

## Religion and the Secular State in Israel

### I. INTRODUCTION

The general rapporteurs on Religion and the secular State write in their Introduction that the focus of their work would be to determine how different States interact with religion through law and other institutions.<sup>1</sup> They also point out that the relations between State and religion “depend on a number of factors closely linked to the history, culture and social structure of each country.”<sup>2</sup> In few cases this dependence and linkage are so obvious as in the case of the State of Israel.

This writer attempted to summarize the religious, political and constitutional history of Israel in an article published about two years before the preparation of this report.<sup>3</sup> Since the article’s publication, there have been very few changes or innovations in the relationship between State and religion in Israel, but those that are relevant will be mentioned. I shall try to follow as much as possible the guidelines of the general rapporteurs and the structure of their questionnaire. This report deals exclusively with the situation in the State of Israel, and not with the territories under Israeli administration as a consequence of the 1967 Six Days War.

On 14 May 1948, following the 1947 United Nations resolution on partition of the territory under the Mandate of Great Britain,<sup>4</sup> the State of Israel was established as a sovereign “Jewish and democratic state,”<sup>5</sup> partially fulfilling the program of the Zionist movement, created in 1987.<sup>6</sup> But the sixty-one-year-old State sees itself, in terms of history, as the successor of the Jewish State that existed in the same region two millennia earlier. As such, Israel considers itself the national state the Jewish People, who are a world-scattered community including the Jews of Israel (the large majority of the population of the State) and the Jews of the Diaspora (namely the Jewish communities living in different locations almost all over the world).<sup>7</sup> This description is explicitly stated in the already mentioned Declaration of Independence, which refers to the recognition by the United Nations of the right of the Jewish people “throughout the Diaspora” to establish their own sovereign State.<sup>8</sup> It does not imply any political ties between the State and the Diaspora.

This report is not the place to discuss the identity of the State as a *Jewish* state but few will contest the fact that the long history of the Jews, or the Jewish people, is closely related to the role of Jewish religion in defining that history. Not every Jew, in Israel or elsewhere, is a religious individual. It is in collective terms that religion has been an essential ingredient in the self-definition and behavior of the Jews, believers or not, observant or not. For that reason, it was aptly stated that Judaism conceived of itself not as

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Since retiring from Tel Aviv University, Professor NATAN LERNER teaches International Law at the Faculty of Law of the Herzliya Interdisciplinary Center. His most recent book is *Religion, Secular Beliefs and Human Rights*, Nijhoff, Leiden, 2006. His teaching includes a seminar on Freedom of Religion in International Law.

1. See Memorandum from Javier Martinez-Torron & W. Cole Durham, General Rapporteurs for Religion and the Secular State: Questionnaire for the Preparation of National Reports for the IACL Congress Washington 2010 to Natan Lerner, Professor at the Faculty of Law of the Herzliya Interdisciplinary center (on file at International Center for Law and Religion Studies, Brigham Young University).

2. *Id.* at 2.

3. Natan Lerner, “Religious Liberty in the State of Israel,” *Emory Int’l L. Rev.* 21 (2007): 239.

4. G.A. Res. 181(II), U.N. Doc. A/RES/181(II) (May 14, 1947).

5. See, Declaration of the Establishment of the State of Israel, 1 L.S.I. 3–5 (1948).

6. For the Zionist program and development, see generally Walter Laqueur, *A History of Zionism* (London:Weidenfeld and Nicolson 1972).

7. Lerner, *supra* n. 3 at 240.

8. See Declaration of the Establishment of the State of Israel, 1 L.S.I. at 5 (1948). See also, The Law of Return, 1950, and its amendments. This Law proclaims the right of every Jew to immigrate to Israel and deals with the difficult issue of “Who is a Jew” in legal terms to the effect of immigration. It is beyond the scope of this report to discuss this issue.

a denomination but as the religious dimension of the life of a people. Hence peoplehood is a religious fact in the Jewish universe of discourse. In its traditional self-understanding, Israel is related not to other denominations but to the “‘nations of the world’... Israel’s... body is the body politic of a nation.”<sup>9</sup>

This is the meaning of the reference to a *Jewish* state in all international texts: the term *Jewish* means pertaining to Jews.

The State of Israel is a secular State. Its Parliament, *Knesset*, makes its laws.<sup>10</sup> If a religious law should be applied, it would only be the consequence of a secular law giving it such force. Affirming that it is a secular State is however not enough to explain the role of religion in the state. That role differs from one state to another on the basis of the respective constitutional provisions, and in Israel’s case, no formal written Constitution has been adopted until now (although this should not be interpreted as implying that there are no constitutional rules in the state) adding an additional complication. How secular laws govern religion and the role of religion in the state is a main subject of this report.

## II. THE SOCIAL CONTEXT

According to the official information of the Central Bureau of Statistics, Israel had a population of about 7,374,000 persons including those “not classified by religion” in 2008. About 75 percent, or 5,569,200, were Jews with varying degrees and forms of identification with Judaism or the Jewish religion; 1,240,000 were Muslims; 153,100 Christians belonging to the various denominations, including Arabs and non-Arabs; 121,900 were Druze.<sup>11</sup> Relevant to this report is a study on the attitudes of the population concerning religion. Forty-four percent of the Jews above the age of twenty declared themselves as “secular” or not practicing; 27 percent as “traditional”; 12 percent as “traditional religious”; 9 percent as “religious,” and 8 percent as “haredi” (ultra-orthodox). Eighty-one percent of the population identified themselves as “Jews”; 12 percent as Muslims; 3.5 percent as Christians (Arabs or other); 1.5 percent as Druze; 1.5 percent as atheists; and 0.5 percent as belonging to other groups.<sup>12</sup> It would be inadequate to conclude solely from this demographic information that the State of Israel can be reputed to be a secular State. It is the constitutional system of a state that determines formally that character, and not the views of individual citizens.

## III. THEORETICAL CONTEXT

How do the State and religion relate to each other? How secular should the State, described in all official, national and international, documents as a *Jewish state*, be considered? What does the term *Jewish* mean? Is it an adjective describing the religious character of the state, or does it possess a sociological, anthropological, or demographic meaning applicable to the majority of the population, explaining how members of that majority relate to Israeli society, culture and way of life? Does “Jewish State” mean something similar to “French State” or “German State” or “Italian State,” or does it mean something similar to “Catholic State” or “Muslim State”?

These are seminal and difficult questions that must be answered, despite discrepancies, in order to avoid misunderstandings. It seems reasonable to accept that the reference to Israel as a “Jewish State” is equivalent to stating that in historical, political, and legal terms, it is the state of the Jewish people – a worldwide community of indisputable religious origin scattered all over the world (about half of which is presently concentrated in the State of Israel, established in 1948, not including the 25% non-Jewish

9. The Jerusalem Colloquium on Religion, Peoplehood, Nation and Land, Jerusalem, October 30-November 8, 1970: Proceedings (Marc H. Tanenbaum & R. J. Zwi Werblowsky eds., 1972).

10. See Haim Cohn, *Human Rights in Jewish Law* (New York: Ktav, 1984), 17.

11. Central Bureau of Statistics, *Statistical Abstract of Israel*, table 2.2, Population by Religion (2009), available at [http://www.cbs.gov.il/reader/shnaton/templ\\_shnaton\\_e.html?num\\_tab=st02\\_02&CYear=2009](http://www.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st02_02&CYear=2009).

12. M. Basuk, “Survey” 44 percent of Jewish Israelis Call Themselves Secular...”, *Haaretz*, 10 April 2006.

portion of the population).<sup>13</sup> The Balfour Declaration of 1917, addressed to the Zionist Organization by a spokesman of Great Britain; the British Mandate over Palestine of the League of Nations of 1922;<sup>14</sup> the 1947 United Nations' General Assembly Resolution 181 (II),<sup>15</sup> all refer to a *Jewish* state, and *Jewish* means, in all of them, pertaining to Jews, namely the individuals seeing themselves as composing the Jewish people, or nation, or community.<sup>16</sup> It clearly does not mean the body of religious precepts, commands or convictions regulated by the *Halakha*, the Jewish religious law developed over centuries.

#### IV. CONSTITUTIONAL CONTEXT

This brings us to the constitutional system developed in Israel. The country lacks a written and integrated Constitution.<sup>17</sup> One of the main reasons for that absence is certainly the issue of defining the character of the state and the meaning of the term *Jewish*. While all points to a secular, not religious, use of the term in legal texts,<sup>18</sup> “[t]he precise meaning of Israel’s self-definition as a Jewish State has never been clearly delineated and is a matter of controversy”, with views varying “from minimalist descriptive notions – which regard the Jewish majority as the only element that makes Israel the ‘State of the Jews’ – to Messianic visions of the state as an instrument in ushering in the millennium.”<sup>19</sup> In a draft Constitution proposed by a Knesset committee in 2006, the words “a Jewish and Democratic State” seem to mean the State in which the Jewish people implement their right to self-determination.<sup>20</sup> In the same line, constitutional law professors refer to the Jewish State (or the State of the Jews or the State of the Jewish people) “in the sense that it is the political framework in which the right of the Jewish people to self-determination materializes.”<sup>21</sup>

An official report submitted by Israel to the Human Rights Committee in 1998,<sup>22</sup> combining the initial and first periodic report on the implementation of the ICCPR, describes very well the complicated character of the state-religion relationship in Israel. Referring to that relationship as “quite labyrinthine”, it states: “History, political expediency, party politics, the lack of a constitution which specifically deals with freedom of religion, and the broad power of the Knesset to legislate in religious matters have resulted in a patchwork of laws and practices that are not easily susceptible to generalization.”<sup>23</sup>

Dealing with the Israeli model concerning state and religion, the Report says:

There is no established religion in Israel, properly so-called. Nor, however, does Israel maintain the principle of separation between matters of religion and the institutions of Government. Rather, the law and practice of Israel regarding religious freedom may best be understood as a sort of hybrid between non-intervention in religious affairs, on the one hand, and on the other hand the interpenetration of religion and Government in several forms, most notably by legislation

13. See Lerner, *supra* n. 3 at 243–46.

14. U.N. Special Comm. on Palestine, Report to the General Assembly, U.N. Doc. A/364 (3 September 1947).

15. G.A. Res. 181(II), U.N. Doc. A/Res/181(II) (14 May 1947).

16. See Lerner, *supra* n. 3 at 243–44.

17. See *id.* at 244.

18. See generally Amos Shapira & Keren C. DeWitt-Arar, *Introduction to the Law of Israel* (The Hague: Kluwer, 1995).

19. David Kretzmer, “Constitutional Law,” in *id.*

20. *Proposals for a Constitution*, Constitution, Law and Justice Committee of the Sixteenth Knesset, 13 February 2006.

21. A. Rubinstein & B. Medina, *The Constitutional Law of the State of Israel* (5th ed., 2005) 318–19 (in Hebrew)

22. HRC, “Civil and Political Rights, Human Rights Council Consideration of Initial Report of Israel”, U.N. Doc. CCPR/C/81/Add.13 (9 April 1998) (hereinafter *Israel HRC Report*).

23. See *supra* note 22. The report was prepared by the Ministries of Justice and Foreign Affairs and was preceded by a Foreword written by the general directors of both ministries.

establishing the jurisdiction of religious courts of the different faiths in specified matters of ‘personal status’; by government funding of authorities which provide religious services to several of the religious communities, and by a series of legal institutions and practices which apply Jewish religious norms to the Jewish population. While it may be said that Israel has been quite successful in guaranteeing the freedom of religious practice and the use of sites to the three monotheistic faiths, particularly for the non-Jewish communities, it is more difficult to claim that ‘freedom from religion’ is fully protected, particularly for the Jewish population.<sup>24</sup>

Still, as stated by Justice Sussman in a classic case,<sup>25</sup> “there can be no freedom of religion if the citizen is not free not to belong to any religion”, a principle accepted in theory, but sometimes clashing with the realities of a system of recognized communities implying automatic membership for the majority of the population.

Although Israel has been correctly described as “a multi-religious state, where various religions are recognized, yet no religion enjoys the status of official state religion.”<sup>26</sup> Israeli legislation reflects the Jewish historical continuity. Examples of this historical continuity are the Law of Return, 1950 (as modified); the Flag and Emblem Law, 1949 (adopting traditional Jewish symbols such as the Jewish prayer shawl, the seven-branched candelabrum and the national anthem, *Hatikva*); the Days of Rest Ordinance 1948 (designating the Sabbath and Jewish holidays as official days of rest, with exceptions for non-Jews); the Martyrs’ and Heroes’ Remembrance Day Law, 1959 (concerning the Holocaust); and the 1952 World Zionist Organization-Jewish Agency (Status) Law, (granting special status to certain Jewish organizations).<sup>27</sup> Traditional Jewish law “has legal standing and societal potency in Israel”<sup>28</sup> and the Legal Foundations Act 1980 includes principles of the “Jewish heritage” among the complementary sources of law.<sup>29</sup>

The fact that six decades after its establishment the State of Israel was still unable to enact a written, coherent Constitution is mainly due to the disagreements concerning religion, secularism and the meaning of the term “Jewish.”

The starting point of the constitutional process was the Declaration of Independence adopted in 1948,<sup>30</sup> which foresaw a swift adoption of a Constitution. This did not happen, despite the fact that the country became a functioning democracy with institutions according to international standards.<sup>31</sup> Rather, a constitutional assembly elected early-on became the first regular Knesset (Parliament) and this body decided not to adopt an organic Constitution, but instead prepared a draft composed of separate chapters, each having the character of a basic law. These basic laws require special majorities to amend.<sup>32</sup>

Since then there have been several proposals and drafts of a Constitution. The last one, already mentioned, was prepared by the Constitution, Law, and Justice Committee of the Sixteenth Knesset in 2006.<sup>33</sup> The draft engendered controversies. The drafters themselves acknowledged the shortcomings of the text, which avoided confronting the problems related to the so-called *status quo* concerning religious issues, family law and

24. *Israel HRC Report*, supra n. 22, at par. 532.

25. H.C. 130/66, *Segev v. Rabbinical Court*, P.D. 21(2) 505..

26. A. Maoz, “Religious Human Rights in the State of Israel,” in Johan D. van der Vyver & John Witte, Jr., *Religious Human Rights in Global Perspective: Legal Perspectives* (The Hague: Nijhoff, 1995). 349, 359

27. See Lerner, supra n. 3.

28. On the role of *Halakha* in Israeli legislation, see A. Kirschenbaum, *An Introduction to Jewish Law* (Tel Aviv 2005) 133.

29. See Lerner, supra n. 3 at 247.

30. 1 L.S.I. 3,4 (1948).

31. See Lerner, supra n. 3 at 249.

32. *Id.*, 250–51.

33. An English translation is available at <http://experts.cfisrael.org:81/admin/proposals.pdf>.

personal status.<sup>34</sup> This situation seems to have its origin in agreements concluded by the political parties in the early stages of the State and kept, with some exceptions, during all these years.

The main issues of religion and religion-State relations are consequently not addressed in any organic basic text. The principles governing those issues are therefore to be found in legislative texts and case-law. On the whole, religious freedom is protected, although some limitations exist, mainly for the Jewish non-Orthodox sector of the population. There is no formally preferred or privileged religion, and the *Halakha* or Jewish law plays a minor role as a subsidiary source of law.

There is no absolute equality between religions in fact, with the religion of the majority playing a role in public life, despite the overall respect for freedom of conscience and religion.

## V. LEGAL CONTEXT

In order to achieve a general overview of the major features of the legal setting concerning state and religion in Israel it is necessary to refer to the two regimes that preceded the creation of the State, namely the Ottoman period (1517-1917) and the British Mandate over Palestine (1918-1948). The Ottoman rule permitted non-Muslim communities to enjoy autonomy in their communal affairs, religion included.<sup>35</sup> Those communities, based on religion and called *millets*, had their own courts in matters of personal status, while the *Mejelle*, the Islamic civil law, governed the same issues for Muslims. Foreigners, under consular jurisdiction, were not subject to Ottoman law. A stated consequence of this system is that Israel is “the only modern state in the world lacking a territorial law of marriage and divorce.”<sup>36</sup>

The British, during the Mandate established by the League of Nations, did not change the system. The principal provisions are contained in the Palestine Order in Council of 1922, art. 83 of which recognized ten communities: Eastern Orthodox, Latin Catholic, Gregorian Armenian, Armenian Catholic, Syrian Catholic, Chaldean Uniate, Greek Catholic Melkite, Maronite, Syrian Orthodox, and Jewish (called *Knesset Israel*).<sup>37</sup> Muslims were not considered a “recognized community” and the Muslim courts enjoyed jurisdiction over all matters of personal status regarding Muslims, even foreign nationals. A 1939 amendment introduced by the British with the aim of permitting marriage between persons who were not Muslims or members of the recognized communities was never implemented.

The State of Israel maintained the status quo, with some minor changes.<sup>38</sup> Religious law rules matters of personal status and the recognized communities have retained their jurisdiction. Additional religious communities, such as the Druze, the Evangelical Episcopal Church and the Baha’i were recognized. Other communities, such as the Lutherans, Baptists, Quakers and others, also operate in the country, despite not having been formally recognized.<sup>39</sup> One major change introduced under the State of Israel related to the Jewish population – Jewish religious institutions became state bodies, exercising authority over all Jews of the country, without consideration to their self-definition and views on religion.<sup>40</sup> This affects particularly family law. Atheistic or non-religious Jews have to undergo a religious ceremony conducted by an Orthodox rabbi if they wish to marry in the country. While a couple can marry abroad by a civilian authority or can sign a private marriage contract and both acts will be recognized by the Israeli general courts

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34. See Lerner, *supra* n. 3 at 250–51.

35. Yoram Schachar, *History and Sources of Israeli Law*, in Amos Shapira & Keren C.DeWitt-Arar , *Introduction to the Law of Israel*; also, See generally, A. Rubinstein, “Law and religion in Israel,” *Israel Law Review* 2 (1967) 380.

36. Declaration of Independence, *supra* n. 30 at 3-4.

37. For the Palestine Order in Council, 3 *The Laws of Palestine* 2569 (Robert Harry Drayton, ed., 1936).

38. Lerner, *supra* n. 3 at 253.

39. *Id.* at 253-55.

40. *Id.* at 253.

and taken notice of by the Population Registry, the marriage will be ignored by the rabbinical courts. While this report is being drafted, the Knesset is to consider, in second and third lecture, a draft law permitting civil marriage for people who do not belong to any religious community.<sup>41</sup> This legislation has been praised by those who see in it a way of breaking Orthodox monopoly; others consider it an insufficient step that may be meaningful for a portion of the population but is far from solving a major issue of principle.

The non-recognized communities also enjoy full religious freedom and rights, including the right to establish institutions, but they do not have their own courts with jurisdiction over their members.<sup>42</sup> Although they enjoy certain tax benefits, they do not receive government funding, as do Jewish religious bodies and recognized non-Jewish communities. Some also enjoy tax exemptions.<sup>43</sup> Relevant to this issue is also the Fundamental Agreement with the Holy See,<sup>44</sup> signed in 1993 (but still the subject of negotiations), dealing with the material rights of the Catholic Church.

A related issue is the situation of the non-Orthodox branches of the Jewish religion, not recognized as separate communities. Although they are totally free to practice Judaism the way they understand it, the rabbis of these communities – Conservative, Reform and Reconstructionist – do not enjoy the status of the Orthodox rabbis and cannot authorize marriages. Also non-religious Jews consider themselves discriminated against.<sup>45</sup> It is impossible to precisely estimate the proportion of Jews who are non-observant. Many non-religious Jews observe some precepts, like circumcision, *bar mitzvah* celebrations, and religious weddings, although they may claim that no religious motivation is present in those acts and they are participating due to the desire to ensure recognition for the future generations. This may also be related to the overlapping of religion and nation in the long Jewish history.

The already mentioned Article 83 of the Palestine Order in Council, 1922<sup>46</sup> is the starting point of Israeli legislation concerning state and religion. It proclaims that all persons “shall enjoy full liberty of conscience, and the free exercise of their forms of worship subject only to the maintenance of public order and morals. Each religious community recognized by the Government shall enjoy autonomy for the internal affairs of the community....” The Order in Council nullified limitations on freedom of religion and worship and prohibited discrimination on religious grounds. After the creation of the State, the Order in Council remained in effect but does not prevail on the laws of the Knesset, which takes precedence over all Mandate legislation, as declared by the Supreme Court when it denied to Jewish couples the right to perform private weddings. The Court referred the case to the Rabbinical Courts, which rule over questions of marriage and divorce.<sup>47</sup>

The Declaration of Independence proclaims that the State of Israel “will guarantee freedom of religion and conscience, of language, education and culture” and will “safeguard the Holy Places of all religions.” The Declaration is, of course, not a Constitution, but it was always considered a guideline for Israeli legislators and courts, and the principles it contains were extended in the Basic Law: Freedom of Occupation

41. Editor’s Note: “A minimized version of the civil marriage bill passed its second and third Knesset readings on Monday [15 Mar 2010], with a majority of 56 Knesset members voting in favor of regulating the nuptials of ‘non-denomination’ Israelis. ... The new law allows non-Jewish Israelis, or citizens defined by the State as lacking religious denomination, to marry via the soon-to-be-formed marriage registrar bureau.” See report at <http://www.ynetnews.com/articles/0,7340,L-3863253,00.html>.

42. *Supra* n. 38 at 254.

43. See, Maoz, “Religious Human Rights in the State of Israel,” 366-72.

44. Israel Ministry of Foreign Affairs, Fundamental Agreement Between the Holy See and the State of Israel (30 December 1993), available at [http://www.mfa.gov.il/MFA/MFAArchive/1990\\_1999/1993/12/Fundamental percent20Agreement percent20- percent20Israel-Holy percent20See](http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1993/12/Fundamental%20Agreement%20-%20percent20Israel-Holy%20percent20See).

45. Lerner, *supra* n. 3 at 255–56.

46. *Supra* n. 26.

47. Cf. C.A. 450/70, *Rogozinsky v. State of Israel*, P.D. 26(I), 269.

and in the Basic Law: Human Dignity and Liberty, as amended in 1994.<sup>48</sup>

The official Report submitted to the Human Rights Committee<sup>49</sup> summarizes “the accommodation between Jewish religious law and the institutions of the secular state.”

The State recognizes the jurisdiction of the Rabbinical courts over all Jewish inhabitants in matters of personal status, deciding these issues according to the *Halakha*. A similar jurisdiction is granted to the other recognized communities over those belonging to them.

The State confers powers upon the Chief Rabbinate, which is organized under law<sup>50</sup> and state funded. It also confers powers on Religious Councils, similarly organized and funded.<sup>51</sup> The Knesset has enacted laws with a religious background regarding the Sabbath and Jewish holidays, dietary laws and other matters related to religion.

The actions of all state institutions that act in the religious sphere are subject to review by the High Court of Justice, including matters related to the application of religious law. Religious courts exceed their jurisdiction if they issue judgments contrary to provisions of secular laws regarding equal rights for women, adoption and spousal material relations.<sup>52</sup>

## VI. THE STATE AND RELIGIOUS AUTONOMY

Public authorities do not intervene in the life or organization of religious communities and the law does not restrict the autonomy of the religious communities to govern themselves. Still there have been some complaints about attempts of the authorities to influence internal affairs such as, for instance, the appointment of religious personnel or the granting of admission visas to such personnel. No bilateral agreements between the State and religious communities have been concluded, except for the 1993 agreement with the Vatican and related ongoing negotiations. No interference in doctrinal issues has been denounced.

Religious communities are not represented as such in the legislature and no particular religion has been given power to control other religious communities. The geographic concentration of certain communities reflects itself obviously in policy matters and may lead to differences in treatment.

The regime of State recognized communities has its impact on several issues and implies civil effects. Recognized communities have their own courts in subjects related to the personal status and their competent officials can authorize acts affecting their status.<sup>53</sup>

Although freedom of religion and worship exists for every group claiming to be a legitimate religion, the problem of sects or cults caused some preoccupation and a parliamentary committee conducted a survey on this issue.

The religious communities are in charge of managing cemeteries.<sup>54</sup> There have been problems when persons not belonging to any community, or who did not want to be submitted to a religious burial ceremony, and such cases went to court. Since 1996, the Right to Alternative Civil Burial Law permits the existence of alternative cemeteries respecting the desires of the deceased or his or her family. The Supreme Court denied the Orthodox Burial Society the right to limit the inscriptions on headstones in Jewish cemeteries. The High Court of Justice ordered the competent authorities to ensure equality in the allocation of funds for Jewish and Arab cemeteries.<sup>55</sup>

Israeli legislation in matters of religious human rights was negatively influenced by some external factors such as the security situation, party politics and above all the

48. See Basic Law: Human Dignity and Liberty, 1992, S.H. 90.

49. See *supra* n. 22.

50. See Chief Rabbinate Law of Israel, 1980, 34 L.S.I. 97 (1980).

51. See Lerner, *supra* n. 3 at 260.

52. Israel HRC Report, *supra* n. 22 at 231-232.

53. See Lerner, *supra* n. 3 at 246.

54. *Id.* at 266.

55. There is abundant jurisprudence on this matter. See, e.g., S. Ct. 53/31, *Frederika Shavit v. Chevra Kadisha Rishon Letzion*, P.D. 53 (3) 600; S.Ct. 54/31, *Adalah v. Minister of Religious Affairs* P.D. 52(2) 164.

secular-orthodox conflict. Such shortcomings led the judiciary, particularly under the activist leadership of retired Chief Justice Aaron Barak, to play a constructive role in this area through a broad interpretation of the basic human rights laws. Some of the achievements of the courts were, however, frustrated by legislation playing to party interests. The final result, however, is that Israel is a country where the rule of law prevails and fundamental rights are respected and enforced.

Religious institutions – recognized communities and other legally constituted religious entities – enjoy various taxation benefits and exemptions.<sup>56</sup> The establishment of places of worship, the celebration of meetings, the distribution of literature, and other activities necessary to the work of religious associations are regulated by general principles proper of a democratic society. Some extremist religious groups have opposed what they deem to be missionary activities, in some cases violently, but, on the whole, the spread of religious ideas and convictions is being conducted freely and protected by the law and authorities against religious intolerance.<sup>57</sup>

There have been some difficulties concerning slaughtering of animals, *kashrut* (dietary laws), and import and sale of pork and other non-*kosher* meat, all of which have reached the courts. Regulation, either legislative or jurisprudential, while cooperative with religion, is aimed at protecting basic individual rights. The Ministry of Interior has records of the religious affiliation of individuals, and religious affiliation has legal consequences as a result of the recognized communities system. Problems of conscientious objection were raised in connection with the mandatory military service, but were not invoked with regard to laws or contractual clauses of general applicability.

#### VII. STATE FINANCIAL SUPPORT FOR RELIGION

Concerning financial support for religion, or rather for religious services, the *IHRC Report* states bluntly that, in comparison with funding of Jewish religious institutions, “the non-Jewish communities are rather severely undersupported by the Government.”<sup>58</sup> The State supports religious institutions, by direct funding and by tax exemptions. There are no clear-cut norms that might ensure equality between the various religions. The system has frequently been criticized by the Supreme Court. In 1995, following strong criticism by the State Comptroller, a public committee elaborated rules for the allocation of state subsidies. The taxation legislation exempts religious institutions from income tax. Christian churches and Baha’i have also received some preferential treatment.<sup>59</sup>

The Fundamental Agreement between the Holy See and the State of Israel contains provisions regarding property and fiscal matters. The Supreme Court declared in 1995 that the State engages in “unlawful discrimination” when it allocates land on the basis of religion or nationality.<sup>60</sup> Clearly, the whole issue of State funding of religious institutions lacks appropriate regulation and is open to general criticism concerning its treatment of State-church relationships.

#### VIII. CIVIL EFFECTS OF RELIGIOUS ACTS

In Israel, the acts enacted by religious authorities have civil effects. The secular law recognizes the jurisdiction of religious courts and gives effect to their decisions adopted in accordance with law. Within the framework of the already mentioned status quo, various aspects of family law are regulated by religious law. Members of the different religious communities are subject to the respective religious laws of their communities, which

56. See Israel HRC Report, *supra* n. 22 at 226.

57. There were incidents and activities particularly against a group called “Messianic Jews” – Jews that believe in Jesus. The press denounced some cooperation of the Ministry of Interior with an ultra-Orthodox small organization engaged in persecuting the Messianic Jews. See, *Haaretz weekly magazine* (2 October 2009) 21.

58. *Supra* n. 22 at 228.

59. Cf., “Religious Human Rights in the State of Israel,” 372.

60. H.C 6698/95, *Ka'adan v. The Israel Lands Administration*, P.D. 54(1) 258. The case dealt with a complaint of an Arab couple that was refused to build its home in a communal settlement that claimed that only Jews may belong to it.

differ between communities. The legal settlement of family law matters is split between religious and civil law. Matters such as child custody, including adoption, inheritance and property relations between spouses are settled by civil, generally territorial, law.<sup>61</sup>

This same split exists in the judicial system. Religious courts decide matters in their competence on the basis of the positive religious law. Except in those cases in which civil law is mandatory, the civil courts are competent and also apply general law. The Rabbinical Courts Jurisdiction (Marriage and Divorce) Law of 1953 deals with Jewish matters; the Palestine Order in Council established the jurisdiction of the Muslim courts; the Druze Religious Courts Law, 1962, that of the Druze. The jurisdiction of the religious courts is exclusive in certain areas and concurrent in others. The Supreme Court determines the competence and jurisdiction of the courts when conflicts arise.

#### IX. EDUCATION

Religion and education are closely connected in Israel. There is a State Education Law<sup>62</sup> several times amended. The system, which existed in the pre-state period, consists of various schools. There is a general education system and an Arab education system. Within the Jewish majority there are various schools: non-religious public schools, with curricula including many religious elements, such as Biblical studies; religious public schools under Orthodox control; ultra-orthodox (*haredi*), non Zionist oriented, including several sub-schools depending on religious affiliation. There is a core program, which is not always respected. Party politics strongly affects this area. Israel has adopted integrationist policies inspired by social and cultural considerations, but did not attempt to change the pluralist pattern of fragmented education, particularly within the Jewish majority. The integrationist efforts have lost intensity in recent years. All the schools enjoy financial support of the State, which also funds some religious schools, among them church schools not recognized formally by the State.

#### X. RELIGIOUS SYMBOLS

There are no restrictions on the use of religious symbols in public places, and there is no law governing the use of such symbols. Kipot, crosses, head coverage are a normal part of the landscape. A Muslim girl was not accepted in a Christian private school and the Court abstained from interfering because of the private character of the school.

#### XI. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

Israeli legislation contains many provisions intended to guarantee religious liberties. The Penal Law of 1977<sup>63</sup> punishes desecration of places of worship, disruption of funerals, or publication and uttering of offenses against religious feelings or beliefs of any person. The numerous holy places for the different religions are safeguarded by the Protection of Holy Places Law of 1967. The Basic law: Jerusalem, Capital City of Israel, 1980 and the Antiquities Law, 1978, contain similar provisions. A well known ongoing controversy relates to the Temple Mount, which engendered many conflictive situations.

There is no legislation on blasphemy or defamation of religions. Limitations on hate speech are applied equally to all religions and beliefs.

#### XII. CONTROVERSIAL ISSUES

The special character of the State of Israel, the tensions caused by political and security issues, the conflict with the Palestinians, demography, the recognized communities regime, the status quo arrangements concerning religious issues within the Jewish majority, and other issues have engendered many controversies and required

61. See, Ariel Rosen-Zvi, "Family and Inheritance Law," in Amos Shapira & Keren C.DeWitt-Arar, supra n. 35 at 75-76.

62. State Education Law, 1953, 7 L.S.I. 113.

63. 4 L.S.I. 54, at par. 323-27.

judicial intervention. They can only be listed here, but not examined in depth. Several among them deserve special mention. The Sabbath and Jewish festivals are days of rest according to the Law and Administration Ordinance of 1948 and the Hours of Work and Rest Law of 1951. Non-Jews can choose their own day of weekly rest. The Sabbath issue came several times before the courts. This is, of course, a matter affecting mainly the Jewish majority.

Cemeteries, burial, dietary laws, equality in the allocation of State land, State financing and support for religious and/or educational institutions, holy places and access to them, have all been the subject of judicial settlement and caused tensions and complaints. Another significant controversial matter concerns proselytism and conversion. The right to convert was clearly recognized in a well known case, *Pessaro (Goldstein) v. Minister of Interior*.<sup>64</sup> In practice, the difficulties relate to conversion into Judaism, a matter in which the Orthodox monopoly is being challenged by the other Jewish religious trends and in which politics plays an indisputable role. A 1977 law never applied punishes material enticement to conversion.

### XIII. CONCLUDING REMARKS

Israel is a democracy and generally respects religious liberties. Its legal system concerning religion is not, however, fully compatible with norms observed in Western democracies. The foundations for this situation can be found in history and in the complex character of the State established in 1948, which has developed into a modern but complex democracy during its six decades of existence. As indicated by the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, in her report on her mission to Israel in 2008,<sup>65</sup> religious minorities living in Israel acknowledge “that there is no religious persecution by the state. Within the Israeli democracy, she would like to emphasize the important role that the Supreme Court played in the past and can continue to play for safeguarding freedom of religion or belief.”

I have attempted to provide a general picture of the situation concerning the role of religion in a secular state such as Israel. The picture is far from complete, but I believe it may help in understanding the peculiarities of this part of the world, influenced by history, politics, and a most complicated, but to a large degree successful, process of state-building in difficult conditions.

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64. H.C. 1031/93, *Pessaro (Goldstein) v. Minister of Interior*, P.D. 49(4) 661

65. Human Rights Council Report of the Special Rapporteur on Freedom of Religion or Belief, UN doc. A/HRC/10/8/Add.2 (2009).