

Establishment of Israel: Analysis of Israel's Declaration of Establishment

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Introduction

The Declaration of the Establishment of the State of Israel was approved at a festive session of the People's Council, comprised of representatives of the yishuv (the Jewish community in Palestine) and the Zionist movement, on Friday, May 14, 1948, several hours before the British Mandate for Palestine came to an end.

The Declaration consists of seven sections, and stipulates six matters:

- Asserts the natural right of the Jewish people to exercise self-determination in its sovereign state.
- Proclaims the establishment of a Jewish state in Eretz Israel, named "the State of Israel."
- Establishes provisional institutions of state governance
- States that an elected constituent assembly will formulate a constitution within several months.
- Sets forth the principles of the political rule of the newly formed state
- Calls for peace and cooperation with the Arabs of Israel, neighboring countries and Jews around the world.

The Text of the Declaration

First Section

The first section of the Declaration, which may be considered its historical preface, succinctly reviews the ties of the Jewish people to the Land of Israel – in concrete historical terms as well as in aspirations.

This section, which takes up nearly half the declaration, makes reference to the following subjects:

- (a) the political, cultural, and religious formation of the Jewish people in the Land of Israel, and its political independence there;
- (b) the hopes of the Jewish people to return to its homeland from all parts of the Diaspora;
- (c) immigration and settlement in the country, and the aspiration for independence and statehood;

(d) international recognition of the Jewish people's right to return to the country, in the Balfour Declaration;

(e) the lesson of the Holocaust – that Jewish independence is a necessity;

(f) the clandestine immigration of Holocaust survivors to Palestine and the yishuv's contribution to the war effort against the Nazis, which entitles it to be among the founders of the United Nations; and

(g) the recognition, expressed in the UN partition resolution, of the Jewish people's right to its own state. (The words "an irrevocable right" were appended to the Declaration in case this UN resolution be abrogated and a decision taken instead to establish a UN trusteeship regime throughout Palestine, since the Arab state had not been established and Jerusalem had not been internationalized.)

Second Section

The second section of the Declaration, one sentence long, addresses the normative aspect of Israel's establishment: it states that it is the natural right of the Jewish people to be like any other people, exercising self-determination in its sovereign state. The importance of this second section is in the assertion that the establishment of the state is based on the natural right of self-determination and is not subject to decisions of other states or international organizations. Nevertheless, the next section, the declarative one, rests in part on the UN General Assembly resolution.

Third Section

The third section, one paragraph long, is the proclamation of the establishment of the State of Israel, and it is the most important operative part of the Declaration. The rest of the document can be seen as supportive elaboration. From an international legal point of view, this section alone would have sufficed. The precise text here reads "...the establishment of a Jewish State in the Land of Israel - the State of Israel." The precise meaning of the term "Jewish state," which recurs four times in the Declaration, has since prompted much public debate, which has recently grown in intensity. However, at the time of the writing of the Declaration, this had hardly occasioned either discussion or questions. It seemed clear that the reference was both to the "Jewish state" mentioned by the UN Resolution, and to the state of the "Jewish people," mentioned several times in the Declaration as *am yehudi* ("Jewish people"), and once each as *am yisrael* ("people of Israel") and *ha'am ha'ivri* ("the Hebrew people").

Fourth Section

The fourth section, the institutional part of the Declaration, sets forth the time for the beginning of independence and the operation of the state's institutions – in fact, their continuing operation under new names. This section also states that a constitution is to be enacted by an elected constitutional council, and that governmental institutions are to be elected in accordance with the constitution. Finally, a date is set for the inauguration of these bodies: October 1, 1948. These details and the

timetable were stipulated so as to correspond to the provisions of the UN resolution in these matters.

Fifth Section

The fifth section of the Declaration, its second declarative section, is the most important of all in terms of its domestic educational and informational function. In but a few words, it gives expression to the basic principles and guidelines of the Israeli polity. As the Supreme Court subsequently ruled, this section expresses the vision and the credo of the people regarding the character, the goals and values of Israeli society and its state:

Israel is to be a state of Jewish immigration – aliya – and of "the ingathering of the exiles." This principle was set forth in legal and practical terms in the Law of Return, passed two years later (1950);

Israel is to be a state of development for the benefit of all its inhabitants;

Perhaps most importantly, Israel is to be a state based on the fundamentals of freedom, justice and peace, a state in which all the inhabitants will enjoy equality of social and political rights, along with freedom of religion, conscience, language, education and culture.

It is true that the word "democracy" does not appear in this impressive list, but there can be no doubt that the Declaration's authors and signatories intended to establish an exemplary democratic regime. Perhaps they thought that the rest of the document's contents made it unnecessary to cite "democracy" specifically.

Two points in this part of the Declaration deserve emphasis:

The guidelines indicating that the fundamentals of freedom, justice and peace be those "envisaged by the prophets of Israel" underscores the message of Israel as a Jewish state – though the authors of the Declaration undoubtedly regarded this vision as a source of universal values;

This list of egalitarian principles assures not only the rights and equality of the individual citizen, but also collective rights, for the notion of freedom of religion is meaningless unless it implies freedom for every religion. Similarly, the freedoms of language, education and culture are meaningful only if they entitle every national group to speak its own language, to educate its children according to its goals and to maintain its own culture. It seems evident that it was the intent of the authors of the Declaration to assure hereby the rights of religious and national minorities, i.e., the Arabs, and that less thought was given to individuals and groups within the Jewish majority. However, the struggle to implement the rights of both the Jewish majority and the Arab minority have continued to this day.

Sixth Section

The sixth section of the Declaration includes appeals for the cooperation of both external and internal factors. The internal factor – "the Arab inhabitants of the State of Israel" – is called upon to preserve peace and participate in the building of the state. Full and equal citizenship – implying, first and foremost, due representation in all state institutions – is conferred on them. The phrasing of the appeal makes it clear that it is addressed to an Arab people. The significance is that although the state is Jewish, it is inhabited by two peoples. It should be stressed here that the term "Palestinian" had not yet become prevalent at that time.

The appeal for peace and good neighborly relations is addressed to all neighboring countries and peoples and is manifested in the assertion of Israel's willingness to make its contribution toward development of the Middle East. The timing of this message is worth bearing in mind, for the country had endured half a year of a very violent struggle and Arab armies had already begun to invade it, wishing to prevent Israel's independence.

The Declaration also urges the United Nations to admit Israel to its ranks; this came to pass only a year later. Finally, the authors urge the Jewish people in the Diaspora to rally around the state in the tasks of immigration, upbuilding and struggle.

Seventh Section

The seventh and last section of the Declaration, the part containing the signatures, begins with the phrase: "Placing our trust in the Rock of Israel, we affix our signatures..." It comes as no surprise that these opening words had prompted a debate among the members of the People's Council, reflecting the disagreements between its secular and religious members concerning the future image of the state. The debate ended in tacit acquiescence, presumably because of the reluctance to engage in such a discussion at that time. It should be mentioned, however, that the representatives of the *haredi* (ultra-Orthodox) community subsequently took exception to the entire Declaration, stating that it greatly offended their sensitivities.

The Manifesto

At the festive session that approved the Declaration, the newly proclaimed state (which, strictly speaking, had not yet come into existence at that moment) passed its first legislative act: the Manifesto, whose name and format have no parallel in the Israeli lawbooks. According to the legal experts of the time, this document was needed because the Declaration itself, although equipped with a quasi-legislative section that stipulated the inauguration of the state's provisional governing institutions, amounted to a public proclamation and was not an authentic legislative act.

Indeed, the first paragraph of the Manifesto repeated the Declaration by stipulating the Provisional Council of State as the legislative authority. However, it also authorized the Council to devolve some of its powers to the Provisional Government for the purpose of urgent legislation. This provision was considered essential under the military circumstances of the time, enemy forces having already

invaded Israel's territory in certain locations. This legal option of main legislation by the executive branch, which had first been introduced in the Manifesto, still exists, although it has been substantially modified and curtailed. It was enacted by the Law and Administration Ordinance, passed about a week later, and is now contained in the Basic Law: The Government.

The second paragraph of the Manifesto put some of the important results of independence in legal terms: it annulled all legal provisions resulting from the Anti-Zionist policies of the British administration, especially those originating in the 1939 White Paper, that aimed to restrict Jewish immigration and land ownership in Palestine.

The third and last paragraph of the Manifesto ensured the continuity of the law in effect in Palestine at the end of the Mandate, with the exception of the provisions which contradicted the establishment of the state (such as those mentioned in the previous paragraph), and until such provisions were amended by original Israeli legislation. The new Israeli authorities received all the powers of the previous Mandatory ones. This clause prevented judicial chaos. Thus, Israel inherited Mandatory law, which, although far from being identical with British law, included important elements of British jurisprudence and public law. However, this continuity also imposed on Israeli law many non- and even anti-democratic provisions for lengthy periods of time and caused a legislative lethargy which impaired the speedy passing of original Israeli legislation.

The continuity provision was copied almost verbatim into Paragraph 11 of the aforementioned Law and Administration Ordinance, which was, in fact, Israel's first regular statute.

A Constitution for the State of Israel

The Declaration of Independence envisaged the enactment of a constitution within several months. However, Israel still has no constitution, and progress towards it has been exceedingly slow.

A constituent assembly was elected in Israel's first general elections (January 25, 1949); the assembly's first action was to pass the so-called Transition Law, by which it reconstituted itself as the "First Knesset." A protracted debate ensued between the proponents of a constitution – those favoring immediate enactment of a constitution – and its opponents, some of whom ruled out the very idea of a constitution, while others argued that the time was not ripe. Finally, the Knesset adopted a compromise resolution – in effect, a decision not to adopt a constitution. The text of this resolution (1950), known as the "Harari Resolution" after its sponsor, MK I. Harari, is as follows:

The First Knesset instructs the Constitutional, Legislation and Judicial Committee to prepare a draft State Constitution. The constitution will be built chapter by chapter, in such a way that each will constitute a separate Basic Law. The chapters shall be presented to the Knesset when the committee completes its work, and all the chapters shall be combined into the Constitution of the State.

Since that resolution was adopted, the Knesset has passed eleven basic laws (two of them – Basic Law: The Government and Basic Law: Freedom of Occupation – have been passed twice). This

effort is not yet complete, although it is commonly thought that most of the constitution's chapters (i.e., the Basic Laws) have been enacted and that the missing ones will soon be ready.

The passing of the Basic Laws: Human Dignity and Freedom of Occupation (passed in 1992 and 1994) has been called a "constitutional revolution," because these laws introduced the constitutional protection of human rights, though not of all rights. This may be considered the closing of a circle in respect of the principles of governance and justice begun with the Declaration of the Establishment of the State of Israel. These two Basic Laws begin with the same meaningful clause:

Fundamental human rights in Israel are based on recognition of the value of man, the sanctity of human life and freedom, and shall be honored in the spirit of the principles in the Declaration of the Establishment of the State of Israel.

Since then, the Israeli lawbook has included not only the principles of justice, liberty, freedom of religion, conscience, language, education and culture, and complete equality of social and political rights for all citizens, irrespective of religion, race and sex, but also constitutional principles acknowledging the freedom and sovereignty of all human beings and the sanctity of human life.

The Constitutional Authority of the Declaration

Until these two Basic Laws were enacted, the meaning and legal validity of the "principles" section of the Declaration was under public debate, although it was generally acknowledged that the Declaration (and its section on principles) should not be considered as legally binding in the ordinary sense. The first President of the Supreme Court Justice M. Smoira put this as follows:

The Declaration expresses the vision and credo of the people; but it is not a constitutional law making a practical ruling on the upholding or nullification of various ordinances and statutes.

These remarks may be regarded as a minimalist rule for the interpretation of the Declaration. Later, other interpretations were heard from time to time, seeking to broaden, if only slightly, the legal validity of this document. Two examples follow, the first by Justice S. Agranat:

It is true that the Declaration is 'not a constitutional law that makes a practical ruling on the upholding or nullification of various ordinances and statutes,' but insofar as it 'expresses the vision and credo of the people,' we are obligated to take heed of the matters set forth therein when we seek to interpret and construe the laws of the state

.The following is excerpted from a ruling by Justice Z. Berenson:

The legal force [of the Declaration] exists in the [rule] that every legal provision should be interpreted in its light and to the extent possible, in keeping with its guiding principles and not contrary thereto. However, when an explicit statutory measure of the Knesset leaves no room for doubt, it should be honored even if inconsistent with the principles in the Declaration of Independence.

Here the Declaration serves as an interpretive tool. One may state that, at least within this constraint, it has a legal validity of sorts or represents a legal norm that expresses the values of the state. A subsequent ruling reflects this thinking:

The democratic character of the State of Israel finds its expression in the Declaration of Independence. These principles light our path and represent the credo of the people, in the light of which laws are interpreted and basic principles determined.

However, since the Basic Laws: Human Dignity and Freedom of Occupation were passed, the principles set forth in the Declaration have become a substantive, binding component of legislation and law.

Time after time judges have incorporated statements in their verdicts referring to Israel as a democratic state by citing principles in the Declaration. One such remark was made by Justice Agranat in the ruling cited above:

The set of laws according to which the political institutions in Israel were established and under which they operate attest that [Israel] is indeed a state with democratic foundations. Furthermore, the matters mentioned in the Declaration of Independence – especially those on basing the state on the fundamentals of freedom and the assurance of freedom of conscience – indicate that Israel is a freedom-loving state.

However, neither the Declaration nor any other enactment of the state contained the word "democracy" or derivatives thereof. No "democratic state" is mentioned alongside a "Jewish state," although it is absolutely clear that the founders had such a state in mind. This rather regrettable lacuna has recently been set right by the two aforementioned Basic Laws, for both contain the identical clause (except for two or three words):

The purpose of this Basic Law is to protect in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.

“A Jewish and Democratic State”

Since the passage of these two Basic Laws, these two definitive characteristics of the state – the Jewish and the democratic – have been inextricably intertwined. However, if the legislators had hoped that this formulation would put to rest the debate over Israel's being Jewish and democratic, the opposite occurred. From the moment these Basic Laws were passed, public debate over this issue and its implications has recurred, and more vehemently so. Some argue that national harmony requires a full symbiosis between these two adhesive attributes, and they consider such a symbiosis not only necessary but also possible. Others believe that the two values clash in substantive ways and cannot be attained in tandem. Thus, they say, one must yield to the other: either democracy to Jewishness or vice versa. The continuum between these polar attitudes is filled with a great many views pertaining to every substantial issue on the public agenda. Some even consider the two values

unequal in status a priori, citing the order in which the two determining words appear in the foregoing clause.

This dispute will undoubtedly continue, and although it may seem theoretical and abstract, it is neither. Not only will the struggle be waged over the relationship between these two components, but a stand will have to be taken on the principles, the meaning and the practical significance of each. At the time the Declaration was written, a tacit and largely unarticulated consent existed concerning the essence of the Jewish state, and disagreements were, for some time, put aside. The same may be said, even more explicitly, about the democratic character of the state – a matter in which almost no one took an interest. Now, amazingly, voices are being heard from different parts, demonstrating not only a misunderstanding of the principles of democracy, but also a disregard of them.

Recently, the domestic dispute over the Jewish character of the state has become very bitter. Dissent ranges from the conceptual and the ideological to the practical – Sabbath observance, marriage and divorce laws, budgets for religious institutions – with a tendency to adopt radical and excessively rigid positions. Furthermore, the political arrangements governing the status, powers and functions of religion (called the "status quo on religious affairs") are steadily crumbling amid rising social tension.

A large majority of Jews take for granted that Israel is a Jewish state and cannot envisage anything else. Although quite a few would prefer to see a different Jewish state – with disagreements over the degree of difference – only a very small minority would seek to abolish it. Many of the country's Arab citizens acknowledge that Israel is a Jewish state and will remain so, and some regret this. Be this as it may, there can be no doubt that on the day when Jews cease to be a majority in Israel, Israel will cease to be Jewish.

The Declaration - A Review

The Declaration of the Establishment of the State of Israel, the first official document of the state, is marking its jubilee – as is the state. The Declaration bears importance of the highest magnitude, for it symbolizes a momentous change in Jewish history. In its contents, structure, and language, it is one of the most impressive of its genre. In its structure and stylistic cadence, the Declaration is a literary gem, its elegant phrasing successfully blending solemnity and exaltation, sober idealism and practicality, coupled with daring, moral force and lucid foresight. The operative sections of the Declaration – i.e., the very proclamation of the formation of the state and its provisional governing institutions – are of historical value only. This cannot be said about the other parts of the Declaration. The historical section was, and perhaps still is, the most portentous Zionist manifesto of all.

The most important section of the Declaration is that dealing with values and principles, which contains political and legal messages that remain relevant to this day. It is still Israel's charter of human and civil rights, enfolding all the basic principles and values that no enlightened society can do without. Obviously, there are abundant disparities, even gaping ones, between ideals and realities,

between promises made and promises honored. For this reason, as this article draws to a close, an attempt should be made to determine which of the promises in the Declaration have been fulfilled and which have not. Of course, it is impossible at this juncture to draw up a detailed, accurate, and reasoned "balance sheet," but one may briefly address – at the risk of being accused of excessive brevity – the development of several of these principles in the reality of Israel.

“Aliya – the Ingathering of the Exiles”

A fundamental aspiration of Zionism and the state, this may be viewed – in the most general way – as a success story, though not everyone would agree. The Law of Return was enacted to give concrete legal form to this cause and, despite criticism of its details, it is hard to envisage the State of Israel without it. The main emphasis has been on the stage of "the ingathering of exiles," the arrival and attraction of faraway Diaspora communities. It was accompanied, perhaps unavoidably, by severe hardship for many immigrants, and the ensuing social inequalities have left scars. Although the Declaration says nothing about integration of exiles and national solidarity, this is obviously the "heart and soul" of the ingathering, and the balance in this respect is far from being fully satisfactory.

Those who regard Jewish immigration not only as a right, but also as a duty, probably regard it as at least a partial failure. Even today, more than half of the world's Jews do not live in Israel, and the number of emigrants leaving Israel is growing; however, the proportion of world Jewry living in Israel is on the rise.

“Development of the Country for the Benefit of All its Inhabitants”

In this matter, too, Israel may congratulate itself for making much progress and attaining an impressive rate of development. The state is among the world's most developed with regard to economy and culture. Its standard of living and quality of life have been rising steadily, despite the impediments of its security situation. All citizens have benefited from these trends – though not equally, as Israel is one of the few developed countries in which the income gap is actually widening.

“Freedom, Justice and Peace”

These universal values, in the absence of which a society cannot be sound nor a state enlightened, account for a hefty portion of the Jewish heritage; a Jewish state not guided by them is inconceivable. Although nobody fails to espouse these values, Israelis from all sectors of society have widely varying interpretations for them. This state of affairs is most conspicuous with respect to peace, of course, but it also applies to liberty and justice. Under such circumstances, it is quite amazing that a golden mean, or at least a workable compromise, is so often attained. In this sense, Israel's performance does not outrank the soundest of nations, but it does not fall significantly short of them.

“Complete Equality of Social and Political Rights”

The Declaration indeed referred to complete equality and, perhaps, to equal opportunity – not only formally (i.e., in law and justice), but also in the implementation of these rights in all areas of life: political, social, economic and perhaps also cultural. Equality is a goal, and its complete attainment cannot occur with ease, if at all. Therefore, the question is to what extent such equality has been achieved and whether the trend is leading toward greater or lesser equality.

When the state was founded, Jewish Israeli society was rather egalitarian in many respects, and in certain senses this trait has gathered strength since then. One of the great accomplishments is the far-reaching equality in political rights of the citizens, including Arabs, and in the courts, where equality under the law is strongly, although not fully, prevalent. However, there are pockets of blatant inequality in resource allocation for development purposes. Although the declared intent is to narrow this disparity, and although visible action is being taken to demonstrate that this is being done, there remains much room for improvement.

The Equality of Women's Rights Law (1951) was meant to make the Declaration's assurance in this respect effective. The statute indeed prescribes legal equality for men and women in all matters of jurisprudence, and adds that any legal provision that discriminates against women qua women shall not be applied. Indeed, much action toward greater equity has been taken over the years, in both judicial and social affairs. However, this law makes a significant exception: in all matters of marital status, women's equality does not apply. Indeed, this exclusion has been expanded to cover all matters related to so-called religious institutions of state, such as rabbinical courts and religious councils, with some minor exceptions. Truth to tell, however, even the law prescribing equal wages for men and women (1964) falls far short of full implementation.

The Declaration speaks of equal rights and refrains, for good reason, from speaking of equal obligations. However, a soundly functioning regime obviously concerns itself with this aspect, too, for it is also a factor in equality. Israel is not among the world's most egregious performers in its infringements of this principle. Nevertheless, there have been occasional grievances, and public debate sometimes erupts over a case of inequality in obligations. Equality, or, to be more accurate, more equitable justice in apportioning the tax burden is the subject of struggles all over the world, and let us admit that Israel has much room for improvement in this respect – not only concerning women. Another matter that has evoked bitter public controversy for some time is equality in carrying the burden of military service, especially in what we call the induction of yeshiva students. The duration of annual reserve duty also remains irksome to many in this respect.

“Freedom of Religion and Conscience”

In the fifty years since the Declaration of Independence was written, it has become clear that intricate problems are involved in honoring freedom of religion, conscience and faith in a country where religion (or to be more precise, religions) holds an official status and wields state-sponsored administrative and judicial functions. Freedom of religion in Israel is, first and foremost, the power granted to the religious establishment to set norms and rules of behavior for its adherents, and the definition of citizenship (at least with respect to Jews) is also fundamentally religious and in accord

with religious law. As to freedom of worship – a matter that is mostly internal to the various religious communities – the High Court of Justice ruled that:

Freedom of religion and worship is but one of the personal freedoms assured [to individuals] in every democratic regime. The very existence and assurance of this freedom entails the risk of schism among various religious currents and movements, but this risk in no way diminishes the freedom of religion and conscience.

By the same token, the state must have the power to limit the freedom of worship in very exceptional and extreme cases, and all one can say about this matter is that such action should be taken with the utmost caution.

Court judgments have expanded the freedom of religion significantly by including in it the freedom from religion. Thus the courts have stipulated that both freedom of religion and freedom from religion, to which both citizens and residents are entitled, are overarching values in Israel – originating in the rule of law (in its substantive sense) and in rulings by the courts. Religious commandments – or religiously derived principles – are not law in Israel unless they are incorporated into a law. However, one can hardly say that the government's performance has always studiously corresponded to the spirit of this ruling, and the tendencies emanating from steadily-growing population groups are also pointing in other directions.

“Freedom of Language, Education, and Culture”

It is clear that the freedom of language assured in the Declaration refers to the right of Israeli Arabs not only to speak and provide education in their language but also to use Arabic in all official contacts. Recognition of Arabic as an official language has solved this problem and, practically speaking, no special difficulties have come up over the years.

The authors of the Declaration had a similar situation in mind when they referred to freedom of education, and presumably they also intended to enshrine the right of all "streams" in Jewish education. On this basis, parents were eventually granted the possibility of enrolling their children in education subsystems of their choice. Obviously, freedom of education was not meant to empower every parent to dictate his children's curriculum nor to teach at home, in circumvention of all school settings (although a quite liberal interpretation of the relevant statutes has allowed such cases).

Indeed, a large majority of Israelis accept what they are offered in this regard. This may also be indicative of a basic rule with respect to rights: use them or prepare to lose them. Recently, problems have arisen because of schools' refusal to honor parents' freedom to choose their children's education by rejecting certain children without justifying the rejection on any formal grounds.

Israel may congratulate itself on its freedom of culture. The only significant infringement is the official censorship of plays and films and, perhaps, some indirect censorship of cultural artifacts and advertising. Notably, however, the trend in this matter has been toward greater liberalism, and only time will tell what the future holds. Of course, those who consider lavish governmental and public

support an essential condition for cultural freedom would not depict the Israeli situation in glowing terms. This attitude, however, would make the scope of this freedom unconventionally broad.

“Safeguard[ing] the Holy Places of All Religions”

The country's holy places, and the free access to them, primarily those of Muslims and Christians, have been safeguarded very meticulously, especially since many such shrines came under Israeli control after the Six-Day War. This situation has been noted favorably by most religions represented in Israel, despite occasional incidents.

A Look Towards the Future

We are witnessing today, thus, the continuing development of the democratic State of Israel, based on the values of freedom, justice and peace, as cited in the Declaration. Furthermore, the Declaration's calls for "bonds of cooperation and mutual help" and "a common effort for the advancement of the Middle East" are being realized in the continuing peace process between Israel and her Arab neighbors.