

Israel and the Family of Nations

The Jewish nation-state and
human rights

**Alexander Yakobson and
Amnon Rubinstein**

Israel and the Family of Nations

Can Israel be both Jewish and truly democratic? How can a nation-state, which incorporates a large national minority with a distinct identity of its own, be a state of all its citizens?

Written by two eminent Israeli scholars, a professor of constitutional law and a historian, Alexander Yakobson and Amnon Rubinstein are the first to treat Zionism and Israeli experience in light of other states' experiences and in particular of newly established states that have undergone constitutional changes and wrestled with issues of minorities. Citing various European constitutions and laws, the authors explore the concept of a Jewish state and its various meanings in the light of international law, and the current norms of human rights as applied to other democratic societies compatible with liberal democratic norms and conclude that international reality does not accord with the concept that regards a modern liberal democracy as a culturally 'neutral' and nationally colourless entity.

In light of the new political map in Israel and the prospect of future disengagement from the West Bank, *Israel and the Family of Nations* is essential reading for all those who wish to understand Israel's future challenges.

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**Alexander Yakobson and
Amnon Rubinstein**

Translated by Ruth Morris and
Ruchie Avital

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Introduction

This book examines the concept of a ‘Jewish state’ and the principal features that determine the Jewish character of the State of Israel in the light of international law, the principle of national self-determination and the norms of human rights accepted in the modern democratic world. This discussion relates to the ongoing controversy, both in Israel and outside it, over Israel’s official designation as a Jewish state. Originally, Zionism sought (in the ‘Basle Programme’¹ adopted by the First Zionist Congress) to establish ‘in Palestine a home for the Jewish people secured under public law’. It sought and eventually obtained international recognition of the Jewish people’s right to a state, never endorsing the ‘nation that dwells alone’ view. Today, however, there are those that claim that the very concept of a ‘Jewish state’ (and everything that it implies, primarily the Law of Return²) runs counter to international human rights norms and discriminates, by definition, against non-Jewish citizens.

This claim, often heard outside the country, is today voiced in Israel not only by members of the radical Left or Arab nationalists. Quite a few ‘mainstream’ Israelis who are committed to universal humanist values raise questions about this matter. Some of them, while still clinging to the definition of Israel as a Jewish state and to the Law of Return, take an apologetic approach, viewing the Jewish state as a form of ‘affirmative action’ that favours the Jewish people because of the catastrophes that befell it in the past. By implication, such ‘affirmative action’ is meant to be merely a temporary arrangement.

On the other hand, some of those who cherish the concept of a Jewish state fear that embracing the values of universal equality will mean having to abandon this idea. Furthermore, in ultra-nationalist circles and among those who favour religious coercion, the concept of a ‘Jewish state’ serves as a seal of approval for undermining accepted democratic principles. From these quarters one hears that, since Israel is a Jewish state (and, according to most Israelis, should continue to preserve this character), its non-Jewish citizens cannot, by definition, enjoy full civil equality. By the same token, secular Jews are required to accept the Orthodox establishment’s definition of Judaism – otherwise the state will not be truly Jewish. Thus, the ostensible contradiction between a Jewish state and liberal democracy drives some to anti-democratic conclusions, while others draw from it the conclusion that Israel’s Jewish character should be rejected. Others prefer

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to ignore the issue and dodge the question. Few have made the effort to systematically come to grips with the question of the relationship between these two principles: Are they in fact fundamentally contradictory?

In this book, we intend to demonstrate that no such contradiction exists. On the contrary, it is the denial of the legitimacy of the concept of a Jewish state that undermines the principles of universal equality, since it denies the right of the Jewish people to self-determination and national independence. There is a considerable measure of historical irony here: at the very time that the majority of the Israeli public has accepted – on the pragmatic level at least – the right of the Arab-Palestinian people to an independent state of its own, and steps have been taken on the ground to realize this right, there are groups in the Israeli Left that have in fact repudiated the principle of ‘two states for two peoples’ by adopting a stance that amounts to denying the right of the Jewish people to national independence.

We shall show that it was the international community, through the UN Partition Plan of 1947, that decided in favour of setting up a ‘Jewish state’ – in other words, a homeland and safe haven for the Jewish people, and that everything that naturally derives from that definition, including the Law of Return, meets human rights norms as accepted by the free world today, not just those acceptable in 1947. Whatever, in the country’s day-to-day reality, contradicts liberal democratic principles does not follow from Israel’s definition as a Jewish state. This definition means no more and no less than that Israel was established as an expression of the Jewish people’s right to a homeland and an independent state – the right of national self-determination, as it is known today. This is how it was perceived, both internationally and by the founding fathers of Zionism.

The United Nations General Assembly, which decided, by adopting the partition plan based on the principle that both peoples in the country were entitled to national independence, to establish a ‘Jewish state’ and an ‘Arab state’ in Mandatory Palestine, stipulated that both these states would be required to adopt a democratic form of governance and guarantee the rights of the national minorities (Arab and Jewish respectively) living within their borders. Thus, the international community saw no contradiction between the national definitions of the character of the two future states – Arab and Jewish – and the principle of citizens’ equality before the law. Similarly, in classical Zionist thinking, a Jewish state means a homeland and refuge for the Jewish people, not a state that discriminates between Jewish and non-Jewish citizens, or a state that is dominated by the Jewish religion. It goes without saying that not all criticism, however harsh, of Israeli realities is to be interpreted as a denial of Israel’s legitimacy as a Jewish state – in other words, a denial of the Jewish people’s right to a state. But neither is there any justification for some people’s tendency to deprecate the very idea of Jewish independence because of shortcomings in its realization. This is not how other peoples, national movements and nation-states are treated in the modern world. Even nations that do not maintain even a semblance of democracy are universally recognized as entitled to national independence, and even in such cases (not in fact wholly exceptional in the Middle East) no one claims that the very idea of national independence is an undemocratic one.

National or ethnic minorities exist in many democratic nation-states. In every such case, the country's public character is determined primarily by the majority and influenced mainly by its culture and identity, with consideration given to the rights of the minority. That is why the Jewish State necessarily has a Jewish character which is expressed in features such as the official status of the Hebrew language (although Arabic is also recognized as a second official language), the state emblems and symbols, the official weekly day of rest and holidays, as well as the character of its public education and its cultural life. Israel's national emblems and symbols are Jewish in nature. Some claim that this fact inevitably alienates the state from its non-Jewish citizens: according to those that take this view, the nation's symbols should be 'neutral' so that all of the state's citizens can identify with them in equal measure. But the sign of the cross, which appears on the national flags of the United Kingdom, Australia, New Zealand, Switzerland, Greece, Hungary and Scandinavia's exemplary democracies, as well as on coats-of-arms of many countries, is not a 'neutral' symbol, and not all the citizens of these countries can identify with it. It is, however, the symbol of the majority's historical and cultural identity. The same can be said of the ancient religious symbol that appears on the flag of secular India, which has a large Muslim minority.

Many believe that the connection between the State of Israel and Diaspora Jews, a bond attested to by the Law of Return as well as in other ways, is a unique phenomenon. Some argue that this attachment is detrimental to the principle of civil equality. The Law of Return, which is clearly fundamental to the Jewish character of the state, is targeted by much of the criticism levelled at Israel in this regard. However, we will show that here too the case of Israel is not, as conventional wisdom would often have it, unique. The contemporary democratic world provides numerous such examples of ties between nation-states and their national diasporas. These ties sometimes include provisions for national repatriation, as reflected in numerous constitutions, as well as in laws governing immigration and citizenship.

Until recently, it could have been argued that in one area – which has both symbolic and practical significance – there was in fact a contradiction between the principle of civil equality and the Jewish character of the state as interpreted by the Israeli (not necessarily right-wing) establishment. While the bulk of the country's land that is not privately owned belongs to the State (and thus, legally, to all its citizens), the Jewish National Fund (JNF), as a branch of the Zionist movement, has in the past purchased land on a wide scale explicitly for the purpose of Jewish settlement. The problem, as far as civil equality is concerned, is that the State sold some of the State land to the JNF. Clearly, this procedure amounts to circumventing the principle that all State property, including land, is the property of all citizens. However, Israel's High Court of Justice recently ruled (in what is known as the 'Kaadan case') that transferring State land to the JNF is illegal, holding that here too, as in other areas, there is no inconsistency between civil equality and the Jewish character of the state, and that this character cannot serve as an excuse for discrimination between one citizen and

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another. For the future, then, the practice has been outlawed; the argument now is over the status of lands handed by the State to the JNF decades ago. This argument, despite the legal complications involved, should undoubtedly be resolved in favour of the principle that guided the High Court in its decision in the case before it. In general, it may be said that the quasi-official status granted in Israel to the institutions of the Zionist movement is legitimate to the extent that it is intended to express and serve the ties between the state and Diaspora Jewry; however, it is not legitimate to use these institutions in order to create what is in effect ethnic discrimination between one citizen and another within the state.

Some make a distinction between the terms ‘the state of the Jews’ (*Der Judenstaat*, the title of Herzl’s celebrated book) and ‘a Jewish state’: Whereas the former term is considered legitimate, the latter is imputed with negative associations of narrow nationalism and religious coercion. We will show that there is no justification for this distinction. The ‘Jewish state’ that the UN General Assembly voted to establish in 1947 is in fact a state for the Jewish people – in other words, ‘the state of the Jews’ of which Herzl dreamed. It should be noted that while some people find it hard to stomach the term ‘Jewish state’, no such difficulty has been caused by the term ‘Palestinian state’ – or, indeed, by the official designation of all of Israel’s Arab neighbours as ‘Arab states’. It is clear to all that a Palestinian state (or an Arab state in Palestine, as the UN Partition Plan put it) means nothing more than the state of the Palestinians, the state of the Arab-Palestinian people. By the same token, the Czech Republic is the republic of the Czech people, despite the fact that it also has Slovak citizens; and therefore it has both a distinctly Czech character and a duty to protect the rights of its Slovak (and any other) minority. Had the Palestinian Arabs accepted the Partition and established their independent state in 1948, that state would have included a Jewish minority. One can only hypothesize what the status of that Jewish minority might have been in such a state, ruled by the Mufti of Jerusalem. However, no one claims that the very idea of an Arab-Palestinian state is inherently illegitimate because it is inconsistent with the principles of civil equality. Similarly, even when they have substantial non-Arab minorities all of Israel’s neighbours are officially defined as Arab states, and although justified criticism is levelled at them – among other things because of the way they treat their minorities – no one claims that their very definition as Arab states is illegitimate.

The arguments against defining Israel as a Jewish state are usually based on an abstract, radical and rather utopian model of liberal democracy. After presentation of this model – whose theoretical validity is also open to debate, and indeed, such a debate is taking place among experts in the field – it is claimed that Israel, as a Jewish state, does not meet its requirements. In order to refute this claim, we shall examine the situation that actually prevails today throughout the free world and analyse the constitutions and laws of many contemporary democracies. Readers of different backgrounds may be interested in hearing how liberal democracy functions in a context of nation-states

throughout the world. It should be remembered that democracy and human rights are concepts that evolve over time, undergoing radicalization in certain areas. Although the basic principles have tended to remain the same, not everything that was considered legitimate in 1947 is acceptable in today's democratic world. In principle, one might have argued that while the Jewish character of the State of Israel was consistent with the norms of the late 1940s, it is inconsistent with those that are generally accepted today. Therefore, this book will relate to the democratic world's prevailing realities in the 1990s and early twenty-first century, and will try to identify the dominant trends in relevant areas. It is a given that even in the most tranquil and liberal countries issues related to religious, linguistic and national minorities prompt debates and controversies. Some of the debates on the status of the Arab minority in Israel – for example, the question of the relationship between the State's principal language and the language of the minority – are of concern to any country that has minorities. In this respect, the arrangement in Israel regarding the status of Arabic, according to which it is recognized as a second official language (although this principle is not always implemented *de facto*), is more liberal and far-reaching than the situation in many other democratic states. However, it is also clear that the peculiar situation of the Arab minority in Israel, which results from the prolonged Israeli–Arab and Israeli–Palestinian conflict, creates distinct and difficult problems.

A large body of research and professional literature deals with such issues as national identity and citizenship; 'civic' versus 'ethnic' nationalism; individual rights and collective rights of minorities; the nation-state and its future in an age of globalization, European integration, mass immigration and multiculturalism. Apart from a few basic references, we do not intend to deal with this literature in detail, or to take sides in the scholarly controversies on those matters. We intend to concentrate mainly on the practice, rather than the theory, of the contemporary liberal nation-state. Some scholars tend to take a positive view of this practice, while others are more critical. However, one must bear in mind that the European states that belong to the Council of Europe have for many years now been subject to the judicial review of the European Court of Human Rights, which rules in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Consequently, the human rights norms prevailing in these countries – among other things, on the treatment of national and religious minorities – certainly reflect the highest international standards. This applies not only to the old, well-established West European democracies, but also to the new democracies of Central and Eastern Europe, which have become part of the European democratic community and have been required to prove their adherence to European human rights norms.

Our premise is that, irrespective of any debate on democratic theory, today's European (mostly Western) states which fall under the purview of the European Court of Human Rights should be considered genuine liberal democracies. If, for example, Finland's immigration laws grant people of Finnish ethnic extraction from the former Soviet Union preferential conditions for the purpose of

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immigrating to Finland, and if the government of Finland has declared that it views these people's immigration to Finland as 'repatriation' (in the sense of returning to one's native land, or *patria*), even though some of the people in question are descendants of Finns who emigrated from Finland hundreds of years ago – all of this does not show that Finland is a 'second-rate' or 'ethnic' democracy. Rather, it shows that, according to the norms practised in today's democratic world, it is legitimate for a nation-state to maintain ties with its ethno-national diaspora, and, among other things, to express these ties through laws on immigration and naturalization.

It is sometimes argued that the standard Western liberal-democratic model is not necessarily – or at any rate, not entirely – appropriate for other regions of the world and their cultures. In principle, arguments based on 'cultural specificity' may have some degree of validity. On the other hand, it is obvious that these claims have often been used as a pretext for gross violations of basic human rights. In any case, we do not intend to present Israel's case as 'specific' in these terms. In our view, Israel can and should meet the highest standards of contemporary Western-style liberal democracy. Naturally, contemporary democracies themselves differ to a considerable degree over the matters to be discussed in this book. These differences reflect the historical and cultural uniqueness of every society. In this sense, every case, including the Israeli one, is unique; but at the same time, a commitment to certain basic principles is universally required. One of the specific circumstances of the Israeli case is, of course, the prolonged national conflict in which the country is engaged. But many other democracies have had to deal with threats and emergencies of various kinds, and have faced the difficult dilemma of trying to protect the safety of the nation without sacrificing its moral values. It seems that a prolonged, 'chronic' state of emergency, often considered an oxymoron, might become a feature of some contemporary democracies as a result of the threat posed by Islamist terrorism.

Israel differs from the many nation-states that have significant national minorities in that, in most cases, the name of the state (and the traditional name of the country) is commensurate with the name of the majority-people as well as with that of its language. Consequently, the question of 'the state's identity' in a national sense does not arise in the same terms in which it arises in Israel. Generally speaking, in the constitution of a democratic nation-state, the standard provisions regarding the name of a state and its official (or 'national') language represent the definition of the national identity of that state; and it should be borne in mind that national language is widely regarded as a fundamental distinctive feature of modern national identity. By definition, a national minority is a community that defines its national identity by means of a different name from that which defines the identity of the state, and in most cases, its language also differs from the state language. It is the 'national majority' which gives the state its name and its identity. No one asks if Slovakia is a Slovak state – it is simply Slovakia. It is left to the hundreds of thousands of members of the Hungarian minority in this state to decide whether to

refer to themselves as ‘Slovaks’ (which could be perceived as a denial of their national identity). On the other hand, the statement ‘I am not a Slovak’ by an ‘ethnic Hungarian’ could be interpreted as a denial of his or her Slovak citizenship. This is a dilemma common to many minority groups. Similarly, Basques and Catalans with a pronounced national awareness often find it difficult to define themselves as ‘Spanish’, because they view this term as relating to the Spanish-speaking majority rather than to all the citizens and national groups (defined as ‘nationalities’ by the Spanish Constitution) living in Spain. Even among the Swedes (or according to the official designation, ‘Swedish speakers’) living in Finland – one of the best-protected minorities in the world – some hesitate to call themselves ‘Finns’.

In this sense, Israel’s Arab citizens are in fact better off because the term ‘Israeli’ is officially regarded, in the Jewish state, as an (inclusive) civic rather than a national identity (despite the unmistakable historical and cultural connection between the name ‘Israel’ and the Jewish people). In principle, an Arab citizen of Israel can call him- or herself ‘Israeli’ without giving up their own national identity or adopting that of the Jewish majority. And in fact, most of Israel’s Druze citizens define themselves as ‘Israelis’ without any difficulty; in doing so, they are expressing their identification with the state and a civic connection with it, without adopting the national identity of the majority.

On the other hand, some democracies insist on full congruence between citizenship and national identity. The clearest example of this model of civic nationalism is France, in which no other identity except French – shared, according to the official and widely accepted view, by all the citizens of the Republic – is recognized. Consequently, France refuses to acknowledge the existence of national or ethnic minorities within its territory, and in principle does not grant official status to any language other than French. This approach has both important advantages and considerable disadvantages. When all the citizens of a state are viewed as sharing the same national identity, this strengthens the sense of partnership between them and their identification with the state. On the other hand, this model denies the distinct identity of minorities that usually exist whether or not they are officially recognized. In France, this approach has clear constitutional implications. When in 1991 the socialist government passed the *Act on the status of the territorial unit of Corsica* that referred to the ‘Corsican people, a component of the French people’ (an intriguing attempt to combine two notions of peoplehood), the law was thrown out by France’s Constitutional Council, which ruled that the ‘*unicité*’ of the French people was a binding constitutional norm. The government’s signing of the European Charter for Regional or Minority Languages was similarly held by the Constitutional Council to be unconstitutional on the grounds that the Republic cannot officially recognize any language other than French which, according to the Constitution, is ‘the language of the Republic’. Those who, basing themselves on the French model, use the slogan of ‘a state of all its citizens’ in order to negate the Jewish character of the state should bear in mind that adopting this model in Israel would mean denying the status of Arabs in Israel as a national minority and

doing away with the official status of the Arabic language. It is highly doubtful that this is what they have in mind.

Beyond the various possible ways to define peoplehood and national identity, it should be remembered that, in an important sense, every democratic state views all its citizens, regardless of culture, ethnicity and identity, as a single people or nation, by virtue of belonging to a single civic community. We all use the term 'people' in that sense when we say, for example, that the Knesset is freely elected by the people, or that the elections are 'a people's judgement' on the government of the day, or when we discuss holding a national referendum on a particular subject. The people, in the civic sense of the term, are sovereign in a democracy. 'Democracy' means, literally, 'people's rule' – in other words, the rule of the citizen body. In this sense, every democratic country is by definition a 'state of all its citizens'. Similarly, the adjective 'national' has different meanings in different contexts. Everyone understands that the Gross National Product is not the product of a particular national group, and that the National Insurance insures all citizens regardless of their national identity. Nevertheless, it is clear that the citizens of the State of Israel are made up mainly of two national groups with two different national identities. Israel's Arab citizens are a national minority in a Jewish state; the Arab-Palestinian people, to which most of them regard themselves as belonging, has a right to a state of its own alongside Israel according to the principle of 'two states for two peoples'.

Hence it is untenable to argue that the very fact that Israel is a Jewish state – i.e. a state which embodies the Jewish people's right to national independence – makes Israel a defective democracy. In making this statement, however, we are not ignoring the very real flaws of Israeli democracy in its current form. Some of these are in fact, as is often claimed, a spin-off of the long-drawn-out national conflict in which the state is embroiled, while others have nothing to do with the conflict, or are connected with it only marginally, and in any case are not an inevitable outcome of it. We will address some of these issues in this book.

The argument that the Jewish state is a legitimate expression of the Jewish people's right to self-determination and independence can of course be met by denying the existence of a Jewish people. And indeed, this has been one of the traditional arguments of the opponents of Zionism – that the Jews are merely adherents to a religion and not a people. These arguments, which at one point appeared to have fallen by the wayside, have recently enjoyed a new lease of life in Israel with their adoption by a number of radical opponents of the Jewish State. Even in those quarters, however, one seldom hears the explicit statement that 'there is no Jewish people' – perhaps because it is too reminiscent of Golda Meir's notorious claim that 'There is no Palestinian people'.³ Liberals and democrats have – or at least should have – a natural distaste for such arguments. It is a truism that there is no universally accepted 'objective' or 'scientific' definition of a people or nation; rather, this is first and foremost a matter of self-definition by the group in question. Historically, the establishment of the State of Israel seems to provide, as regards the genuine nature of modern Jewish peoplehood, as 'scientific' a proof as one could hope for. However, if it is a question of

international legitimacy, one should bear in mind that the international community – the League of Nations in the Mandate for Palestine, followed by the United Nations in its 1947 Partition Plan and in the explanations provided for it – explicitly recognized the Jewish people, its historic connection to Israel and its rights to a national homeland and independence in it.

Some propose relinquishing or at least downplaying the Jewish character of Israel not because they view it as illegitimate, but based on what might be defined as a stance informed by post- (as opposed to anti-) Zionist ‘Israeliness’. Those who endorse this view insist that the Jewish-Israeli public should define its national identity as ‘Israeli’ rather than ‘Jewish’. To debate this issue goes beyond the scope of this book. In principle, there can be no doubt that the Hebrew-speaking Jewish public in Israel (which, naturally, often uses the term ‘Israeli’ in this sense) has the right to adopt this definition, or any other definition, of its identity, just as there can be no doubt that in practice, the vast majority of it does not wish to relinquish its Jewish identity or its connection with the Jewish people in the Diaspora. It is also clear that adopting this definition will not create a shared national identity for all the citizens of the state, because the Arab minority in Israel has shown no sign of a desire to give up its Arab national identity or its ties to the Palestinian people.

Since its inception, modern nationalism was identified with political freedom and social advancement. A historic and logical connection exists between the modern nation-state and the concept of the people’s sovereignty. Nevertheless, the dangerous and destructive potential that lay in narrow and aggressive nationalism had become apparent in the nineteenth century. In the twentieth century – the age when the democratic nation-state flourished – fascism and Nazism, under the banner of national and racial superiority, brought about an unprecedented human catastrophe. In the last few decades, struggles for national liberation have gained broad international support, while at the same time there have been numerous examples of the danger of nationalistic ‘negating of the Other’ and of the bloody nature of national strife. It is vital to be aware of these dangers, from which no national movement is exempt. However, a people’s desire to safeguard its identity and culture, to attain and to maintain national independence should by right – and, usually, does in fact – enjoy the support of those who cherish democratic and humanistic values (whatever their general views on the future of the nation-state in the modern world). This should also apply to the Jewish people and their nation-state. Moreover, it should apply to the two peoples in historic Palestine/land of Israel: The nationalism of both is legitimate as long as it is aimed at guaranteeing each of them independence in its own land, but not when used to deny the other people this right.

This book presents and discusses international norms and examples from around the world. It does not address the unique nature of the historic, emotional, cultural and religious bond of the Jewish people to the land of Israel. We have refrained from doing so not because we make light of these things, or out of an attempt to deny the unique nature of Jewish history. Every people have their own unique history and culture; certainly, this fully applies to the Jewish

people. If one wants to describe the history of the Zionist movement, if one wants to understand what motivated its founders and their followers to become engaged in an undertaking that to many appeared utopian and hopeless, one must understand these unique factors, as well as the terrible distress of the Jewish people in the twentieth century. However, when one discusses the principles of justice, the discussion should be conducted in terms of universal norms. Many peoples have struggled for national independence. A people's right to independence is not conditional on having roots in its homeland which stretch back thousands of years, or on the fact that the story of its bond to its homeland is one of the foundations of world culture (and not only of its own national culture). Nor does this right depend on the fact that the people underwent persecution and catastrophes due to its lack of independence. In terms of universal norms, the statement in Israel's Declaration of Independence is sufficient: 'It is a natural right of the Jewish people to be masters of their own fate, like all other peoples, in their own sovereign State.'

Recently, it has become a trend in certain circles to abandon, openly and without equivocation, the principle of two states for two peoples in favour of a 'bi-national' state in all of the land between the Jordan and the Mediterranean. Thus, for example, Tony Judt writes in an article in *The New York Review of Books*: 'The very idea of a "Jewish state" – a state in which Jews and the Jewish religion have exclusive privileges from which non-Jewish citizens are forever excluded – is rooted in another time and place. Israel, in short, is an anachronism.'⁴ He proposes to replace the 'anachronism' of a Jewish nation-state with a bi-national state (which he apparently considers to be a state-of-the-art model of modern statecraft, whereas it is a type of state which is very rare in the democratic world and wholly non-existent in the Middle East). This, in theory, would require both peoples to renounce full national independence – a demand that is unjustified, but whose rhetorical strength lies in that it purports to apply equally to both sides. But this equality is on paper only. In reality, it is perfectly clear that a country with an Arab-Muslim majority (as such a 'bi-national' state is bound to be, sooner rather than later), located in the heart of the Arab-Muslim world, cannot be anything but an Arab-Muslim state in all respects, regardless of any formal definitions. In order to believe that such a state would in fact be bi-national, a number of wildly implausible assumptions need to be made: that the Arab-Palestinian people would agree over the long term that its state – the only state it will have – would not have an Arab character and would not be regarded as part of the Arab world; that it would agree to be the only one among the Arab peoples whose state would not be officially Arab, would not be a member of the Arab League and would not share, by declaration, the aspirations for Arab unity; and that the Palestinian people would agree to make this concession – a declared relinquishing of Palestine's 'Arabness', something which no Arab nation has agreed to do in its own state for the sake of the non-Arab native minorities – for the sake of the Jews, widely considered 'foreign intruders' and 'colonialist invaders' in Palestine, whose very claim to constitute a nation is no more than 'Zionist propaganda'. All these assumptions are entirely unreasonable and fanci-

ful. This much can be asserted simply on the basis of Palestinian national narrative and regional realities, without needing to raise uncomfortable questions as to the chances of such a state to be a democracy. So the true alternative to a Jewish nation-state in part of the country (alongside a Palestinian nation-state) is an Arab nation-state in all of it – one state for one people. It is somewhat ironic that such a solution is being advocated in the name of equality.

1 The establishment of the State of Israel

The UN debates in 1947

The declaration of the establishment of the State of Israel

The debate that has gained momentum in recent years over the legitimacy of Israel's definition as a Jewish state usually ignores a basic fact: The 'Jewish State' is what the international community decided to establish in 1947 (on part of Mandatory Palestine), whereas 'Israel' is merely the name that the Zionist leadership chose to give this state. From the perspective of international legitimacy, the question of whether 'Israel' is entitled to define itself as a Jewish state is, therefore, somewhat paradoxical. The Israeli Declaration of Independence¹ did not determine that Israel was to be a Jewish state, but rather that the Jewish State was 'to be called Israel'. The context in which this appears within the wording of the Declaration clearly points to the fact that the founders of the state based its international legitimacy on the partition resolution of the United Nations and on the principle of national self-determination, which the Declaration views as a universal principle, and which the establishment of the State of Israel is intended to realize for the Jewish people.

The Declaration begins with a survey of the history of the Jewish people from ancient times, with an emphasis on the unbroken connection between the Jewish people and the Land of Israel, even during the period of the Diaspora. The Jewish people 'never ceased to pray and hope for their return and the restoration of their national freedom'.

The Declaration relates to modern Zionism, which is described as a movement for the revival of Jewish independence and to the international recognition (by means of the Balfour Declaration and the Mandate of the League of Nations) of the historic connection between the Jewish people and the Land of Israel and the right of the Jewish people to re-establish its national home:

The Nazi holocaust, which engulfed millions of Jews in Europe, proved anew the urgency of the reestablishment of the Jewish State, which would solve the problem of Jewish homelessness by opening the gates to all Jews and lifting the Jewish people to equality in the family of nations.

And the Declaration goes on to say:

On November 29, 1947, the General Assembly of the United Nations adopted a resolution for the establishment of an independent Jewish State in Palestine, and called upon the inhabitants of the country to take such steps as may be necessary on their part to put the plan into effect. This recognition by the United Nations of the right of the Jewish people to establish their independent State is irrevocable. It is a natural right of the Jewish people to be masters of their own fate, like all other peoples, in their own sovereign State. . . . Accordingly, we, the members of the People's Council, representing the Jewish people in the land of Israel and the Zionist movement, met together in solemn assembly today, the day of the termination of the British mandate for Palestine, by virtue of the natural and historic right of the Jewish people and of the Resolution of the General Assembly of the United Nations, hereby proclaim the establishment of the Jewish State in the land of Israel, to be called Israel.

The Declaration then describes the nature of the state in the making: Israel would be a state 'open to the immigration of Jews from all countries of their dispersion', but would also 'uphold the full social and political equality of all its citizens, without distinction of race, creed or sex'. Next, the Declaration calls upon 'the Arab inhabitants of the State of Israel to adhere to the ways of peace and play their part in the development of the State, with full and equal citizenship and due representation in its bodies and institutions'. These principles, it should be noted, not only conformed to the traditional position of all strands of the Zionist movement regarding the status of the Arab citizens of the future Jewish state, but were also mandated by the UN partition resolution, which demanded that both the Jewish state and the Arab state guarantee full equal rights to national minorities. The Declaration notes that, in accordance with the partition plan, Israel is

ready to cooperate with the organs and representatives of the United Nations in the implementation of the Resolution of the Assembly of 29 November 1947, and will take steps to bring about the economic union over the entire land of Israel (Palestine).

This statement was made when the war was already being fought with the Palestinian Arabs (whose leadership had totally rejected the partition plan), and on the eve of the invasion of Arab countries into Israel with the declared objective of destroying the nascent Jewish state. In his comments before the People's Council, Ben-Gurion related to the argument held beforehand in the provisional government on the question of whether or not to determine the state's borders in the Declaration:

We decided to *evade* (I choose this word deliberately) this question for a simple reason: If the United Nations upholds its decision and commitments and maintains the peace and prevents bombings and will enforce its own

resolutions – then for our part, we will honour all the UN resolutions. So far, the United Nations has not done this and it has been left up to us. That is why not everything is binding on us, and we have left this matter open. We did not say ‘not the UN borders’, but nor did we say the opposite. We left the matter open to developments.

For many years, Israel’s peace camp, expressing its criticism of the policy of Israeli governments towards the Palestinians, maintained that whereas the partition borders had been erased by the war that the Arab side launched in 1947–1948, the principle of partitioning the country between its two peoples remained morally valid and binding, in the spirit of what is stated in Israel’s Declaration of Independence, which views the right of national independence as ‘the natural right of all peoples’. The acceptance of the principle of ‘two states for two peoples’ eventually became the ultimate test of one’s belonging to what is known as the Israeli peace camp – the camp which embraces political moderation not only for pragmatic Israeli considerations, but also out of the belief that it is morally wrong to rule over another people and that the Palestinian people has the right to self-determination.

The voices heard in recent years which disparage the concept of the ‘Jewish state’, claiming that it contradicts the principle of equality, are in fact denying the principle of two states for two peoples. While one of the two peoples in the country from the Jordan to the Mediterranean defines itself, and therefore is, Arab and Palestinian, the other defines itself, and therefore is, Jewish and Israeli. No Jewish state means no state for one of the two peoples. The fact that the state is the expression of the right of the Jewish people to national independence does not mean that it is not also the state of those of its citizens that belong to the Arab national minority – that is, a democratic state or, in other words, a state of all its citizens. Israel is a democratic nation-state that contains a sizeable national minority. In that, it is by no means unique in the democratic world.²

The statement of principles for Israeli–Palestinian peace, as agreed upon by Ami Ayalon and the Palestinian intellectual and public figure Sari Nusseibeh in autumn 2002, spells out what should be self-evident: that the principle of two states for two peoples requires the existence of two nation-states side by side – an Arab-Palestinian state and a Jewish-Israeli state. The document also makes it clear that the existence of two nation-states also involves two national laws of return:

Nation-state: Palestine is the only state of the Palestinian people and Israel is the only state of the Jewish people. ... Right of return: Palestinian refugees will return only to the State of Palestine; Jews will return only to the State of Israel.³

Seemingly, none of those that declare their support for the solution of two states for two peoples should disagree with any of this. However, strangely enough, the very idea that the Jewish people are also entitled to a state of their own has come under attack today as being anti-democratic.

The debates in 1947: the UNSCOP report

The debates that were held in the United Nations in 1947 regarding the question of Palestine make it abundantly clear what meaning the international community attributed to the term 'Jewish state', and what the rationale of those that supported the partition solution was. They supported the establishment of an independent state for the Jewish people – not just for the Jewish population of Mandatory Palestine. They viewed the establishment of this state as an act of historic justice for the Jewish people and a humanitarian solution to the problem of the displaced Jews in Europe after the war, and also, in a broader sense, as a solution for the ancient problem of the Jews as a homeless people. They recognized the historic bond between the Jewish people and the land of Israel/Palestine as well as the actual existence of two peoples and two national movements in the land. They attached great importance to the previous international recognition of the historic connection of the Jewish people to Palestine and the need to 'reconstitute their national home in that country' – recognition that was included in the Mandate for Palestine endorsed by the Council of the League of Nations in 1922. The arguments of the opponents of the partition plan are no less instructive. Among other things, Arab representatives and their supporters repeatedly argued that the Jews were a religious community rather than a people, and that consequently they were not entitled to a state of their own. Indeed, little has changed in this debate since 1947.

The most detailed discussion of these subjects appears in a report of the UN Special Committee on Palestine, UNSCOP, the committee that investigated the situation in Palestine on behalf of the United Nations and recommended, by a majority vote, that the country be partitioned into two states. At the end of the report appears the 'Partition Plan' that was eventually endorsed (after slightly reducing the size of the territory allocated to the Jewish State) by the UN General Assembly in the famous 29 November 1947 vote. This detailed and well-argued report includes a historical analysis and assessment of the situation in the country, a presentation of the arguments of both parties to the conflict and an evaluation of the validity of these arguments by the members of the committee, and, finally, their reasoned conclusions regarding the desirable solution.⁴ A minority report was also submitted proposing a different solution: a single independent state in the entire country to be established on a federative basis, made up of an 'Arab state' and a 'Jewish state'. The autonomous Jewish state that was to be part of the federation would also have included an Arab minority. This did not prevent the delegates from Yugoslavia, Iran and India from supporting this solution, demonstrating that the concept of a 'Jewish state' was, in a certain sense, accepted even by these states. They supported the establishment of a Jewish political entity – albeit not an independent one.

The majority report (of the representatives of Canada, Czechoslovakia, Guatemala, the Netherlands, Peru, Sweden and Uruguay) extensively analyses the international commitments given to the Jewish people in the Balfour Declaration and the Mandate. The members of the committee reject the claims of the