

Preservation of Civil and Human Rights under the Rule of Law

Human Rights

And the Rule of Law

Source: Ministry of Foreign Affairs

A Written Constitution

Since the establishment of the State of Israel in 1948, the protection of human rights has fallen to the judiciary, for Israel has no formal constitution or Bill of Rights. In 1948 it was decided to adopt a written constitution, and a Constituent Assembly was elected to implement this decision. However, internal political problems soon led to a decision to postpone the immediate adoption of a constitution. Instead, the constitution would be prepared by the Knesset, Israel's parliament, chapter by chapter in a series of "Basic Laws" which would eventually be brought together to form the constitution. Thus the Basic Laws, taken together, comprise a "constitution-in-the-making."

Basic Laws on Human Rights

Israel's constitutional system is based on two fundamental tenets: that the State is democratic and that it is also Jewish. These principles are rooted in the 1948 Declaration of the Establishment of the State of Israel, notwithstanding the commitment to guarantee equal social and political rights to all its citizens, irrespective of religion, race or ethnic background. Although the Declaration does not constitute a binding constitutional document, the 1992 Basic Law: Human Dignity and Liberty explicitly provides that the human rights it articulates shall be interpreted "in the spirit of the principles in the Declaration of the Establishment of the State of Israel" and that the purpose of the Basic Law is to establish "the values of the State of Israel as a Jewish and democratic state." Hence, the constitutional challenge facing the State of Israel is to create a synthesis between these two principles. ♦



ABOVE: Facsimile of the 1948 Declaration of the Establishment of the State of Israel.

State of Law and Justice

In the Midst of Terrorism

Written by **Alan M. Dershowitz**,
Felix Frankfurter Professor of Law, Harvard Law School

Israel's 60th anniversary should be an occasion not only for celebrating the Jewish state's enormous accomplishment in the area of medical science, technology and environmentalism, but it should also be a time to recognize Israel's contribution to striking the appropriate balance between the war against terrorism and a commitment to civil liberties, human rights and the rule of law. No country in the world, faced with comparable threats, both external and internal, has ever done a better job of striking this difficult balance. Yet throughout the world, Israel is condemned more than any other country for the manner by which it seeks to prevent terrorism.

It is far more difficult to fight against enemies who want to die than against enemies who want to live. Hamas rockets target and hit Israeli restaurants, apartment buildings, and schools. They are loaded with antipersonnel ball bearings and shrapnel designed specifically to maximize civilian casualties. Hezbollah too has fired missiles at Israeli civilian targets and threatens to do so again.

Hamas and Hezbollah combatants, on the other hand, are difficult to distinguish from the "civilians" who recruit, finance, harbor, and facilitate their terrorism. Nor can women and young people always be counted as civilians, as some organizations do, since terrorists are increasingly using women and teenagers to play important roles in their attacks.

This, in a nutshell, is the dilemma faced by democracies with a high level of morality. The Hamas-Hezbollah tactic

would not have worked against the Russians in Chechnya. When the Russians were fired upon, they fired against civilians without hesitation. Nor would it work in Darfur, where janjaweed militias have killed thousands of civilians and displaced 2.5 million in order to get the rebels who were hiding among them. It did not work against France in Algeria or England in Kenya, both of which killed civilians indiscriminately. But it works against Israel, because the policy of the Israeli Army is to target only combatants, while seeking to minimize civilian casualties.

What, then, are Israel's rights under international law, under the law of war, under historical precedents, and under various treaties and human rights concepts? What would other nations do if their cities and towns were attacked by enemy rockets, and what have they done in the past? Israel certainly has the right to counterattack its enemy, destroy its capacity to fire rockets, and engage in "belligerent reprisal." The only constraint on Israeli action, according to international law, is "proportionality." Israel's military actions must be proportional. But proportional to what? Certainly not to the actual number of people who have thus far been killed or injured by rocket attacks. Israel has spent an enormous amount of money building shelters to protect against rockets. Close to a thousand rockets have been aimed at southern Israel in recent years. Each one of them had the capacity to kill dozens, if not hundreds, of civilians. The fact that no Hamas rocket has yet hit a school bus, a kindergarten, an ambulance, a synagogue, or a school yard is simply happenstance. It is only a matter of time until this happens. No nation has to wait until the goals of its enemy are fulfilled before it engages in a proportional response. Proportion must be defined by reference to the threat posed by the enemy and not by the harm it has thus far produced.

Israel has tried several options, each of which has been condemned by vocal members of the international community, human rights groups, and religious organizations—some of whom have been silent about the Hamas war crimes that precipitated the Israeli actions. Israel has tried economic sanctions, border controls, targeted attacks on terrorists, and ground incursions. Each of these generally acceptable war measures carries with it the risk of some civilian casualties. In whatever manner Israel responds, Hamas wins. If Israel does nothing, Hamas taunts it for being

impotent. If it does something, Hamas accuses it of a "disproportionate" response. Hamas leader Khaled Mashaal characterized Israel's military actions in Gaza as "the real Holocaust." Even Mahmoud Abbas, the so-called moderate Palestinian leader in the West Bank, said that Israel's military efforts to stop the rockets were "more than a Holocaust." Then the international community pounced on Israel. This chorus of condemnation actually encourages the terrorists to operate from civilian areas. This is a point that must be emphasized because it actually affects the tactics on the ground selected by terrorists.

Moreover, even Israel's efforts to provide fuel and food to the residents of Gaza are frequently thwarted by Hamas's rocket and terrorist attacks on the fuel depots and the food transit points. Hamas is seeking to create a humanitarian crisis in order to have Israel condemned by the international community. How else can anyone explain Hamas's attack on the fuel depot, in which two Israeli civilians who provide fuel to Gaza were shot and killed? What choice did Israel have at that point but to temporarily shut down the depot because Israelis were reluctant to endanger their lives to provide fuel to Hamas-controlled Gaza? I have not heard of Israel's critics volunteering to serve in these depots or crossing points.

The time has come for Israel's critics to tell Israel what it should do in the face of these escalating rocket attacks on its civilian population centers. If economic sanctions, border controls, targeting terrorists, and ground incursions should not be employed, what are the alternatives?

The answer to this question is important, not only to Israel, but to the United States and other democratic nations that will surely face the prospect of having to take actions to prevent terrorist attacks by enemies who deliberately hide among civilians. The barrage of unconstructive criticism directed against Israeli self-defense actions will only encourage more terrorism of this kind.

So let us applaud Israel for fighting terrorism since its birth 60 years ago (and even before that) in a highly moral and legal manner. And let us hope that before long it may be blessed with the ability to turn its sword into plowshares and reap the benefits of peace. Shalom and salaam. ♦

WEB RESOURCES:

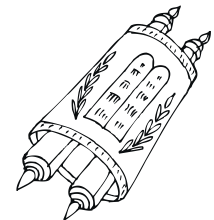
Zionism and Israel Information Center:
www.zionism-israel.com

Knesset:
www.knesset.gov.il

Israel Democracy Institute:
www.idi.org.il

Israeli Laws and Legal Links:
www.law.co.il

The Israel Bar
www.israelbar.org.il



ABOVE: Torah containing the five books of Moses: The basis of Judeo-Christian law.

ALAN DERSHOWITZ

In addition to his numerous books and articles on legal issues, Professor Dershowitz is a regular contributor of articles on Israel and the Middle East to major news outlets and academic journals. He is the author of "The Case for Israel" and "The Case for Peace: How the Arab-Israeli Conflict Can be Resolved".

The Supreme Court

The Protector of Civil Liberties and the Rule of Law

Written by **Alan M. Dershowitz**,
Felix Frankfurter Professor of Law, Harvard University.
From "Israel's Gift to the World", New York Post, May 4, 2008.

"Israel has created a legal system that is the envy of the world, with a Supreme Court that is open to all with few, if any, restrictions on its jurisdiction. As America's most liberal Supreme Court Justice William Brennan observed when he visited Israel in 1988:

It may well be Israel, not the United States, that provides the best hope for building a jurisprudence that can protect civil liberties against the demands of national security. For it is Israel that has been facing real and serious threats to its security for the last 40 years and seems destined to continue facing such threats in the foreseeable future. The struggle to establish civil liberties against the backdrop of these security threats, while difficult, promises to build bulwarks of liberty that can endure the fears and frenzy of sudden danger - bulwarks to help guarantee that a nation fighting for its survival does not sacrifice those national values that make the fight worthwhile."

WEB RESOURCES

See: Judgments of the Israel Supreme Court: Fighting Terrorism within the Law, January 2, 2005: www.court.gov.il

RIGHT: Supreme Court building in Jerusalem: an internal view of the courtyard



In the absence of a written constitution, and even in the face of legislation seemingly hostile to civil liberties, largely inherited from the former British mandatory government, the Supreme Court has been able in numerous cases to develop a body of case law protecting civil liberties almost as if a Bill of Rights existed. The court's decisions have protected, among other liberties, freedom of speech, freedom of occupation, and equality as fundamental values of the Israeli legal system. As a result, in practice Israelis largely enjoy the same civil liberties as citizens in other Western democracies.

The Supreme Court and the Problem of Terrorism

by Aharon Barak,
Former President of the Israel Supreme Court

"...Admittedly, the struggle against terrorism turns our democracy into a "defensive democracy" or a "fighting democracy." Nonetheless, this defense and this fight must not deprive our regime of its democratic character. Defensive democracy: yes; uncontrolled democracy: no. The judges in the highest court of the modern democracy must act in this spirit. We have tried to do so in Israel. ... "◆

Voting

A Right for all Citizens

All Israeli citizens 18 and older — regardless of religion, gender or race — enjoy the right to vote free from intimidation. In fact, in Israel's current Parliament (Knesset) three parties have mostly Arab voters and office-holders Israel's vibrant political system ensures that virtually every segment of society and every viewpoint can be represented. Parties reflect a broad array of ideological, ethnic and religious groupings. ◆

The Press

Voices of Freedom

Source: *The Israel Project*

Israel is often described as “a nation of news junkies.” Israeli news media provide a diverse array of ideological, political and cultural perspectives characterized by a strong spirit of independence. In the last two decades, the practice of investigative journalism has increased, local papers have mushroomed and a community of intellectual commentators has established a secure niche.

In Israel’s open society, which comprises Jews, Muslims, Christians, Druze, Circassians and Baha’i, a free press has always been crucial to the existence of its flourishing democracy. ...

Regional Comparisons

While most Arab states do not tolerate a free press, Israel provides an open and vibrant environment that encourages the media to flourish. Surveys by respected foreign journalism and research organizations have repeatedly confirmed that Israel is the only country in the Middle East whose press standards are comparable to those of Western countries. In 2006, Freedom House conducted a study which reaffirmed that Israel is the only country in the Middle Eastern/North African region that maintains press freedom.

WEB RESOURCES:

A series of background papers was prepared by The Israel Project highlighting Israel’s 60th anniversary on related topics:
www.theisraelproject.org

Ha’aretz:
www.haaretz.com

Jerusalem Post:
www.jpost.com

Ynet News:
www.ynetnews.com

BELOW: Prime Minister Levy Eshkol answering journalists questions at a lunch at the Press Club at Beit Sokolov in Tel Aviv, 1965



PRIDAN MOSHE © ISRAEL NATIONAL PHOTO COLLECTION

Profile: Khaled Abu Toameh: Print Journalist

Khaled Abu Toameh, an Israeli Arab, is the West Bank and Gaza correspondent for The Jerusalem Post and U.S. News and World Report. His investigative journalism, which has included documentaries produced for the BBC, regularly uncovers controversial issues such as incitement and financial corruption within the Palestinian Authority (PA).

Abu Toameh speaks about Israel-Palestinian issues regularly in various forums.

In a recent interview in a Santa Fe newspaper, *The New Mexican*, Abu Toameh made the following remarks (excerpts):

“Khaled Abu Toameh said most Americans he has met on his speaking tour of the United States ‘think that Jews and Arabs in the Holy Land are just basically killing each other every day’. However, he said, ‘they’re also doing a lot of things together. We talk to each other. We live with each other there. So normal life is also continuing at the same time.’

...‘I get criticism from both sides. That’s when I feel that I’m doing my job,’ he said.

...‘The Israeli media interviews Palestinians more than the Palestinian media. The Palestinians have to have a way to get their message to the Israeli public, so the Palestinians have never boycotted the Israeli media. On the contrary, we, the Arabs living there, we always admire the Israeli media because of its openness and freedom. We used to say, ‘We hope one day we’ll have a free media like the Jews.’” ♦

Source: standwithuscampus.com

ISRAEL AHEAD OF U.S. IN PRESS FREEDOM:

In 2007, Reporters Without Borders ranked Israel 44th out of 167 countries in regard to press freedom, the highest of any country in the Middle East. Israel rated ahead of the United States, which came in 48th.



ABOVE: Girls enjoying the beach in Tel Aviv near Old Jaffa.

Women's Rights

Source: *The Israel Project: Israel at 60*

All women in Israel, regardless of ethnicity or religion, enjoy broad freedoms, rights and protections, including the right to vote, dress as they wish, say what they wish and pursue any career. Women are protected by law from discrimination. Indeed, Israel's Declaration of Independence grants "all Israel's inhabitants equality of social and political rights irrespective of religion, race or gender."

Three years after declaring statehood in 1948, Israel passed legislation guaranteeing women the right to live in dignity, including providing equality in work, education, health and social welfare.

During its 60 years of existence, Israeli society has undertaken many steps to advance women's status. Women have progressed in multiple spheres of Israeli life, such as politics, economics, education, the domestic realm and the military.

Israeli Women in Politics

Since Israel's establishment in 1948, dozens of women have served in the Knesset (Israel's parliament), and have held leadership roles in politics.

- ♦ Ten women have served as cabinet ministers, including Prime Minister Golda Meir, Israel's first - and the world's third - female prime minister.
- ♦ Israeli-Arab women actively participate in political life. Nadia Hilou was the second Israeli-Arab woman to serve in the Knesset when she took her current seat in office in 2006.
- ♦ At present, 17 Knesset members are women.
- ♦ 34 percent of judges in Israel are women.

Currently, three women hold senior political roles in Israel: Tzipi Livni, vice premier and minister of foreign affairs; Dalia Itzik, Knesset speaker; and Dorit Beinisch, president of Israel's Supreme Court.

Israeli Women in the Workforce

Israeli law protects the right of women to equal opportunity in the workplace. Since the 1950s, women's opportunities in the workplace have been secured by legislation guaranteeing maternity leave allowance paid

by the National Insurance Institute, protection against dismissal during pregnancy and affordable childcare facilities. In 1964, legislation was passed mandating that women receive pay equal to that of men.

Today, women are making great strides in the Israeli workforce. Though Israeli women still haven't achieved equal pay, women have risen to the CEO level in several Israeli Fortune 500 companies. Examples include Dalia Narkiss, CEO of Israel's largest employment agency, Manpower; and Galia Maor, CEO of leading commercial bank Bank Leumi.

In the Israeli national trade union (Histadrut), women are represented at each level. The Histadrut has adopted a resolution requiring that 30 percent of its leadership must be women.

In addition, Israel's Ministry of Commerce and Industry has established a unit to encourage women to open small- and medium-sized businesses. The unit has aided Bedouin women in Israel in setting up small businesses, and is providing them the planning and marketing skills necessary to maximize their success. The Negev Institute for Strategies and Development has also instituted a project in southern Israel to provide Bedouin women with vocational, entrepreneurial and managerial training, combined with financial support and counseling. ♦

Profiles of Leadership

Israeli Women at the Helm

Dorit Beinisch: **Supreme Court President**

"The Supreme Court must be ... protected from those who aspire to turn it into an institution based on political representation or one that reflects in its composition and work procedures the party divisions in Israeli society." - Dorit Beinisch, from a speech given as she took her oath of office in September 2006.

Dorit Beinisch (b. 1942) is chief justice of Israel's Supreme Court. She was born in Israel and served in the Israel Defense Forces as a first lieutenant before completing her law studies at the Hebrew University of Jerusalem in 1968.

**WEB
RESOURCES:**
The Israel Project:
www.theisraelproject.org

Beinisch served as assistant attorney general (1982-1988) and in 1989 was appointed attorney general. In that capacity, she headed the General Prosecution Department, representing the State of Israel in various law courts and providing legal advice to state authorities.

In December 1995, Beinisch was appointed to the Supreme Court and was elected chief justice in 2006. She is married and has two daughters.

Golda Meir: Israel's Fourth Prime Minister

"It is true we have won all our wars, but we have paid for them. We don't want victories anymore." - Golda Meir, from a 1969 *LIFE* magazine article

"Pessimism is a luxury that a Jew can never allow himself." - Golda Meir, from a 1974 article published in *The Observer* (London)

Golda Meir (1921-1978) was Israel's fourth prime minister, a diplomat and a Labor Zionist Party leader.

Meir served in the Knesset from 1949 to 1956. As Israel's foreign minister from 1956 to 1966, Meir used her position to initiate Israel's policy of cooperation with the newly independent nations of Africa and cement ties with Latin American countries. After serving as secretary-general in the Labor Party (1966-1968), Meir was elected prime minister in 1969.

As prime minister, Meir ushered in a cease-fire agreement with Egypt, ending the War of Attrition (1967-1970) despite the advancing threat of Egyptian missiles on the Suez Canal front. In the 1973 Yom Kippur War, in which neighboring Arab counties launched a surprise attack on Israel during the Jewish Day of Atonement, Meir demonstrated strong leadership and managed to secure an American airlift of arms. Though an investigative commission exonerated her from direct responsibility for Israel's lack of preparedness for the war, Meir bowed to what she felt was the "will of the people" and resigned in mid-1974. Meir died in December 1978, at the age of 80.

Raya Strauss Bendror: Co-founder and President of Strauss-Elite Group

Raya Strauss Bendror is the co-founder and president of billion-dollar food conglomerate Strauss-Elite Group.



ABOVE: Dorit Beinisch at the induction ceremony of newly appointed Supreme Court judges (President's Residence in Jerusalem).



ABOVE: Golda Meir with Marc Chagall during the unveiling ceremony of his *Goblints* in the Knesset building in Jerusalem, 1969.



AMIT: Building Israel. One Child At A Time.

In 22 cities throughout Israel, and more than 70 schools, the AMIT educational network provides a safe nurturing environment and quality education for over 20,000 children and young people.

AMIT is Israel's only government-recognized network of religious Jewish education incorporating academic and technological studies.

Our diverse student body includes new immigrants from Ethiopia, France, Argentina and the former Soviet Union. Many AMIT students live in homes torn apart by chronic unemployment, violence, alcoholism or drug abuse. We raise funds to assist these children with their basic needs – hot meals, books, tutoring or psychological counseling.

AMIT students are given the skills needed to develop as productive members of their communities, and the opportunity to become future leaders in Israeli society. They are imbued with a firm foundation in Jewish values, and a deep commitment to Zionism and the State of Israel.

AMIT Honors Israel on its 60th Anniversary!

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212-477-4720 or 1-800-989-AMIT

A leader in Israeli corporate social responsibility, she has been a social, public and personal activist through her involvement, partnership and support of a wide range of projects and organizations such as MAALA (Business for Social Responsibility in Israel) and the Reut Institute (strategic advice on security and socioeconomics). She has also worked with homeless teens and on projects providing leadership and excellence training for marginalized teens.

Nava Swersky Sofer: President and CEO of Hebrew University's Yisum

From *Israel's Most Powerful Woman in Biotech*

- by ISRAEL21c staff, January 24, 2008

... With her wheels set in motion, she joined Yisum, a “private enterprise with a public goal,” she says. Since she took the post on, revenues are up some 25 percent, and the vast majority of this money gets funneled back into research.

Yisum is the company that markets Hebrew University's research and inventions, with the most well known to date being the anti-cancer drug Doxil, Exelon for treating Alzheimer's disease and dementia, and the famous long shelf life cherry tomatoes. The list goes on and includes hundreds of technology licenses and spin-off companies.

Israel is a world leader in technology, and its biotechnology research is world class, whether it is inventing new drugs, novel drug delivery methods or new medical devices. Much of this innovation starts in the “incubator” of the Jerusalem hills, home to Hebrew University.

“Yisum is one of the leading tech transfer companies in the world,” says Sofer, from her office nestled among the pines. “We rank among the world's top 15 tech transfer companies, and are number 12 in biotech patents, just under Harvard. Not bad considering that our net research budget is 10 percent that of most US universities.”

More than 40 percent of all biomedical research done in Israel occurs at Hebrew University, according to official government statistics. “No two other Israeli universities put together reach that level,” she says. ... ♦



Gay Rights

From “isRealli” blog - Consulate General, New York

Israel today is one of the world's most progressive countries in terms of equality for sexual minorities. In recent years, Israel has produced more progressive legislation and court decisions in the areas of sexual orientation and gay and lesbian rights than many Western countries. Israel has an active gay community and it is by far the most tolerant Middle Eastern country towards homosexuals.

Politically, legally, and culturally, the gay and lesbian community has moved from life at the margins of Israeli society to visibility and growing acceptance. As is often the case with battles for social justice and equality, changes occur due to a combination of political, legal and social factors.

Same-sex couples in Israel now have many of the same rights as heterosexual couples. They have been granted legal recognition for the purpose of property tax benefits, inheritance tax and housing aid.

Culturally too, the gay and lesbian community has moved into the mainstream. Gay issues are represented in television, film, theatre and literature. Most of Israel's gay bars and cafes operate in Tel Aviv, which also hosts an annual Gay Pride parade. In 1998, a transgender singer - Dana International - represented Israel in the Eurovision Song Contest and won first prize, bringing transgenders further into Israeli mainstream society. ♦

ABOVE:
The gay community celebrating in the streets of Tel Aviv during the pride parade.

WEB RESOURCES:

Yisum:
www.yisum.co.il

For more from the
isRealli blog go to:
www.isrealli.org