

Question: Does Israel still have a claim to all the territories of the British mandate under *uti possidetis juris* – or does the acceptance of the UN 1947 Partition plan forfeit the remaining lands?

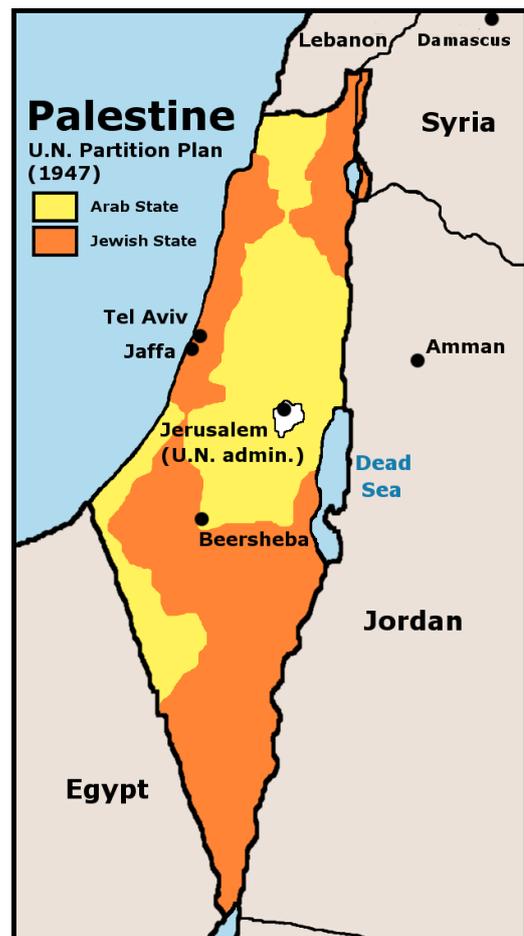
The status of the territories outside the Green Line is complex and controversial. For a full discussion, see the book *Israel on Trial*, Chapter 9. Broadly speaking, the following arguments are often made:

- the territories are part of the territory of the State of Israel
- Israel is entitled to make a claim to the territories
- sovereignty over the territories is “in abeyance” or is “indeterminate”
- the territories are “disputed” and can only be resolved by agreement
- the territories are “occupied” and therefore do not belong to Israel
- the territories belong to the Palestinian people
- the territories belong to “Palestine”.

The Partition Plan

The 1947 UN “Partition Plan” was rejected by the Arabs in 1947. It never came into force and was never implemented. While the Partition Plan was referred to in the Declaration of Independence, Israel’s acceptance of the Partition Plan in 1947 was conditional on Arab acceptance of the Plan. In response to this claim, the Israeli Attorney-General has written:

“Needless to say, UN General Assembly resolutions such as resolution 181 are, in any event, without binding effect. Recent claims that Israel had subsequently accepted the territorial delimitation suggested by the UN partition plan through signing the 1949 Lausanne Protocol are misleading, as Israel merely agreed therein to regard the plan as a basis for future discussions on borders. This political willingness in no way indicated any waiver of legal rights or claims. For example, the Director General of the Israeli Ministry of Foreign Affairs, representing Israel in Lausanne, made it there clear that accepting the November 29th frontiers as a “base de travail” did not mean acquiescence in them: Letter from W. Eytan (the Director General of the Israeli Ministry of Foreign Affairs) to M. Sharett (Israel’s Minister for Foreign Affairs) . That Israel did not waive any of its territorial rights or claims is further evident in, inter alia, the subsequent armistice agreements with Arab States and the agreements concluded between Israel and the Palestinians.”



Sovereignty over the territories

Israel's claim to the territories is officially that stated by the Attorney-General in his Memorandum to the Prosecutor of the International Criminal Court in 2019: "sovereignty over the West Bank and the Gaza Strip is currently in abeyance".

However, "the right of the Jewish people to a national home extended to the entire territory of Mandatory Palestine", and this right was preserved by Article 80 UN Charter. See paragraphs 26-32 of the Memorandum:

[https://mfa.gov.il/MFA/PressRoom/2019/Documents/ICCs%20lack%20of%20jurisdiction%20over%20so-called%20situation%20in%20Palestine"%20-%20AG.pdf](https://mfa.gov.il/MFA/PressRoom/2019/Documents/ICCs%20lack%20of%20jurisdiction%20over%20so-called%20situation%20in%20Palestine)

Israel does not, officially, rely on the principle of *uti possidetis juris*. The argument based on the principle of *uti possidetis juris* is explained by Professors Kontorovich & Bell in their 2016 paper: <https://arizonalawreview.org/pdf/58-3/58arizlrev633.pdf>

See also the excellent overview in: https://www.icc-cpi.int/CourtRecords/CR2020_01055.pdf

In response, Zemach argues that *uti possidetis juris* did not mean that in 1948 the territory of Israel covered all of Palestine: "applying *uti possidetis* in the manner proposed by Bell and Kontorovich translates into a "winner takes all" resolution of the Israeli-Palestinian territorial dispute, depriving the people that formed the majority group within the Mandate of Palestine of the right to self-determination."

think.

ISRAEL *and* INTERNATIONAL LAW