HUMR5502

Nils Butenschøn

Ethnic Challenges to the Nation State

Political responses 2

Lecture 2: Assignment and case study

- Assignment:
- A country X with a population of about 10 million people has experienced an internal conflict between the major ethnic groups in the country. Representatives of these groups are now meeting in negotiations with the mandate of proposing **general constitutional principles for power-sharing**, including a system of representation.

Assignment (cont.)

- The aim is to arrive at a future political system based on the following criteria:

- Respecting international democratic and human rights standards;

- Giving the contending groups a fair say in the decision-making processes;

- Securing the best possible efficiency in the decision-making processes.

Assignment (cont.)

- Four groups are represented in the negotiations facilitated by a team of international mediators:

- The majority, comprising 65 % of the population;

- The largest minority, 20 % of the population;

- A smaller minority, 10 % of the population;

- The smallest minority, an indigenous group, 5 % of the population

Assignment (cont.)

- The conflict broke out when the minorities B, C, and D revolted against the traditional domination by the majority (A). The open conflict ended after international mediation. An interim constituent assembly was convened with the purpose of agreeing on a new constitution. The constitution will be presented for a referendum at a later stage.

- <u>As renowned international experts</u> you have been commissioned by the Constituent Assembly to give advice on some of the issues to be resolved in a power-sharing agreement.
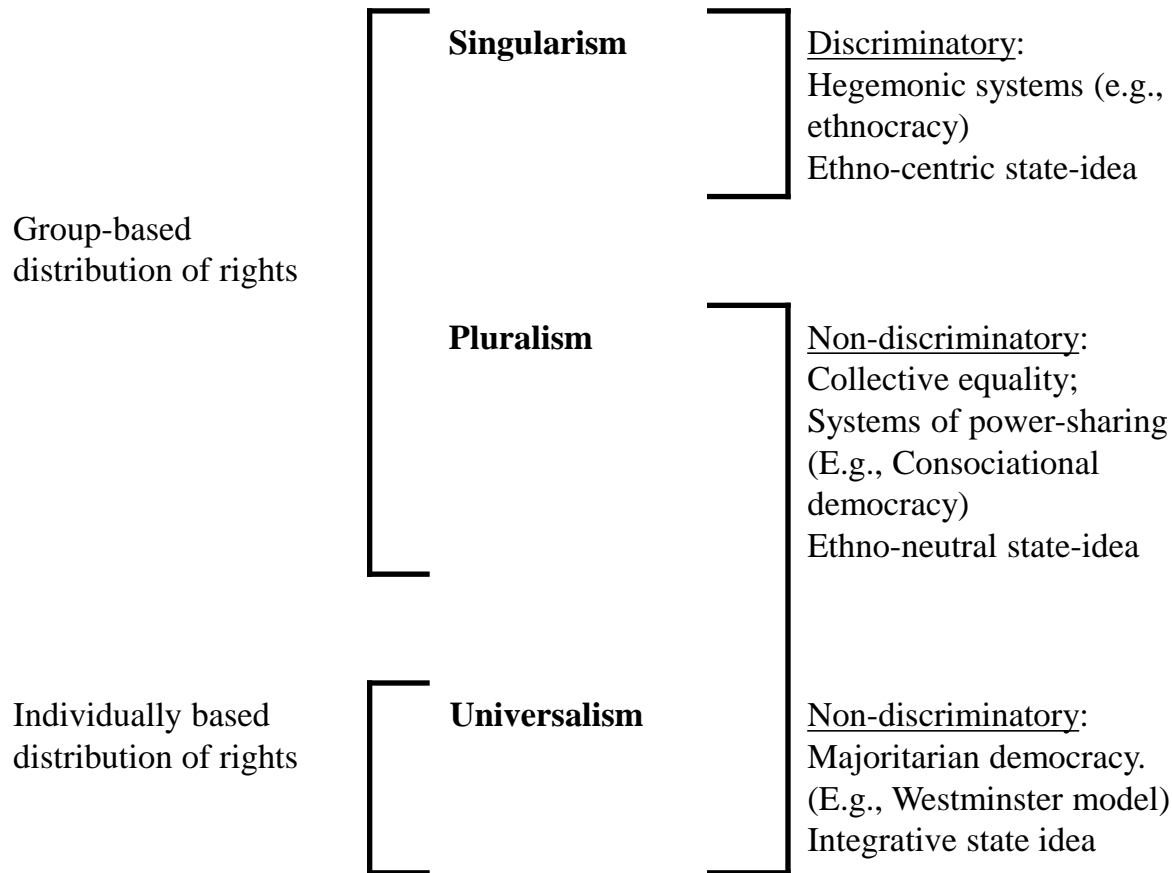
Assignment (cont.)

- Questions:
- Which **general principles and arrangements** would you propose so that the interests and rights of the minorities will be protected in the post-conflict system?
- Which arrangements, **including human rights mechanisms**, would you propose that can facilitate reconciliation between the groups and contribute to future stability?
- Which **challenges and dilemmas** would you expect to encounter in the implementation of the proposed arrangements?

Elements of power-sharing

- **Devolution of powers:** Territorial (federalism) and non-territorial (consociational)
- **Representation:** Qualities of the electoral system
- **Form of government and grand coalitions:** Parliamentary or presidential system; minimal winning (majority) coalition or grand coalition (consensus)
- **Decision making rules:** Absolute or qualified majority-decisions; Minorities should not be outvoted when their vital interests are at stake; Sunset clauses: Should power-sharing arrangement be permanent or temporary?

Principles of distribution of rights

(Butenschøn 2000:17)

	Singularism	Discriminatory: Hegemonic systems (e.g., ethnocracy) Ethno-centric state-idea
Group-based distribution of rights	**Pluralism**	Non-discriminatory: Collective equality; Systems of power-sharing (E.g., Consociational democracy) Ethno-neutral state-idea
Individually based distribution of rights	**Universalism**	Non-discriminatory: Majoritarian democracy. (E.g., Westminster model) Integrative state idea

Political Organisation of State Territories. A Typology
(Butenschøn 2000:18)

Territorial Principles

| **Constitutional Principles**	*The Unitary State*	*The Non-Unitary State*	*Separate Territories*
Singularism	Ethnocratic systems	Imposed/dominated self rule	Ethnic "Homelands"
Pluralism	Consociational systems	Cantonization, ethnic federation	Partition/separate states along ethnic lines
Universalism	Majoritarian systems	Regionalisation, functional federation	Partition/separate states along functional lines

Case: Israel/Palestine

- The case discussion is based on our previous discussion of principles and elements of power-sharing from a human rights perspective.

- Let's start with a figure that can represent some major dimensions relevant to my lectures. (Netx slide).
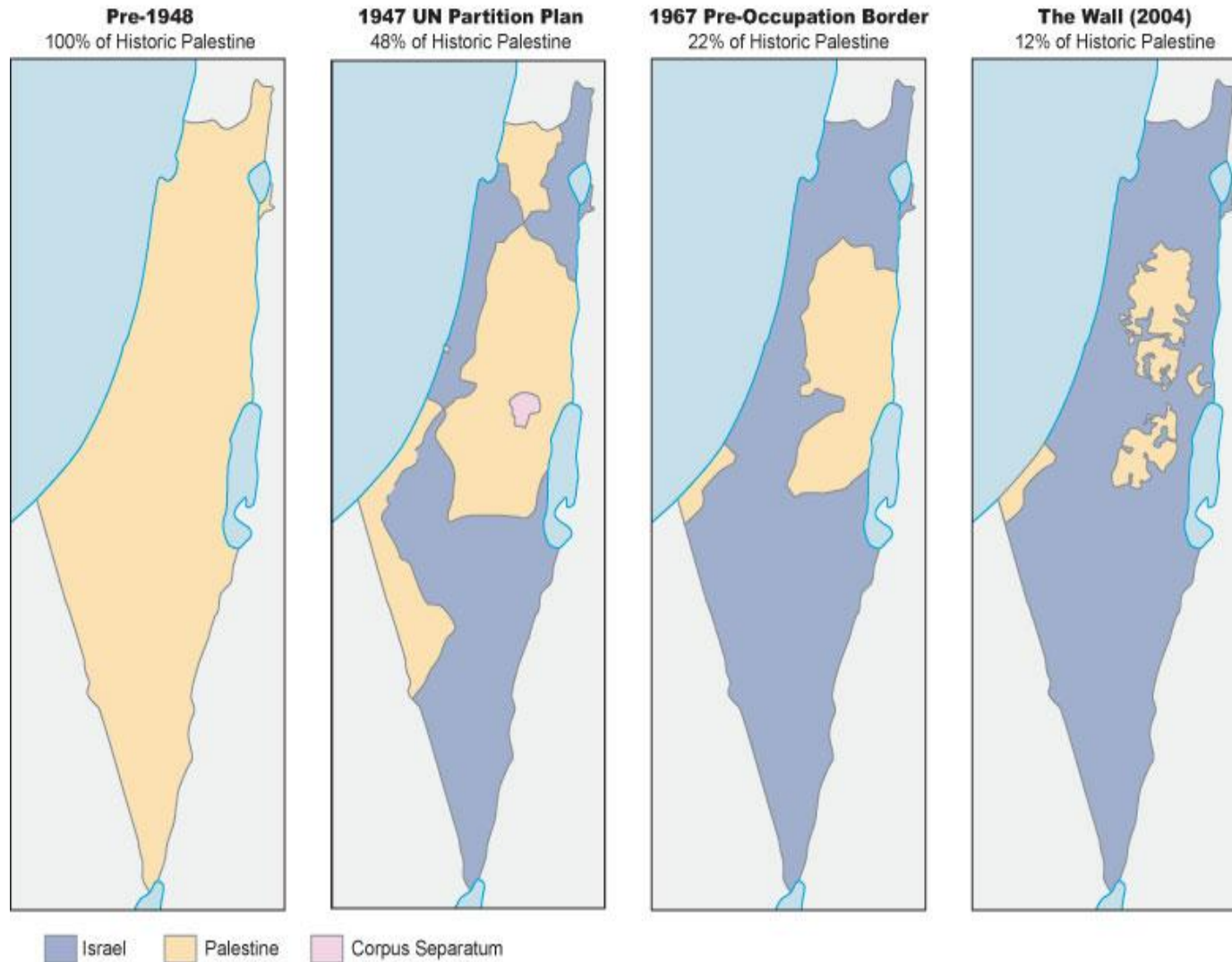
Alternative demographic foundations for claims of self-determination in Israel/Palestine
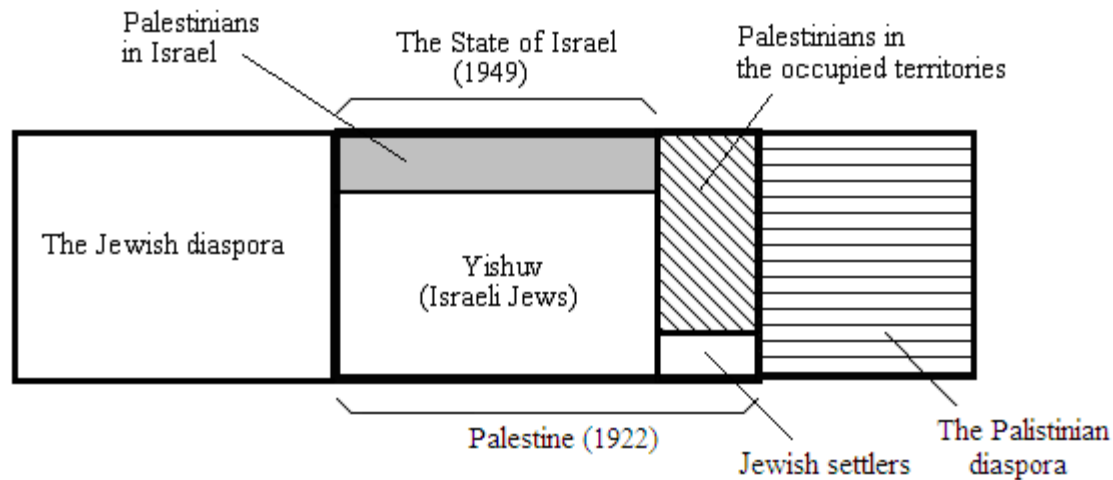
Israel/Palestine: How to define the *demos*

- **Six** demographic entities involved in the claims of the right to self-determination in the territory:

- <u>The Zionist claim</u>: The Jewish people (Jewish diaspora + Yishuv + settlers)

- <u>The Palestinian claim</u>: The Palestinian people (Palestinian diaspora + Palestinians in Israel + Palestinians in Occupied Palestinian Territory).

- Who should be *included*, who should be *excluded* within which *borders*? Who has the right to *decide*?

- **Problem**: Demographic realities as *constantly changing*.

Destroying the Two-State Solution

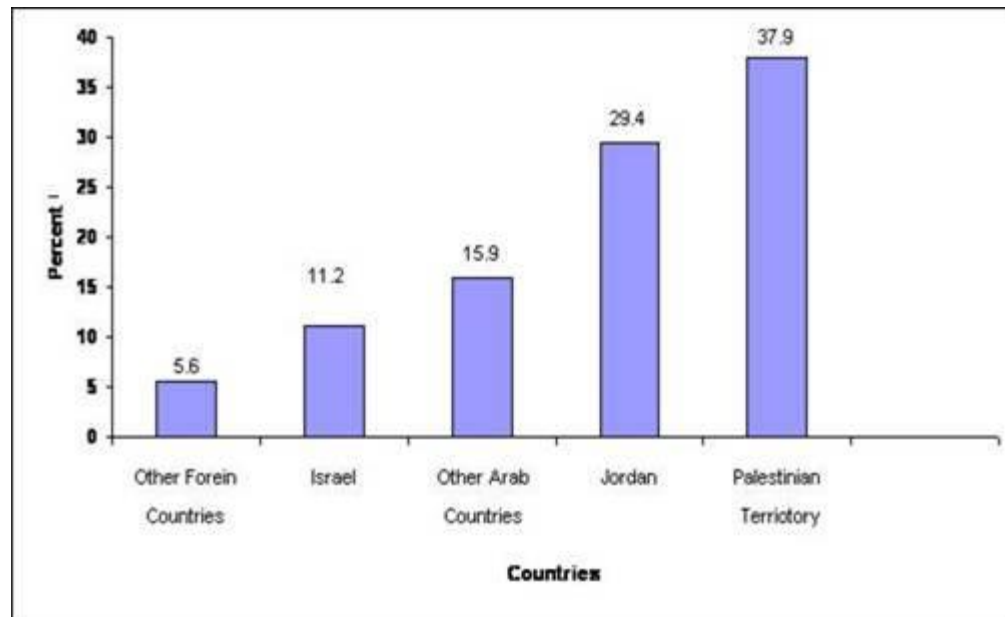| Pre-1948 | 1947 UN Partition Plan | 1967 Pre-Occupation Border | The Wall (2004) |
| 100% of Historic Palestine | 48% of Historic Palestine | 22% of Historic Palestine | 12% of Historic Palestine |

Legend: Israel — Palestine — Corpus Separatum

Palestinian demographics

- The estimated number of Palestinians all over world by the end of 2014 is **12.9 million** distributed as follows: 4,1 million in the OPT (37.9%); 1.4 million (11.2%) in Israel; 3.8 million (29.4%) in Jordan; 0,6 million (4.6%) in Syria.

- In OPT: 3,1 million (63.0%) in West Bank and 1.8 million (37.0%) in Gaza Strip.

The regugees

- 1949: 711.000. These and their descendants are registred at [United Nations Relief and Works Agency for Palestine Refugees in the Near East](...) UNRWA: http://www.unrwa.org/palestine-refugees
- Today: About 5 million. About 1/3 still live in refugee camps in Jordan, Lebanon, Syria and OPT. The rest live in towns and villages in these countries.

Palestinian demographics, distribution.

Jewish demographics

Jewish
demographics

World Jewish Population
13.3 million

Diaspora
8.35 million
63%

N. America

6.5 million
46%

Eu ro pe

1. 6 mil lio n 12 %

S. America, Africa, Asia, Australia

5%

Israel

4.95 million
37%

The State of Israel.

Demographics 2013

Group	Population	Proportion of total	Growth rate
Jews	6,119,000	75.0%	1.7%
Of which:			
Mainstream	*5,162,500*	*63.3%*	*1.2%*
Haredi	*956,500*	*11.7%*	*5.0%*
Arabs	1,688,600	20.7%	2.2%
Total	**8,157,300**		**1.9%**

ISRAEL'S ROAD NETWORK FOR SETTLEMENT CONTIGUITY

JULY 2005
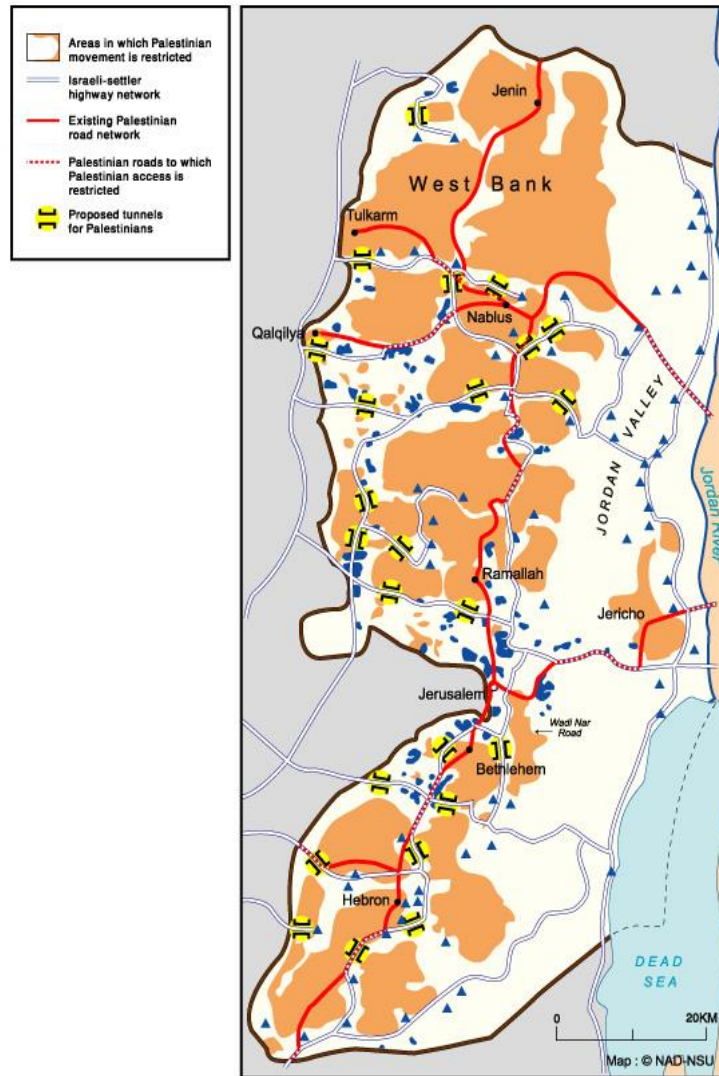
A comparison

- South Africa under Apartheid. Homelands

Palestine: Some aspects of international law

- ## The right to self-determination
  - UDHR, Art 21: "the will of the people shall be the basis of the authority of government."
  - An individual and collective right to "freely determine . . . political status and [to] freely pursue . . . economic, social and cultural development." (ICCPR and ICESCR, common Art 1).
  - A norm of *jus cogens (*the highest rules of international law) and *erga omnes* ("flowing to all": the international community is under a mandatory duty to respect it in all circumstances in their relations with each other).
  - Self-determination and "the politics of avoidance". An arena for intense politization (national liberation vs. state integrity, freedom struggle vs. terrorism, etc).

# Palestine and de-colonialisation

- «Perfect» and «imperfekt» de-colonisation.
  - The Declaration on the Granting of Independence to Colonial Countries and Peoples (GA Res 1514 XV, 1960).
  - "Perfect" de-col.: Full and orderly transition from the colonial power to a new independent state.
  - "Imperfect" de-col.: *de jure* but not *de facto*; leaving the colonial territory with intractable conflicts.
  - Palestine as a case of imperfect de-colonialisation.

Palestine and the history of imperfect de-colonisation

- Pre 1948: Mandate system; Balfour Declaration.
- 1947 Partition Plan: Two-state solution (GA Res 181).
- 1948: Right of Return (GA Res 194).
- 1967 and The Green Line (SC Res 242).
- 1993/1995: Oslo Accords.
- 2002: SC Res 1397 («a vision of two states»).
- 2004 ICJ Advisory Opinion on The Wall.
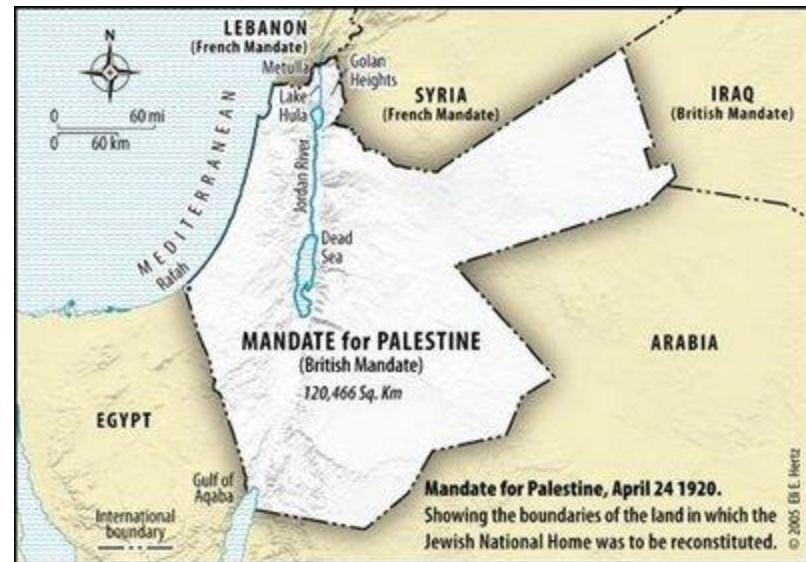- 2011-2012: The quest for UN recognition

Pre-1948:Sykes-Picot 1916

- Blue: French
- Red: British
- Yellow: Joint
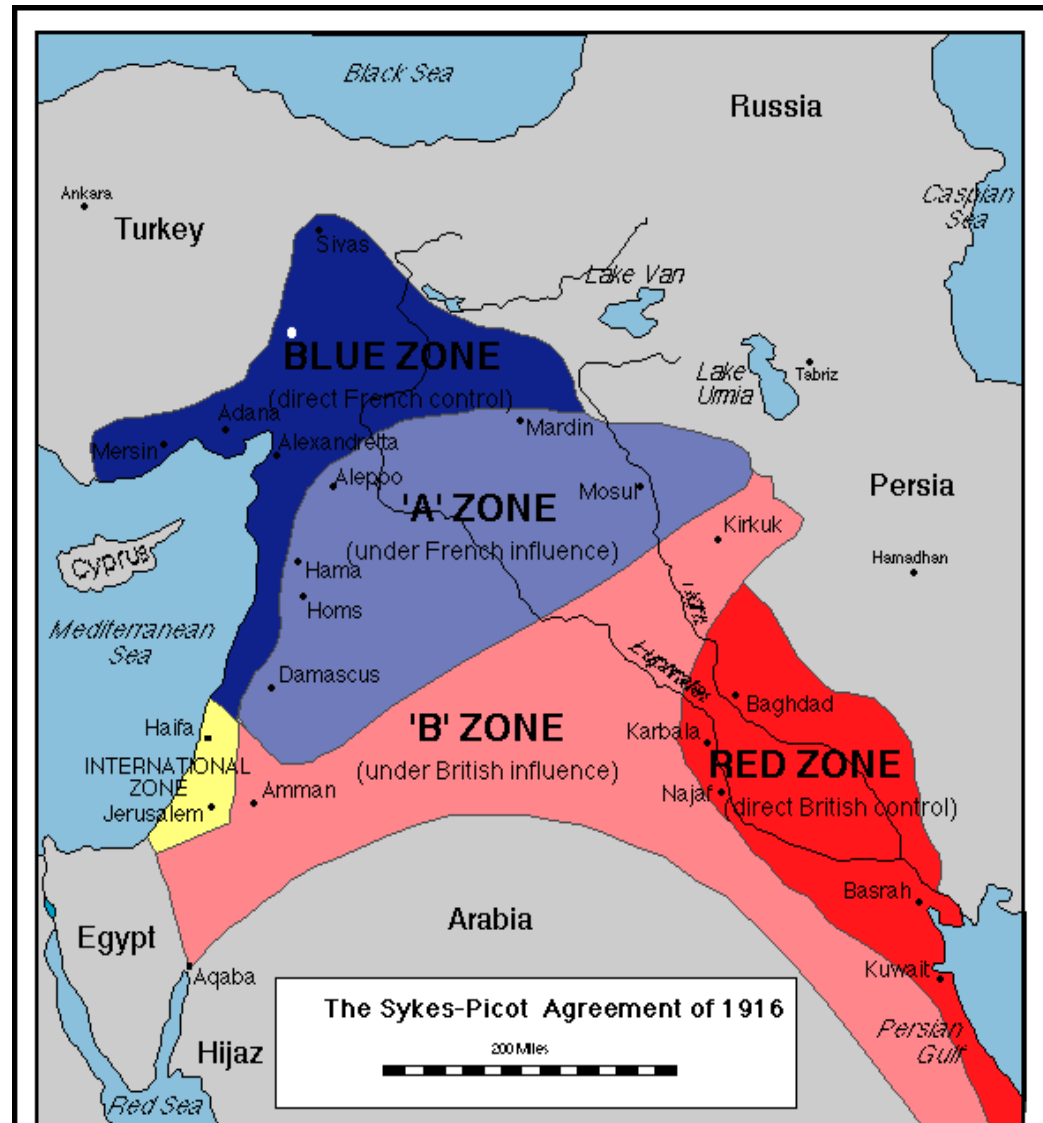
Balfour Declaration 1917

- British occupation 1917-1918
- League of Nations
  mandate1920
- Unsolved:
  - What is a 'National
    Home'?
  - Borders?
  - Status and rights of indigenous people?

Mandate for Palestine, April 24 1920.
Showing the boundaries of the land in which the Jewish National Home was to be reconstituted.

The Partition Plan 1947 and post-war situation

- Two states within an economic union.

- 1948-49: Cease fire agreements, not peace agreements. The cease fire lines known today as 'The Green Lines' or '1967 borders'.

- Resolution 194: The Right of Return.

1967 and the principle of 'Peace for territory' (SC Res 242)

- SC Res 242: «the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security"

  – Withdrawal of Israeli armed forces from territories occupied in the recent conflict;

  – 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;

  – For achieving a just settlement of the refugee problem.

The Oslo Accords 1993/1995

- Oslo I: A declaration of principles: Conflict to be solves by peaceful means; The establishment of a Palestinian Authority in parts of the territory; Political institutions and elections; Permanent status questions to be negotiated within three years.

- Oslo II: Division of OPT in A, B, and C status.

The ICJ Advisory Opinion 2004

- Defining all post 1967 settlements as illegal; The route of the wall in OPT is illegal.

- Until now, no or little practical importance because Palestine is not a state.The admission of Palestine as a «non-member observer state» in the UN might change this.

The Palestinian bid for recognition of statehood

- Montevideo Convention 1933
- PA letters and application
- UN Security Council rules
- GA rules
- Positions and alliances/negotiations
- Why did it fail?
- The 2012 successful bid for status as Non-Member Observer-State

Discussion: Prospects

- If not a two-state solution, what then?

- Israel-Palestine as a unified state based on power-sharing between autonomous Israeli ans Palestinian entities (cfr. Bosnia-Herzegovina)?

- A federation (cfr. UN 1947 Minority proposal)?