeli government until agreement could be reached on its permanent status.⁴ Under these agreements, Areas A and B of Judea and Samaria are now administered by the Palestinian Authority, while Area C, which includes the Israeli settlements, is administered by Israel. In particular, jurisdiction in respect of the Israeli settlements is reserved exclusively to Israel.⁵

Importantly, the Oslo Accords specifically stipulated that certain unresolved issues would be subject to further negotiations. These subjects were: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis.⁶ Subsequent negotiations have not yet resolved these issues. While settlements are one of the outstanding issues, it should be noted that there are a number of other major issues, and it would not be correct to suggest that the settlements are the only or main obstacle to a solution.

To summarise: Judea and Samaria were the heart of the historic Jewish homeland and were part of the territory allocated for its reconstitution following the First World War, alongside much larger territories designated for Arab States. The armistice lines separating the West Bank from recognised Israeli territory are not legal borders, but merely reflect the outcome of the illegal invasion by Jordan in 1948. Israel’s boundaries and the status of Jewish communities in Judea and Samaria are matters to be settled by negotiation between the parties. And even if Israel breached international law by establishing settlements in the West Bank, the operation of businesses in their vicinity is not inherently illegal and very often is highly beneficial to the Palestinian population.

In a little more detail

1) Biblical times - 1200 BC – 70 AD

The presence of the Jewish People in the strip of land west of the Jordan river is recorded in detail in the Bible. The Book of Joshua describes the conquest of the Land of Israel and its division between the different Tribes of Israel, as shown in the following illustration:

⁴ Declaration of Principles on Interim Self-Government Arrangements, Washington DC, 13 September 1993; Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington DC, 28 September 1995 <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>.

⁵ See Article XVII of the Interim Agreement on the West Bank and the Gaza Strip

⁶ See Articles XVII.1 and XXXI.5 of the Interim Agreement on the West Bank and the Gaza Strip



The tribes were united under Kings Saul, David and Solomon, but then split into two kingdoms, Israel and Judah, which were conquered by the Assyrian and Babylonian Empires respectively. Many of the inhabitants were exiled, but the Persian Empire, which succeeded the Babylonian Empire, allowed Jewish people to return and rebuild Jerusalem.

The Persian Empire was later conquered by the Greeks under Alexander the Great. Following a revolt against the Seleucid successors to Alexander, the Maccabees re-established an independent Jewish kingdom in the Land of Israel.

The following illustrations show the territories of the kingdoms of Israel and Judah and the kingdom re-established by the Maccabees.

The area subsequently came under the control of the Roman Empire. Following Jewish revolts in 67-70 AD and 132 – 135 AD Jerusalem was destroyed and many of the Jewish inhabitants were forced into exile. The Roman Empire also ordered that the name of the country be changed to Palaestina (or Palestina).

However, the exiled Jews maintained their hope to return to the Land of Israel. Prayers for their return and the rebuilding of Jerusalem have been a central part of Jewish liturgy since the Roman period.

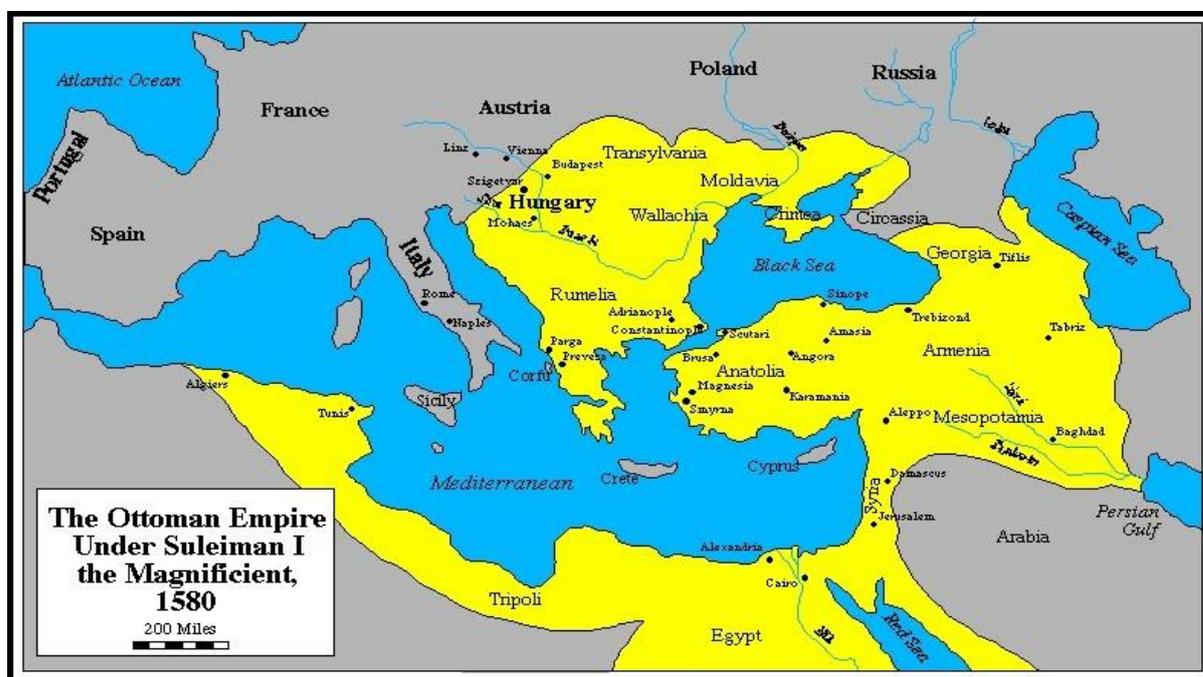
2) The changing rulers of the Land of Israel – 70 – 1517 AD

Subsequently, a succession of different regimes ruled the Land of Israel, still called Palestina. These included Roman and Byzantine rule until 614 AD; Persian rule from 614 – 629 AD; Byzantine rule from 629 - 638 AD; Rashidun and Umayyad Caliphs from 638 – 750 AD; Abbasid Caliphs from 750 – 970 AD; Fatimid Caliphs from 970 – 1099 AD; Crusaders from 1099 – 1187 AD (and until 1291 AD in Acre); and Mamluk rule from 1291 – 1517 AD.

3) Ottoman rule - 1517 – 1917 AD

In 1517 AD, the Land of Israel was conquered by the Ottoman Turks. The Turkish Empire would rule the region for almost 400 years, with some interregnums, as part of an extensive empire until its demise as a consequence of the First World War.

The following illustration shows the extent of the Ottoman Empire in the 16th century:



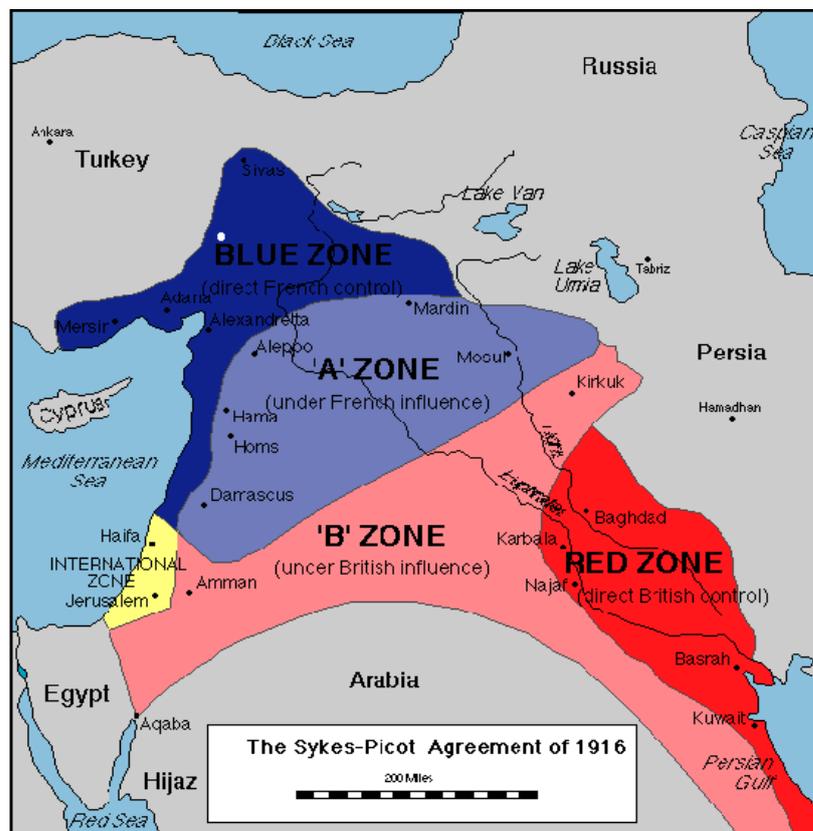
Throughout centuries of exile, significant numbers of Jews had sought to return to the Land of Israel, but their efforts to rebuild communities there had generally foundered. However, in the second half of the 19th century, these efforts gained momentum. Jews were already the largest religious community in Jerusalem by the middle of the 19th

century⁷ and became a substantial majority of its population by the end of that century. New Jewish settlements were established in many other locations in Palestine in the late 19th and early 20th centuries.

4) The First World War and the Sykes - Picot Agreement, 1916 AD

In 1914, Turkey joined the Central Powers in their war against Britain, France and Russia. In 1916, anticipating Turkey's defeat in the war, representatives of the British and French empires made an agreement, with the concurrence of the Russian Empire, to divide control over the Middle East between them.

According to this agreement, known as the "Sykes – Picot Agreement" after its negotiators, spheres of influence and control in much of the Middle East were to be divided between the two empires according to following map:



However, at the time of this agreement neither Britain nor France was in control of most of the territory covered by it, and it was never implemented.

5) The Balfour Declaration, 2 November 1917 AD

In late 1917, British forces advanced into Palestine, pushing the Turkish forces back. With the agreement of her allies, France,⁸ Italy⁹ and the USA,¹⁰ and with the blessing

⁷ <http://ziontruth.blogspot.co.uk/2006/03/jewish-majority-in-jerusalem-in-1853.html?m=0>;

<http://ziontruth.blogspot.co.uk/2016/07/the-jewish-majority-in-jerusalem-in.html>

⁸ <http://www.balfourproject.org/french-support-for-the-zionist-cause/>

⁹ Palestine Royal (Peel) Commission Report (Cmd 5479, 1937)

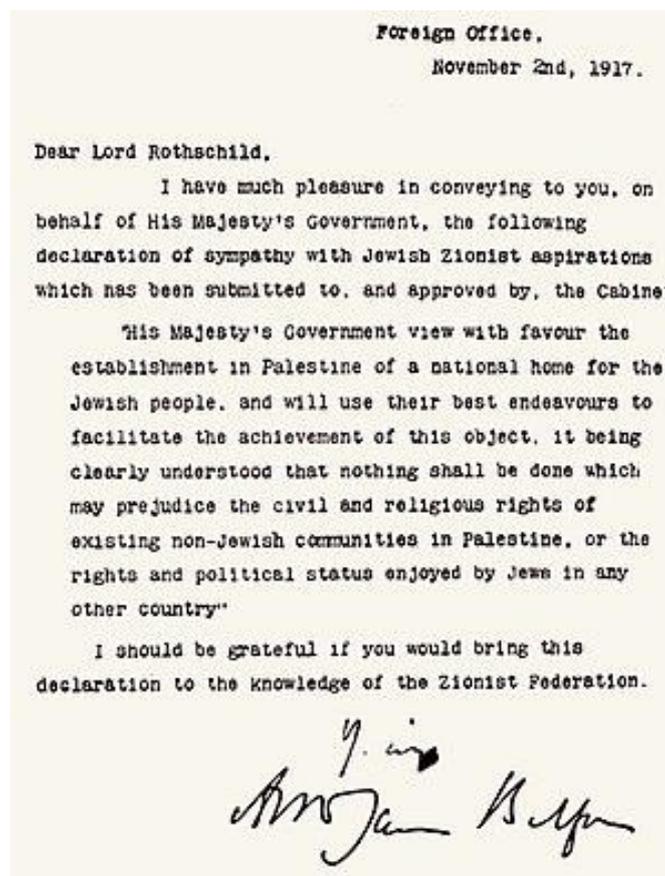
<https://palestinianmandate.files.wordpress.com/2014/04/cm-5479.pdf> page 22

¹⁰ http://americanjewisharchives.org/publications/journal/PDF/1987_39_01_00_brecher.pdf

of the Pope,¹¹ the British government decided to support the establishment of a Jewish national home in Palestine.

Accordingly, on 2 November 1917, the British government, represented by Arthur James Balfour, conveyed the following statement to the Zionist Federation, which was seen as representing the majority of Jewish people:

“His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country”



Foreign Office,
November 2nd, 1917.

Dear Lord Rothschild,

I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet

His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country"

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

A. J. Balfour

The establishment of a national home for the Jewish people in Palestine was also supported subsequently by the Turkish government,¹² the Arab leadership,¹³ Japan and other countries.¹⁴

¹¹ Sergio Minerbi, *The Vatican and Zionism: Conflict in the Holy Land, 1895–1925* (OUP, 1990) pp 63-64, 111

¹² <https://www.meforum.org/articles/2017/the-ottoman-balfour-declaration>

¹³ Weizmann-Feisal Agreement 3 January 1919

<http://www.mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/the%20weizmann-feisal%20agreement%203-jan-1919.aspx> Art.III

¹⁴ <https://mosaicmagazine.com/essay/2017/06/the-forgotten-truth-about-the-balfour-declaration/>

6) The League of Nations and the San Remo Conference, 1920 AD

British forces continued their advance through Palestine and into Syria during the last few months of the war in 1918. In 1919 the Treaty of Versailles established the League of Nations. Article 22 of the Covenant of the League of Nations provided that territories which had ceased to be under the sovereignty of the States that formerly governed them should be administered by established countries under Mandates to be defined by the Council of the League of Nations until they could become independent.

In 1920 representatives of the Principal Allied Powers, which were also the permanent members of the Council of the League of Nations, met at San Remo to consider the Mandates that should be adopted in relation to former territories of the Turkish Empire. They agreed that France should be appointed the Mandatory for Syria and that Britain should be appointed Mandatory for Mesopotamia and Palestine, with the terms of the mandates being formulated by the Allies and submitted to the Council of the League of Nations for approval.

In the case of Syria and Mesopotamia, the Allies agreed that these territories should be provisionally recognized as independent states; they subsequently became the States of Syria, Lebanon and Iraq. In the case of Palestine, the Allies agreed that the Mandatory would be responsible for putting the Balfour Declaration into effect.

7) The League of Nations Mandate for Palestine, 1922 AD

The Mandates were then formulated and duly approved by the Council of the League of Nations.

The Preamble to the Mandate for Palestine reaffirmed the Balfour Declaration and the historical connection of the Jewish people to the Land of Israel by stating:

"Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favor of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country;

"Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country."

Article 2 of the Mandate confirmed that

"The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion."

Amongst other provisions to give effect to the Balfour Declaration, Article 6 of the Mandate provided that

“The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.”

8) Disapplication to Territory East of the Jordan

The Mandate for Palestine applied to areas that lay to the East and West of the Jordan River, as can be seen in the following illustration:

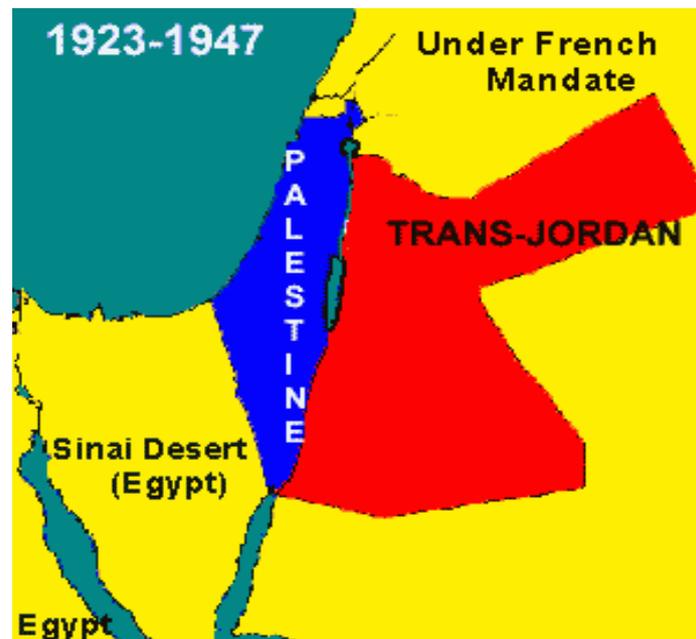


However, article 25 of the Mandate provided that

“In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of Articles 15, 16 and 18.”

Thus the provisions of the Mandate giving effect to the Jewish National Home could be withheld in the area of the Mandate East of the Jordan river. On the other hand, by so providing, the Mandate made it clear that its full provisions (including the facilitation of settlement by Jews on the land) should be implemented throughout the territory West of the Jordan river.

Britain exercised Article 25 by establishing a separate regime in the territory East of the Jordan, called Trans-Jordan, that was subsequently granted independence as the Hashemite Kingdom of Jordan in 1946. The following map illustrates this division:



9) Overall effect of the arrangements in the Middle East following World War I

The overall effect of the arrangements in the Middle East following the First World War was that the vast majority of the former Turkish territory was allocated for the creation of Arab States – Iraq, Jordan, Syria, Lebanon – and the narrow coastal strip West of the Jordan river was reserved for the reconstitution of the Jewish National Home.

10) Implementation of the Mandate

Significant development of the Jewish National Home in Western Palestine was achieved under the Mandate. A substantial number of Jews settled there, endemic malaria was eliminated, and the Jewish communities created a viable economy, universities, social organisations and institutions of a modern state. Many Arabs also immigrated into Western Palestine, attracted by the thriving economy.

However, in the 1930s Britain restricted Jewish immigration into Palestine in the hope of appeasing Arab violence. This blatant violation of the Mandate occurred when the Jewish home was most needed for refugees from Nazi persecution.

A British Royal Commission (the Peel Commission) recommended the partition of Western Palestine into a Jewish state and an Arab state.¹⁵ However, this proposal was abandoned when it was found that the Arab state would not be financially viable.¹⁶

¹⁵ Cmd 5479, 1937 <https://palestinianmandate.files.wordpress.com/2014/04/cm-5479.pdf>

¹⁶ Woodhead Commission Cmd 5854 (1938) <https://archive.org/details/WoodheadCommission>

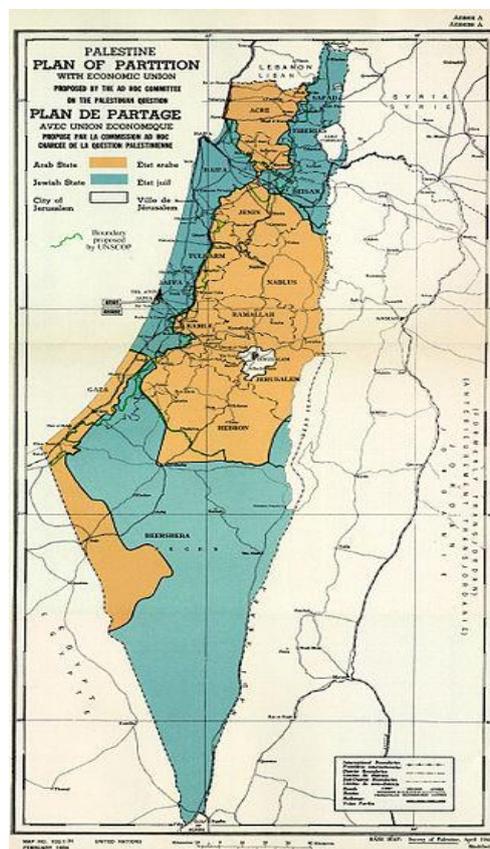
11) The United Nations and the Partition Plan, 1947

Following the Second World War, the League of Nations was replaced by the United Nations. Chapter XII of the United Nations Charter made provision for the remaining Mandates of the League of Nations to be replaced by UN Trusteeships. Article 80 of this Chapter stated:

“Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.”

No trusteeship agreement for Palestine was concluded. Accordingly, the rights of the Jewish people recognized in the Mandate were preserved. These included the right to settle throughout Western Palestine, provided that the rights and position of other inhabitants were not prejudiced.

Instead of a trusteeship agreement, the UN General Assembly adopted Resolution 181 on 29 November 1947, which recommended the division of Western Palestine into a Jewish State, an Arab State, and a central area (*corpus separatum*). This last area, comprising all of Jerusalem and Bethlehem, would remain under international administration for 10 years, after which its future would be determined taking into account a referendum of its inhabitants. Since the overwhelming majority of the inhabitants of Jerusalem by this time were Jewish, this should have allocated all of this area to the Jewish state. The proposed boundaries are shown below:



This non-binding recommendation was reluctantly accepted by Jewish representatives, but rejected by Arab representatives, and not adopted or implemented by the UN Security Council. The Arabs of Palestine prepared to seize the whole of Western Palestine by military force with the assistance of surrounding Arab countries. Britain announced its intention to terminate its administration of Palestine with effect from 15 May 1948.

12) Israel's Independence

On 14 May 1948, on the eve of the departure of the last British officials and forces, representatives of the Jewish communities in Western Palestine declared the independence of a new State of Israel, without specifying its borders.

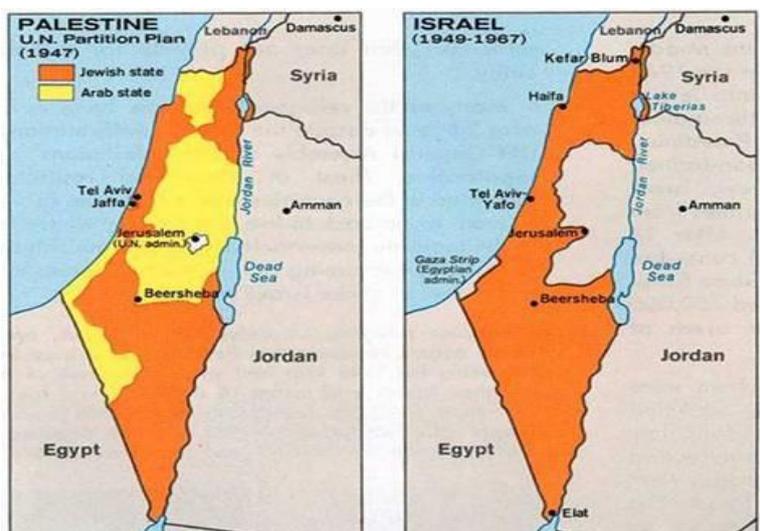
The new State was immediately attacked by the surrounding Arab countries as well as Arab forces inside Western Palestine, striving to wipe it out. Jordanian forces, accompanied by Iraqi forces, invaded from the East, conquering parts of Judea and Samaria West of the Jordan River, which they would then call "the West Bank".

Despite its numerical inferiority, the Israeli army managed to hold off its attackers on all the different fronts, although existing Jewish communities in Judea and Samaria, as well as Jerusalem, were overrun by the Jordanian and local Arab forces.

13) Armistice Agreements

Active hostilities between Israel and the surrounding Arab States were terminated by a series of armistice agreements. The first of these, which consolidated the truce in Jerusalem between the Israeli and Jordanian forces, was reached on the 30th of November 1948. The line demarcating the separation between the forces was drawn in green and became the precursor of what would later become known as the "Green Line".

Following this initial agreement, further armistice agreements were reached in Rhodes in 1949 between Israeli and Jordanian, Egyptian, Syrian and Lebanese representatives. The following maps show the armistice lines as compared to the recommendations of UN resolution 181:



The armistice agreements with Jordan, Egypt and Syria expressly provided that the demarcation lines drawn would under no circumstances be considered as "borders"¹⁷.

In particular, Article II.2 of the armistice agreement with Jordan stated:

“It is also recognised that no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations”

Article VI.9 of the same agreement provided:

“The Armistice Demarcation Lines defined in articles V and VI of this Agreement are agreed upon by the Parties without prejudice to future territorial settlements or boundary lines or to claims of either Party relating thereto.”

Despite these provisions, Jordan purported to annex the West Bank in 1950, but this was only recognized by the UK and Pakistan (and possibly Iraq) and was subsequently retracted.

14) The Six Day War

In May 1967 the President of Egypt, Gamal Abdel Nasser, mobilized Egyptian forces in Sinai on Israel's southern border; demanded that the UN force (which was supposed to keep the peace) leave Sinai; closed the Gulf of Aqaba to shipping bound for Israel, thereby blockading Israel's port at Eilat; and signed a mutual defense pact with Jordan. Israel had stated that it would regard a blockade of Eilat as an act of war.

On 5 June 1967 Israel carried out pre-emptive strikes against the Egyptian forces. Israel asked Jordan not to intervene, but Jordanian forces bombarded Israeli towns and advanced in a pincer movement around West Jerusalem. Israel successfully counter-attacked, liberating the whole of the West Bank from Jordanian rule.

15) UNSC Resolution 242

Several months after the end of the Six Day War, on 22 November 1967, the UN Security Council adopted its Resolution 242. This called for a

“just and lasting peace which should include the application of both the following principles: (i) Withdrawal by Israel armed forces from territories occupied in the recent conflict; and (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.”

¹⁷ See Article V(2) of the Armistice Agreement with Egypt of 24 February 1949; Article V(1) of the Armistice Agreement with Syria of 20 July 1949; and Articles II.2 and VI(9) of the Armistice Agreement with Jordan of 3 April 1949
<http://mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/Pages/TABLE%20OF%20CONTENTS.aspx#III>

Earlier drafts of the Resolution had demanded that Israel withdraw its forces “from all the territories occupied by it as a result of the recent conflict” or “to the positions they held prior to 5 June 1967”¹⁸ but this language was not accepted, thus signifying that a full withdrawal by Israeli forces to the armistice lines established in 1949 would not be required.

On the contrary, the Resolution also referred to the right of every State in the area to live in peace within “secure and recognized boundaries”, which was inconsistent with complete withdrawal to the 1949 armistice lines, especially in respect of the West Bank.

In any event, the reference to withdrawal of Israel armed forces was coupled with other principles in UNSC Resolution 242 that have not yet been implemented.

Furthermore, Resolution 242 did not mention or recognize the rights of a "Palestinian People" or a "Palestinian State".

It should also be noted that this Resolution was adopted under Chapter VI of the UN Charter and is not legally binding.

16) Israeli administration and the Oslo Accords

In the years following 1967 Israel administered the West Bank and the Gaza Strip. Under Israeli rule, enormous advances were made in health, education and standard of living of the Arab inhabitants of these areas.¹⁹

During this period the Israeli government also allowed Israeli citizens to settle in Judea and Samaria (the West Bank) if they wished to do so, in some cases in places where there had been a Jewish community in 1948 prior to the Jordanian invasion, and in other cases in new communities. Although there were occasional errors, care was taken to ensure that new Israeli settlements were not established on land owned by Arabs.

As administrator of this territory, Israel was entitled and bound to permit Jewish settlement in accordance with Article 6 of the League of Nations Mandate and Article 80 of the UN Charter. Many of the Israeli settlements were also justified to ensure security, which enabled the improvements mentioned above and avoided the deterioration that has occurred since the removal of Israeli settlements from the Gaza strip.

Even though Palestinian Arabs had not constituted a separate national entity in the past, Israel agreed with the Palestine Liberation Organization (“PLO”) in the Oslo Accords of 1993²⁰ and 1995²¹ to the creation of a new “Palestinian Authority” (“the PA”) to be elected by the Arabs of the Gaza Strip and the West Bank.

¹⁸ Washington Institute, “UN Security Council Resolution 242: The Building Block of Peacemaking” <http://www.washingtoninstitute.org/uploads/Documents/pubs/UNSecurityCouncilResolution.pdf> pages 71-74, 77-80

¹⁹ See eg Efraim Karsh, “What Occupation?” Commentary, July-August 2002 <http://www.aish.com/jw/me/48898917.html>

²⁰ Declaration of Principles on Interim Self-Government Arrangements http://avalon.law.yale.edu/20th_century/isrplo.asp

²¹ Interim Agreement on the West Bank and the Gaza Strip <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>.

The 1995 agreement divided the West Bank (excluding Jerusalem) into three parts:

- 1) Areas A, which include all of the large Palestinian towns, were placed under the jurisdiction of the PA.
- 2) Areas B, which include many Palestinian villages, were placed under the jurisdiction of the PA subject to Israel retaining overriding responsibility for security.
- 3) Area C, the remainder of the West Bank, where jurisdiction was not generally transferred to the PA. In particular, jurisdiction over the Israeli settlements in Area C was retained by Israel.

The Oslo Accords specifically left issues relating to various matters to be resolved in further negotiations. These matters were: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis.²² The Accords provided that no jurisdiction, powers or responsibilities were transferred to the PA in respect of these matters.

Notably, the Accords did **not** require Israel to close down the Israeli settlements, or to refrain from establishing new ones, or to halt economic activity in the vicinity of Israeli settlements.

17) UNSC Resolution 2334

UN Security Council Resolution 2334 of 2016 called upon all States to distinguish in their relevant dealings between the territory of the State of Israel and the territories occupied since 1967. However, it did not call upon States to prevent trade with Israeli businesses operating these territories.

The EU meets this requirement by not treating territories administered by Israel beyond the “Green Line” as part of Israel for the purpose of its agreements with Israel.

In any case, this Resolution was adopted under Chapter VI of the UN Charter and is not legally binding.

18) Businesses in the vicinity of Israeli settlements

For the reasons set out above, the Israeli administration in the West Bank should be regarded as successor to the duly appointed Mandatory of the League of Nations, rather than as successor to the intervening illegal occupier, Jordan. As successor to the Mandatory, the Israeli administration is entitled and bound to facilitate the settlement of Jews in Judea and Samaria in accordance with the requirements of Art.6 of the Mandate, which were preserved by Art. 80 of the UN Charter. On this basis, Jewish settlements are lawful unless they were established on land owned by Arabs. As mentioned above, save in a few cases where mistakes were made, Israel has ensured compliance with this condition.

²² See Article XVII of the Interim Agreement on the West Bank and the Gaza Strip

However, even if Israel is regarded instead as an occupier of this territory, and even if Israel can be said to have contravened provisions of International law, such as Art. 49(6) of the 4th Geneva Convention or Art. 8(2)(b)(viii) of the Rome Statute of the International Criminal Court, by facilitating the settlement of its citizens there, it still does not follow that the operation of a business in the vicinity of an Israeli settlement is unlawful.

The operation of a business in the West Bank does not normally result in the State of Israel causing the transfer of population into this territory, as would be required for the above provisions to apply. The distances from major Israeli population centres within the Green Line are in general so short that there is no need for Israelis to settle in the West Bank in order to work in businesses there. The UK Supreme Court specifically rejected the assumption that the operation of an Israeli business in the vicinity of an Israeli settlement must be illegal, in the absence of any evidence that the Israeli government had caused any transfer of its population into the West Bank through the operation of a business there.²³

Furthermore, far from prejudicing the rights of Palestinians, many Israeli businesses in the West Bank are enormously beneficial to them, since the Palestinians who work in these businesses enjoy much higher wages and other benefits than they get from Palestinian employers. They also promote peace by creating good relations between Palestinians and Israelis working together.

²³ *Richardson v DPP* [2014] UKSC 8 para 17