First, I would like to introduce our panel: Rabbi Shear-Yashuv Cohen is the Chief Rabbi of Haifa and had a very illustrious career before entering that office. He served in the Israeli army and fought in the Old City in 1948. He was seriously injured and made a prisoner of war. Later on, he served on different academic bodies and was also Vice-Mayor of Jerusalem. He has held the post of Chief Rabbi of Haifa for several years, and I would like to add he was also a candidate during the last elections to serve as Chief Rabbi of Israel. Rabbi David Rosen is now the Director of Israel’s Office of the Anti-Defamation League. Born in Britain, he undertook his Rabbinic studies and his “Smicha” (Ordination) in Israel, and served in the Israeli army, in the armored corps. He was senior Rabbi of one of the largest Jewish congregations in South Africa and a member of the “Beth Din”, and later on served as Chief Rabbi of Ireland and had important duties as member of the councils which dealt with meetings of Christians and Jews. He has taken up academic duties as a lecturer in the Irish School of Ecumenics and is Dean of the Sapir Center for Jewish Education, since 1988 serving as the Director General of the ADL office in Israel. Mr. Joseph Roubache is a member of the Bar of Paris, he has engaged in important duties in different legal bodies in France and is a very active member of this Association and member of this head council.

This panel deals with a very important and sensitive topic; it has two connotations or two implications. It has a general universal meaning, because it applies to every part of the world and it has also a specific, unique Israeli meaning, which is very important and sensitive because it touches upon the structure of our system, our culture, government and society within the framework of our country. It has already raised many important problems, debates, and discussions. If I start with a universal meaning of the topic which is the subject of our panel, we are living in a liberal democracy, or so we believe. Democracy is a term which is commonly used by every governmental system which likes to be regarded as adopting the system, but we know that there are different kinds of democracies, and not all of them are identical in their meaning. It was the Frenchman de Tocqueville, who stated that use of the word “democracy” is confusing, because it has a large array of meanings and therefore the term should be clarified before we start to deal with its components.

The hallmarks of democracy which I would like to propose and which are commonly accepted, are twofold: democracy is a system according to which sovereignty is in the hands of the entire people. This means, that they, in their entirety, rule the people, whether by direct rule, as was the case in Athens thousands of years ago, or by representatives, as is commonly known and accepted in modern times. This is the first component. But the rule of the people by itself does not define “democracy”; “the rule of the people” means that the people elect their representatives and there is always a majority and a minority. One of the components of the system of election is that by dividing the opinions of people, one always has different groups, some of which are superior in numbers. There have been other uses of the word “democracy” which have based themselves only on this fundamental principle of rule by majority, but they do not reach our aspi-
ration of a liberal democracy and this is because there is a second important component, which is applicable to everyone, whether that person belongs to the majority or to the minority, namely - the equality of all people in this society.

Thus, we have two main components: sovereignty in the hands of the people and equality of all those who belong to the people and live within a certain framework political, social or otherwise.

Equality touches upon the rights of the individual. One could add additional components such as the separation of powers, but in all cases one will always fall back to the important question - what are the rights of the individual within the framework of a political society. The rights of an individual, are laid down, in constitutions, or, as we have it, in separate basic laws which are only parts or chapters of a constitution, or, within the framework of a tradition of law, like the common law, which does not have a comprehensive constitutional system - although the British Parliament is currently working on the Bill of Rights which will adopt the ideas of the European Community. Indeed, I am afraid that we in Israel will remain the last country which does not have a comprehensive constitution, because even Britain will join the family of nations which have a written constitution. This, at least, is the proposal of the present Attorney General of Britain in the new government of Tony Blair.

The safeguarding of rights of the individual is a permanent, continuing duty of the governmental system under which people live. We know that every society has a different approach to the problems which arise in society or the political institutions, and one of the ideas which relates directly to the problem before us, which has been defined lately by John Rawls in his last book, concerns what he regards as a component of liberal democracy, namely, the adoption of pluralism, the adoption of rights, of having different opinions, voicing them, fighting for them, and being accepted and recognized by the governmental system as equals - pluralism by consent. This may be compared to pluralism which has been forced upon the people, when one says, “you must behave in a certain way, otherwise you will be arrested or punished or oppressed”. This is not the right system. The right system is that all groupings in a certain country accept the fact that if you have a free country, you have different opinions and you must leave space and time and the right to voice your different opinions and to have equal rights in voicing your different opinion. This is called “pluralism by consent”, namely, that all agree rationally, that from the rational point of view, the best way to adopt the society of freedom, is to accord the freedom to everyone, because this will, in return, be mutual and reciprocal. If you accord freedom to everyone, you also accord to yourself, by way of a rational approach, the freedom you are asking or looking for. Therefore, pluralism should be “pluralism by consent”. This is the idea which I have been voicing lately.

Thus, democracy or liberal democracy, is based, as we said, on the liberty and on the equality of people, and on the recognition of the fact that there are pluralistic ideas, that society is composed of different components with different approaches. The main factor in according to people the right to live together and to create together a political system or a social system is to regard everyone as owning or possessing the right to have equal standing in this difference. We differ, but agree, and as Voltaire said, “I disapprove of what you say but will defend to the death your right to say it”. He even mentioned the possibility of death, in the fight to accord to everyone the equal right to be different. This is a comparatively short description of the universal factor.

But I would like to turn to our specific Israeli equation. Israel started its existence formally, and factually, by publishing a Declaration of Independence. This Declaration of Independence stated that there would be equality of rights to people of all faiths. In other words, the equality or equal rights of every group, having a different religion, faith or ethnic composure, are safeguarded by the declared intention of those who founded the State of Israel. We must be aware of the fact that so far the Declaration of Independence has not been regarded as part of our constitutional system. It has been described by our Supreme Court as being “declaratory of the spirit of the laws”, of the ideas which are the corner stone of our State. The Declaration of Independence does not have the force of law, in other words, one cannot safeguard rights by basing oneself on the Declaration and turn to the Court as was done in 1948, when these judgments were given, which described the declaratory status of the Declaration of Independence. Nevertheless, a certain change of heart did take place in 1992, when our Basic Law: Human Dignity and Freedom was passed, forming one of the chapters of our constitution which is being created step by step by the Knesset. This Basic Law states that the values of
the State of Israel have to be interpreted in the spirit of the Declaration of Independence. Thus, the Declaration of Independence received an additional statutory legislative status, by being turned into part of the Basic Law, which is part of our constitution. The special status is achieved by the norm laid down in Article 8 of the Basic Law that ordinary legislation cannot be enacted except if it fits the basic values of the State of Israel, is for valuable purpose, for a recognized purpose, and does not exceed the extent needed in order to achieve the aims of this legislation. Accordingly, to a certain extent, ordinary legislation has been turned into legislation which has to obey the norms laid down in the Basic Law and therefore, the mentioning of the Declaration of Independence, in connection with the basic values of the State of Israel, has accorded to it special status, strengthening the spirit of the basic intention of the founding fathers of our country.

The Declaration of Independence provides for equality. The equality is based on a society which recognizes and accords equal rights to different people. Further, the Basic Law: Human Dignity and Freedom mentions that Israel is a Jewish and democratic State. Thus, one has two components which have to live together, which somehow have to be fused into one meaning, or balanced. This certainly is another expression of the acceptance of Israel that there are different components which have to be obeyed or recognized or honoured by ordinary legislation and by all the governmental bodies - all the three arms of government, the legislative, the judiciary and the executive. This is, I would say, a hint at pluralism, as one of the basic factors of our State.

How do we live together in a society which is so divided? We have a society which is very open-minded; having different opinions, and not agreeing, is an expression of freedom. One must not exaggerate, there is a certain point where one must reach some conclusions which are accepted, but Israel certainly is a society where one can voice every opinion. It is not always accepted, it is not always agreed upon, one would not call it consensual, but the difference of opinion has a very large and wide array. How does one live in a society and how does one really turn the theory into practice? Because when we talk about constitutions and States and governments, there is always an idea and there is not always a practice. There is a difference between the idea and the practice. There are countries which had great constitutions, such as the Soviet Union, but the practice was, much to our regret, quite different. Practice, therefore, is very important and one of the questions we are posing in this panel is how do you turn the idea of pluralism, of freedom, of liberty, of the equality of every individual into practice.