

The State of Israel's Legal Right to Judea and Samaria

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Jerusalem Center for
Security and Foreign Affairs

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Contents

Executive Summary	5
The State of Israel's Legal Right to Judea and Samaria	7
The Balfour Declaration	11
End of WWI and The Paris Peace Conference, 1919	15
San Remo Conference, 1920	19
The League of Nations Mandate for Palestine	23
Arab Violence in the Jewish Homeland	29
WWII and the Creation of the UN	31
The 1947 United Nations Partition Plan	33
<i>Uti Possidetis Juris</i> and the Emerging State of Israel	35
1948–1967	39
Applying Israeli Law to East Jerusalem	41
Applying Israeli Law to Judea and Samaria	43
The Oslo Accords	45
Final Comment	47
Notes	49
FAQ	55
About the Author	57

Executive Summary

Israel's legal and historical rights to Judea and Samaria are grounded in international decisions made after World War I. The 1920 San Remo Conference and the 1922 League of Nations Mandate for Palestine recognized the Jewish people's historical connection to the land and charged Britain with facilitating the establishment of a Jewish national home west of the Jordan River. Under the principle of *Uti Possidetis Juris*, Israel inherited these Mandate borders at independence in 1948, which included Gaza, Judea, Samaria, and Jerusalem.

The 1947 UN Partition Plan was a nonbinding recommendation rejected by Arab states, and subsequent armistice lines drawn in 1949 were explicitly not intended to serve as borders. Egypt controlled Gaza, and Jordan controlled Judea, Samaria, and east Jerusalem until 1967, but these occupations did not alter sovereignty. Article 80 of the UN Charter further preserved the validity of Mandate-based rights.

Israel has already extended its domestic law to territories such as Jerusalem (1967) and the Golan Heights (1981), establishing precedents for applying law to additional areas. While political and diplomatic considerations are significant, the legal foundation for extending Israeli law to Judea and Samaria rests on longstanding international recognition of Jewish sovereignty in the region.

The State of Israel's Legal Right to Judea and Samaria

The State of Israel's historic and legal rights to Judea and Samaria are unequivocal and universally recognized. They rest on documents, resolutions, and decisions adopted repeatedly by the international community following World War I. While the best minds of Soviet-era propagandists have done their utmost to rewrite history and invent an Arab-only "Palestinian people" who claim a right to "Palestine," the State of Israel's legal and historic right to the area remains unaffected.

This paper reviews the historical and legal claims of Israel to Judea and Samaria.

While the decision to extend Israeli law, and whether to do so over the entire area or any part thereof, is often discussed in a political context, any such discussion cannot ignore, and must be based first and foremost on solid legal and historical foundations.

As set out below, and based on its historic and legal rights, the government of Israel would be legally justified in extending Israeli law to any part of Judea and Samaria. Whether this would come about as part of the outcome of a negotiated settlement or unilaterally depends on whether the Palestinian and broader Arab leadership are prepared to revoke their blanket revocation of any acceptance of the concept of a Jewish state

and genuinely enter into a genuine and bona fide mode of negotiation.

Having said that, a decision of this nature would need to take into account not only the legal and historical basis, but also many other considerations, domestic and international.

Since this paper does not delve into those additional considerations, it should not be perceived as a recommendation to adopt any specific course of action.

The paper will, however, clearly demonstrate that Israel holds the international legal title to Judea and Samaria, and has the right to decide the future of those areas.

To understand the nature of the right, amidst the sea of misleading and politicized propaganda and historical distortion, it is essential to be familiar with the background to the decisions made by the international community and their legal implications.

From 1517 until 1917, the entire area of Israel, including Judea, Samaria, and the Jordan Valley, was part of the Ottoman Empire. During this period, no independent sovereign state existed in the area.

While some Jews had lived in the area for centuries,¹ the period starting in the mid-1800s witnessed a substantial revival of the Jewish desire for self-determination in their ancestral homeland. Working toward this goal, and with the consent of the Ottoman Empire, tens of thousands of Jews had started to return to the Land of Israel. The Jews who came from all parts of the world purchased land and began establishing

both agricultural settlements² and even towns.³ By 1914, the Jewish population in the area to the west of the Jordan River was calculated to be 84,660 of whom 11,660 were in Jewish villages, townships, settlements, and the remainder in towns.⁴

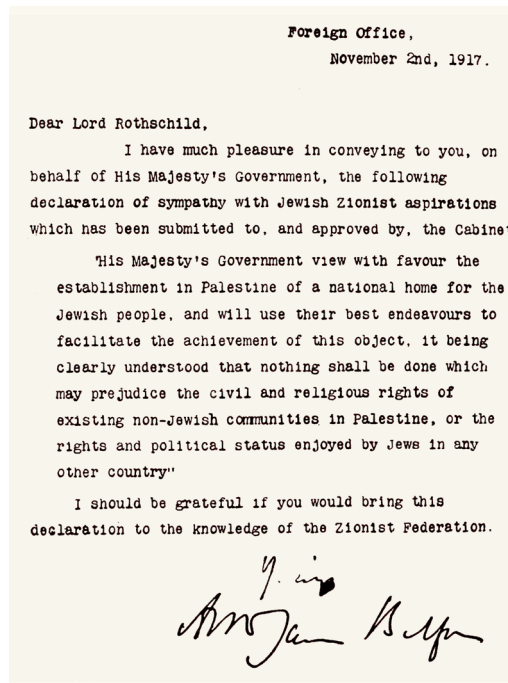
In 1916, anticipating the end of WWI, representatives of the British and French empires agreed, with the concurrence of the Russian Empire, to divide control over the Middle East between them. The agreement, known as the “Sykes-Picot Agreement,”⁵ divided the spheres of influence and control in much of the Middle East between the two empires.



The Balfour Declaration

The Sykes-Picot Agreement was followed in November 1917 with the “Balfour Declaration,” a unilateral document issued by the Government of Great Britain. In the declaration, His Majesty’s Government declared that it:

view[s] 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.



At the time, the boundaries of “Palestine” were unclear.

While the “Balfour Declaration” was, in its essence, a unilateral declaration of Great Britain, as historian Martin Kramer notes,⁶ “Despite appearances, then, the Balfour Declaration was more than the chess move of a single power. Behind it stood the Allies, each of whom gave it some push forward.” And when Balfour finally issued it, no one doubted that the Allies stood by Britain’s side. Just after publication of the declaration, the Jewish Chronicle of London affirmed that the British government had acted “in accord—it is without doubt to be assumed—with the rest of the Allies.” The Zionist Review described the declaration as “formal public recognition by Great Britain (and, that is, by the Allies) that Israel as a nation lives and persists.”

The declaration also had the blessing, albeit in advance, of Pope Benedict, who, in a meeting with Nahum Sokolow of the Zionist Executive, described the return of the Jews to Palestine as “providential; God has willed it.”⁷

The blessing of Pope Benedict, given in May 1917, was followed by the blessing of the French Government. In a letter to Sokolow in June 1917, French diplomat Jules Cambon, writing on behalf of the French government, noted:⁸

You were good enough to present the project to which you are devoting your efforts, which has for its object the development of Jewish colonization in Palestine. You consider that, circumstances permitting, and the independence of the Holy Places being safeguarded on the other hand, it would be a deed of justice and of reparation to assist, by the protection of the Allied Powers, in the

renaissance of the Jewish nationality in that Land from which the people of Israel were exiled so many centuries ago.

The French Government, which entered this present war to defend a people wrongfully attacked, and which continues the struggle to assure the victory of right over might, can but feel sympathy for your cause, the triumph of which is bound up with that of the Allies.

I am happy to give you herewith such assurance.

End of WWI and The Paris Peace Conference, 1919

Following the end of WWI, the allied powers met, in 1919, at the Paris Peace Conference in order to discuss the dismemberment of the Ottoman Empire.

In preparation for the discussions, the U.S. prepared an “Outline of Tentative report and recommendations prepared by the Intelligence Section, in accordance with instructions, for the President and the plenipotentiaries” dated January 21, 1919.

While the outline dealt with wider subjects, the section on Palestine provided as follows: ⁹

It is recommended:

1. That there be established a separate state of Palestine.
2. That this state be placed under Great Britain as a mandatory of the League of Nations.
3. That the Jews be invited to return to Palestine and settle there being assured by the Conference of all proper assistance in so doing that may be consistent with the protection of the personal (especially the religious) and the property rights of the non-Jewish population, and being further assured that it will be the policy of the League of Nations to recognize Palestine as a Jewish state as soon as it is a Jewish state in fact.

4. That the holy places and religious rights of all creeds in Palestine be placed under the protection of the League of Nations and its mandatory.

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Speaking at the conference, Sokolow, “representing the Zionist Organisation and the Jewish population of Palestine,” presented the “Statement of the Zionist Organisation regarding Palestine” and read out a section thereof, which he asked to be considered as a draft resolution for the consideration of the conference:¹⁰

1. The High Contracting Parties recognise the historic title of the Jewish people to Palestine and the right of the Jews to reconstitute in Palestine their National Home.
2. The boundaries of Palestine shall be as declared in the schedule annexed hereto.¹¹

3. The sovereign possession of Palestine shall be vested in the League of Nations and the Government entrusted to Great Britain as Mandatory of the League.
4. (Provision to be inserted relating to the application in Palestine of such of the general conditions attached to mandates as are suitable to the case).
5. The mandate shall be subject also to the following special conditions:
 1. Palestine shall be placed under such political, administrative and economic conditions as will secure the establishment there of the Jewish National Home and ultimately render possible the creation of an autonomous Commonwealth, it being clearly understood that nothing shall be done which may prejudice rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.

While not all of Sokolow's position was adopted, much of it was later incorporated into the League of Nations Mandate for Palestine.

During the discussions in Paris, on March 3, 1919, U.S. President Wilson noted, "I am persuaded that the Allied nations, with the fullest concurrence of our own Government and people, are agreed that in Palestine shall be laid the foundations of a Jewish commonwealth."¹²

While Arab representatives actively participated in the conference, at no stage was there any reference to an Arab population

called “The Palestinians,” nor was there any discussion of any requirement to establish a state, for the yet unknown group.¹³

San Remo Conference, 1920

Following the creation of the League of Nations, and after further interim discussion, the Allied leaders met again in San Remo, Italy, in April 1920.

At the conference, the “High Contracting Parties” agreed: ¹⁴

[T]o entrust, by application of the provisions of Article 22, the administration of Palestine, within such boundaries as may be determined by the Principal Allied Powers, to a Mandatory, to be selected by the said Powers. The Mandatory will be responsible for putting into effect the declaration originally made on November 8, 1917, by the British Government, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people, 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.

Article 22,¹⁵ mentioned in the decision, was a reference to Article 22 of the Covenant of the League of Nations, which had been concluded and published two months earlier, in February 1920. The Covenant established, inter alia, the system of “Mandates.”

At the time, the geographical area that compromised “Palestine” included all of the modern-day Hashemite Kingdom of

Jordan, and the entire area of modern-day Israel, including Judea, Samaria, and the Gaza Strip.

The importance of the decision made in San Remo cannot be understated.

Despite its great historical significance, the “Balfour Declaration” conveyed the unilateral commitment of Great Britain to establish a Jewish national homeland in Palestine. The discussions in Paris furthered that goal, but remained as discussions.

In San Remo, however, the “Balfour Declaration” was transformed from being a non-binding commitment of Great Britain, to being international law, as the official position adopted by the international community within the framework of a binding international treaty. In San Remo, the political aspirations of the Zionist movement were elevated, and thereby, the right of the Jews to a national home in Palestine became an instrument of international law.

As Jacques Paul Gauthier noted, “The sessions of the Peace Conference held in San Remo altered the destiny and status of the territories then referred to as Palestine.”¹⁶ Howard Grief added that the effect of the decision “made the Jewish People as a whole the national beneficiary of the Mandate for Palestine, in whom *de jure* sovereignty was vested.”¹⁷

Once again, no reference was made to either a “Palestinian people” or any intention to establish a “Palestinian state.”

Expanding on the power and jurisdiction of the Allied Powers to divide and dispose of the territories of the former Ottoman Empire, Professor Sir Ian Brownlie noted that:

[a]fter the defeat of the Central Powers, the leading victor states assumed a ***power of disposition, to be exercised jointly, over territory of the defeated states***. In the years 1919 and 1920 decisions were taken by the Supreme Council of Allied and Associated States... States losing territory as a consequence of dispositions in this way might, and often did, renounce title by provisions of a peace treaty to the area concerned, but the dispositions were assumed valid irrespective of such renunciation and the recipients were usually in possession prior to the coming into force of a peace treaty.¹⁸

The League of Nations Mandate for Palestine

Building on the decisions made in San Remo, and in anticipation of a decision in the League of Nations, on June 3, 1922, the British Government issued a White Paper which stated that:

So far as the Jewish population of Palestine are concerned it appears that some among them are apprehensive that His Majesty's Government may depart from the policy embodied in the Declaration of 1917. It is necessary, therefore, once more to affirm that these fears are unfounded, and that that Declaration, re-affirmed by the Conference of the Principal Allied Powers at San Remo and again in the Treaty of Sèvres, is not susceptible of change.¹⁹

The White Paper continued, saying that the Jewish communities in Palestine:

should know that it is in Palestine as of right and not on the sufferance. That is the reason why it is necessary that the existence of a Jewish National Home in Palestine should be internationally guaranteed, and that it should be formally recognized to rest upon ancient historic connection.²⁰

On July 24, 1922, the League of Nations adopted the "Mandate for Palestine."²¹ The Mandate entrenched the agreements that had been reached in the Paris and San Remo Conferences.

The Mandate itself left no room for interpretation, with its preamble already providing the historical and legal context:

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*** [emphasis added].

Building on the preamble, the Mandate included multiple operative provisions requiring Great Britain to work to establish the Jewish homeland.

Thus, Article 2 provided:

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.²²

Article 4 provided:

An appropriate ***Jewish agency shall be recognised as a public***

body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect *the establishment of the Jewish national home and the interests of the Jewish population in Palestine*, and, subject always to the control of the Administration, to assist and take part in the development of the country.

The **Zionist organisation**, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. *It shall take steps in consultation with His Britannic Majesty's Government to secure the cooperation of all Jews who are willing to assist in the establishment of the Jewish national home* ²³ [emphasis added].

Article 6 provided:

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 ²⁴ [emphasis added].

While recognizing the historical connection of the Jewish people to “Palestine” and the grounds for reconstituting the Jewish national homeland in “Palestine,” for the first time, in the Mandate, the international community also designated the area in which the Jewish homeland would be established.

In recognition of the promises made by Great Britain to Hashemite Emir Abdullah bin al-Hussein as a reward for his and his family's rebelling against the Turks in World War I, the Mandate gave specific permission for the "Mandatory" (Great Britain):

In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined,... 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...

In other words, under the Mandate, Great Britain was granted permission to separate 78% of the territory of "Palestine," the area east of the Jordan River, from the rest of the territory.

This provision allowed Great Britain, subject to the consent of the League of Nations that was later given, to establish the Hashemite Kingdom of Jordan, over which Emir Abdullah bin al-Hussein became King.

As regards the remaining territory—the entire area to the west of the Jordan River—the Mandate provided, in Article 5,²⁵ that Great Britain "be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power."

After the separation of the eastern area of "Palestine," the British Mandate continued to apply to the entire area west of the Jordan River. The geographical area over which the Mandate continued, as will be shown below, is of critical importance.



Once again, it is clear from the unequivocal language of the Mandate that the League of Nations was acknowledging the historical connection of the **Jewish people** to the area.

No parallel recognition was given to either the existence of a “Palestinian people” or the need to create a **third state** alongside the Jewish homeland and the Hashemite Kingdom of Jordan. In fact, the Mandate did not mention Arab national or political rights in Palestine, except the provision that “nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities.” According to Professor Talia Einhorn, the reason for this was clear: “[T]he purpose of the Mandate was to reconstitute the political ties of the Jewish people to their biblical homeland.”²⁶

Since the Mandate did specifically refer to severing the area to the east of the Jordan River from the rest of “Palestine,” it is clear that the League of Nations was not oblivious to the demands of the Arabs in the area, and made specific provision for the creation of just one other state—the Hashemite Kingdom of Jordan.

As jurist Robert L. Meyer noted:²⁷

It is clear from the provisions of the Mandate that the states that were members of the League of Nations, constituting the then international community, made explicit legal promises to the Jewish people establishing the Mandate for the purpose of guiding the “provisionally independent” area of Palestine into full statehood.

The Mandate, it has been said, “did not create a new national right, but rather acknowledged a preexisting right that was broadly accepted in international circles within the League of Nations at the time.”²⁸

Critically, Article 27 of the Mandate specifically provided that “The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.”²⁹

Arab Violence in the Jewish Homeland

After the enactment of the Mandate and having already established the Hashemite Kingdom of Jordan, the Arabs residing in the area designated for the Jewish homeland launched repeated waves of violence against the Jews and the British forces. The major waves were followed by commissions established to investigate the roots of the violence.

Thus in 1929, following the Arab massacre of 130 Jews in Hebron, Jerusalem, and Safad, the British established the Shaw Commission.³⁰ The commission found that “The fundamental cause, without which in our opinion disturbances either would not have occurred or would have been little more than a local right, is the Arab feeling of animosity and hostility towards Jews...”³¹

Following the Arab Revolt of 1933-1936, the British established the Peel Commission.³² The commission found that:

The underlying causes of the disturbances, or (as we regard it) the rebellion, of 1936, are, first, the desire of the Arabs for national independence: secondly, their antagonism to the establishment of the Jewish National Home in Palestine, quickened by their fear of Jewish domination.³³

While separated by seven years, both commissions found that the arrival of the Jews in “Palestine” was accompanied by economic improvement for the Arabs.

On this subject, the Shaw Commission noted, “Jewish

enterprise and Jewish immigration... have conferred material benefits upon Palestine in which the Arab people share.”³⁴ The Peel Commission noted that, “We have found that, though the Arabs have benefited by the development of the country owing to Jewish immigration, this has had no conciliatory effect. On the contrary, improvements in the economic situation in Palestine have led to a deterioration in the political situation.”

Notwithstanding the benefits gained by the Arabs from Jewish immigration to Palestine, the Peel Commission concluded that there was no alternative other than to divide the area to the west of the Jordan River into a Jewish country and a second Arab country, while simultaneously leaving Jordan untouched.

However, considering the provision of the Mandate, specifically Article 5 mentioned above, Great Britain was unauthorized to implement this solution without the express permission of the League of Nations.

WWII and the Creation of the UN

World War II saw not only the Jewish Holocaust in Europe, but also the failure and dissolution of the League of Nations, and its replacement with the United Nations (UN).

As part of its foundational documents, the UN adopted its own Charter.³⁵ Article 80 of the UN Charter guaranteed the continuation of the Mandate system established by the League of Nations, and provided as follows:

1. 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.
2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

In other words, in the current context, the UN's own Charter adopted and entrenched the "rights whatsoever of any states or any peoples or the terms of existing international instruments" as approved in the League of Nations Mandate for

Palestine, ensuring that its provisions could only be altered with the permission and agreement of the UN.

The 1947 United Nations Partition Plan

In 1947, in the aftermath of the Holocaust, and acting on the recommendations of Great Britain, the newly-formed UN suggested³⁶ adopting a new plan that would partition the area to the west of the Jordan River into two states – a Jewish State and an Arab State. At no stage did the plan mention creating a “Palestinian State.”

While the representatives of the Jewish organizations accepted the proposed plan, the Arab countries rejected it. As the Report of the Ad Hoc Committee on the Palestinian Question reported,³⁷ on November 25, 1947:

At its third meeting, the Ad Hoc Committee heard the representative of the Arab Higher Committee, who rejected the recommendations of the Special Committee on Palestine and advocated the establishment on democratic lines, in the whole of Palestine, of an Arab State which would protect the legitimate rights and interests of all minorities. At the fourth meeting the representative of the Jewish Agency indicated its readiness to accept, subject to further discussion of the constitutional and territorial provisions, the majority plan of the Special Committee on Palestine.

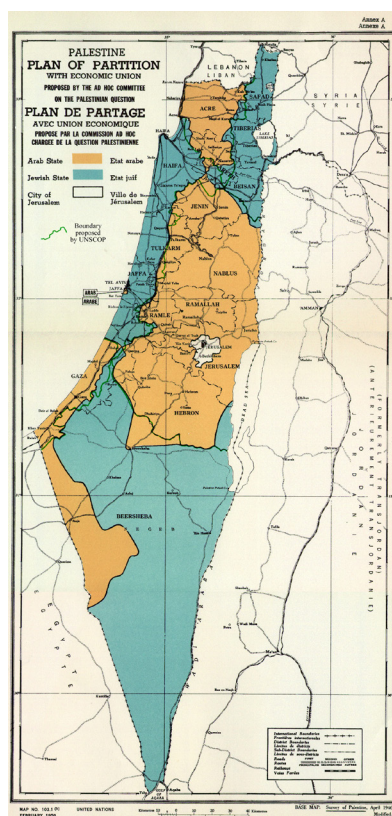
On November 29, 1947, the UN General Assembly voted on the Partition Plan.³⁸ 33 countries voted in favor of the plan,³⁹ 13 countries voted against it.⁴⁰

It is essential to emphasize that the resolution passed by the General Assembly, like all General Assembly resolutions, was

merely a recommendation that required further action by the UN Security Council. That action was never taken.

Therefore, while the Partition Plan had the potential to fulfill the requirements to amend the Mandate, its rejection by the Arab countries fundamentally and irrevocably frustrated that potential.⁴¹

Thus, when the Mandate came to its conclusion, the geographical area it covered, from Lebanon in the north to the Red Sea and Egypt in the south and southwest, the Mediterranean Sea in the west, and the Jordan River in the east, remained the only lines of demarcation.



***Uti Possidetis Juris* and the Emerging State of Israel**

The legal doctrine of *Uti Possidetis Juris* is a principle of customary international law that serves to preserve the boundaries of emerging states. In reference to the principle, the International Court of Justice noted ⁴² that *Uti Possidetis Juris* is a “general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power.”

Pursuant to *Uti Possidetis Juris*, when Israel declared its independence in May 1948, it inherited the borders previously set by the Mandate, as administered by Great Britain.

Accordingly, the geographic area of the nascent state included not only the area undisputedly considered Israel, but also the Gaza Strip, Judea, Samaria, and all of Jerusalem.

However, since the Arab countries rejected Israel’s right to exist, five Arab armies immediately invaded the nascent state with the declared goal of destroying it.⁴³

While Israel managed to repel most of the aggression, the Gaza Strip was occupied by Egypt, and Judea, Samaria, and east Jerusalem were occupied by Jordan. It was at this time that the Jordanians referred to the area as “the West Bank” (of Jordan).

After months of fighting, and with UN mediation, in 1949, Israel concluded “Armistice” agreements with the neighboring Arab countries. The agreements included maps with lines detailing where the forces of each side had stopped. The lines drawn were nothing more than a reflection of the practicalities on the ground, and were never meant to reflect “borders.”

Thus, Article II.2 of the armistice agreement with Jordan provided that:

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.⁴⁴

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.

Article V of the armistice agreement with Egypt contained similar provisions:

The line described in Article VI of this Agreement shall be designated as the Armistice Demarcation Line and is delineated in pursuance of the purpose and intent of the resolutions of the Security Council of 4 and 16 November 1948.

The Armistice Demarcation Line is not to be construed in any

sense as a political or territorial boundary, and is delineated without prejudice to rights, claims and positions of either Party to the Armistice as regards ultimate settlement of the Palestine question.⁴⁵

1948–1967

From 1948 through 1967, Gaza was under Egyptian control⁴⁶ and Judea, Samaria, and east Jerusalem were under Jordanian control. During that period, had they so chosen, the Arabs and the Arab countries could have established the “Arab state” envisioned by the Partition Plan.

Instead, Egypt, which never laid any territorial claim to the area, held Gaza under military rule.⁴⁷ Jordan did try to annex Judea, Samaria, and east Jerusalem,⁴⁸ but the move did not gain general acceptance by the international community.

Notably, during this period, there was not even one UN resolution calling on Egypt or Jordan to end their “occupation” of what the UN and the international community would later term, only to Israel’s detriment, as the “occupied Palestinian territory.”

Even UN Security Council resolution 242,⁴⁹ often cited deliberately misleadingly and without any basis by the Palestinians and others as the source for the demand of Israel to leave Judea, Samaria, east Jerusalem, and Gaza, never once mentions the term “Palestinians” or “Palestinian territory.” As Professor Eugene Rostow noted:⁵⁰

it is hard to believe that professional diplomats seriously claim in 1993 that Security Council Resolution 242 requires that Israel must return to the 1967 armistice lines. This Arab position is particularly bizarre when applied to the West Bank and the Gaza Strip, where the Jewish people have an

incontestably valid claim under the original Mandate and Article 80 of the U.N. Charter to make close settlements on the land.

Applying Israeli Law to East Jerusalem

Since Israel's War of Independence ended merely with the conclusion, as noted above, of Armistice Agreements and with "lines" that were not to be considered as "borders," the nascent Israeli government had a dilemma.

In normal circumstances, the law of a country applies⁵¹ to the sovereign territorial area of that country, as defined by its borders. Thus, when passing the foundational acts of Israel's legislation, paragraph 1 of the Area of Jurisdiction and Powers Ordinance, 5708-1948,⁵² decreed that Israeli law would apply to the territories as defined in an order of the Minister of Defense. That area delineated Israel's territory according to the lines drawn pursuant to the Armistice Agreements.

In 1967, following the Six-Day War, pursuant to the amended paragraph 11B of the Regulation of Administration and Law Ordinance, 5708-1948,⁵³ Israel expanded the application of its law to include the area of Greater Jerusalem, including extensive areas still referred to as "East Jerusalem." In contrast, Israel did not, at that stage, choose to apply its law to the areas of the Gaza Strip, Judea, or Samaria.

Israel's Supreme Court analyzed the manner in which Israel expanded the territory of Jerusalem, following the Six-Day War, in the case of *Rabakh et. al. v. Jerusalem Local Affairs Court, et. al.*⁵⁴

In that case, an Arab living in an area of Jerusalem that used to be under Jordanian control was indicted for illegal building.

He claimed that the application of Israeli law to greater Jerusalem was unlawful and that, consequently, the court lacked jurisdiction to prosecute him. As the Jerusalem Local Affairs Court refrained from addressing the claim, Rabakh petitioned Israel's Supreme Court, sitting as the High Court of Justice.

In its decision to reject the petition, the court noted that pursuant to the amendment to paragraph 11B mention above, on June 28, 1967, the government issued Law and Administration Order 1, in which it decreed that "The area of the Land of Israel described in the addendum is hereby declared as an area over which the law, jurisdiction, and administration of the state will apply."

The addendum gave a geographical description of the areas of Jerusalem that were included in that order.

The court further added that on the same day, Israel's parliament adopted an amendment to the Cities Ordinance [New version] to add paragraph 8A. According to the amendment, Israel's Minister of the Interior was empowered to set the municipal boundaries of any city, as he saw fit. The next day, the Minister of the Interior issued an order setting Jerusalem's new municipal boundaries.

Applying Israeli Law to Judea and Samaria

Since there is no difference between the extension of Israeli law to apply to greater Jerusalem, including the part that used to be under Jordanian rule, and applying Israeli law to Judea and Samaria, or any part thereof, the same technical legal methodology adopted in 1967 could still be relevant today.⁵⁵

In other words, the extension of Israeli law to additional territory could be achieved through an order from the Minister of Defense or the government.

Either way, the orders would need to be accompanied by ancillary amendments to scores of other laws that are now in effect in Israel.

It would also not be unreasonable to assume that a change so fundamental to Israel would be done not exclusively by the executive branch, but rather specifically by legislation. While the other methods mentioned above were (and remain) in force, when Israel decided, in 1981, to extend its law of the Golan Heights, it did so via legislation passed in the Knesset.⁵⁶

The Oslo Accords

The Oslo Accords, a collective name for a series of agreements between Israel and the Palestine Liberation Organization (PLO) from 1993 through 1997, provided for the creation of limited Palestinian autonomy in Judea, Samaria, and the Gaza Strip.

Contrary to popular misconception, it was never agreed by the Palestinians and Israel in the Oslo Accords on any notion of creating a second state to the west of the Jordan River. Thus, the Accords could never, and should never, be perceived as an Israeli waiver of its legal and historical claim to Judea and Samaria. The Oslo Accords deliberately refrained from referring to any such concept as a “two-state solution.” They did not refer to the establishment of a Palestinian state; the parties preferred to agree to negotiate the issue of permanent status. In these negotiations, they would present their respective historic and legal rights and negotiate the final status of the territories. Nothing in the Accords implies that these negotiations would necessarily lead to the creation of a “Palestinian state.” By the same token, nothing therein ruled out the possibility that the areas of Judea and Samaria, or part of them, would not become part of sovereign Israel.

1517–1917



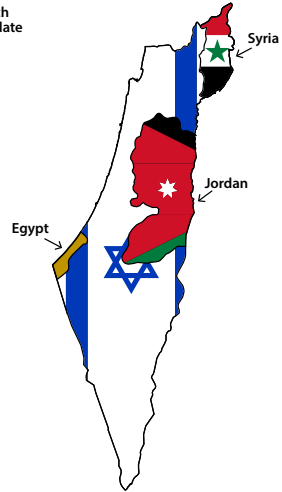
Ottoman Empire

1917–1948



British Mandate

1948–1967



Israel

1967–1995



Israel

1995–Today



Israel

Facts Matter

**When did
an independent
“State Of Palestine”
ever exist?**

Never!

Final Comment

This paper reviews the historical and legal claims of Israel to Judea and Samaria. The decision to extend Israeli law, and whether to do so over the entire area or any part thereof, is complex. However, as demonstrated above, should the government of Israel decide to extend Israeli law to any part of Judea and Samaria, it would undoubtedly have a solid base on which to rest.

Notes

1. Predominantly in Jerusalem, Safad, Tiberius and Hebron (the synagogue, for example, in the Avraham Avinu neighbourhood of Hebron dates back to 1540)
2. Including Rishon Le'tzion, Zichron Ya'akov and Rosh Pina, founded between 1882 and 1883, and Deganya, founded in 1909
3. Including Petah Tikva, founded in 1878 and Tel-Aviv, founded in 1909
4. British Census for Palestine, 1922 - <https://archive.org/details/PalestineCensus1922/page/n3/mode/2up>
5. https://avalon.law.yale.edu/20th_century/sykes.asp
6. Kramer, Martin, "The Forgotten Truth about the Balfour Declaration," *Mosaic* - <https://www.washingtoninstitute.org/sites/default/files/pdf/Kramer20170605-Mosaic.pdf>
7. Ibid
8. Ibid
9. Miller, David Hunter, *My Diary. At the Conference of Paris. With Documents. Volume IV. Documents 216-304*, <https://archive.org/details/MyDiaryAtConferenceOfParis-Vol4/mode/2up>
10. Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919, Volume IV - <https://www.lawandisrael.org/library/historical/mandate/timeline/records-of-the-paris-peace-conference/>
11. The paper submitted by Sokolow set the borders of Palestine as follows:

2. *The boundaries of Palestine shall follow the general lines set out below:*

Starting on the North at a point on the Mediterranean Sea in the vicinity South of Sidon and following the watersheds of the foothills of the Lebanon as far as Jisr el Karaon, thence to El Bire, following the dividing line between the two basins of the Wadi el Korn and the Wadi el Tiem, thence in a southerly direction following the dividing line between the Eastern and Western slopes of the Hermon, to the vicinity West of Beit Jenn, thence Eastward following the northern watersheds of the Nahr Mughaniye close to and west of the Hedjaz Railway.

In the East a line close to and West of the Hedjaz Railway terminating in the Gulf of Akaba.

In the South a frontier to be agreed upon with the Egyptian Government.

In the West the Mediterranean Sea.

The details of the delimitations, or any necessary adjustments of detail, shall be settled by a Special Commission on which there shall be Jewish representation.

12. <https://www.gov.il/en/pages/speeches-by-jewish-agency-representatives-in-the-general-assembly-may-1947>
13. As historian Abd Al-Ghani Salameh, noted, on November 1, 2017: "Before the Balfour Promise when the Ottoman rule ended (1517 - 1917), Palestine's political borders as we know them today did not exist, and there was nothing called a Palestinian people with a political identity as we know today..." – Palestinian Media Watch, "The Balfour bogeyman" - <https://palwatch.org/page/32285>
14. <https://www.jewishvirtuallibrary.org/the-san-remo-conference>
15. Article 22 of the League of Nations Covenant (https://libraryresources.unog.ch/ld.php?content_id=32971179) read as follows:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

...

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the

Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

16. Gauthier, Jacques Paul, *Sovereignty Over the Old City of Jerusalem*, https://www.nli.org.il/en/books/NNL_ALEPH997011345447405171/NLI
17. Grief, Howard *The Legal Foundation and Borders of Israel Under International Law* (Mazo Press, 2008) p. 293.
18. Brownlie, Ian. *Principles of Public International Law*, 4th ed., pp. 135,136, as quoted by Gauthier.
19. Gilbert, Sir Martin, “‘An Overwhelmingly Jewish State’ – From the Balfour Declaration to the Palestine Mandate” - <https://jcpa.org/article/an-overwhelmingly-jewish-state/>
20. Ibid
21. <https://www.gov.il/en/pages/the-mandate-for-palestine>
22. Ibid
23. Ibid
24. Ibid
25. Ibid
26. Einhorn, Prof. Talia, “Israel Under Fire – Israel’s Legal Rights Regarding Settlements” - <https://jcpa.org/article/israel-under-fire-israels-legal-rights-regarding-settlements/>
27. Meyer, Robert L. “Israel Under Fire – The Attempt to Deny the Foundational Legal, Historical, and National Rights of the Jewish People” - <https://jcpa.org/article/the-attempt-to-deny-the-foundational-legal-historical-and-national-rights-of-the-jewish-people/>
28. Gold, Dr. Dore, “Review: ‘Churchill’s Promised Land’,” *Colombia Magazine*, <https://magazine.columbia.edu/article/review-churchills-promised-land>
29. Ibid
30. <https://babel.hathitrust.org/cgi/pt?id=mdp.39015066430987&seq=9>
31. Ibid, p. 163
32. https://ecf.org.il/media_items/290
33. Ibid, p. 363

34. <https://babel.hathitrust.org/cgi/pt?id=mdp.39015066430987&seq=9>, p. 161
35. <https://www.un.org/en/about-us/un-charter/full-text>
36. <https://docs.un.org/en/A/AC.13/82>
37. <https://unispal.un.org/pdfs/CB265C939B5A551F802564B40053D359.pdf>
38. <https://www.gov.il/en/pages/un-general-assembly-resolution-181>
39. Australia, Belgium, Bolivia, Brazil, Byelorussian S.S.R., Canada, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ecuador, France, Guatemala, Haiti, Iceland, Liberia, Luxemburg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Sweden, Ukrainian S.S.R., Union of South Africa, U.S.A., U.S.S.R., Uruguay, Venezuela.
40. Afghanistan, Cuba, Egypt, Greece, India, Iran, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Turkey, Yemen.
41. <https://jcpa.org/article/70-years-un-resolution-181-assessment/>
42. <https://www.icj-cij.org/sites/default/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>
43. A statement issued by the Governments of the Arab League States on 15 May, 1948 (the day on which Israel declared its Independence), reiterated the Arab rejection of Partition Plan and added “that it would not be possible to carry it out by peaceful means, and that its forcible imposition would constitute a threat to peace and security in this area.” The Statement added that:

Palestine is a sacred trust in the hands of the Arab States... [and] found themselves compelled to intervene in Palestine solely in order to help its inhabitants restore peace and security and the rule of justice and law to their country, and in order to prevent bloodshed.

The statement continued by saying “that the only solution of the Palestine problem is the establishment of a unitary Palestinian State.” For the full text of the statement of the Arab League, see <https://www.gov.il/en/pages/arab-league-declaration-on-the-invasion-of-palestine>
44. <https://peacemaker.un.org/sites/default/files/document/files/2024/05/il20jo490403hashemite20jordan20kingdom-israel20general20armistice20agreement.pdf>
45. <https://www.gov.il/en/pages/israel-egypt-armistice-agreement>
46. With the exception of a short period in 1956 following the Sinai Campaign.
47. <https://jcpa.org/article/does-the-world-hate-gaza-and-the-gazans/>
48. <https://jcpa.org/why-do-the-arabs-in-judea-and-samaria-lack-citizenship/>

49. UNSC 242 was adopted in November 1967, five months after the end of the June 1967 Six Day War.
50. Eugene V Rostow, "The Drafting of Security Council Resolution 242: The Role of the Non-Regional Actors," *NYLI Journal of International Law and Politics*, Vol. 25, No. 2, p. 489 (1992) - <https://openyls.law.yale.edu/server/api/core/bitstreams/432d0f29-e276-4a1c-bb0e-ad0f4d660c01/content>
51. With minor exceptions that provide for extra-territorial application.
52. https://www.nevo.co.il/law_html/law01/p216_001.htm
53. https://www.nevo.co.il/law_html/law00/73184.htm
54. HCJ 256/01
55. See also on this subject: Lieberman, Bentzi, Leiter, Yechiel M., Roth, Anat, *ISRAELI SOVEREIGNTY IN JUDEA, SAMARIA, AND THE JORDAN VALLEY, The Importance, Procedure, and Legal Basis for Applying Israel's Legal System in Select Areas of Judea, Samaria, and the Jordan Valley* (Shiloh, 2020) - https://www.shiloh.org.il/_files/ugd/e93e5c_d87c977685954f16ba86b41034e6d415.pdf; Vinitzky, Dr. Hagai, *Applying Israeli Law, Jurisdiction, and Administration to the Jordan Valley and certain Areas in Judea and Samaria* (Hebrew) (Shiloh, 2020) - https://www.shiloh.org.il/_files/ugd/e93e5c_04985db522b740c994ec9c91887d45ad.pdf
56. https://www.nevo.co.il/law_html/law00/4882.htm

FAQ

What is the core legal claim for Israel's rights to Judea and Samaria?

Israel holds international legal title to Judea and Samaria rooted in post-WWI instruments—most notably the San Remo decisions and the League of Nations Mandate for Palestine—which recognized the Jewish people's historical connection and tasked Britain with facilitating a Jewish national home west of the Jordan River.

How does *Uti Possidetis Juris* factor into Israel's borders at independence?

The doctrine preserves administrative borders at the moment of statehood. When Israel declared independence in 1948, it inherited the Mandate-era boundaries administered by Britain—covering Gaza, Judea, Samaria, and all of Jerusalem.

Did later UN actions nullify those Mandate-based rights?

No. The 1947 UN Partition Plan (GA Resolution 181) was a non-binding recommendation rejected by Arab states and never implemented by the Security Council. The UN Charter's Article 80 preserved existing rights under earlier international instruments unless lawfully modified—which did not occur.

What about the 1949 Armistice Lines and the 1948–1967 period?

The armistice agreements explicitly stated their lines were not borders and were drawn for military reasons only. From 1948–1967, Egypt controlled Gaza and Jordan controlled Judea, Samaria, and east Jerusalem; Jordan's annexation lacked broad recognition and no UN body labeled these areas "occupied Palestinian territory" during that period.

Can Israel lawfully extend its domestic law to Judea and Samaria today?

Yes, as a matter of legal right derived from the Mandate and subsequent continuity. There are precedents and mechanisms (e.g., government orders or Knesset legislation, as used for Jerusalem in 1967 and the Golan in 1981). Whether to do so—and over which areas—is a political decision that must weigh broader domestic and international considerations. The Oslo Accords did not concede sovereignty or predetermine statehood outcomes.

About the Author

Lt.-Col. (res.) Maurice Hirsch served as Director of the Military Prosecution for Judea and Samaria. Since retiring from the IDF, Hirsch worked as the Head of Legal Strategies for Palestinian Media Watch, as a Senior Military Consultant for NGO Monitor, an advisor to the Ministry of Defense, and head of an advisory committee in the Ministry of Interior. Hirsch was the architect of the Israeli law that strips citizenship from Israeli terrorists who have been convicted for terror offenses, sentenced to a custodial sentence, and receive a payment from the Palestinian Authority as a reward for their acts of terror.



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Pursuant to *Uti Possidetis Juris*, when Israel declared its independence, it inherited the borders previously set by the Mandate. Accordingly, Israel's geographic area included the Gaza Strip, Judea, Samaria, and all of Jerusalem.



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