

Israel's Declaration of Independence

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The Historical Setting of the Declaration

The War of Independence started many months before the State of Israel declared its independence.

On November 27, 1947, the United Nations voted by a majority of 33 to 11 to bring the British Mandate of Palestine to an end. The decision called for Britain to evacuate all of its forces from Palestine, and for the territory to be divided into two states, one Jewish and one Arab. Further, the resolution called for Jerusalem and its environs to become an international zone, not part of either state, and for the two states to form an economic union.

The resolution was received enthusiastically by the Yishuv, but was rejected by the Arab leadership, and by the night of the United Nations resolution, there were violent incidences throughout mandatory Palestine. In the beginning of April 1948, when war between the Jewish and Arab residents of the land was well underway, the British declared that they would remove all their troops from the country as of May 15, 1948.

Even while the Yishuv was engaged in a struggle for its very survival, the leaders of the Yishuv began preparations for establishing a state. They decided to set up two institutions: The *Moatzat Ha'Am*, the the People's Council, which had 37 members who represented the various Zionist and pro-settlement streams, including but not limited to the Jewish Agency and the Jewish National Council and other political organizations , and the *Minhelet Ha'Am*, the People's Administration, which was a sort of provisional government composed of 13 members of the people council. (The People's Council was the forerunner of the eventual Knesset, and the People's Administration was the eventual forerunner of the government.)

On May 12, 1948, the People's Administration convened at the Jewish National Fund headquarters in Tel Aviv. The leaders of the Yishuv were under pressure from the United Nations and the United States to delay declaring the establishment of a state due to threats of invasion by neighboring Arab states and violence by local Arabs. Despite all this, on May 13 the People's Administration voted to declare the establishment of the state on May 14. They were charged with answering some crucial questions: What would be

the name and symbols of the Jewish state? What would be its language? Who would have the authority to act as legislators? What would be the name would be the various government institutions, and what powers would they have?

The members of the provisional government revised a draft text of the declaration of independence many times until the final text that we now know was accepted. It was also decided that the declaration would be read at a ceremony to be held in the hall of the Tel Aviv Museum, now known as Independence Hall, with the participation of the members of the People's Council. Aside from them, a few other invited dignitaries were to attend: Mayors and heads of political parties, rabbis, authors, newspaper editors, Haganah commanders, members of the Zionist Workers Council, and others.

The preparations for the ceremony proceeded with haste and great emotion. Ze'ev Sherf, who served at the time as secretary of the People's Administration, recorded that he experienced "happiness and trepidation at the same time. The present and the past mixed with each other, fantasy and reality in collusion. The days of the Messiah were at hand, the end of subjugation by foreign kingdoms."

The ceremony was held on the afternoon of Friday, 4 Iyar, 5708, May 14, 1948, as the Sabbath approached. In Sherf's words: "The hall was packed, with no space at all, it was quiet within, and the heat was scorching." The members of the People's Administration were seated at the dais, and opposite them were seated the members of the People's Council, and the rest of the invitees surrounded them in a semicircle. Draped above was a picture of Herzl. At 4 pm, David Ben Gurion pounded on the table. The assembled stood up and spontaneously sang "*Hatkvah*," which was not on the program. Ben Gurion read the declaration "and his face shone," and the chapters of our people's history came to life from the words of the scroll. After Ben Gurion concluded the reading of the declaration, Rabbi Yehuda Leib Maimon (formerly Fishman) was called upon, and in a choked and trembling voiced, he intoned the blessing upon "He who has kept us alive, and sustained us, and brought us to this season," to which the assembled responded with a loud "Amen."

Sherf also testified as to the solemn and modest ceremony that took less than half an hour, without the pomp and circumstance that one would have expected for such an event. He also described the emotional and brotherly reactions of the assembled upon adjuration of the meeting, the historical and romantic significance of Jewish independence after millennia of foreign dominance by successive conquerors, and the spontaneous celebrations in the streets after the live broadcast of the declaration.

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The Substance of the Declaration and its Sections

It is generally accepted that the Declaration of Independence contains four sections.

The first section consists of a historical introduction describing the story of the Jewish people. The second section is a practical-legal section that defines the protocols for governing the state. The third section details the founders' views of the guiding principles of the state. The fourth section includes affirmations and appeals to various parties.

We will examine the substance and meaning of each section.

Section One: Historical Introduction- The Story of Zionism

This part serves as the basis for the entire declaration, and described therein are the important events of Jewish history. The historical context presented in this section brings to light the bond between the Jewish nation and the land of Israel, and the recognition of the nations of the world of this fact. The introduction begins with the Biblical period, and concludes with the UN General Assembly meeting of November 29, 1947.

From the introduction, we can learn of the various reasons for the Jewish people's rights to the land of Israel.

1. The history of the independent Jewish people in Eretz Yisrael before the exile from the land, and the spiritual connection of the nation to its land during the years of exile.
2. The attempts by the Jews to return to their land and settle it during the periods of exile, especially after the advent of the Zionist movement.
3. The establishment of the Zionist movement under the leadership of the visionary of the state, Theodore Herzl, as an expression of the people's yearning to live in its sovereign land.
4. The recognition of the nation's right to a national home, as granted by the Balfour Declaration.
5. The European Holocaust as proof of the necessity of establishing an independent Jewish state.
6. Immigration, both legal and illegal, to Eretz Yisrael, that showed the courageous drive of the Jews to return to their land and build their sovereign state

7. The Yishuv's contribution to the allied war effort against Nazi Germany and the Axis Powers during World War II.

8. The United Nations resolution of November 29, 1947, that called for the establishment of a Jewish state in Eretz Yisrael.

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The second part of the declaration was the legal and practical one. This can be considered the actual declaration: of the establishment of the state, its name, its protocols for governing, and its institutions. This is the only section of the declaration of which there is no doubt as to its legal-constitutional authority.

We shall discuss certain details of this section.

- * The signers: i.e. the members of the People's Council, mentioned above.
- * The date of the proclamation: Friday, 4 Iyar, eve of the Sabbath, 5 Iyar, 5708, May 14, 1948.
- * The character of the state: Jewish. In the words of the declaration, "we hereby proclaim the establishment of a Jewish state in Eretz Yisrael."
- * The name of the state: The State of Israel.
- * The provisional governmental institutions: the People's Council would function as a "Provisional State Council" (a sort of parliament) and the People's Administration would now function as a provisional government.

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In the third section, the authors of the declaration elaborate on the guiding principles on which the state would be based:

1. **Immigration of Jews to the Land:** Every Jew would have the right to immigrate to the State of Israel.
2. **Development of the land for the benefit of all of its inhabitants:** The intent was to expand already existing settlements and establish new ones, and establish developmental enterprises and economical opportunities for every resident.
3. **The democratic character of the State of Israel:** The word "democracy" is not explicitly written in the declaration, but the democratic character of the state is alluded to in passing by saying that the state would be based on the foundation of freedom and the upholding of equal political and civil rights for all its citizens.
 - a. **Equal rights:** The State of Israel would guarantee equal political and civil rights for all its citizens without regard to race, religion, or gender. The

intent of this is equality before the law, equal rights to vote and hold elected office, other political rights, and civil equality expressed in the prohibition of discrimination and the granting of equal opportunities to all.

- b. **Freedom:** In a state with a liberal democratic constitution, the principle of protection of freedom of religion and thought, and the right to choose for oneself a language, manner of education, and culture, are of central importance.
4. **Preservation of the holy sites of every religion.**
5. **The principles of freedom, justice, and peace in light of the vision of the prophets of Israel:** The young State of Israel declares its yearning to create a free society with social justice for its citizens and peace, all in the spirit of the message of the ancient prophets.
6. **Faithfulness to the principles of the charter of the United Nations,** for example, resolving conflicts peacefully, cooperation solving international problems related to the economy, society and culture, and developing a respectful stance toward human rights.

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In the fourth section, the writers turn to various parties with affirmations and appeals:

1. **An appeal to the United Nations:** The State of Israel affirms its faithfulness to the principles of the UN charter. The state affirms its its readiness to cooperate with the UN in realizing the resolution of November 27, 1947, and to act to establish an economic union for Eretz Yisrael.
2. **An appeal to the Arab inhabitants of Eretz Yisrael** to keep the peace and participate in the building of the state. The Arab citizens of Israel are guaranteed representation in government institutions and civil equality.
3. **An appeal to neighboring Arab states:** Israel affirms its desire for peace and neighborliness, and its preparedness to cooperate with the Arab states and provide mutual assistance for the sake of progress throughout the Middle East.
4. **An appeal to diaspora Jewry** to rally behind the state and assist with immigration and building and strengthening the state.

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The Legal Standing of the Declaration

The Declaration of Independence is the first document to be publicized by the State of Israel. The declaration establishes the character of the State of Israel as the state of the Jewish people and as a democracy. The declaration also contains the founding principles of the state: justice, equality, freedom, and

yearning for peace. The third and fourth sections express the values of the State of Israel and the rights of its citizens.

The declaration is therefore an important document, yet it brings up a number of questions: is the declaration's status statutory or constitutional? What would happen if any of the principles set down within were to contradict conflict with laws accepted by the Knesset? What takes precedence - the declaration's principles or Knesset legislation?

Because Israel still does not have a written constitution, some view the Declaration of Independence as a de facto constitution. Yet it is not a constitution, if only because it provides for a constitution to be written by an elected committee. The declaration is neither law, if only because it was not passed by the state's legislative body, the Knesset.

Legalists believe that the question as to the legal legitimacy of the Declaration of Independence can only be asked concerning the second and third sections. The first and fourth section do not have any legal aspects, and therefore can serve no legal purpose. (See Rubinstein, *The Constitutional Law of the State of Israel*, 1991.) Legalists propose that the the second section does not have any authority greater than any other law, neither authority lesser than any law. Therefore, it is possible to override the directives included in the second section with a later law. In any case, portions of the resolutions written therein have not been implemented; (because of the war) elections were first held after the date called for in the Declaration of Independence; until today, there still is no written constitution; and the legislative body (the Knesset) also received the task of drafting a constitution.

The question of the legal standing of the Declaration of Independence has been addressed more than once by the Supreme Court, after petitions premised on the Declaration of Independence were submitted to the High Court of Justice.

For example, In 1953 the Kol HaAm newspaper published a controversial article on the Korean War, which resulted in the Minister of Internal Affairs ordering the paper to close for 15 days. The papers filed a petition to the Supreme Court, which ruled that the suspension had been wrongly issued and should be set aside. The ruling had utilized the Declaration of Independence in making its judgement on the issue of free speech, the first time the declaration had been used as an instrument for interpretation. What became known as the "Kol HaAm decision" also set the precedent that newspapers could only be shut down if it was an "almost certain" danger to national security.

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In that decision, the court established that the Declaration of Independence does not act as a constitution, rather, as a declarative document that expresses the vision of the nation and the essentials of its faith. Despite that, the court's decision also stated that "it is incumbent upon us to pay attention to the matters stated in the declaration at a time when we try to interpret and discover the laws of the state." From here we see that whenever there is no clear law legislated by the Knesset, or where it is possible to interpret standing law in various ways, the court prefers the interpretation that resonates with the principles established by the Declaration of Independence.

Further, "the voice of the people" is heard from the High Court of Justice because, in the eyes of the court, the Declaration of Independence expresses the "sincere belief" of the nation and its vision, but it is not the law. The matter implies that the Knesset is authorized to pass laws that contradict the principles of the Declaration of Independence, and if the Knesset passes such a law, its legal power would be greater than that of what is written in the Declaration of Independence. For example, the court one time decided that "whenever there is an explicit directive of one of the Knesset's laws, that leaves no room for doubt, it should be followed, even though it does not follow in the spirit of the principles elucidated in Declaration of Independence."

The Declaration of Independence, or at the very least its third section, is an exegetical tool with legal significance that can be utilized when seeking to interpret directives and laws. Petitions to the high court that sought to find exegetical basis for equal rights and various liberties became commonplace as the years went on.

In one decision from 1987, the court decided that "the need for guaranteeing equality within Israel can be learned from various sources, the foremost of which is the Declaration of Independence, which establishes that the State of Israel will uphold complete equality of civil and state rights for all its citizens without attention to religion, race, or gender."

In 1962, the court decided that "the Declaration of Independence guarantees freedom of religion and worship for all the state's citizens, and even if the Declaration of Independence itself did not grant a citizen such rights, the way of life of her citizens is established by the Declaration of Independence, and every government body is obligated to receive inspiration from its principles."

In conclusion: The third section of the Declaration of Independence has legal value: as an exegetical tool of the court, as principles that obligate the administration of the state, and as principles that may be contradicted or



contravened by explicit law. The Declaration of Independence serves to shed light on the state's Jewish and democratic character.