

Where are Israel's legal borders, and how are they determined?

General remarks on argumentation in disputes on this topic

Currently, the official position, expressed in UN General Assembly resolutions, documents of the International Court of Justice, the International Criminal Court, and even the Supreme Court of Israel, and held by the vast majority of international lawyers, is that Israel currently occupies certain "Palestinian territories." These are usually understood to mean the West Bank, eastern Jerusalem, and the Gaza Strip.

However, despite the fact that hundreds of documents use the well-established clichés "Occupied Palestinian Territory, including East Jerusalem" and "Israel, the occupying Power," it is very difficult to find a genuine legal analysis explaining why these territories are occupied and where Israel's borders actually lie under international law.

In general, it can be stated that the tactic used to prove that Jerusalem, the West Bank and the Gaza Strip are under occupation is to use the expressions "occupation," "occupied territories," and "Israel, the occupying power" as often and in as many documents as possible.

Thus, the frequency of repetitions creates the impression that we are talking about something that has long been established, universally recognized, and that, therefore, does not require any justification.

Very characteristic in this regard is the argument made by representatives of the Palestinian National Authority in the International Criminal Court case [ICC-01/18](#) when deciding whether "the West Bank, including East Jerusalem and Gaza" is Israeli territory or Israeli-occupied territory of the "State of Palestine":

"The West Bank, including East Jerusalem, and the Gaza Strip have been consistently referred to by the international community, including the UN General Assembly and the UN Security Council, as Occupied Palestinian Territory, leaving no doubt as to who has the right to this specific territory."

(See p. 34 [ICC ruling of February 5, 2021](#))

Here's the legal argument: everyone keeps calling this territory the "Occupied Palestinian Territory", so there's no doubt who owns it.

The International Criminal Court in The Hague agreed with this argument: on February 5, 2021, the ICC issued a decision that the court's jurisdiction extends to the "Israeli-occupied" territories

of Gaza and the West Bank, including "East Jerusalem." On March 3, 2021, the ICC prosecutor opened an investigation into war crimes committed in these territories, and on November 21, 2024 [issued warrants of arrest](#) for the Prime Minister and Minister of Defence of Israel.

In fact, this method of argumentation is not legal. And it is not legal even if it is used by people in judicial robes.

The legal approach consists of formulating general legal norms applicable to the situation and drawing conclusions based on them, based on the established facts. Moreover, "legal norm" means that this norm applies in similar situations. That is, if we are talking about borders and occupation, then we must first define the rules applicable to borders and occupation in general, not just in relation to Israel, but in general.

Applicable rules of international law

So, following the legal approach, we will first formulate legal norms and principles, and then draw conclusions from them.

As you can see, this approach is radically opposed to the approach adopted today.

And these principles, despite their apparent simplicity and obviousness, lead to conclusions that are contrary to both the position of most UN documents and the position of the Supreme Court of Israel.

These principles are as follows:

- (1) The territory of a state is the territory within the borders of that state.
- (2) A border treaty between neighboring (bordering) states establishes the border line between them.
- (3) Occupation may only be considered to be the occupation by the armed forces of a state of a territory located ~~for~~ the borders of this state.
- (4) The desire, even a very strong one, even an intolerable one, to create one's own state on the territory of another state, is not in itself a reason to consider this territory occupied, and does not change existing state borders.

Each of these principles, in our opinion, should be considered as a norm of international law, in the sense of the [paragraph 1 of article 38 of the Statute of the International Court of Justice of the United Nations](#), and, as our experience of professional discussions on this topic shows, even those lawyers who are ardent opponents of Israel cannot deny the correctness of any of these four principles.

Their application to the question of where the borders of Israel are located, taking into account the current international treaties, leads to the conclusion that both the Gaza Strip and what is usually called in UN documents “the West Bank of the Jordan River, including East Jerusalem” are undoubtedly Israeli territory, and not “occupied”, and not even in any way ["disputed territory"](#)

Let's look at this issue in more detail, and the answer to the question: where exactly are Israel's borders, and what does Israel actually occupy?

History

League of Nations Mandate for Palestine

Since 1922, the territory of Palestine (including the territory of present-day Jordan) has been under British administration, in accordance with [Mandate](#) League of Nations.

The text of the Mandate itself stated that this entire territory, that is, including the one on which Jordan is now located, was initially transferred to such management. *"to create a national home for the Jewish people"* (*"in favour of the establishment in Palestine of a national home for the Jewish people"*)

Then on September 16, 1922, it was adopted [Transjordan Memorandum](#) ([Trans-Jordan memory](#)), which excluded the territory of present-day Jordan from the list of territories designated for Jewish settlement. And on May 25, 1946, the Hashemite Kingdom of Transjordan, established on this territory, gained independence.

The UN Partition Plan for Palestine and the so-called "1947 borders"

On November 29, 1947, the UN General Assembly adopted Resolution No. 181 ["The Future Government of Palestine"](#)

This resolution recommended the creation of the territory of Mandatory Palestine, which was still under British control, of two independent states - a Jewish one and another (in addition to the already independent Jordan) an Arab one.

In discussions about current events, one sometimes hears that the State of Israel is supposedly an occupier because it occupies territory that the resolution in question intended for the creation of an Arab state.

For example, in the relevant Wikipedia article [Arab–Israeli War \(1947–1949\)](#) citing a UN document [The origins and history of the Palestine problem](#) it is stated:

As a result of the war, about half of the territories allocated for the Arab state and West Jerusalem were occupied by Israel

Also, for example, the President of France recently [stated](#) : “Mr. Netanyahu mustn't forget that his country was created by a decision of the UN”

However, this position is legally erroneous. And since it is generally accepted, the legal significance of Resolution 181 requires a closer look.

The Arab side then officially rejected Resolution 181 by the [statement](#) of The Arab League (or League of Arab States) of May 15, 1948 (i.e. the day after Israel declared its independence), and at the same day began a war against Israel, in which Egypt, Syria, Lebanon, Transjordan, Saudi Arabia, Iraq and Yemen took direct part.

But let us imagine the following situation: on May 15, 1948 (the day after the Declaration of Independence of Israel was proclaimed) the League of Arab States, instead of declaring that they reject UN General Assembly Resolution No. 181 and military aggression, issues a statement that the LAS, as a representative of the Arab people, ardently supports the plan set out in Resolution 181 and confirms the consent of the Arab side to its implementation.

Question: What are, from a legal point of view, therefore, the borders of Israel at this moment (May 15, 1948) under these conditions?

The legally correct answer is:

Based on the text of Resolution 181, it did not change the provisions of the Mandate, did not establish borders, and did not obligate anyone to anything. It merely recommended a plan for dividing the territory and "requested that ... the Security Council take the necessary measures as provided for in the plan for its implementation."

That is, in the absence of any decisions by the Security Council, it had no legal consequences, even if the plan it proposed would be approved by the Arab and Israeli sides.

This did not deprive the parties in the future of the opportunity to conclude agreements on new borders in accordance with the recommendations of the resolution, but at the time of the end of the Mandate, since its provisions were recognized as obligatory (*what was confirmed by Resolution 181 itself*) and since no changes were made to it, the entire territory west of the Jordan River and to the Mediterranean Sea, including the city of Jerusalem, became the territory of the Jewish State (that is, Israel) - based on the provisions of the Mandate itself, and taking into account the provisions of [Article 22](#) of the Covenant of the League of Nations.

That is, from the perspective of international law, the borders of the State of Israel, from May 14, 1948, were defined by the boundaries of the territory allocated by the Mandate for the Jewish

state (*"a national home for the Jewish people"*). And this remained so until Israel concluded the border treaties with Egypt in 1979 and with Jordan in 1994, which, however, established the border along the same former Mandate boundaries (which we will examine in more detail below).

From which it follows:

- 1) The borders of the territory of Israel from May 14, 1948 were legally determined by the borders of the Mandate, the provisions of which were mandatory and were not changed by anyone.
- 2) The territory of Israel from 1949 (to 1967) was under the illegal occupation of Jordan (the West Bank and Jerusalem, illegally annexed by Jordan since 1950) and Egypt (the Gaza Strip)

The Green Line of 1949 (or the pre-1967 border)

In 1949, under the auspices of the UN, negotiations took place between Israel and all the aggressor states except Iraq, as a result of which agreements were reached on ceasefire lines ([1949 Armistice Agreements](#))

The line of separation of troops after the conclusion of the armistice was named [Green Line](#)

This line is also sometimes referred to as the "pre-1967 borders" or "1967 borders".

For example, [UN General Assembly resolution of 2019-12-13](#) contains the words "preserving the principle of coexistence of two states within the borders that existed before 1967."

However, the armistice agreements themselves clearly stated that:

Demarcation Line is not to be construed in any sense as a political or territorial boundary

That is, in fact, no "1967 borders" ever existed; there was a demarcation line established by the armistice agreements, which, on the contrary, emphasized that this was not a border, but only a line of withdrawal of troops.

Six-Day War of 1967

During the Six-Day War of 1967, Israel captured the Sinai Peninsula, the Gaza Strip, the West Bank, East Jerusalem and the Golan Heights.

The Sinai Peninsula was later returned to Egypt under a 1979 treaty.

The remaining territories recaptured by Israel in 1967, as can be seen from the above, should be considered as territories that legally belonged to Israel as of May 14, 1967 and were liberated by Israel from the occupation of hostile armies.

The legal difference between the territories conquered in 1948-49 and in 1967

Contrary to popular belief, there is absolutely no legal difference between the territories of the former Mandatory Palestine (we are not talking here about the Sinai Peninsula and the Golan Heights here) that Israel controlled in 1967 and in 1949.

In both cases, control over the former territory of Mandatory Palestine, originally intended for the creation of a Jewish state, was gained by Israel during the war.

Modern borders and territory of Israel.

What are the borders of a state and the territory of a state?

State border— a line and a vertical surface (conditional) passing along this line, defining the boundaries of the state territory (land, waters, subsoil and airspace) of a particular state, that is, the spatial limit of the effect of state sovereignty.

The territory of a state is the territory within its borders.

As a general rule, borders are established by border treaties between neighboring (bordering) states.

Contrary to popular belief, borders are not registered with the UN or any other international body.

The Gaza Strip and the border between Israel and Egypt

According to Article II [Egyptian-Israeli Peace Treaty of 1979](#):

The permanent boundary between Egypt and Israel is the recognized international boundary between Egypt and the former mandated territory of Palestine, as shown on the map at Annex II, 1 without prejudice to the issue of the status of the Gaza Strip. The Parties recognize this boundary as inviolable. Each will respect the territorial integrity of the other, including their territorial waters and airspace.

The main question here is the interpretation of the phrase "*without prejudice to the issue of the status of the Gaza Strip*"

There are opinions that this phrase itself defines the existence of a certain status. But in fact, it's quite the opposite: it means that the status at the time of the treaty's conclusion is not determined in any way and is not affected by the treaty.

That is, if the treaty/contract states that the parties have reached an agreement that a fence will be built between them, but "without prejudice to the issue of the color of the fence," this in no way means that the parties have agreed that the fence is green; on the contrary, the parties have emphasized that the contract does not contain any conditions regarding the possible color of the fence.

Why was the Gaza Strip specifically mentioned? Because the treaty included an additional agreement "concerning the establishment of full autonomy in the West Bank and the Gaza Strip" (Letter Agreement 1 Additional to the Treaty of Peace of 26 March 1979 Between Egypt and Israel, concerning the establishment of full autonomy in the West Bank and the Gaza Strip), in which the parties agreed to begin negotiations on the modalities for establishing the elected self-governing authority (administrative council). It should be emphasized that the parties agreed only to begin negotiations on the possible creation of self-governing bodies, not on their creation, and that the subject of the negotiations was the granting of autonomy with the creation of self-governing bodies, but in no way the deprivation of Israel of its territory or the creation of any other sovereign state on it.

Thus, from the moment this treaty came into force, the border between Egypt and Israel is where the border between Egypt and Mandatory Palestine was (i.e. it is the same border), so that *on one side of the border is Egyptian territory, and on the other is Israeli territory*.

In other words, the treaty effectively drew the border where it had already legally been. However, from the moment the treaty entered into force, the provisions of the treaty, rather than the provisions of the Mandate, as had been the case previously, became the basis for determining the border line.

The Gaza Strip (although it had been under Egyptian occupation for some time before that), is therefore now on the Israeli side of the *bilaterally approved border*, meaning on the territory of Israel.

The agreement specifically states that Israel has no obligations to Egypt regarding the status of the Gaza Strip arising from this agreement, other than the obligation to participate in negotiations on the possible establishment of self-governing bodies.

The West Bank and Jerusalem, the border between Israel and Jordan

According to [Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, October 26, 1994](#) the beds of the Jordan and Yarmouk (a tributary of the Jordan) rivers

were established as the established border between Israel and Jordan, and it was agreed that if the river beds changed naturally, the border would follow the new bed.

The agreement is accompanied by a map showing the border between Israel and Jordan. The map itself states the following regarding the border line:

"This line is the administrative boundary between Jordan and the territory which came under Israeli Military government control in 1967. Any treatment of this line shall be without prejudice to the status of that territory"

Here again, in discussions with anti-Israeli opponents, one comes across the opinion that the phrase "without prejudice to the status of this territory" means granting this territory some special status, which means that although this territory is located on the Israeli side of the border, it is not Israeli territory.

However:

- 1) This opinion contradicts the very concept of a "state border" as a line dividing the territories of neighboring states.
- 2) As noted above with respect to the current 1979 Israel-Egypt treaty and the hypothetical fence color agreement, the phrase "without prejudice to status" itself does not establish any specific status.

Thus, according to the 1994 agreement between Israel and Jordan, *the east side of the Jordan River is Jordanian territory, and the west side is Israeli territory.*

Oslo Accords.

On September 28, 1995, the agreement was signed in Washington: [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#), which received the informal name "Oslo II" (Oslo II Accord).

This agreement did *not provide any changes to the border between Israel and Jordan established by the above-mentioned treaty between them.*

The fact that this agreement does not affect existing borders is expressly stated in paragraph 5 of Article XXXI of the Agreement, which stated that the border issue is a matter for future negotiations, and not for this agreement:

"Permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the Parties. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest"

Thus, this Agreement did not change the borders of Israel's territory and, therefore, provided for the creation of a self-governing entity *on the territory of Israel*.

This Agreement did not provide for the creation of a sovereign state for the Arabs living in this territory, nor, even more so, the extension of its sovereignty to part of the territory of Israel, and directly prohibited such unilateral actions, see paragraph 7 of Article XXXI of the Agreement:

"Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations"

Accordingly, actions by the leadership of the Palestinian National Authority that constitute attempts to call itself a "state" ("State of Palestine") without Israel's consent or to act as an independent state are a direct and clear violation of the Oslo Accords and, accordingly, are legally null and void from the perspective of those Accords.

Thus, at present, the border between Israel and Jordan still runs along the Jordan River, and the PNA operates *on Israeli territory* in accordance with the Oslo II Accords.

The concept of "annexation" in international law.

[Annexation](#) in international law, this is by definition one-sided (*unilateral*) acquisition of another state's territory. That is, the acquisition of *another state's* territory *without its consent*.

Since the establishment of Israel's border with Jordan and Egypt was carried out through the conclusion of bilateral treaties with these states, Israel cannot in any way "annex" territories already belonging to Israel under these treaties.

Golan Heights

Israel annexed the Golan Heights because it annexed them (see [Golan Heights Law](#)) without the consent of Syria, to which they previously belonged.

Only an agreement on the withdrawal of troops was signed with Syria ([Separation of Forces Agreement Between Israel and Syria; May 31, 1974](#)), but the parties continue to be in a state of war, since the agreement itself stipulated that "this agreement is not a peace agreement"

UN Security Council Resolution 497 (1981)

In this regard, it is also worth mentioning [UN Security Council Resolution No. 497 of December 17, 1981](#)

On the one hand, the resolution's assertion that "the acquisition of territory by force is inadmissible under the Charter of the United Nations, the principles of international law and the relevant Security Council resolutions" is legally *wrong*.

The acquisition of territory *through aggression* is unacceptable.

Taking territories from an aggressor by force is acceptable from the point of view of international law (this is how Germany and Japan lost their territories after World War II).

And in this case, it was Syria that was the aggressor. And, accordingly, *the annexation of the aggressor's territory is fully legitimate under international law* (Security Council resolutions do not in themselves establish norms of international law, but must be consistent with those norms)

On the other hand, despite the fact that this resolution contains a clear legal error, due to [Article 25 of the UN Charter](#) until it is repealed, UN members, including Israel, are obliged to comply with its demands.

That is, Israel should really reverse the annexation and consider them occupied, not annexed. But at the same time, the question of formally canceling this resolution, as violating international law in favor of the aggressor, should be raised.

Positions of various authorities on the issue under consideration

UN

As has already been said, the UN uses the expression "Israel, the occupying Power" and "Occupied Palestinian Territory, including East Jerusalem" in many documents.

[Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 13 July 2004](#) should also be specifically noted in this regard.

Paragraph 78 of the said Advisory Opinion states that the signing of the peace treaty between Israel and Jordan did not change the fact that this territory is occupied by Israel.

Legally, this is, of course, complete absurdity, and is equivalent to the assertion that “nothing at all can change the fact that this territory is occupied” or “never and under no circumstances, and despite any agreements, can it be recognized that this territory belongs to Israel.”

Unfortunately, it must be acknowledged that the Advisory Opinions of the International Court of Justice (even though they are not binding) can be erroneous.

Supreme Court of Israel

The Israeli Supreme Court has never considered the question of whether the boundaries drawn in Israel's treaties with Jordan and Egypt establish Israel's boundaries with Jordan and Egypt.

As stated in the [Kretzmer, David. \(2012\). The law of belligerent occupation in the Supreme Court of Israel. International Review of the Red Cross](#):

The Israeli authorities' de facto recognition that the applicable law in the occupied territories is the law governing military occupation has freed the Israeli Supreme Court from the need to determine what constitutes occupation. Although the court addressed this issue during Israel's presence in Lebanon in 1982, it also later considered whether Israel continued to be the occupying power in Gaza after the withdrawal of its troops and settlements.

That is, the Supreme Court of Israel has never assumed that the borders of Israel's territory are defined by its treaties with Egypt and Jordan.

In the decision [in the case of Mara'abe v. The Prime Minister of Israel](#) September 15, 2005 The Supreme Court of Israel, presided over by [Aaron Barak](#) wrote:

"14. The Judea and Samaria areas are held by the State of Israel in belligerent occupation. The long arm of the state in the area is the military commander. He is not the sovereign in the territory held in belligerent occupation (see The Beit Sourik Case, at p. 832). His power is granted him by public international law regarding belligerent occupation. The legal meaning of this view is twofold: first, Israeli law does not apply in these areas. They have not been "annexed" to Israel. Second, the legal regime which applies in these areas is determined by public international law regarding belligerent occupation (see HCJ 1661/05 The Gaza Coast Regional Council v. The Knesset et al. (yet unpublished, paragraph 3 of the opinion of the Court; hereinafter – The Gaza Coast Regional Council Case). In the center of this public international law stand the Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (hereinafter – The Hague Regulations). These regulations are a reflection of customary international law. The law of belligerent occupation is also laid out in IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949 (hereinafter – the Fourth Geneva Convention)"

This reasoning gives the lawyer the impression not of a legal conclusion, but of a propaganda document: the mention of international conventions alongside the conclusion about the occupation of the said territories is clearly intended to create the appearance that the thesis about occupation is justified by the norms of international conventions.

In fact, the court would first have to decide whether the territory in question is, at the time of the case, Israeli territory or the territory of another State. If it is the territory of another State, then it would have to decide whether Israel is occupying it. If so, it would have to determine *whether both the occupying and occupied States are parties to the relevant conventions*, when they acceded to them, and whether any reservations were made upon accession to the conventions.

Article 2 of the Hague Convention, which establishes the "Regulations concerning the Laws and Customs of War on Land," states that the provisions of the Convention *are binding only on the Contracting Powers and only if all belligerents participate in the Convention*.

Israel has not yet ratified the Hague Convention, see list [of parties to this convention](#) But the court, having mentioned this convention in its decision, somehow "modestly" kept silent about it.

So, the court did not by chance use the expression "these rules reflect customary international law." It can be assumed that the judges understood that the Hague Convention, according to its Article 2, was not directly applicable to the situation at hand, even if an occupation had taken place.

For some reason, the court wanted to advance the thesis that Gaza and the West Bank are occupied, and pretend that this thesis is based on international law.

Levy Commission Report

[Report on the legal status of construction in Judea and Samaria](#), also known as [Levy's Report](#), was prepared at the request of the Prime Minister of Israel ([Benjamin Netanyahu](#)) and the Minister of Justice ([Yaakov Neiman](#)) and published in 2012 by a committee chaired by a former Israeli Supreme Court judge [Edmond Levy](#).

The report contained a section titled "The Status of the Territories of Judea and Samaria under International Law." The commission concluded that the territories in question should not be considered occupied for two reasons:

(1)

"the most reasonable interpretation of those provisions of international law appears to be that the accepted term "occupier" with its attending obligations is intended to apply to brief periods of the occupation of the territory of a sovereign state pending termination of the conflict between the parties and the return of the territory or any other agreed upon arrangement. However, Israel's presence in Judea and Samaria is fundamentally different: Its control of the territory spans decades, and no one can foresee when or if it will end"

(2)

"the territory was captured from a state (the kingdom of Jordan), whose sovereignty over the territory had never been legally and definitively affirmed, and has since renounced its claim of sovereignty; the State of Israel has a claim to sovereign right over the territory"

In our view, the Levy Commission's first argument is insufficiently substantiated. International law does not specify a specific time limit after which an occupation ceases to be considered occupation, nor does the intention of the occupying party to end the occupation, or lack thereof, constitute a criterion for recognizing or not recognizing a territory as occupied.

As for the second argument, it must be emphasized that:

a) It is correct to say not that Jordan's "sovereignty over the territory had never been legally and definitively affirmed", but that since May 14, 1948, this was Israeli territory (according to the provisions of the Mandate), illegally occupied/annexed by Jordan.

b) At this point, it is no longer actually important whether Jordan had rights to these territories before the conclusion of the border agreement between Israel and Jordan; what is important

now is that by concluding this agreement, these territories are recognized as being on the Israeli side of the state border.

Conclusions

(1)

As can be seen from the above, in fact, both the Gaza Strip and the Judea and Samaria region (West Bank of the Jordan River) and Jerusalem are part of the territory of Israel according to real international law, since they are located within its legally established borders, defined by the treaties currently in force with the bordering states (Egypt and Jordan, respectively).

(2)

Therefore, they cannot be considered occupied in any way. And legally, “annexing” them is impossible, since one cannot annex one’s own territory.

(3)

The current documents defining Israel's borders with Egypt and Jordan are treaties with Egypt (1979) and Jordan (1994). This method of establishing borders (treaties with neighboring states) is accepted in international law, and therefore, from an international legal perspective, Israel does not need to make any decisions or sign any other documents to establish its borders. And, just like all other states in the World, *Israel's sovereign territory is the territory within its borders*.

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