Position Paper

Managing Global Migration: A Strategy for Immigration Policy in Israel

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Editor: **Ruth Gavison**

Translated from Hebrew

**The Metzilah Center
for Zionist, Jewish, Liberal and Humanist Thought**

Jerusalem, 2010

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The contents of this position paper do not necessarily represent the views of The Metzilah Center and are presented at the sole responsibility of the authors.

The Metzilah Center was founded in 2005 to address the growing tendency among Israelis and Jews worldwide to question the legitimacy of Jewish nationalism and its compatibility with universal values. **We believe** that Zionism and a liberal worldview can and must coexist; that public discourse, research, and education hold the key to the integration of Zionism, Jewish values, and human rights in the Jewish state; and that the integration of these values is critical for the lasting welfare of Israel and the Jewish people worldwide.

Metzilah aims at disseminating knowledge, deepening the understanding and awakening the public discourse in the areas that we deem are the core issues facing the citizens of Israel and the Jewish people worldwide. These key issues include: the Jewish people's right to national self-determination in (part of) the Land of Israel, contemporary Jewish identities; the complex nature of Israeli society; and the preservation of human rights for all Israeli citizens and residents.

The early stages of the Zionist movement were characterized by profound and comprehensive discussions. While the State of Israel and its society are still facing complex challenges, the contemporary public discourse has lost depth and tends to be characterized by the use of slogans and stereotypes. To counter this trend, the Metzilah Center focuses on the academic and historical research of these topics for ideological clarification and practical policy recommendations.

In our effort to meet this crucial challenge, the Metzilah center strives to publish a variety of professional and accurate publications which shed new light on key issues and lay the necessary factual, historical and ideological foundations to promote public discourse and action in these essential matters. The clarification of these key issues is a necessity for Israeli society and the Jewish people.

The Metzilah Center believes that a sustainable State of Israel is crucial for the welfare and prosperity of the Jewish people and that actions need to be taken in order to achieve the State's objectives to their full extent: to reestablish the right of the Jewish people to self-determination by means of a Jewish state in their historical homeland; respecting the human rights of all of Israel's citizens and residents; and consolidating Israel as a democratic, peace-seeking, prosperous state that acts for the welfare of all its inhabitants.

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Dedicated to the late Professor Ehud Sprinzak,
a colleague, friend, and partner

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Executive Summary

Introduction

Israel is the only Western democracy that still lacks an immigration policy. The basic assumption is that Israel is an "*aliyah* country," whereas in fact it has become a country that is absorbing large-scale immigration beyond the framework of the Law of Return. Israel has no modern immigration law. The country's authorities are not prepared to cope with the challenge it faces. Its strategic thinking is deficient. It has no vision, it has not set long-term goals and objectives, and it has no reliable database that could serve as the foundation for policy-making. The current situation can be traced back to ad hoc decisions, some of which were made arbitrarily by bureaucrats acting without guidance from above—against the background of a quantitative and qualitative revolution that, in the past decade, has given Israel one of the world's largest proportions of in-migrants (outside the Law of Return) and what is apparently the world's highest share of illegal aliens among the migrants whom it has admitted. *The perpetuation of this state of affairs is injuring vital state interests and causing mistreatment of aliens that puts us to shame as a people and as a state.* Israel needs a policy on immigration and a policy on immigrants. This document proposes, for the first time in Israel's history, a comprehensive outline for such a policy.

Chapter One: Israel in a Global Perspective

This chapter situates Israel within the global discourse on migration and migrants, explains the novel characteristics of this discourse, and describes the new challenge that it brings with it. The goal of this chapter is first of all to show that today's debate about migration goes beyond the classical debate about immigrants as individuals and raises questions about the self-definition of peoples and the cultural, economic, and demographic complexion of states. Its second goal is to explain Israel's need to integrate

itself into the international migration discourse, which has many common features. *As it comes to formulate an immigration policy, Israel should learn from the cumulative experience of other countries, albeit with the caution required in the light of its unique characteristics and needs.*

Chapter Two: A Strategy for Immigration Policy

Immigration is an instrument that should promote the interests of the state and the community residing within it.

An immigration policy should respond to social, economic, political, cultural, and security needs. When Israel begins to draft its immigration policy, it will have to assess its impact in five different areas: (a) security and public order; (b) economic interests; (c) its absorptive capacity in terms of the size and composition of its population; (d) its national identity and sociocultural complexion; and (e) its social service systems. Along with these general considerations, *Israel has unique features and interests.* Israel is a "*state with a mission*" in which the Jewish people exercises its right to self-determination, *a state that has been in the throes of war and protracted national conflict* since the day it came into being, *a developed country in a developing region, a democratic island in an undemocratic and unstable region, a small country that is sensitive to social changes,* and a country with a *history and national legacy* that should serve it as a moral compass in the crafting of its immigration laws, especially where refugees are concerned.

In the past decade, several hundred thousand migrants have entered Israel and now constitute a sizeable portion of its population. A very large proportion of them entered or are staying in the country illegally. This reality, coupled with the fact that many others are still pounding on Israel's doors, necessitates the immediate adoption of several measures:

• *The drafting of an up-to-date immigration law.* The existing legislation was for the most part adopted when Israel was newly established and does not respond to today's immigration challenge. "Primary arrangements" on

basic questions of entry and naturalization are being made by administrative authorities and without public debate.

- *Goal-oriented strategic planning, predicated on a reliable database.* Israel has no data on basic issues such as the number of in-migrants, the extent of their social integration, their contribution (and cost) to the economy and the national welfare, and their involvement in crime. Moral decisions are made on the basis of a rickety and deficient infrastructure of data, and it is difficult to formulate clear goals and to derive policy from them. The shortage of data also results in different estimates that are sometimes put to manipulative use.

- *Establishment of specialized immigration authorities.* Today, the treatment of migration and migrants is divided among various government agencies that take a shortsighted and incomplete view of the issues. This causes treatment of the subject to fall between the cracks, with no guiding hand in evidence. This situation renders it difficult to fulfill the economic potential latent in the in-migration and to cope with its challenges. It is necessary to concentrate the treatment of immigration issues in the hands of a government ministry dedicated to this purpose or a special national authority.

Chapter Three: Principles of an Israeli Immigration Policy

Israel has no interest in systematically increasing its population via immigration beyond the framework of the Law of Return. The guiding principle of the immigration policy proposed here is *"hard outside/soft inside,"* i.e., a tough and selective entrance policy alongside a humane immigration policy after lawful entry and protracted stay, including the possibility of acquisition of status and naturalization.

A. Entry Policy

Israel's entry policy is full of holes. There are neither clear criteria nor goals. Despite the existence of an "immigration police," the number of

in-migrants is trending upward vigorously. Given the paltry magnitude of *aliyah* (Jewish immigration) and the large numbers of migrants who enter the country outside the framework of the Law of Return, Israel is suffering from a negative Jewish migration balance.

Israel should take several actions at once:

• *Establish clear criteria* for the issue of entry visas, such as age, economic situation, education, connection with the state, family ties with a citizen, quotas, etc.

• *Require in-migrants who intend to make their stay permanent to declare* that they recognize "the legitimacy of the State of Israel."

• *Extend the grounds for denial of entry that are set forth in the Law of Return* (risk to public security, risk to public order, or action against the Jewish people) to in-migrants who arrive outside the framework of the Law of Return.

• *Establish rules of entry that befit a country in a state of war and armed conflict,* including restrictions on the entry of nationals and residents of enemy states and hostile entities.

• *Complement the entry policy by applying effective enforcement,* including:
  » effective border control and enforcement of the entry provisions (including the construction of physical barriers along the borders);
  » reducing the population of aliens staying illegally.

The discussion of immigration policy will be clearer if it is structured on the basis of the main groups of in-migrants:

Labor Migrants

The main consideration in issuing entry visas to labor migrants is their contribution to the economy. It is proposed that Israel establish different tracks for labor migrants, the duration of their stay, and the arrangements for their stay in the country, transparently and in accordance with the country's needs. It is recommended that Israel should:

- *encourage "quality" labor migration;*
- *ensure the upholding of labor migrants' rights;*
- *reduce the population of legal labor migrants and seek to make sure that their stay is indeed temporary.*

From among the various means by which these objectives may be attained, it is recommended that Israel should undertake the following activities: the adoption of a mechanism of different classes of work permits, international cooperation, and the imposition of sanctions against employers and go-betweens.

Family Members

The main concern behind granting entry permits for family members is consideration of the rights and interests of Israeli citizens while safeguarding the interests of the state. In Israel, as in other countries, the number of family reunification applications has been rising and accounts for the lion's share of in-migrants. Family immigrants are also unique in that they intend their stay to be permanent *ab initio.* Today's law is based solely on discretion, exempts applicants from most standard requirements for naturalization, and includes explicit arrangements only in the context of applications from enemy nationals. In order to craft a controlled entry policy, it is proposed:

- *to continue giving preference in naturalization to members of citizens' or residents' families. However, at the same time, family members who wish to immigrate must be subject to the basic general admission requirements.*

Refugees and Asylum Seekers

Israel should incorporate the main provisions of the United Nations Convention Relating to the Status of Refugees into Israeli law.

The lack of systematic legislation relating to asylum seekers and refugees is causing judicial lack of clarity, failure to implement Israel's international obligations, lengthy and problematic proceedings, and mistreatment of

refugees. The policy toward refugees should *strike a balance between the need to be generous and exemplary in providing refugees with protection and shelter and the need to limit the vast range of the phenomenon and the abuse of law by non-refugees.* What is needed, practically speaking, is an intelligent and humane mechanism that includes, among other things, the construction of adequate housing facilities that can accommodate asylum seekers until their cases are resolved, the establishment of a professional body for the handling of their applications, priority for those whose applications are submitted through embassies beyond the state's borders, and summary deportation of those whose applications are lawfully rejected.

B. Residency in Israel and Acquisition of Status

Israel's Citizenship Law offers a general track leading to naturalization under certain conditions. This track, however, is not available to in-migrants, including those whose stay in the country is legal and protracted, unless the state has a special interest in them or unless they are citizens' kin. On the other hand, the terms of naturalization have not been adjusted to the new migration reality. Accordingly, Israel should:

• *broaden and sharpen its naturalization criteria.* It is proposed to extend the residency requirement; to rephrase the pledge of allegiance to include "recognition of the legitimacy of the State of Israel, an undertaking not to act against it, and the renunciation of loyalty to any other state entity"; to require passing a test of familiarity with "the Israeli form of government"; and to set up exclusionary grounds for naturalization. The state may establish faster and simpler tracks for special immigrant groups such as preferred workers or members of citizens'/residents' families.

• *establish a permanent-residency track for those who have been in the country legally for ten years and also, at a later point, a naturalization track.*

• *grant permanent residency permits to foreigners' Israel-born children who have reached the age of ten; farther on, when they attain majority, open up for them a naturalization track as well.*

Summing Up and Looking Ahead

This outline is proffered in view of a given reality. However, one can foresee changes in its underlying assumptions and one ought to be prepared to respond to them in an appropriate fashion. The need to cope with waves of in-migration will become more pressing in the future. Improvement in Israel's economic situation, trends toward tougher immigration policies in Europe, and demographic pressure in neighboring countries may combine to increase the numbers of those pounding on Israel's doors. If an Israel–Palestinian peace settlement is concluded, not to mention a regional peace arrangement, the whole matter will have to be rethought. *The clock is ticking:* the grim reality of immigration in Israel is emphatically the outcome of the lack of systematic policy and the corresponding lack of effective enforcement mechanisms. Unless these shortcomings are corrected, Israel will find it difficult to attain its national interests, fulfill the latent potential of immigrants and immigration, and uphold the dignity and the rights of immigrants and refugees.

Introduction

Immigration—as a public and legal matter—was not on Israel's agenda in the country's early years. *Aliyah*—immigration of Jews and their families—was almost the only source of population growth outside of natural increase. This was the case for three main reasons: (a) Israel's borders were defined by the fortified armistice lines that were established after the War of Independence; (b) beleaguered by security and economic problems, Israel was not a magnet for migrants; and (c) the pace and nature of its development were such that it did not need a foreign labor force, especially given the large pool of workers among the *olim* (Jewish immigrants, sing. *oleh*) and local Arab residents. All these factors changed after the Six-Day War. The newly added occupied territories were inhabited by a large and poor population and offered a path through which Israel could be entered; the Israeli economy grew in such a way that the gap between its income level and the increasing poverty in the nearby developing countries palpably widened; and the coincidence of rapid development and a slowdown in *aliyah* increased demand for non-Israeli labor, initially from the occupied territories and later from foreign countries as well.

From the late 1980s onward, four significant immigration processes commenced: *First*, the opening of the FSU gates brought three kinds of population to Israel's shores: Jews, relatives of Jews who are entitled to immigrate to Israel under the Law of Return (as amended in 1970), and relatives of persons in the first two categories who are not entitled to immigrate under the amended Law of Return.[1] There is in fact a fourth group: the , who by official decision are not entitled to immigrate under the Law of Return but may do so under the Entry into Israel Law. *Second,* since Israel and the Palestine Liberation Organization concluded the first "Oslo accord" in 1993, tens of thousands of Palestinians from the Gaza Strip and the West Bank have immigrated to Israel to reunite with their Israeli family members.

Third, when terrorism in Israel took a sharp upward turn, the domestic labor market needed many more labor migrants than before, and the migrants' stay in Israel—including the families that they established and the children who were born—posed new challenges. *Fourth,* the genocide in Darfur, ethnic and national conflicts in various countries, and racial persecution have in the past decade attracted to Israel large numbers of refugees and asylum seekers who reached the country's southern border after a grueling and difficult journey from eastern Africa via Egypt.

These changes have created a quantitative and qualitative revolution in the phenomenon of immigration to Israel. Despite the changing reality, however, the legal arrangements—and the authorities and mechanisms that deal with them—have remained largely unchanged since the 1950s and have not been adequately adapted to the change that has occurred. *The effects of the lack of a systematic policy and mechanisms to cope with the complex reality grow worse and worse as Israel continues to deny that it has changed from an* aliyah *(Jewish immigration) country into one that also absorbs a considerable number of non-Jewish immigrants*

Under Prime Minister Ariel Sharon, the government decided "to formulate an immigration policy for the State of Israel that will not only base itself on security arguments but will also assure Israel's existence as a Jewish and democratic state."[2] On June 26, 2005, the Minister of the Interior, Ophir Paz-Pines, with the consent of the Minister of Justice, Tsipi Livni, established an advisory committee and tasked it with proposing a national immigration policy. The committee, chaired by Prof. Amnon Rubinstein, presented an interim report and recommendations on February 7, 2006. The succeeding Government never discussed the report and for this reason the committee decided to disband. Since then, a severe and worsening gap has formed between the reality of large-scale immigration and the lack of a national immigration policy. The purpose of this position paper is to acquaint readers with the main problems occasioned by this state of affairs and to propose guidelines for the formulation and design of a comprehensive immigration policy that will provide an adequate response to the new reality.

Chapter One

Israel in a Global Perspective

Migration is not a new phenomenon in human history but its modern manifestations present a new challenge. First, the extent and pace of migration differ from those known in the past. Technological changes create relatively easy and inexpensive possibilities for transnational and transcontinental mobility and serve as stimuli for massive waves of migration. The number of migrants has climbed from roughly 75 million in the 1960s to around 191 million today—approximately 3 percent of the world's population—and is expected to continue rising (Table 1).[3] Coinciding with the increase in migration, some Western countries are experiencing an outflux of citizens (emigration).[4]

Second, the composition of the migrant population has changed. Until a few decades ago, most migration to the West was of internal origin, i.e., among Western countries. The waves of migration from Europe to the United States in the late nineteenth and early twentieth centuries are a salient case in point. Today, a considerable share of migrants originates in developing countries that have no democratic tradition and do not include most principles of liberalism in their fabric of life. These migrants are often distinct in their culture and ways of life from members of the society they are entering.

Third, the purposes of migration have changed. The horrors of World War II led to recognition of the special status of refugees and asylum seekers. The refugee phenomenon has risen to an enormous magnitude in recent years and, concurrently, one can identify extensive migration of families, which accounts for the lion's share of migration to many countries today.[5]

As a rule, both of these migrant groups seek permanent status and naturalization.

Table 1: Global Migration, 1960–2005

	1960	1975	1990	2005
Approximate number of migrants	75,463,352	86,780,304	154,945,333	190,633,564
Approximate number of refugees	2,163,992	4,217,992	18,497,223	13,471,181
Share of refugees in transnational migration	2.9%	4.9%	11.9%	7.1%

Source: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *Trends in Total Migrant Stock: The 2005 Revision* (http://esa.un.org/migration/).

Not only immigration has changed its nature in the last years. The Western world that the migrants reach has also changed. *First,* the West is experiencing a *dramatic change in the traditional family structure.* Fewer couples are choosing the framework of marriage and those who do opt for marriage usually do so at a relatively advanced age.[6] Divorce rates are high—exceeding 50 percent in several countries—and birthrates low.[7] Just as family migration to the West increases, the institution of marriage is undergoing a conspicuous decline in the West.[8] *Second, the Western way of life has changed.* Migrants in previous eras also reached a society that adhered to values other than theirs, but the value gap is much greater today. Western society is more permissive, secular, and modern than before. One only need mention the revolution in the status of women, sexual permissiveness, and homosexuals' rights. The resulting culture shock often precipitates a clash between migrant communities and members of the host society.[9] Against such a background, immigrants are less likely to assimilate into the host society.[10] *Third,* Western society is more sensitive than before to *considerations of distributive justice and social rights.* The ascendancy of the welfare state allows

immigrants to live in the host country without joining its labor market. This phenomenon is particularly conspicuous in Europe.[11]

In addition to the changes in migration patterns and characteristics of Western society, the world has changed as well. *First, its geopolitical disposition and the composition of its population* have changed. The population of Europe shriveled from around 25 percent of the global population in 1900 to 12 percent in 1999 and is projected to contract to 6 percent by 2050. In contrast, the population of Africa, around 8 percent of the world total in 1900, climbed to 13 percent in 1990 and is poised to grow to 21 percent by 2050 (Table 2). *Second,* far-reaching *technological changes*, including the Internet revolution, have helped, among other things, to make mobility and communication relatively easy and inexpensive. Consequently, today's migrants can stay in daily contact with their countries of origin. An Israeli who lives in New York can receive *Yedioth Ahronoth* at his or her doorstep every morning, listen to Israel Army Radio online while eating at Aroma, and speak Hebrew via his or her laptop with acquaintances in Israel. This reality not only encourages migration—by making it easier to "be there and feel here"—but also allows migrants more easily to maintain their national identity, language, and culture.[12] The phenomenon of dual citizenship, once an anomaly in international law, has gained acceptance in many countries.[13] Against this background, a phenomenon of transnational communities has sprouted. *Third, the human-rights regime has changed.* Unlike in the past, states no longer enjoy absolute sovereignty in making immigration-related decisions; their hands are largely tied by the human-rights regime, especially vis-à-vis migrants who have already entered their territory.[14] Finally, in the course of the twentieth century the Western world began to recognize collective rights of minorities, thereby encouraging minority groups that dwell in nation-states to express national demands.

Table 2: Changes in Composition of the Global Population, 1900-2050 (in millions and in percent of the total)

	1900	1950	1999	2050		
				Low outlook	Middle outlook	High outlook
Total	1,650	2,521	5,978	7,866	9,322	10,934
Europe	408 (25%)	547 (22%)	729 (12%)	556 (7%)	603 (6%)	654 (6%)
Asia	947 (57%)	1,402 (56%)	3,634 (60%)	4,527 (58%)	5,428 (58%)	6,430 (59%)
Africa	133 (8%)	221 (9%)	767 (13%)	1,694 (22%)	2,000 (21%)	2,320 (21%
S. America	74 (4%)	167 (6%)	511 (9%)	657 (8%)	806 (9%)	975 (9%)
N. America	82 (5%)	172 (7%)	307 (5%)	389 (5%)	438 (5%)	502 (5%)
Oceania	6 (>1%)	13 (>1%)	30 (>1%)	42 (>1%)	47 (>1%)	53 (>1%)

Source: United Nations Department of Economic and Social Affairs, *World Population in 2300* (2004).

Demographic prognoses indicate that immigrant communities or their off-spring may become majority communities in several European cities and countries in a generation or two.[15] The American demographic tapestry is also changing; the U.S. Bureau of the Census foresees 44 percent population growth by 2050, with Asian and Hispanic immigrants as the main contributing factors.[16] The Asian, Afro-American, and Latino minority communities will collectively become the majority by 2042.[17] Texas is expected to have a Mexican-origin majority by 2035 and California by 2040.[18] These data have reignited a debate due to concern about the formation in the American heartland of cultural enclaves whose values are foreign to American values.[19] This debate goes beyond the classic debate about migration

and migrants. It raises not only issues of society, economy, and individuals but also questions related to self-determination and collectives; in this debate, the question is whether migration is a process that allows a society to develop and strengthen itself or one that weakens and fragments it. Thus, today's migration presents a new challenge that calls for new thinking.

This new reality has recently been leading to changes in immigration laws around the world. There is hardly any Western country that has not revised its immigration laws and entrance criteria.[20] By and large, the trend is toward greater stringency. For example, countries have stiffened their economic and social requirements for entrance and naturalization; imposed general immigration quotas and specific quotas for certain types of visas; boosted the cultural requirements that immigrants must satisfy for entrance and naturalization; intensified individual-level background checks before allowing entrance and permanent residence, including DNA checks to verify kinship; imposed age restrictions on marrying an alien spouse in order to tackle the phenomenon of convenience marriages, juvenile marriages, and forced marriages; and established attachment and allegiance requirements before admission or naturalization.[21] Although different countries impose these restrictions in different ways, they impose them on all kinds of migrants, including family members and refugees. Their purpose is to establish a policy that allows immigrants to be absorbed in accordance with national needs while facilitating control over the nature and number of the immmigrants.

Israel is not an isolated island. When it comes to formulate a coherent overall immigration policy, it should make itself part of the international discourse, which has many common characteristics. Migration in the twenty-first century, with its panoply of inherent opportunities and challenges, is a global phenomenon. One needs to learn from other countries' experience while proceeding cautiously, as the unique interests of the State of Israel warrant.

Chapter Two

A Strategy for Immigration Policy

A. General Considerations in Immigration Policy

An immigration policy has to be based on a broad and long-term perspective. Successes and failures of immigration policy are measured over the long run, usually over a generation or two. For example, the current challenge of immigration in Europe stems largely from decisions made and carried out in the 1970s that allowed, among other things, uncontrolled immigration from Asia and Africa. The results of Israel's policy, then, will become visible only one or two generations down the road. Since non-Jewish immigration to Israel is a relatively new phenomenon, the country lacks rich experience of its own on which it can rely. Accordingly, it should learn from the experience of others and engage in thought-experiments. The main considerations in designing an immigration policy include demography, national identity, security, the economy, and social services.

Immigration and demography: An immigration policy is based primarily on demographic needs and absorptive capacity. It is an important part of long-term national planning with regard to the size, composition, and character of the population. A country's migration balance also interrelates with variables such as its population density, availability of natural resources (e.g., water consumption), environmental quality, and quality of life.

Immigration and national identity: Immigration policy has implications for the character of a society. Immigrants do not arrive alone; their culture, language, and ways of life (and sometimes their families as well) travel with them. The experience of other states shows that receiving immigrants from countries that resemble the destination country in terms of cultural background is the key to success. The opposite is likewise true: Receiving

immigrants from a culture other than that of the host society may be a source of difficulties; it may diminish the likelihood of social, economic, and also cultural integration[22] and may foment social stress. By and large, immigrants to the United States do achieve social integration. (Immigrants from Mexico constitute an exception, but even in this case there is a significant improvement in the second generation.) Such is not the case among some immigrant communities in Europe, which maintain their culture and ways of life. This disparity is rooted in differences between Europe and America with respect to history, demography, religion, and regime, and also in differences among the immigrant communities. Either way, massive and uncontrolled immigration may challenge a nation-state's cultural complexion.

Immigration, security, and public order: The topic of migration has lately raised many issues of security and public order around the world.[23] In the United States, all nineteen airplane hijackers in the September 11 terror attacks entered the country legally on student or tourist visas. A study by the Nixon Center found that most terrorists in the United States and Europe in recent years are first-generation or second-generation immigrants. Second-generation immigrants were responsible for the terror attacks in London in 2005, the terror cells that were captured in Hamburg in 2007, and—we do not mean to equate the two—the riots in the *banlieux* of Paris and the suburbs of Sidney in 2005.[24] The connection between migration and security is especially relevant in countries that are combating terrorism, since freedom of movement is essential for the efficient perpetration of terror attacks.[25] Migration also evokes questions of crime. In this context, different countries report different experiences: In Europe, it has been found that immigrants are overrepresented among those involved in crime. In the United States, the opposite is the case: first-generation immigrants are less involved in crime than the local population.[26]

Immigration and the economy: Countries accept immigration primarily for economic reasons. The data show on balance that controlled immigration is good for the economy.[27] As a rule, immigrants not only fill gaps in demand for jobs that the local population does not want but also create

additional jobs. Furthermore, by and large, immigration has a favorable effect on per capita Gross National Product in the host country as well as a positive impact on the economy of the country of origin. When a person migrates, his capabilities migrate with him, contributing to enterprise and competition.[28] Contrary to conventional wisdom, controlled immigration neither deprives local residents of jobs nor increases unemployment, although it may have a slight downward effect on the average wage in certain industries.[29]

Immigration and social services: Immigration has costs and benefits in terms of social services. Different countries have had different experiences in this domain. The American experience shows that immigrants essentially contribute more to tax revenues and total production than they cost in consumption of social services. It has not been proved that welfare benefits create a disincentive to immigrants' integration into the labor market.[30] This can be traced to the special conditions in the United States and its work culture. European countries, however, have had a different experience: In most countries, the outlays to immigrants in social-service do not pay off. The generosity of European social benefits—education, health care, housing, disability, and unemployment—creates a disincentive for immigrants to join the labor market. Overall, it can be said that the improper exploitation of welfare benefits is greater among immigrants in Europe than among nonimmigrants.

Decisions about immigration policy also have to address the question of the preferred length of the migrant's stay in the destination country. An immigration policy may prefer a short stay or entry that is periodic (seasonal, repeat, and recurring), long-term, or permanent. *The temporary or permanent nature of a migrant's stay* is another highly important issue that has to be taken into account in the determination of immigration policy. In this connection, decisions on immigration policy also entail informed thinking about how to treat those whose presence in the country is illegal.

Immigration is a policy tool that should promote the interests and the well-being of the country and its inhabitants. Basically, it is a moral decision

derived from the relative weight that each country attributes to each of these considerations. Even though the experience of other countries may inspire Israel's prospective immigration policy, it cannot by itself determine the policy best suited to Israel. *In Israel, as in any other country, the strategy of the immigration policy must also relate to the specific basic characteristics of the local context.*

B. Specific Considerations for Israel's Immigration Policy

Israel's immigration policy should be expressly linked to challenges that are specific to it or of heavier weight in its context. The most fundamental of these are Israel's status as a Jewish nation-state, a democracy at war, a developed country in a developing area, and a small country that is sensitive to the implications of demographic changes. To all of these we should add the implications of Jewish heritage and of Jewish history.

"A democracy with a mission": Israel is a country with a purpose: As a Jewish nation state, it is the country in which the right of the Jewish people to self-determination is being realized. This is why it was established and granted recognition and legitimacy by the United Nations resolution of November 29, 1947, and other international documents.[31] One of the basic instruments for the fulfillment of this purpose is immigration law. When Israel considers the adoption of an immigration policy, the principle of "return" (repatriation) should remain a central normative underpinning of its efforts.[32] In tandem with "return," the immigration laws should help to maintain the country's Jewish and democratic character

The maintenance of a solid Jewish majority is a necessity for the country's existence and security, a normatively justified means of insuring the State of Israel's survival.[33] This is particularly the case regarding Palestinian immigrants, who join a large national minority in Israel and may at some future time undermine the "two states for two peoples" solution to the Israel-Arab conflict. The fulfillment of this objective, however, should

not be sought at any price. As a democracy, Israel is bound by the accepted principles of the human-rights regime.

A democracy at war: Israel is a democracy at war, caught up in a national conflict since the day it was established. Its borders are partly shared with enemy entities that intermittently engage it in armed conflict: Syria, Lebanon, and the Hamas government. These states and entities do not recognize Israel's legitimacy and their subjects are raised on hatred of Israel. Beyond the adjacent borders, there are countries that are in a state of war with Israel, one of which—Iran—has openly called for its obliteration. Even the neighboring states that have concluded peace treaties with Israel possess a hostile population that, in part, does not recognize Israel's existence and supports violent action against it. There is also the unique situation in Judea and Samaria, where there is no state but a partly autonomous authority that considers itself—and is viewed by others, including Israel—the kernel of a future Palestinian state. Israel is occasionally involved in a political and military conflict with this entity and, with even greater intensity, with the inhabitants of this area, where hatred of Israel and support of terror are especially strong. Against this backdrop, Israel's immigration policy should adopt measures that will strike a balance between immigration needs and security considerations.[34]

A developed democracy in a developing region: Israel is the only Western democracy bordered on all sides by Third World countries that are characterized by enormous disparities vis-à-vis Israel in Gross National Product—surpassing, for example, those between the United States and Mexico. Since the economy is an important push-and-pull factor in global migration, it is reasonable to assume that Israel's geographic position—on the continental hinge between Asia and Africa— will make it a preferred destination for large numbers of migrants seeking economic relief and better lives. Compounding this situation is the instability of the governments in some countries in the region and the intention of some of their inhabitants to seek asylum from onerous policies or violent conflict. Against this background, Israel's immigration laws should reflect the need to mitigate mass immigration that

may place heavy burdens on its economy and welfare. Furthermore, Israel is a Western democratic island in a region that does not share those qualities. Thus, its immigration policy should be one that lessens concern about the kind of immigration that would challenge its democratic culture.[35]

A small country: What has been said up to this point is doubly important in the case of Israel because it is a country with a limited territory and a relatively small population that is sensitive to the kind of social changes that immigration creates. It is no coincidence that the countries that are limiting immigration today are nation-states that have relatively small populations— e.g., Austria, Denmark, and the Netherlands—and in which it is possible to discern the implications of demographic changes more easily and rapidly.

Along with all these factors, *Jewish history and the Jewish heritage* should serve as a moral compass in crafting immigration laws. The lesson of the horrors of the Holocaust should influence the formation of a policy that reflects sensitivity and openness—even beyond the obligations that the rules of international law require—toward authentic cases of refugees and asylum seekers. In this matter, we think Israel should be a pioneer leading the way for others. The Jewish heritage also demands a proper attitude toward what the Bible describes as the "sojourner" who dwells among us. Israel is entitled to adopt rigid entry rules and enforce its immigration laws strictly, but its approach toward the migrants in its midst should be based on humane principles. *Israel's immigration laws would then reflect the historical singularity of the Jewish people and its national heritage.*

C. The Situation in Israel and the Pressing Need for Change

The public debate about immigration in Israel is in its infancy.[36] First and foremost, *Israel has no systematic and goal-oriented immigration policy.* The basic assumption was, and remains, that Israel does not need such a policy because it is not an immigration state. This premise prompted the High Court Justice to rule recently that "Israel is perceived in essence as an '*aliyah* state,' i.e., a repatriation state, and not as an immigration state [. . .].

Immigration appeared to be a 'like all other countries' concept that is unsuited to the specific Israeli reality and the Zionist vision."[37] The terminology, too—and, consequently, the way that government ministries collect data—generally speaks of *aliyah* instead of immigration and of *yeridah*—Jewish "descent" from the country—instead of emigration.

This basic premise no longer accords with reality. *First*, like other developed countries, Israel too has become an attractive destination for growing numbers of labor migrants. Especially after the Al-Aqsa Intifada began, Israel allowed and even encouraged labor migrants to enter its territory in order to replace the Palestinian labor force, which for security reasons could no longer be counted on as a stable source of labor. Many of these workers stayed in Israel, some had children, and in many cases their temporary stay became permanent. *Second,* due to its economic situation and geographic location—its southern border straddles the only overland route between Africa and Europe—Israel has become a preferred migration destination for refugees and asylum seekers as well. The number of infiltrators has been climbing and came to around 7,580 in 2008 (averaging close to 600 a month).[38] *Third,* since 1967 and especially after the Oslo accords, Israel has been absorbing a large number of Palestinian family migrants, many of whom have received permanent status in Israel. *Fourth,* even though they are not considered "immigrants," hundreds of thousands of people eligible to enter the country under the Law of Return—who are not Jewish as this term is defined in the Law of Return—have immigrated to Israel from the former Soviet Union. *Fifth,* Israel has taken in thousands of *Falashmura*, even though they are not eligible for *aliyah*.*

Therefore, Israel is contending with a new reality. Admittedly, some of this reality was "forced" on Israel, but another portion originates in a misguided policy or the absence of policy. This makes the formulation of an immigration policy a necessity. *Existing legislation*—the Law of Return, 1950; the Citizenship Law, 1952; and the Entry into Israel Law, 1952, as applied by the Ministry of the Interior and interpreted by the courts—*does not provide a response to the change in circumstances that has occurred.* This

legislation, when enacted, was suitable for a state-in-formation that absorbed *olim* (Jewish immigrants); however, it does not meet the exigencies of the new reality. *The perpetuation of the existing situation is causing legal unclarity and ad hoc decision-making that are damaging the country's interests and leading to systematic violation of human rights and heavy handed mistreatment of aliens.* In the absence of a policy, the courts are forced to resolve difficult cases without there being any guiding principles, while dealing with matters on a case-by-case basis that does not necessarily take coherent and consistent national interests into account. This state of affairs also gives the Minister of the Interior and his subordinates broad powers, of dubious legality, to establish "primary arrangements" with respect to the basic questions of entry, residency, and naturalization, by means of administrative guidelines that are sometimes not fully publicized.[39] The capacity to cope with a reality of massive illegal immigration is also lacking. Such is the case with regard to mechanisms governing relations with migrants' countries of origin, upholding of migrants' rights in Israel, border management, treatment of undocumented entrants, and improving the methods of dealing with those who are not entitled to stay in Israel but cannot return to their countries of origin.

Another aspect of the lack of a systematic immigration policy is *a severe lack of basic data.* For example, we did not find even one official graph that illustrates migration trends by types of migration (family, refugee, labor, etc.), an annual presentation of migrants as a cross-section and proportion of the total population—a basic statistic that every Western country monitors. Also, very little is known about the migrants' identity and the extent of their integration.[40] Do the migrants—especially their Israel-born children—feel Israeli? Are they involved in Israeli culture? Do they have a sense of belonging in holidays and at official events? How many of them speak Hebrew? How many are willing to serve in the Israel Defense Forces? It is hard to know. It is also hard to estimate the extent of the involvement of migrants and their offspring in terrorism, crime, and disturbances of the public order. Furthermore, there is no systematic collection of data on the migrants' contribution to the Israeli economy and the level of welfare

payments that they and their children receive.[41] In these circumstances, moral political decisions are made on the basis of a shaky and deficient infrastructure of data, making it hard to determine clear goals and derive from them a policy that is tailored to the country's needs. The shortage of data also results in significantly different estimates that are put to uses that may be construed as manipulative. The construction of an accessible and reliable database is a necessity of the utmost urgency.

The formulation of an immigration policy also requires a "guiding hand." Today, the treatment of immigration is divided among several authorities: the Population, Migration, and Border Crossings Authority, part of the Ministry of the Interior (established in July 2008 in order to combine the treatment of would-be in-migrants with that of aliens already in the country); the Planning and Research Administration of the Ministry of Industry, Trade, and Labor; the national security staff at the Prime Minister's Office and also, in a certain sense, the Israel Police and other security agencies; the Bank of Israel; and the National Insurance Institute. This state of affairs not only creates lack of coordination and unsuccessful cooperation among the agencies—causing inefficiency that is detrimental to both the migrants and important national interests—but also leads to a narrow and bureaucratic view of things that is fundamentally suspicious and hostile toward immigration. The government entities examine the phenomenon from the narrow standpoint of their respective purviews: the General Security Service (the *shin bet* or the GSS) regards some migrants as a security risk; the Immigration Authority takes an enforcement approach that views migrants as a negative phenomenon and acts mainly to deport them; and the National Insurance Institute considers them a social burden. Consequently, the treatment of immigration "slips between the cracks" and lacks a guiding hand. Especially conspicuous is the absence of an institution tasked with integrating the immigration policies, coordinating their phases, and dealing with migrants' well-being and rights.

The reality of immigration in Israel today is not the product of a robust policy that accommodates political and moral decisions and efficient

mechanisms of implementation. Instead, it is a consequence of the lack of a systematic policy. It is already clear that disregarding the phenomenon of global migration and its domestic manifestations is not an adequate response to the challenges that it poses. Furthermore, it creates difficulties in fulfilling the social and economic potential of migration and coping with the challenges that it presents. Israel needs to internalize the fact that it has become a large-scale immigration country and must set forth a systematic strategy to cope with it, including guiding principles and practical tools. *To devise a comprehensive policy of this nature, Israel will have to tackle four main issues: the scale and purposes of immigration that it wants; the make-up of the immigration; the immigrants' legal status; and the implementation and enforcement of the arrangements chosen.*

D. The Need for Normative and Institutional Arrangements

Israel's current immigration policy is anchored in two principal statutes. The Entry into Israel Law, 1952 controls entry and residence in Israel, how visas and residency permits are granted and reasons for canceling them, and grounds and procedures for deportation. The Citizenship Law, 1952[42] determines how Israeli citizenship is acquired and lost. In addition, there are the Citizenship and Entry to Israel (Temporary Provision) Law, 2003 which controls the issue of entry and residency permits for persons from risk areas and enemy countries, and several statutes dealing with labor migrants, e.g., the Employment Service Law, 1959, which controls permits and quotas for the employment of guest workers, and the Foreign Workers Law, 1991, which criminalizes the unlawful employment of labor migrants and regulates their social benefits.[43] The arrangement for refugees and asylum seekers is embedded in an internal administrative procedure, the Regulation of Treatment of Asylum Seekers in Israel Procedure, signed by the Deputy Attorney General in 2001, in conjunction with the United Nations Convention Relating to the Status of Refugees, which Israel ratified in 1958. In practice, immigration policy is regulated for the most part by

hundreds of internal procedures that the Ministry of the Interior established in regard to entry, exit, and residency permits, passports and *laissez-passer*, border crossings, record-keeping, and enforcement. These administrative procedures create *de facto* "primary arrangements" in central matters relating to entry and status. Accordingly, standards for the treatment of family reunification, labor migrants, and refugees and asylum seekers are regulated, if at all, by administrative guidelines that were not informed by a preceding public debate and were not approved, in terms of either legality or utility and prudence, by the *Knesset* or the government.[44] *Thus, there is an urgent need for a comprehensive and up-to-date immigration law that would clearly set Israel's goals and policies in issuing entry and residency permits, its procedures and standards for treatment, and the considerations guiding its policy. Such legislation should respond to the challenges of reality, relate to Israel's specific conditions and characteristics, and be based on solid data.*

In the area of immigration, states enjoy very broad discretion in tailoring policy to their needs and concerns. The authority to exclude aliens or establish certain conditions for their entry is generally accepted as being embedded in the principle of sovereignty, and is perceived as crucial for the state's self-determination. National security interests, concern for the public order, the protection of liberal institutions, the economy, welfare, and the right to self-determination underlie the far-reaching power of states to adopt the immigration policies that they see fit. *This discretion, however, is not unlimited.* One type of constraint lies in constitutional law. Even though the constitutions of many host countries do not apply outside their sovereign territory and therefore, as a rule, these countries do not extend constitutional protection to non-citizens outside their territory,[45] the constitution may impose constraints on the state itself. A notable example is the case of family migration in which citizens' interests and rights are involved, i.e., where one of the spouses is a citizen. Overall, however, one may say that constitutional law applies few restrictions to individual countries' immigration laws.[46] Another source of constraint is international law. By and large, international law gives states exceedingly broad discretion in establishing

restrictions and conditions for immigration. The classic ruling in the Nottebohm case states that "international law allows each state to determine its immigration and Citizenship Laws at its own discretion." Since then, international law has intervened very sparingly in matters of immigration and citizenship.[47] However, it does entail the protection of refugees (a matter that in some countries is given constitutional protection[48]) and establishes the principle of non-discrimination against "a specific national group."[49] Thus, states have very broad discretion drafting immigration laws. At one extreme are countries that allow hardly any immigration, e.g., Denmark and Japan, and at the other are pro-immigration states such as Australia and Canada. Most democracies are somewhere in the middle, adjusting their policies to their needs and character.[50]

In addition to the normative aspects, the institutional aspect of immigration policy must be addressed. It is recommended that Israel integrate the treatment of immigration, absorption, and integration. Most countries assign the matter to a government ministry dedicated to the task. Integrative and designated treatment may also be tasked to an independent national authority that is established for this purpose. Given the importance and complexity of the subject, it is crucial to establish a government agency that is dedicated solely to dealing with immigration. Such an agency should be assigned various duties, including the formulation of proposals for the shaping of immigration policy and the presentation of such proposals to the government for approval, ongoing oversight and publication of data, efforts in the field of international cooperation, strict attention to the sound integration of enforcement mechanisms, and the like. The existence of this agency would also make it possible to cope more efficiently with the complexity of the matter. Immigration has demographic, security, cultural, social, economic, and enforcement implications that demand systematic treatment. As stated, such treatment is not attained in the current situation of institutional and functional fragmentation of immigration affairs within Israel's governing apparatus. Although an Immigration Authority was recently established at the Ministry of the Interior, its powers are too limited to handle all facets of

the issue and its subordinate relationship with the Ministry of the Interior inherently narrows its perspective and capacities. Today, several administrative committees deal with the investigation of exceptional cases and the making of individualized decisions.[51] These committees—which do not always operate in full format—are not enough. *Israel needs a judicial authority for immigration affairs (or, at the very least, a quasi-judicial and independent authority), enshrined in legislation and specializing in this field.* Furthermore, as we show and propose below, Israel should involve its diplomatic missions abroad in dealing with immigrants and the issues associated with them.

E. The Guiding Principle: "Hard Outside/Soft Inside"

By sketching a simple matrix regarding entry policy versus post-entry immigration policy on one side and a lenient approach versus a restrictive one on the other, we obtain four policy options. The *first* is a lenient entry policy and a lenient immigration policy. This approach makes entry relatively easy and simple and gives migrants, once they have entered, generous treatment in a variety of areas (obtaining rights, acquiring status, etc.). The *second* is a lenient entry policy and a tough immigration policy. This approach, while easygoing about entry, favors a rigid approach afterwards (limiting of rights, difficulty in acquiring status, etc.). Simply put, it favors immigrants but opposes immigration. *Third,* the combination of a tough entry policy and a tough immigration policy allows few people to enter and makes it hard for them to acquire status once there. *Fourth,* the combination of a tough entry policy and a lenient immigration policy allows selectivity in entering the country but treats the immigrants leniently once they have entered. *This is the approach that we think Israel should adopt: strict terms of entry for those who immigrate for the purpose of permanent settlement and painstaking review of applications from immigrants who have this as their goal, coupled with a relatively lenient immigration policy after lawful entry and lengthy stay, including the possibility of acquiring status.*

We propose that Israel adopt a selective entry policy that will serve the full range of its general and specific interests. There is nothing legally wrong about such a policy. As noted, states have broad discretion in determining entry policies. For example, they are free to decide that they have no interest in the entry of any immigrants at all. States do have certain obligations even in regard to entry policy, such as those relating to the entry of refugees and the need to keep citizens' interests in mind when ruling on the entry of family members. Another example is the principle of non-discrimination: The moment states decide to allow entry, they may not discriminate among migrant communities *solely* on the basis of their ethnic and racial origin. However, such is not the case when it comes to policy after entry, when considerations of a different kind come into play. In this context, we favor a humane policy that takes account of the immigrant and not only of national needs and interests. A state's decision to allow entry carries a "price tag" and the state must be prepared to pay for it. This price requires, under certain circumstances, recognition of a path to the acquisition of status and the establishment of a regime of rights and obligations that applies during the interim period. Obviously, if the price renders immigration unprofitable from the state's point of view, entry should be made more difficult. The choice is Israel's to make. We stress that the "Soft Inside" principle should apply to legal immigrants and not to those who enter the state illegally.

In contrast to countries that suffer from the aging of their population on account of low birth rates or that need thousands of working hands or wish to populate desolate parts of the country, Israel has no general need for any external augmentation of its population. This difference, coupled with the considerations specific to Israel that were described above, are the factors that underlie the proposed principle of "Hard Outside/Soft Inside."[52] As we explain below, the principle is not suited to all types of migrants and all circumstances, but it may and should be a guiding principle in Israel's immigration policy.

Against this background, we will now discuss basic principles of an immigration policy for Israel. Our proposal is divided into two. First we present entry-policy principles as they relate to labor migrants, family migrants, and refugees and asylum seekers. Our proposal positions Israel in a "good place in the middle": On the one hand, it does not allow generous entry but on the other hand it does not prescribe an overly rigid entry policy. In the second part, we present principles for an immigration policy relating to residency, naturalization, and enforcement.

Chapter Three

Principles of an Israeli Immigration Policy

A. An Entry Policy for Israel

The situation today: Even if one does not count *aliyah* as "immigration," Israel is one of the world's leading states in absorbing immigration in relation to the size of its population.[53] Among the factors contributing to its performance are its economic situation, geographic location, and issues related to the religious importance of the Land of Israel.[54] Although there are no accurate and comprehensive data on the extent of non-Jewish immigration, several estimates place the number of in-migrants in the past two decades at several hundred thousand (accounting for roughly one-tenth of the population): more than 130,000 family migrants (mostly Palestinians who entered Israel under family-reunification arrangements),[55] 250,000–400,000 labor migrants (more than half of whom stay on in Israel without legal permits),[56] more than 320,000 persons who immigrated from the former Soviet Union under the Law of Return as relatives of Jews but are not themselves considered Jewish according to the definition of the Law of Return,[57] and several thousand refugees and members of the *Falashmura* community. Unlike other countries, Israel received this upsurge of immigrants as the result not of a gradual process but a short and rapid one.

Despite tough legislation that limits the entry of persons who are not eligible for immigration under the Law of Return or their relatives, and despite the "Immigration Police,"[58] immigration is trending upward. The number of labor migrants climbed from roughly 178,000 in 2005 to several hundred thousand in 2008 and, as stated, is currently estimated at

250,000–400,000, more than half of whom are in the country illegally.[59] One way or another, it is obviously a considerable percentage, especially for a small country like Israel. According to the report of a committee tasked with formulating policy on non-Israeli workers (Ministry of Finance, 2007), "The extent of employment of non-Israeli workers has grown over the years and by any criteria exceeds the norm in developed Western countries; [. . .]. The share of foreign workers in total employment is 8.5 percent in Israel as against 6 percent on average in the OECD countries."[60] The extent of immigration looms large in view of the dwindling numbers of *olim* (Jewish immigrants): in 2007, twice as many legal labor migrants entered the country as did *olim*. Overall, the share of non-Jewish immigration in the migration balance is crucial. *Aliyah* has ground to a halt, sinking to the lowest rate since 1983,[61] while one can anticipate an increase in non-Jewish immigration. The potential for *aliyah* is more limited than in the past. Together with the number of Jewish emigrants, this has created a negative Jewish migration balance for Israel.[62]

Entry into Israel by people who are not eligible for *aliyah* is regulated by the Entry into Israel Law. For this purpose, the Minister of the Interior issues residency permits, chiefly a visitor's permit that is valid for three months with the possibility of a two-year extension; a temporary residency permit valid for up to three years and extendable for another two years each time; and a permanent residency permit. A residency permit for a foreign worker under the Foreign Workers Law also requires the consent of the Minister of Industry, Trade, and Labor. The Minister of the Interior may extend a foreign worker's permit for a period that may not exceed five years altogether, with the exception of a long-term caregiver, whose permit may be extended for longer periods if certain conditions are met, or some other worker who makes a particular contribution to Israel.[63] The criteria for the issuance and extension of residency permits are fixed not in law but in administrative guidelines and are subject to the Minister of the Interior's discretion. The law also defines the procedures for entering Israel and the detention and deportation of those staying in the country illegally.

The first thing that an entry policy requires are criteria for the issuance of entry permits. Israel's entry law does not have them. Excluding constraints on entry due to security considerations, Israel has no clear criteria for the entry of immigrants. This lack of criteria reflects the wish to enact entry laws that give the bureaucracy broad discretion without binding the state. In practice, this discretion has been used to exhibit openness to visits and tourism along with an immigration policy that restricts those who wish to settle in the country and are not eligible for *aliyah*. Where Jews are concerned, in contrast, no criteria are invoked, at least officially (with very few exceptions). Dissatisfaction with the existence of different criteria for Jews and non-Jews, in addition to the policy of the High Court of Justice, which demanded the formulation of criteria for immigration, created a reality in which no general entry criteria have been adopted for either group. Often, the discretion in denying entry boils down to checking the personal characteristics of applicants for status or examining the nature of their relationship with a citizen or a resident. Against this background, the European experience may serve as a source of inspiration for the formulation of entry criteria.[64] These conditions would permit Israel to restrict non-turist visas, safeguard migrants' interests in staying in the country and being successfully absorbed there, and respect the international human rights regime.[65] Here are several examples:

• *Economic and social threshold conditions:* Some states require immigrants—or citizens who wish to form families within the country with foreign nationals—to prove that they are capable of staying in the country without burdening the social services. The economic requirements are diverse, including proof of income and evidence of continuous work, an *ab initio* undertaking to pay for one's own health insurance, documentation of appropriate housing and, at times, confirmation of a workplace, and a contractual obligation to assume the burden of spouse-related expenses. Sometimes the posting of a bond against potential future costs or the signing of a statement of non-recourse to public assistance is required.

These requirements are largely functional and dependent on the applicant's age, family size, salary record, and occupation.[66]

- *Security, public order, and connection with the country:* States generally do not admit citizens or residents of enemy states.[67] Persons who have serious records of criminality, involvement in terrorism, or trafficking in drugs or human beings, or who evoke concern that they will damage security or the public order, are also barred.[68] To some extent, there is also a ban on entry, usually time-limited, for persons who violated the terms of immigration in the past. There are also requirements concerning loyalty, such as a compulsory pledge or oath of allegiance.[69]

- *Threshold conditions relating to values and culture:* States require prospective immigrants who wish to settle permanently in the country to demonstrate their intention to integrate into the host society. The assumption is that setting a certain cultural threshold will allow immigrants to integrate with greater facility. The Netherlands, which notably favors this approach, presents a model that requires immigrants to demonstrate some proficiency in the Dutch language and familiarity with the country's social and cultural life. Applicants must take tests on these subjects at Dutch embassies in their countries of origin in order to gain entry. Denmark takes a unique approach toward family migrants: The Danish citizen and his or her spouse must demonstrate that both of them together are more strongly connected to Denmark than to any other country. And there are states like Denmark and France, among others, which require prospective immigrants to sign an "integration contract" before they enter. Immigrants must undertake to make an effort to integrate into the host society. Some countries, such as Germany and Switzerland, also require would-be immigrants to adopt the country's way of life.

- *Quotas:* some countries apply immigration quotas that vary from year to year in accordance with policy considerations and pertain to all immigrants or certain types of immigrants—labor migrants, family members, and even the permanent absorption of asylum seekers. Austria and Australia are examples of countries that maintain immigration quotas. In the

United States, immigration is limited by quotas with the exception of some immediate relatives.

• *Age threshold and injunction against polygamy:* European countries have established a minimum age for marriage immigration: only marriage immigrants above a certain age may apply to immigrate. The minimum is 18 for both spouses in some countries, 21 in the UK and the Netherlands, and 24 in Denmark. Moreover, some countries limit or bracket the age at which children may apply for family immigration. In Denmark, the maximum age established is 15 (and not 18, as is the norm in most countries). In addition, most countries forbid polygamy in order to limit the possibility of duplication by family migrants. The United States also limits the number of occasions on which one may apply for status for a nonresident alien spouse; a third application may be turned down.

These criteria—or some of them—may serve as *conditions for entry,* and the trend in recent years has been toward greater stringency. The *rationale* is plain: once a person has entered, the state is more limited in what it may do and a different human rights regime applies. It is easier to reject an application for entry than to remove an immigrant on account of failure to achieve social integration. Most of the criteria listed above have been approved by the European Union institutions and have recently become law in the directives that set the standards of EU entry policy.[70] By resorting to a framework of general criteria, a country may shape an immigration policy that is tailored to its national interests.

Israel should not, however, adopt the strictest standards, some of which do not correspond to its values. For example, it should not go so far as to require would-be permanent immigrants to learn Hebrew and pass intrusive tests that demand the right answers to value and cultural questions as conditions for entry. However, *it is justified to demand that every prospective immigrant whose goal is permanent settlement recognize, as a condition for entry, "the legitimacy of the State of Israel," undertake not to act against the State of Israel,* and affirm that the violation of these undertakings will result

in sanctions including fines and even deportation.[71] It is neither necessary nor wise to allow people to immigrate if they do not recognize the country and are unwilling to promise not to take action against it. We also propose that *the grounds for denial of entry, enshrined in Section 2 of the Law of Return with respect to* oleh *visas for Jews, be applied also to those entering Israel via mechanisms other than the Law of Return.* Under the terms of this law, entry permits are denied to would-be immigrants who have acted against the Jewish people, are liable to endanger public health or national security, or have a criminal record that may endanger the public welfare.[72] In addition, given Israel's unique security realities, it is justified *to establish rules of entry tailored to the special constraints of a state of war and armed conflict.* With regard to immigration from enemy countries, for example, we believe Israel is entitled to close its doors to immigrants, even to family immigrants.[73]

As we noted, the economy is the fundamental consideration in all matters related to immigration. On the one hand, it is the fundamental incentive for a country's admission of immigrants and, on the other hand, the main reason for the migration of many persons searching for employment and a better life. Immigration policy must reconcile supply and demand intelligently and in a way that will not only optimize the immigrant's contribution to the labor market but also make sure that he or she is integrated into the workforce in a legal, safe, and humane way. Along with the entry of labor migrants, refugees, asylum seekers, and family migrants are apt to be found at the country's gates. In the past, the entry of such immigrants was limited (with the exception of Jews' family members), and regulating their affairs posed no particular problem. However, this is no longer the case. Moreover, the discretion the state enjoys in the case of family migrants and refugees is more limited than it is for migrant workers. Refugees are those people forced by palpable dangers to seek entrance to the country; family migrants are those who have a specific relationship with a citizen or a resident of this state and wish to join him or her. Today, there is a significant spillover between these two categories and conventional immigration procedures. It is not always clear that an

asylum seeker meets the definition of a "refugee" and family migrants do not always base their case on genuine and sufficiently meaningful kinship; it is precisely these considerations, however, that necessitate separate treatment. In other words, Israel's general entry policy has to coordinate *the range of its concerns with the range of categories of immigrants who are entering Israel.* In what follows we will present these concerns insofar as they relate to labor migrants (including temporary ones), family migrants, and refugees and asylum seekers.

1. Labor Migrants

The current state of affairs: Since the 1990s, Israel has been experiencing a massive influx of labor migrants, some brought in deliberately as temporary workers by the government and others entering the country illegally from the start. This phenomenon is part of a global trend. In Israel it has been aggravated by the deterioration in the security situation that led to a protracted closure of the Gaza Strip and the West Bank and, consequently, to a reduction of the Palestinian labor force and an increase in demand for labor in construction and agriculture. The number of guest workers in Israel today ranges from 250,000 to 400,000, more than half of whom are there illegally (often due to the expiration of visas that they had received under an arrangement that tied them to specific employers—an arrangement struck down by the High Court of Justice).[74] Of diverse origins, most come from developing countries that are not liberal democracies, such as Thailand (30 percent), the Philippines (18 percent), the former Soviet Union (15 percent), China (10 percent), Nepal (6 percent), and Romania (5 percent). Some come from the West Bank or Jordan. Most hold jobs in construction, agriculture, or home nursing—the latter being a rapidly developing industry (bringing on an increase in the percentage of women among the labor migrants)—and a minority works in manufacturing. The phenomenon of high skills labor migrants from developed countries is marginal, comprising fewer than 1 percent of the guest workers in Israel in 2007.[75]

Since the main impetus for labor migration is economic, the contribution of this kind of migration to the national economy is immensely important. On this issue, little research has been done in Israel. A committee tasked with formulating policy with regard to non-Israeli workers (Ministry of Finance, 2007) expressed doubt about the economic contribution of labor migrants. According to the committee's findings, the employment of labor migrants in Israel exceeds what is generally accepted in the West. The Israeli economy has developed a genuine dependency on foreign labor: In 2007, roughly 8.5 percent of its total labor force consisted of foreigners. "Their employment," the aforementioned report states, "hurts the employment options and wages of poorly educated Israelis, inhibits the accumulation of new technologies, and encourages economic activities in which [Israel's] economy has no relative advantage […]; however, reliance on non-Israeli workers does serve social and national goals such as aid to those needing long-term care, and the strengthening of agricultural settlement in remote frontier areas."

Some researchers dispute this conclusion.[76] The committee noted, however, that labor migrants are less expensive to employ than Israeli workers in every industry. Labor migrants are willing to put in more hours and generate higher unit output. According to the data of the Bank of Israel, their wages are 40 percent lower, on average, than those of Israeli workers.[77]

Israel's policy with regard to the admission of, and the care for labor migrants is full of holes. *First,* the number of workers is enormous. Certain branches of the economy have become dependent on them. Foremost among them are construction, agriculture, and nursing. The share of foreign labor in Israel's total labor force surpasses the OECD average by 2.5 percentage points. *Second,* the share of those residing in Israel illegally goes beyond all measure. In the United States, about one third of the total immigration is illegal, definitely a high proportion. In Europe, the rate is much lower. In Israel, however, an estimated one half of labor migrants are in the country illegally. *Third,* Israel has hardly any high skills migrants. Fewer than 1 percent are well-educated Westerners. *Fourth,* Israel does not integrate its

immigration policy into a broader strategic picture of government or business wishes and interests in maintaining relations with the migrants' countries of origin. Labor migrants offer a window of opportunity for business and trade with their countries.[78] Within the framework of such relations, Israel might improve the conditions for recruitment of labor and also encourage stronger enforcement of the element of temporariness in the guest workers' terms of service. *Fifth,* together with the absence of high skill immigration ("brain gain"), there is the striking phenomenon of a "brain drain." About 750,000 Israelis live abroad, a rather large share of the population. Some are highly educated academics: Indeed, around 4,600 Israeli faculty members teach at American universities.[79] In Israel, however, unlike other countries, the "brain drain" phenomenon is not perceived as part of the large picture related to immigration policy.

Israel should take several significant measures to control and make the most of labor migration. *First, the illegal migrant population should be downsized considerably.* To attain this goal, we propose four concerted steps. The first consists of border control measures to prevent illegal infiltration. The principal tool that countries use in this context is the construction of physical obstacles equipped with advanced surveillance and monitoring devices. For example, the fence that the United States is building along its border with Mexico and the fences that surround Ceuta and Melilla, the Spanish enclaves in Morocco. *As an essential measure, we propose the construction of a physical obstacle along the Egyptian border, which constitutes a convenient route for infiltration.*[80] It should be borne in mind, however, that the American experience has proved the limited efficacy of a fence as the *only* means of stopping illegal migration.[81] Furthermore, a physical barrier between Israel and its neighbors will not totally stamp out the phenomenon of illegal migrants since, among other things, many of them enter Israel legally. Today, more than 90,000 people are living in Israel on expired tourist visas.[82] The second proposed measure, then, is *sanctions against migrants who stay in the country illegally, and against their Israeli employers*. Since Israel knows where 'its' illegal migrants come from—e.g., Jordan, Mexico, Brazil, Colombia,

and Romania—it could adopt a system that has been proposed in Norway. According to this system, tourists from countries that have demonstrated a "problematic" record (and who, therefore, are liable to stay and work in the country unlawfully) should be asked to place a deposit in a government bank account as part of the visa issuance process (around $8,500 in the Norwegian case); the deposit would be returned as soon as they leave the country and confiscated if the terms of entry visa are violated.[83] Even this, however, is not enough. The European experience proves that sanctions on migrants do not reduce their numbers significantly. An American study showed similarly that the efficacy of sanctions against migrants from Mexico was limited and hardly dented the number of illegal migrants. The toughening of sanctions against *employers* of illegal migrants, however, reduced the number of the latter by 40 percent.[84] A third requisite measure is *international cooperation* between Israel and the workers' countries of origin and countries along its borders. In Europe, various countries have recently begun to cooperate with African and Asian countries to lower the numbers of illegal migrants. It is still too early to determine how effective these measures are, but initial findings point to achievements.[85] Additionally, *sanctions against "go-betweens"* who help labor migrants to infiltrate into the state have been found effective.[86] Cooperation with countries of origin to stamp out the brokerage phenomenon is also crucial. Finally, as a fourth and complementary measure, an immigration policy also entails *stringent enforcement of rules against illegal residency.* This is the underlying *rationale* of a directive that the European Parliament approved in 2008 for a crackdown on illegal immigration to EU countries.[87] The directive gives illegal migrants a brief period of time during which they may leave voluntarily, after which a deportation order is issued. The directive also allows the authorities to keep a person in detention for up to eighteen months in cases where escape is feared.

It is worth emphasizing that a considerable number of the illegal migrants in Israel became such due to a practice that the High Court of Justice has found unconstitutional. We are speaking of workers who entered the

country lawfully and held legal work permits but became illegal because they left the employers to whom they were bound by the arrangement that had previously been in use. The High Court of Justice has decided that this arrangement is unconstitutional, and it should therefore be abolished altogether.[88] Against this background, it is necessary to make sure that *labor migrants who became illegal due to this unconstitutional "bonding" arrangement receive work permits that will enable them to complete what remains of their legal stay in the designated industry but without being tied to a specific employer within it.*

Second, the number of legal labor migrants should be reduced and temporary stays should be encouraged. The share of foreign labor in Israel's total labor force should be limited to a target percentage. *It is advisable to give priority in the assignment of jobs to labor migrants who are already in the country—* and have switched employers—before additional workers are admitted. If this is not done, not only will the population of labor migrants increase but those already in Israel will be harmed.[89] In addition, the entry procedure for workers whose entry has already been approved should be made easier. To accomplish this, Israel's consulates may be involved in the process through interviewing candidates for labor-permits, providing information about employment possibilities in Israel, or offering preparatory workshops on life in Israel.[90] This would also facilitate state-level control of the incoming labor force and its quality and would sever the connection between labor migrants and personnel companies, which has been proved inefficient and sometimes cruel. Moreover, *the exorbitant brokerage fees that middlemen and agents charge workers in their countries of origin should be reduced and even eliminated altogether.* This objective could be furthered by agreements between Israel and countries of origin, supervised by the International Labor Organization. It is advisable to limit entry from countries that do not take part in these agreements. The *temporary* nature of labor migration should be made clear and fewer work permits should be issued in countries whose workers systematically violate the terms of the permits. At the same time, work permits should be more flexible, e.g., related to a given sphere of

activity and not to a particular employer. As noted, this would give labor migrants an interim period in which to seek another job and prevent the "importation" of additional workers. *The work permit should be limited in time,* capped to a period of three (to five) years with the possibility of extension in exceptional cases, and sometimes limited to seasonal employment. "Permanent guest workers" should not be created by repeated extensions of work permits. The appropriate principle is to reduce the number of workers and limit their term of employment but give them leeway to choose their employers. The enforcement of temporariness, even by means of stringent requirements relating to the immigration of labor migrants' families, is part of the permissible effort to apply strict controls over terms of residency.

In addition to downscaling low skills immigration, *high skills immigration to Israel should be encouraged.* The main reason is its contribution to the economy. Quality immigration contributed some $500 billion to the U.S. economy in 1991–2006. In the U.S., 55 percent of doctoral students in engineering and 43 percent of doctoral students in mathematics and computer science are immigrants. First- or second-generation immigrants established Google, Yahoo, eBay, and Sun Microsystems. Some 37 percent of engineers in Silicon Valley are immigrants.[91] In the UK, quality immigration contributed roughly 20 percent of national growth in 2001–2005.[92] Immigrants may also be useful in additional fields, e.g., the arts, music, and sports. They accounted for a sizable share of medal winners in the American delegation to the Beijing Olympics.[93] Various countries—Canada and Australia, for example—are mindful of the economic potential of immigrants and therefore encourage quality immigration by offering economic benefits and rapid acquisition of status. *Israel should set the specific objective of encouraging "preferred workers" and allowing them eventually to acquire permanent status.* As for how to attain this goal, further research is needed. Comparative studies show, for example, that tax benefits do not play an important role in promoting quality immigration but other factors do encourage quality immigration, such as quality of life, work environment, occupational diversity, and prestigious universities that attract young people who remain in the

country to work. An example is the U.S., which absorbs about half of all the quality immigration in the world.[94]

To attain this target, *Israel should issue different types of work visas.* These visas would specify different paths of entry and different policies after entry and would offer a fast and preferred track for quality immigrants such as investors, the well-educated, and individuals who make a significant economic, scientific, athletic, cultural, or humanitarian contribution to the national interest. In the United States, for example, there are five main categories of labor migration: preferred workers; well-educated or professional workers whose entry fulfills a national need, e.g., in the arts, science, or technology; skilled workers who are needed due to a shortage of local workers; special workers such as clerics and representatives of international organizations; and investors who invest at least one million dollars in the country and are expected to create jobs. These categories imply the establishment of different paths of entry.[95] The UK uses similar methods. Its policy on admitting labor migrants is divided into five tiers: highly skilled workers, skilled workers who are needed due to a shortage of local workers; ordinary skilled workers; students; and short-term guest workers.[96] Israel's labor migration corresponds to the third category in the American system and the second tier in the British case. Very few of Israel's labor migrants fit into the other categories.

In its new system, adopted in 2008, the UK catalogues immigrants by a *points system:* each immigrant receives points on the basis of age, income, education, and employment options in Britain. The cataloguing of types of visas by the points method was also recently adopted in Australia and has been standard practice in Canada and New Zealand for years. The number of points accumulated influences the entry policy.[97] The advantage of this method is the *flexibility* that it allows in receiving quality labor migrants in excess of yearly quotas.

To complete the description, we again mention the need to *stem Israel's brain drain,* which is unmatched in the Western world. Around 1,400 Israelis hold senior faculty positions at American universities, the equivalent

of 27 percent of Israel's academic faculty. Halting this outflux is a strategic objective.[98]

Although this chapter is concerned mainly with entry provisions, we note again that these measures, pertaining to the quantity and quality of immigration, should be part of *a policy that also includes the protection of migrants' rights and the prevention of harm to this population group, which is often vulnerable.* It is necessary to make sure that foreign workers' rights, which are advertised in guidelines from the Ministry of Industry, Trade, and Labor (Foreign Workers' Rights Leaflets), are strictly enforced and upheld. In a recent ruling, the National Labor Court extended the protections in the Employment Service Law to foreign workers' rights as well.[99] The entire array of protective labor laws should be interpreted in this spirit.

2. Family Members

The current state of affairs: The exact number of persons entering Israel for family unification—together with those who apply to stay in Israel once a family relationship with a citizen has been established—is unknown. According to various estimates, since the Oslo process began more than 130,000 Palestinians have received status in Israel within the framework of family reunification[100] and several thousand additional non-citizens accomplished this by marrying citizens.[101] As matters stand today, an Israeli citizen must apply for family reunification under Interior Ministry procedures, chief among which is the Treatment of Spouses of Israel Citizens Procedure. Applicants have to satisfy several conditions, including proof of the authenticity of the marriage. Once the application is approved, the spouse begins a phased process for the receipt of permanent status, which takes around four and a half years for citizens' spouses, five years and three months for permanent residents' spouses, and at least seven years for citizens' common law spouses. Today, as a result of a ruling of the High Court of Justice, a spouse unlawfully present in Israel no longer needs to leave the country as a condition for the processing of his or her application.[102] If the non-resident member of the family is lawfully in Israel, he or she may stay until his or

her case is resolved. Under current practice, applications from non-resident family members who are in Israel illegally are also processed.[103]

Theoretically, until the introduction of naturalization under Section 7 of the Citizenship Law was passed in 1996 (and, more emphatically, until the temporary provision in the Citizenship and Entry into Israel Law was passed in 2003), Israel allowed family immigration of non-Jewish aliens on a generous scale and, by and large, without clear entry criteria.[104] The provisions of the law were framework provisions that made no explicit place for criteria of the sort noted above. In the first years, few immigrants of this type reached the country and their integration went well. This situation has changed. *First,* the number of persons applying to immigrate for family reunification purposes increased considerably during a short period of time. *Second,* many applications have been submitted by subjects of enemy states and high risk areas. The combination of the extent of this phenomenon and the composition of the applicants, would have justified the formulation of a comprehensive policy on family immigration in Israel, as many other countries have done. Nonetheless, the passage of the Citizenship and Entry into Israel Law in July 2003, which limited the entry of, and the acquisition of status by, family migrants from the Palestinian Authority areas, was problematic. The problem can be traced not only to the imposition of restrictions on immigrants from the Palestinian Authority areas—a policy that we consider justified in view of the potential security risk that immigrants from this area pose, coming from a region in which and from which an armed confrontation is taking place—but also to the fact that the restrictions were applied to these immigrants *only*, with no principled general framework that establishes criteria for the entry of family immigrants, including a reference to security considerations.[105] After the High Court of Justice (HCJ) handed down a ruling that barely upheld the constitutionality of the statute, the law was amended (and its validity was extended to this date): its applicability was expanded to family members from Syria, Lebanon, Iraq, and Iran, and a humanitarian committee was set up to deal with exceptional cases.[106] At the present writing, the amended law faces an additional constitutional review.

A detailed analysis of the challenges to its constitutionality goes beyond the scope of this position paper. Suffice it to say that we believe that under international law and constitutional principles, an injunction by a sovereign state against the entry of immigrants from areas that are embroiled in armed conflict against, or that have hostile relations with, the destination country (without requiring a case-by-case examination of the risk that each immigrant presents) may be justified.[107]

Different countries have had different kinds of experience with the immigration of family members. In the United States, the entry policy is divided into four categories: marriage, labor, refugee status, and diversity (often determined by a lottery). Within the rubric of family immigration, there are also four categories. The first relates to first-degree kin (spouses, unmarried children under age twenty-one, and parents). Although this category is not subject to a quota, other restrictions apply. To all the other categories, relating to second-degree kin and onward, quotas and additional restrictions apply.[108] This approach eases the entry of first-degree kin but its *rationale* is utilitarian: the authorities believe that communal life of citizens with family members contributes to social stability, economic prosperity, and the retention of economic and human capital.[109] This *rationale* is not generally followed in Europe, where family immigration evokes more fear than hope, and an attempt to limit it has therefore been made.

The dilemma: It is a primary characteristic of family immigration that the immigrants wish to enter the country for the express and *ab initio* purpose of acquiring status and settling for good. Furthermore, this immigration also involves the interests and rights of *citizens*—to whom the state has a higher level of legal and moral obligation—in the entry of family members. Finally, the advancement of family life is a national interest.[110] It is no simple matter to strike the right balance between family life and national interests: Various countries have rejected the argument that the right to family life includes a citizen's *right* to oblige the state to admit an alien family member.[111] In Israel, in contrast, the High Court of Justice ruled by majority that a citizen's constitutional right to a family includes the right to

live with a non-citizen family member in Israel (although this right may be limited by means of accepted criteria and immigration quotas,[112] provided that they are proportional and equal).[113] These considerations may justify the creation of partial exemption for family immigrants from general entry requirements. In this matter, however, the trend in other countries actually points toward the equalization of the conditions of family immigrants with those of others. Therefore, various countries require even family immigrants to meet economic, cultural, and other threshold conditions before naturalization and, sometimes, even before entry. This approach allows states to choose the number and quality of family members without breaching accepted international standards of human rights.

Section 7 of the Citizenship Law allows a citizen's spouse to obtain status and citizenship without meeting the general requirements for naturalization that apply to an adult non-citizen who applies for citizenship. (The terms are set forth in Section 5 of the law: some proficiency in Hebrew, renunciation of former citizenship, eligibility for permanent residency, etc.). For historical and other reasons, Section 7 of the law, as interpreted by the court, is permissive and obliges the state to allow entry and grant status to a spouse unless there is evidence of deceit in the marriage or evidence *at the individual level* that the spouse endangers national security, public order, or the public's health. In our opinion, as stated, *the principles of Section 7 should be re-examined and family immigration should be subordinated to general immigration considerations.* In the next chapter, we argue that some of these conditions should be applied earlier, at the entry stage—especially with regard to marriage immigration, which has the express and deliberate goal of permanent settlement and the acquisition of status.

It would be appropriate to accompany the regulation of family migrants' entry to Israel with renewed attention to additional issues that current law does not address. For example, it is necessary to define the "family" that is eligible for entry after it meets the threshold conditions. Must the spouses be married or does cohabitation suffice? Are children included and, if so, which children—only those of both spouses, or every child of either spouse?

In the case of a married child, may his or her spouse immigrate as well? May the spouses' parents or dependent relatives immigrate? What happens if one of the spouses dies or gets divorced? Different countries have different arrangements.[114] In Israel, some of these issues are covered by case law and arrangements adopted in domestic law, which may—in conjunction with some of the current practices—serve as a basis for the requisite decisions.

3. Refugees and Asylum Seekers

The current state of affairs: Israeli law does not regulate the issue of refugees and asylum seekers. Israel appears to be the only Western democracy that has no legislation pertaining to the entry and absorption policy toward such migrants. The treatment, evaluation, and resolution of requests for asylum are set forth in an internal procedure dating from 2001, the Treatment of Asylum Seekers in Israel Procedure, which is at most an administrative guideline. Israel has also ratified the United Nations Convention Relating to the Status of Refugees, but only recently began to establish the judicial and institutional mechanisms that are needed to carry out its undertakings under the Convention. The lack of a staturory arrangement for refugees and asylum seekers has resulted in legal unclarity, a lax attitude toward Israel's international obligations, and a faulty attitude toward refugees that puts us to shame as a people and as a state.

According to data from the Office of the United Nations High Commissioner for Refugees (UNHCR), at the end of 2007 Israel hosted around 1,200 refugees and 5,762 asylum seekers (whose applications were being reviewed). The Israeli authorities cite higher estimates of the number of asylum seekers who have entered and lower numbers relating to the granting of status, but here again, too, no data have been published. As matters stand today, persons who seek asylum on the grounds that their life or liberty are in danger—on account of race, religion, citizenship, social affiliation, or political outlook—if they return to his homeland, must apply to the United Nations Commission for Refugees in Israel. Israel, which signed the International Convention in 1954 and ratified it in 1958, is required

by international law to consider every application for refugee status on a case-by-case basis even if it seems to rest on shaky foundations.[115] The Commission undertakes an initial classification. If it finds the prospective asylum seeker's application worthy, he is given a temporary residency and work permit in Israel (a B/1 visa) until his case is resolved. The Commission forwards its recommendation for the approval or rejection of the application to an interministerial governmental committee. The committee presents its recommendation to the Minister of the Interior, who reserves the right to determine whether to recognize the applicant as a refugee. If recognition is granted, the refugee receives the status of temporary resident in Israel for one year with the possibility of an extension (an A/5 visa, extended from time to time if the danger of persecution is still found to exist).[116] There is no specific naturalization procedure for refugees or asylum seekers even if they live in Israel legally for decades. Israel also protects persons who are recognized as "humanitarian refugees" even though they do not meet the definitions of the Convention, until the turmoil in their countries of origin (civil war or other humanitarian disaster) blows over. Until large groups of asylum seekers from Sudan and Eritrea began to arrive in 2007, applicants for temporary protection received a temporary residency and work permit. But this has been converted into a limited "quasi-permit" status that resembles the release under restrictive conditions status in the Entry into Israel Law. Today, Sudanese[117] and Eritreans account for 70 percent of asylum seekers in Israel and, as stated, are not given case-by-case treatment in view of the collective temporary protection that they receive due to their country of origin. Asylum seekers whose applications are turned down must leave Israel within thirty days or apply for reconsideration of their case. In practice, many applicants who have been turned down stay in Israel even though they are obliged to leave immediately, either voluntarily or by deportation.[118]

The existing situation[119] suffers from five main failures. *First,* the procedure for the treatment of asylum seekers is anchored in provisional, non-comprehensive measures whose appropriate interpretation lacks clarity. Thus, the procedures are not subject to adequate review, their lawful

application is not supervised, and the advantage of deterring illegitimate asylum seekers from reaching the country is not obtained, since the long-term unclarity of the law is itself apt to be a pull factor. *Second,* in the absence of a systematic procedure for the treatment of asylum seekers at border checkpoints, their entry to Israel is not necessarily legal, with all the implications that follow from this. *Third,* the procedures for the review of an asylum application take thirty-three months on average,[120] a long period of time that harms both the applicants and Israel, which is responsible for them. Since the interministerial committee does not meet regularly, its work is badly in arrears. We should note that in recent years the waves of infiltrators from the south and the Israeli authorities' struggle against the spreading phenomenon of illegal labor migrants have precipitated a dramatic increase in the number of asylum applications in Israel: from 60–100 per month to 40–60 per day.[121] The onerous burden often causes delays in processing applications and prolongation of the proceedings. *Fourth*, the handling of asylum applicants during the interim period until their status is resolved takes place without a governmental guiding hand and with no assurance of proper conditions, in a manner that sometimes constitutes a violation of international law. Part of the process is handled by military and police personnel who lack the training to treat refugees and asylum seekers with the appropriate sensitivity and lack access to mechanisms and arrangements that would allow them to do their jobs. *Fifth,* in the absence of a clear strategy for the treatment of the spreading phenomenon of asylum seekers, Israel has not been taking adequate steps on its own initiative that would allow it to tackle the matter more effectively, such as strict guarding of its borders and coordination with countries of origin and neighboring states, appropriate administrative deployment for the handling of asylum seekers during the interim period, or efforts to conclude agreements for the return of refugees or asylum seekers whose applications have been turned down.

The convention on refugees enjoins a country against deporting refugees and returning them to a country where they will be persecuted on grounds of race, religion, citizenship, affiliation to a particular social group, or

political outlook. This principle, known as *non-refoulement*, has been adopted into Israeli law,[122] and its application has been extended, under the United Nations Convention against Torture (1984), to the return or deportation of a person to a country where he or she may be exposed to torture or cruel, inhuman, and humiliating treatment and punishment.[123] This requirement applies from the time the person reaches the border of the country, which is obliged from then on to review his or her request. Israel does not today contest its obligation in this regard, but there is some disagreement about its legal interpretation, especially with regard to its implementation along the state's borders.[124]

More and more Western countries attempt to limit the possibility of people appearing at their borders unannounced.[125] New Zealand employs officers at foreign airports to prevent improperly documented persons from reaching the country. The UK legislated criminal sanctions against persons who land at its airports without documents (unless they can explain this in some reasonable way) in order to limit this phenomenon, which accounted for 60 percent of asylum seekers on British soil.[126] Austria ruled that asylum seekers who appear at its border without ID shall be requested to address their application to the third country whence they arrived or shall be referred to the Austrian diplomatic mission in that country. Italy uses marine police patrols to prevent boats carrying Libyan asylum seekers from reaching its shores. Australia, where many asylum seekers who lack identifying documents reach the country's northern coast, established in law in 2005 that specific areas in the north of the country (several thousand small islands) lie outside "Australia's migration zone," meaning that people who reach these places unlawfully (mostly by boat) may not apply for residency permits there and may not enjoy the protection of Australian law.[127] These border control measures do not rule out the submission of applications for refugee status on the relevant countries' soil, even after illegal entry. We must make it clear that by presenting these matters we are not recommending the adoption of the same arrangements in Israel; instead, we offer them as examples of the types of difficulties that the question of refugees and asylum seekers presents

and the measures that various countries have taken in this connection. We emphasize again that Israel should examine the characteristics of the challenge that it faces and devise ways to cope with it in a manner that befits its international undertakings and particular circumstances.

Two troubling trends in regard to asylum seekers and refugees have emerged in recent years. *First,* the phenomenon has attained enormous proportions. The number of seekers of political asylum in Europe alone climbed from 440,830 in 2000 to 1,991,270 in 2004.[128] In Israel, too, the number of applicants for refugee status has grown perceptibly: from 106 applications in 1998 to 7,681 in 2008 (Table 3).[129] There are two main reasons for this. The first is a dire global reality that no longer corresponds to the legal reality of the post-World War II definition of a refugee. International law defines the term "refugee" rather narrowly. Most asylum seekers today are not fleeing persecution on grounds of racial, religious, or national discrimination; instead, they are victims of ethnic and national conflicts, famine, and natural disaster. The classic definition of a refugee does not necessarily cover them. The second reason has to do with the abuse of refugee status by non-refugees who seek refugee status as an alternative way of entering a country that would not accept them under its ordinary immigration procedure. Thus, a legal structure that is meant to provide a humane response to a problem of limited scale and circumstances becomes an alternative route that is exploited to vault the hurdles of immigration policy. The question posed by this problem is how the obligation to care for refugees, or for those who pose as such, applies when large groups seek permanent asylum as opposed to temporary shelter from catastrophe. *Second,* due to both the extent of the phenomenon and the difficulty in uncovering the facts pertaining to the asylum seekers' countries of origin, an evidentiary and administrative difficulty has arisen in coping with the growing number of applications and verifying the authenticity of documents in order to identify cases that deserve protection and deal with prospective asylum seekers who lack credible documents.

Table 3: Applications for Refugee and Asylee Status in Israel, by Year and Country of Origin

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
Eritrea	4	13	21	20	8	14	39	7	28	1751	3058	4963
Sudan	12	2		1		3	33	121	278	1829	2139	4418
Ivory Coast	2			3	36	164	60	50	146	745	502	1708
Nigeria	10					9	31	32	282	515	418	1297
Ethiopia	45	22	30	37	37	43	115	42	12	57	454	894
Turkey	3				1	3	30	50	120	157	143	507
Ghana	3					5	4	2	27	192	231	464
Georgia	1						1	2	4	39	238	285
Dem. Rep. Congo	2	10	2	15	29	47	17	8	8	23	66	227
Colombia	1			1	2	2	30	19	21	66	92	234
Liberia	8		3	23	12	14	39	25	42	10	8	184
Guinea						2	8	23	75	22	24	154
Myanmar						18	33	12	14	22	8	107
Philippines	1				1	2	2	1	3	40	27	77
Kenya							2	2	1	51	12	68
Cameroon	1					4	4	2	20	21	6	58
Togo						2	10		8	21	13	54
Sri Lanka							6	4	6	8	8	32
Sierra Leone	2					4	6	3	10	3	2	30
Mali				1			1		13	4	12	31
Other	11	2	5	8	7	20	77	48	86	127	220	611
Total	*106*	*49*	*61*	*108*	*134*	*356*	*548*	*453*	*1204*	*5703*	*7681*	*16403*

Source: UNHCR 2008 (www.unhcr.org).

According to UNHCR data, Israel recognized eleven of the 909 applications that were submitted within its territory in 2005 and six of 1,348 applications in 2006. In 2007, three applications were accepted and 832 were rejected and in 2008 one refugee was recognized from 1,586 applications.[130] These minuscule numbers are due to the strictness of Israel's policy toward refugees and asylum seekers.[131] One should recall, however, that during these years Israel granted temporary protection status to approximately 13,000 asylum seekers, most of whom are still in the country. Furthermore, even though the number of approved applications is infinitesimal by any

measure—especially given Israel's moral obligations in view of the centrality of rescue in the Jewish history and national heritage—Israel is not unique in this respect. Other counties, such as the Netherlands, Japan, and Finland, apply similar policies, although many Western countries, such as the U.S., Norway, Canada, and Sweden, recognize refugees at higher rates.

We propose that Israel predicate its policy on the entry of refugees and asylum seekers on the following principles: *First, at the regulatory level, the main provisions of the United Nations Convention Relating to the Status of Refugees and of the principal practices of democracies*—including the granting of refugee status to persons persecuted on grounds of sexual orientation or gender—*should be incorporated into domestic law.*[132] Israel should act on the basis of the most generous possible interpretation of these statutes and should enshrine in law the procedure for treating asylum applicants in order to establish a clear and uniform foundation. Israel should also *create an additional category of resettlement, within the framework of a small and predetermined quota that the government establishes in accordance with policy considerations. This quota should permit the granting of asylum beyond the obligations established by the Convention Relating to the Status of Refugees* and should also include persons who have fled a country where their lives were in danger stemming from serious humanitarian crises.[133] This way, Israel would join the countries that have reconciled their asylum regimes with the changing situation, such as Austria and Canada (persecution by nongovernmental organizations), New Zealand (danger posed by environmental and climate threats), and Sweden (flight from ecological disaster). Such resettlement quotas are accepted in various countries.[134] In most cases, the quota is small, in the vicinity of several hundred persons. Since it should be a function of population size, it would be several dozen in Israel's case. The countries that invoke these quotas allow the UN agency for the protection of refugees to offer to resettle in their territory persons whom the agency recognizes as refugees and who are subsequently approved by the state on an individual basis. The state may offer to resettle these refugees in national priority areas. In Israel, the setting of an annual

quota of this kind would also be a symbolic action that would express the country's moral obligation.

As for asylum seekers from enemy or hostile countries, Israel currently bases its actions on a norm laid down in Section 6 of the Treatment of Asylum Seekers in Israel Procedure: "Israel reserves the right neither to receive nor to grant a residency permit to citizens of enemy or hostile states—as the competent authorities shall determine from time to time and as long as [said states] retain this status." This procedure, adopted before the precipitous increase in the numbers of asylum seekers from Africa and in any event not applied sweepingly today, seeks to strike a balance among compulsory obligations toward refugees, security needs, and concern about the entry of hostile individuals during times of warfare. However, one doubts whether the procedure, as it is currently phrased, meets Israel's obligations under international law. International law concerning refugees demands *individual* treatment as opposed to *categorical* treatment even during times of emergency and war.[135] Furthermore, even the laws of war establish an exception, among the group of enemy citizens whose entry may be denied categorically, for persons who are victims of ethnic persecution in their countries of origin. Such people may not be treated as enemy aliens solely because they are citizens or residents of an enemy state.[136] This exception evolved in World War II in the context of German Jews, whom some regarded as enemy aliens who should be denied entry.[137] It applies, for example, in the cases of Darfur or the Bahais in Iran. It should be emphasized that the convention on refugees allows states the possibility of coping with the security risk that an individual asylum seeker may pose. Such is implied by Section 33(2) of the Covenant, which entitles Israel to deny refugee status to a person—and even to deport him or her—if it has adequate reason to consider him or her a risk on grounds of security or public order.[138] However, *the review of applications has always to be performed on a case-by-case basis.*

Second, on the political level and in order to mitigate the influx of asylum seekers (and infiltrators) through the southern border, *an effective barrier should be constructed along the Egyptian border,* in cooperation with the

Egyptians insofar as this is possible, coupled with strict enforcement of border procedure at the official checkpoints that shall be determined.[139] Israel should also act to conclude agreements with neighboring countries in order to reduce infiltration across the border. Furthermore, *Israel's embassies and consulates should be involved in the processing of applications.* Prospective asylum seekers should be encouraged to apply to an Israeli diplomatic mission in the third country where they are already located, e.g., the Israeli Embassy in Egypt. Applications presented orderly at these missions should receive priority in processing. At missions in countries where the phenomenon of asylum seekers is widespread (e.g., Egypt), the processing of asylum and immigration applications should be assigned to a specially trained official. Moreover, *Israel should try to reach bilateral international agreements* with third countries to assure the efficient absorption of the refugees in view of the principle of non-repatriation of individuals to countries in which their lives or their liberty are in danger. Israel and Egypt have signed such agreements in the past. The condition for the validity of such accords is the authenticity of the proof that the third country will in fact implement them.[140] Finally, *a list should be prepared, and regularly updated, of "safe" countries that are presumed not to endanger their citizens' lives. Citizens of these countries should not be recognized as refugees and their applications for asylum should be swiftly rejected unless they manage to refute the "safe-country presumption" in their specific case.*

We would like to emphasize that Israel is not obliged to admit refugees and asylum seekers who have a connection with a third country that should reasonably be expected to offer them protection on its soil. Refugees should try to be absorbed by the first country that they reach and have no intrinsic right to choose where they wish to be absorbed. Accordingly, Israel is entitled to turn away asylum seekers as long as it has concluded with neighboring countries (whence the asylum seekers arrived) an agreement that would assure access to asylum application procedures in those countries and the honoring of the principle of the non-repatriation to countries in which their lives or their liberty are in danger. However, Israel must

allow any individual to contest the presumption that he or she has received effective protection in his or her first country of refuge (i.e., that he or she is not exposed to danger in said country). In this context, the Canadian Supreme Court recently rejected a petition against the constitutionality of Canada's "safe third country" accord with the United States, which allows the Canadian authorities to turn away asylum seekers who reach its borders from the U.S.[141]

Third, with respect to the procedure for the treatment of applications, *a special and professional authority—independent and at least a quasi-judicial one—should be established for immigration affairs and also for the processing of requests for asylum.* The decision-making power in this matter should be entrusted to people who have relevant knowledge and training and not to soldiers and police. In the course of the proceeding, it is important to assure the applicant's right to present his or her arguments (including a personal interview) and adhere to a case-by-case procedure that also relates to language constraints. In the UK, every asylum seeker is paired with a "case owner" who stewards him or her through the review procedure from start to finish. Applicants for refugee status should be given access to the proceedings and not be deported as long as the application is pending. Applicants may be required to appear before and report to the authorities on specific dates. Decisions pertaining to their affairs should be handed down in writing. In case of rejection, the reasons for it should be spelled out and the information on which the authorities based themselves should be disclosed (except where security considerations rule this out). Applicants should be allowed to appeal a decision not to recognize them as refugees and should be provided with legal aid. Such appeals may be limited to errors in law or fact and should not be heard by the person or body making the decision which is the subject of the appeal. Such features are accepted today as a basic norm in some Western democracies. Israel should also devote thought in the complex issue of family reunification for persons whom it has recognized as refugees.

The *fourth* point relates to *asylum seekers' rights while their applications are pending: During the proceeding, applicants are entitled to the basic social*

services and freedom of movement that are associated with a limited work permit. Asylum seekers are not criminals and there is no reason to deport or incarcerate them (except in cases where they pose an evident risk). However, the state does have a legitimate interest in preventing such people from "assimilating" into the population in a way that would make it hard to know where they are. *We propose that Israel build special housing complexes near border checkpoints where applicants for refugee status would be housed until their cases are resolved.* While the applicants' *freedom of movement* to and from these compounds should be granted, Israel is entitled to take measures to ascertain the presence of asylum seekers in these compounds The state should establish temporary residency arrangements that meet international standards, including the upholding of human rights, access to health care services for the population at large, and education for minors. Israel is entitled to make the review and processing of applications conditional on full cooperation with the authorities with regard to the proceedings and behavior in accordance with the country's laws. It ought to be emphasized that Israel must give unescorted minors special and supportive treatment, as the current guidelines require.[142]

In practice, as noted, the investigation of asylum applications takes too long, creating a "justice delayed" situation for those who ultimately do qualify for refugee status. The state itself, too, has no interest in dragging out the review of the applications. The principle should be that *requests for asylum are reviewed as quickly and efficiently as possible,* even though it is not clear whether it is practical to set a maximum period for such reviews. It is important to emphasize that the shorter the process is, the less motivated non-refugees will be to apply for recognition as refugees, because they will not be able to benefit from a long interim period that continues until the decisions in their cases are handed down. Furthermore, *the state should act without delay to deport persons whose applications, and sometimes even their appeals, are lawfully rejected.*

In 1979, Prime Minister Menachem Begin gave the order to absorb immediately approximately 100 Vietnamese refugees, stating, "It is a natural

thing for us to grant asylum in our country because such is the humane Jewish tradition." In 1993, it was the turn of refugees from Bosnia to receive asylum in Israel, and in 1999 ethnic Albanians from Kosovo received temporary residency permits and assistance. In 2008, the Government of Israel under Ehud Olmert granted temporary status to 600 refugees from Darfur. This is the spirit that should inform the actions of all governments in Israel. Israel should participate in efforts to accept "real" refugees. For difficult humanitarian cases, entry under a quota mechanism should be considered. A dramatic change in the circumstances and number of asylum applications would also require a rethinking of Israel's policy.

B. Residency in Israel and Acquisition of Status

An immigration policy guided by the "Hard Outside/Soft Inside" principle has several ramifications. First and foremost among them is *the possibility of granting status and naturalization in Israel* by virtue of a lengthy legal stay in the country to immigrants whose residency was not defined *a priori* as temporary unless, due to special circumstances, the initial temporary status should not pose an obstacle to the presentation of an application for status. To allow the possibility of acquiring status, *criteria* for naturalization should be laid down, the immigrants' *basic rights* during the period between entry and naturalization should be regularized, and the possibility of *effecting their integration into Israeli society* should be considered. Apart from family immigrants who join an Israeli citizen or resident and are entitled to apply for status under the phased procedure, immigrants who are not entitled to "make *aliyah*" under the Law of Return have no specific and structured path that has naturalization as its natural and ordinary outcome.[143] The basic premise was and remains that most migrants are supposed to return to their countries of origin. Therefore, the state rarely grants permanent residency or citizenship to migrants who are ineligible to immigrate under the Law of Return or to their relatives, apart from exceptions originating in *raison d'État* or associated with family

immigration. As a rule, too, there are no criteria for a systematic procedure for the granting of status in Israel.

The assumption of temporariness of migration contains within it two main problems. *From an empirical point of view,* other countries' experience shows that not all temporary migrants leave the country even when the express purpose of the policy is to keep migration "temporary." In Europe, immigration policy in the 1960s and 1970s was based on the working assumption that workers are "temporary" and are expected to return to their homeland. This premise proved erroneous and led to difficulties the results of which may be seen in Europe today. In the United States, notwithstanding early expectations, "temporary" workers from Central and South American countries continued to live within its borders. In Israel, too, the government's basic premise seems to rest on shaky foundations: Despite tough entry laws, stringent border inspections, and the activities of the immigration police, the government is finding it difficult to reduce the population of in-migrants, and the percentage of those residing within the country illegally is unprecedented. *From the normative perspective,* Israel sometimes seems to act under the assumption that since labor migrants come by free choice they are not entitled to the protection of the human rights regime. As we recall, however, in contrast to entry policy—a domain in which states retain very broad discretion—the treatment of migrants already in the country is subject to the constitutional human rights regime.

Labor migrants in Israel are entitled today to a temporary work permit for a cumulative period of five years at the most. This limitation is meant to underscore the accepted working assumption of the temporary character of their residency, because the longer their stay in Israel is, the more likely they are to encounter difficulties in leaving and the more predisposed they will be to remain in the country. An exception is the long-term care industry, in which work permits may be extended to additional terms.[144] Discretion in the issuance, extension, and revocation of work permits—and in the set of criteria for these actions—resides with the Minister of the Interior. Applications for status, in turn, are reviewed by an interministerial committee

consisting, among other parties, of representatives of the Ministry of the Interior, the Israel General Security Agency, the Israel Police, the Foreign Ministry, the Ministry of Health, and the Ministry of Labor and Welfare. This distinguishes Israel from countries that allow a clear and defined option, after the passage of a lengthy period of time—and if certain conditions are met—of permanent resident status and, ultimately, citizenship. A similar arrangement applies with regard to refugees and asylum seekers. *Israel, as stated, is entitled to determine and enforce its preferences in temporary labor migration, but once it allows migrants to stay in the country legally and establish Israel as the center of their lives for many years, the connection that they and their children have forged with the country should also be kept in mind.*

In the matter of labor migrants, *a permanent residency track and also, if requisite conditions are met, a naturalization track should be established for workers who are lawfully employed in Israel for ten years.* Workers who are lawfully employed in Israel for such a long time and who wish to settle in the country and raise their families there should not be deported, especially if they would find it difficult to return to their countries of citizenship or if their return would amount to an act of cultural exile. It is proposed that labor migrants who stay in Israel lawfully for ten years be entitled to permanent resident status.[145] In keeping with the practice abroad, it is proposed that Israel establish a faster and simpler track for "preferred" workers such as academicians, professionals, and those who serve a vital national interest.[146] The possibility of the right to status should also be extended to labor migrants' spouses and children in appropriate cases.

Once the new arrangement is adopted, it is proposed that *guest workers' children who were born in Israel and have reached the age of ten be given a permanent residency permit* and, once they attain majority, be allowed to apply for citizenship. The deportation of children who were born and raised in Israel and speak its language to a country foreign to them runs against Israel's basic values and does not accord with its obligation to protect children's rights.[147] Culturally and socially, many of these children are Israeli.[148] Lacking any status, they are people without rights: they have no right to a

driver's license, an ID card, or national health insurance. However, it should be made clear that these children do not bestow rights or special privileges on their parents with respect of their status in Israel. The same principles should be applied, in a suitable way, to children already present in the country. *As for the naturalization of refugees and asylum seekers, they should be treated as labor migrants are,* i.e., a refugee or asylum seeker who has been in Israel lawfully for ten years should be allowed to apply for permanent status.

Along with the creation of the possibility of acquiring status in Israel, in principle, it is necessary to formulate *a policy for the absorption of migrants who are entitled to status into Israeli society.* Israel has no absorption policy for immigrants who are ineligible for *aliya* or for preferred immigrants. This is because Israel's working assumption, as we have noted, is that it does not need to absorb them due to the temporary nature of their stay. It has an absorption policy only with regard to people eligible for *aliyah* who enter Israel under the Law of Return. The procedure for the absorption of *olim* begins in the Diaspora and is put into practice in manifold ways by the Jewish Agency. When they reach Israel, *olim* are entitled to an "absorption basket" (a package of in-kind and in-cash services) and assistance in finding work, arranging housing and education, and in social and psychological aid. Within the framework of an "absorption center," they are also entitled to assistance in Hebrew-language study and familiarizing themselves with Israeli society. These opportunities, which are the main reasons for the usually impressive success of the absorption and integration of those eligible to immigrate under the Law of Return, do not exist, as we have already noted, for immigrants who arrive outside the framework of the Law of Return. However, the integration of immigrants *who have resided in Israel for an extended period* is, first and foremost, a national interest; its purpose is to prevent the formation of communities that amount to cultural enclaves. In this connection, Israel should refrain from repeating Europe's errors with regard to immigrant communities that have different cultures. The aggressive cultural integration policies that European countries are adopting today

are meant largely to correct the effects of the lack of an integration policy in the past, it having been assumed that such a policy was unneeded since the immigrants are "temporary" and expected to return to their homeland.

One of the principal issues in status and naturalization policy concerns the standards that structure the discretion that exists in making this decision. According to Section 5 of the Citizenship Law, naturalization by virtue of stay in Israel is possible if the applicant is an adult; is in Israel when he or she presents the application; has spent at least three of the preceding five years in the country; qualifies for permanent residency; has settled in Israel or intends to do so; has some proficiency in Hebrew; has renounced his or her previous citizenship, and pledges allegiance to the State of Israel.[149] This track, as noted, is not widely applied. Furthermore, the Entry into Israel Law does not lay down conditions for the granting of the essential right to permanent residency.[150] In other words, the decision about naturalization is left to discretion and there are no binding guidelines pertaining to an essential condition for naturalization—a permanent residency permit. However, the conditions set forth in the law are neither severe nor stringent. This arrangement is due to the fact that when these laws were passed, the idea was to maintain as much flexibility as possible, including the ability to facilitate the entry and naturalization of Jews' relatives who were ineligible for *aliyah* under the original Law of Return. In the reality that has come about since then, there is a presumption that if the immigrant meets the conditions in Section 5, the discretion to deny status or naturalization is limited. Against this background, what is needed is a review on the merits, which is responsive to the current reality, of the terms of naturalization set forth in the law.

First, the length of the residency requirement for naturalization—"three of the five years preceding the date of the application," according to Section 5(a)(2) of the Citizenship Law—is too short to establish a real connection between the immigrant and the state. The accepted average in Europe is five years of residence in the state as a condition for naturalization. Some countries require a longer period, e.g., eight years in Germany, seven years

in Denmark, and six years in the UK. *Israel should require a longer stay in the country as a threshold condition for naturalization: Our proposal is "five of the seven years preceding the date of the application."*

Second, it is conspicuous and unusual that Israel, unlike most countries in the world, does not require immigrants to endure its democratic values or accept its legitimacy as a condition for naturalization. States customarily lay down this condition by means of three principal mechanisms. The first is a pledge of allegiance. Israel does require a pledge of allegiance but its phrasing is vague and couched in generalized terms ("I declare that I will be a loyal citizen of the State of Israel."). *It is proposed to rephrase the pledge of allegiance for naturalization candidates so that it will include recognition of the legitimacy of the State of Israel, an undertaking not to act against it, and the renunciation of loyalty to any other political entity.* These requirements are common in other countries.[151] The second mechanism is the passing of a citizenship exam that tests the candidate's basic familiarity with the country in which he or she desires to be naturalized. The usual subjects are diverse: geography and history, culture, national symbols and basic constitutional principles, and the candidate's attitudes toward the country's culture and ways of life.[152] France requires recognition of "principles vital to the Republic"; Germany demands the recognition of "constitutional liberal democracy" and "the German way of life."[153] While Israel should not adopt the stringent wordings of the cultural questionnaires, *compulsory passing of a citizenship test as a condition for naturalization is reasonable and may enhance the new citizen's integration. For this reason, it is advisable to add to Section (5)(a)(5) of the Citizenship Law, which requires "some knowledge of the Hebrew language," the phrase "and the principles of government in Israel."* The third mechanism is an "integration contract" of the sort that has become common in Europe. Such contracts are drawn up between immigrants and the host country, usually at the point of entry, and they spell out the obligations that immigrants must fulfill (and the rights that they possess) as part of the process of acquiring status and, subsequently, naturalization. For example, the immigrant undertakes to learn the state language, refrain from

committing criminal offences (altogether or of certain kinds), respect the nature of the state, and undertake not to act against it or abuse its welfare system. It is a full-fledged contract: If breached, it activates sanctions including fines, non-renewal of a residency permit, and, at times, even deportation. *Israel should consider the adoption of a "thin" version of an "integration contract" as part of the process of status acquisition and naturalization.* These mechanisms, which entail the amendment of Section 5 of the Citizenship Law, should also be applied, in full or in part, to family immigrants under Section 7 of the law.

Third, from the time of entry to Israel to the submission of an application for status, the immigrant must spend a number of years in the country—five of the seven years preceding the application, according to our proposal. For various reasons, Section 5 of the Citizenship Law does not include grounds for the denial of a request for citizenship, such as those listed in Section 2 of the Law of Return as grounds for refusing to issue an *oleh* visa. In other countries, grounds of these sorts are spelled out. Some examples are national security, criminal record, public welfare, the public's health, mental health, violation of the terms of a residency permit or a work permit, and refusal to renounce foreign citizenship. *It is proposed to amend Section 5 of the Citizenship Law so that it will include grounds for refusing an application for naturalization even if the applicant meets the general conditions.* Concurrently, it should be made clear that the applicant does not possess a *right* to the acquisition of status; the Minister of the Interior should retain the discretion to refuse status for special reasons. It is also recommended that the maximum duration of processing of an application for status or naturalization be established by law or regulation; it should not exceed one year from the application date, after the threshold conditions have been met.

It should be established in law that *a person who enters or stays in Israel illegally shall be allowed to apply for status only after a specified period out of the country.*[154] This cooling-off period should be long enough (e.g., three years) to create an adequate and proportional deterrent, irrespective of the

duration of the illegal stay. As the High Court of Justice ruled not long ago, this provision should not apply to immigration for marriage purposes; foreigners who are living in Israel illegally and are married to Israel citizens should not have to leave the country until they demonstrate the authenticity of their marriages in order to begin acquisition-of-status proceedings.[155] However, marriage should not be a reason to dispense with the fulfillment of any conditions that are required in cases of lawful immigration. In cases where the authenticity of the marriage is in doubt, the parties may ask the court for a declarative ruling. Obviously, the alien spouse should not be deported from Israel until the court hands down its decision. We repeat that the legislature enjoys broad discretion in establishing conditions for the acquisition of status and naturalization, flowing from the needs and special characteristics of the country, so long as they are non-discriminatory and proportional.

Summing Up and Looking Ahead

Immigration, with its expanding dimensions and significant inherent challenges, is one of the main topics on the agendas of democracies around the world. In most countries—which willingly or unwillingly have become targets of growing and diverse waves of immigration—a coherent and comprehensive policy has been adopted, lively debates take place in public institutions and civil society, and a noticeable attempt has been made to reconcile legislation with the changing reality. Israel, which has found it difficult thus far to internalize the fact that it has ceased to be exclusively an *aliyah* country and has become one that also attracts large-scale immigration, has yet to take the requisite actions. Its legislative branch has not given thought to the enormous changes that have unfolded in Israel and abroad since the early 1950s, when the Law of Return, the Citizenship Law, and the Entry into Israel Law were passed. Today, Israel has neither a coherent immigration policy nor a policy toward immigrants. In the absence of an ideological, regulatory, and administrative infrastructure, and in the absence of an adequate framework legislation, Israel is unprepared to cope with the political, social, security, and economic challenges that its immigrants bring with them. This position paper proposes a strategy for thought and action to promote the formulation of a lucid immigration policy that would meet Israel's national interests and cope appropriately with the challenge of immigration.

The proposed guiding principle, "Hard Outside/Soft Inside," represents a balance between toughening the terms of entry into Israel and improving the lot of those who have immigrated to the country legally. This principle is intended to strike a balance between Israel's national needs and its legal and moral obligations to migrants who enter its gates and dwell within the country. The strategy presented above is based mainly on universal criteria but also rests on Israel's status as the nation-state of the Jewish people. Israel's unique situation as a "democracy with a mission"

that is in a protracted state of warfare, situated in the heart of a developing area, sensitive to changes originating in immigration (due to its size), and bearing a historical legacy—obligate Israel to aspire to formulate a stringent entry policy and a humane policy toward the immigrants in its midst. Additionally, Israel should rely on a profound understanding of the issues on the table, including economic growth, the management of the social processes of cohesion, the upholding of social justice and human rights, and internal as well as external cooperation. Policymakers must examine four scope issues in the light of which immigration policy must be determined: the scope of immigration that is desired; the make-up and purposes of immigration; the immigrants' status; and the means of enforcing the arrangements.

This strategy for an immigration policy for Israel is presented in light of a given reality. However, one should anticipate possible changes in the basic premises and be ready for them. The need to cope with waves of immigration will become more urgent and pressing in the future. An improvement in Israel's economic situation, trends toward the toughening of entry and naturalization processes in Europe, and demographic pressures in neighboring countries—all of these are likely to increase the numbers of people pounding on Israel's doors. The basic premise of Israel being a democracy at war may also change significantly. If an Israel–Palestinian peace settlement is attained, and *a fortiori* if regional peace comes about, a rethinking will be needed. On the one hand, the element of hostility among the neighboring countries' populations may weaken or even disappear; on the other hand, in a situation of accommodation or peace, one would expect the waves of immigration to grow in intensity, possibly challenging Israel's identity as the nation-state of the Jewish people. Therefore, it will be important to conclude agreements among countries in the region with regard to migration as well. International law relating to immigration and the manner of its enforcement may also change. The corpus of international law that deals with migration—be it in multinational accords or in established custom—

may evolve in tandem with the growth of migration at the regional and global levels.

Time is pressing. The difficult reality of immigration in Israel is the manifest outcome of its lack of a coherent policy and effective enforcement mechanisms. Action should be taken, without delay, to establish a normative and institutional infrastructure based on data—one that, as stated, would be capable of fulfilling the national interest. Once this happens, Israel will be prepared to cope properly with the new reality and will also be able to make the most of the potential inherent in immigration as a global phenomenon that can no longer be ignored

This is the general strategy, but much work remains to be done.[156]

Main Recommendations

Israel is one of the few states in the democratic world that lack a migration policy. The basic premise was, and still is, that Israel has no need for such a policy because it is an "*aliyah* country" and not an immigration country. This basic premise no longer corresponds to reality—and is undesirable from a normative perspective. This position paper proposes a strategy for immigration policy and a policy toward immigrants.

The Guiding Principle—"Hard Outside/Soft Inside"

This principle permits selectivity in entry into a country but treats migrants leniently once they have entered. Its underlying feature is the coupling of stringent terms of entry for settlement purposes and a lenient policy after entry and lawful long-term residency—including the possibility of acquiring status and naturalization.

At the legislative level, it is proposed:
To pass a comprehensive, modern immigration law that responds to the challenges of today's realities and incorporates into internal law, among other things, the United Nations Convention Relating to the Status of Refugees.

At the ideological level, it is proposed:
To base Israel's migration policy on clear goals with regard to the desired extent and make-up of immigration, while bearing in mind the country's special basic characteristics: a "state with a mission," i.e., the state where the Jewish people exercises its right to self-determination; a democratic state, committed to the accepted principles of human-rights regimes; a democracy at war, embroiled in a national conflict from the day it was founded; the only Western democracy whose land boundaries all abut Third World countries, with some of the world's largest

GNP disparities; and a state that is relatively small in territory and population and is sensitive to social changes originating in migration.

At the institutional level, it is proposed:

    To unify the systemic treatment of immigration affairs and place the subject in the hands of a single government ministry or an autonomous national authority that shall be established for this purpose;

    To establish a special judicial authority (or, at the very least, an independent quasi-judicial instance) for immigration affairs, anchored in legislation and professionally competent in its field;

    To involve Israel's diplomatic missions abroad in the treatment of immigrants and the handling of immigration issues.

A. Entry Policy
General remarks:
- *It is proposed* to establish unambiguous criteria for the issuance of entry visas, including, for example, meeting economic and social threshold conditions, minimum age, quotas, and a requirement of some ties to the state.
- *It is proposed* that an immigrant who intends to settle permanently in Israel be required, as a condition for entry, to recognize the legitimacy of the State of Israel and to undertake not to act against it.
- *It is proposed* that Israel apply the grounds for refusal of entry, anchored in Section 2 of the Law of Return in regard to *oleh* visas, to persons who enter Israel by virtue of provisions other than the Law of Return. Accordingly, no entry permit should be issued to a prospective immigrant who has taken action against the Jewish people, who may endanger public health or state security, or who has a criminal background that may pose a menace to public safety.
- *It is proposed* to construct a physical barrier along the Egyptian border, where considerable potential for the infiltration of illegal entrants exists.

• *It is proposed* to establish different kinds of entry visas in accordance with the "points" system conventionally used in the United Kingdom, Australia, Canada, and New Zealand. These permits will create different tracks for admission to Israel, establish a different policy after entry, and offer a rapid and preferential path for "quality" immigrants.

Labor migrants:
• *Proposed* Objective 1: to reduce considerably the number of persons illegally present in the country.
• *Proposed* Objective 2: to reduce the number of legal labor migrants and encourage them to keep their stay temporary.
• *Proposed* Objective 3: to encourage "quality" immigration.
• *Proposed* Objective 4: to mitigate "brain drain."

Refugees and Asylum Seekers
• *It is proposed* to incorporate into municipal Israeli law the main provisions of the Convention Relating to the Status of Refugees and the principles underlying the practices of democratic countries, including the recognition as a refugee of someone who is persecuted on account of sexual orientation or gender.
• *It is proposed* to establish an additional category, within the framework of a limited and predetermined quota, fixed by the government on the basis of policy considerations, that will permit permanent settlement of persons whose lives were threatened by a harsh humanitarian situation.
• *It is proposed* to draw up a list of "safe" countries that are presumed (unless shown otherwise) not to place their citizens in danger.
• *It is proposed* to relate on an individual and not a categorial basis to asylum seekers from enemy or hostile countries.

B. Residency in Israel and Acquisition of Status

- *It is proposed* to create a permanent residency track for workers who are lawfully employed for a period of ten years and also, at a subsequent stage, a naturalization track.

- *It is proposed* to create a faster and simpler track leading to status and citizenship for "preferred" workers and those who serve a vital state interest.

- *It is proposed* to establish criteria for naturalization. In this connection, it is proposed to extend the required term of residency in Israel as a threshold condition for naturalization to "five of the seven years preceding the date of the application"; to rephrase the pledge of allegiance for naturalization candidates in a way that will include recognition of the legitimacy of the State of Israel, an undertaking not to act against it, and renunciation of allegiance to any other political entity; to require applicants to pass a general knowledge test on "government in the State of Israel" as a condition for naturalization; and to establish grounds for the rejection of a naturalization application even if the applicant meets the general conditions (e.g., national security, criminality, public safety, the public's health, mental health, and violation of terms of settlement permit or work permit).

Notes

1. This position paper does not address entry and naturalization under the Law of Return. On that topic, see Gavison, 2009. On Israel's demographic trends, including the Jewish-majority issue, see Rebhun and Malach, 2009.

2. Government Resolution 3805, June 26, 2005.

3. One of ten persons living in "developed regions" is a migrant—as against one in 170 in developing regions. The annual rate of increase in the number of migrants to OECD member states is 9 percent. See Agunias, 2007.

4. Examples are the UK and the Netherlands. See, for instance, Selm, 2005; Johnston, 2008; Wallop, 2009.

5. The proportions of married immigrants in 2001 were 62 percent in Canada, 70 percent in the United States, 53 percent in Denmark, 69 percent in France, 65 percent in Sweden, and 42 percent in Switzerland. See United Nations, 2005. If we factor out asylum seekers and political refugees, family migration accounts for 80-90 percent of the total migration to many destinations.

6. In the U.S. in 2007, it was revealed that married couples had become a minority for the first time in history: only 49.7 percent of households were composed of married couples and only 23.7 percent of households comprised married couples with children.

7. Salient examples are Italy, Germany, Japan, Spain, and Russia. See, for example, Graff, 2004; Samuelson, 2005; Hinsliff and Martin, 2006.

8. Israel has higher rates of marriage and natural increase, and a lower divorce rate, than the United States or Europe. There are various reasons for this, including the fact that Israel is a traditional society with Jewish and non-Jewish religious minorities. Nevertheless, there has been gradual erosion in these parameters in Israel as well. See Dobrin, 2005, New Family 2006.

9. Wikan, 2002; Roy, 2003; Blankley, 2005; Fukuyama, 2006; Laqueur, 2007.

10. Obviously there was a culture and value gap between immigrants and local society in the past, too, but it was much less significant. Nineteenth-century immigrants reached a largely rural society in which women lacked equal rights and religious, technological, and educational disparities were narrower.

11. In Denmark, for example, about 5 percent of Muslims account for roughly 40 percent of welfare recipients. For an extended discussion, see Bawer, 2006.

12. Soysal, 1998; Levitt, 2001.

13. Franck, 1996; Hansen and Weil, 2002.

14. Macedo, 2007.

15. Jenkins, 2006.

16. According to the prognosis of the Bureau of the Census, the U.S. population will increase by 135 million persons over a 42-year period due to a combination of a permissive entrance policy and a higher rate of natural increase among immigrant communities. See Camarota, 2008.

17. Roberts, 2008a.

18. Krikorian, 2008.

19. Hanson, 2004; Huntington, 2004; Fukuyama, 2006.

20. See Weil, 2001; Joppke, 2008. Even in countries in which it is possible to discern a certain liberalization in immigration policy in the light of economic or other interests, one observes contrasting processes resulting in tougher policies on account of the war on terrorism, cultural and democratic fears, or the existence of diasporas that generate a process of ethnic preferences.

21. For a survey, see Rubinstein and Orgad, 2006.

22. For a quantitative index that measures these types of immigrant integration in the United States, see Vigdor, 2008. The index tests various types of integration—social, economic, and cultural—with respect to various immigrant communities (including immigrants' children) and different degrees of integration in the United States in 1900–2006.

23. While the tendency toward terror and crime is not specifically typical of immigrants, various countries' experience shows that certain immigrant communities pose uneven levels of risk.

24. See, among others: Camberg, 2005; Kephart, 2005; Leiken, 2005, 2006; Boukhars, 2007.

25. The connection between migration and terrorism is explained at length in the findings of the congressional investigative committee on the events of September 11, 2001. The committee stated that immigration policy should be considered a significant part of the war on terrorism and that the U.S. immigration authority (the Immigration and Naturalization Service) played a considerable role in the failure to prevent the terror attacks on the United States. The committee also noted

that the entrance of a terrorist into a country is in itself a weapon, since entrance visas are no less important to terror organizations than weapons. They allow freedom of movement, the ability to provide information, and participation in terrorist acts with less probability of being caught.

26. Butcher and Piehl, 2005; Moehling and Piehl, 2007; Rumbaut and Ewing, 2007.

27. For a survey, see Chang, 2007.

28. Chapple et al., 1994; Borjas, 1999; Simon, 1999; Riley, 2008.

29. This is a central argument in Borjas (1999). In contrast, some have claimed that, under certain circumstances and from a purely economic standpoint, illegal immigration is more "cost effective" than legal immigration. See Hanson, 2007.

30. The U.S. entitles immigrants to welfare benefits such as Social Security, Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI). There is no proof that these facts cause unemployment. For a review of the literature, see Riley, 2008.

31. Jacobson and Rubinstein, 2003.

32. Gavison, 2009.

33. On the legitimacy of the aspiration to maintain a Jewish majority in Israel in order to continue to assure the fulfillment of the Jewish people's right to self-determination there, see, for example, Gans, 2006; Gavison, 2009. Israeli law also recognizes the wish to preserve a Jewish majority as a worthy goal; see High Court of Justice, 11280/02, *Central Election Committee for the Sixteenth Knesset* v. *MK Tibi, Ruling 57(4) 1, 101;* Election Appeal 2/88, *Ben-Shalom* v. *Central Election Committee for the Twelfth Knesset,* Ruling 43(4), 221, 248; High Court of Justice 6427/02, *Movement for Quality Government in Israel* v. *The Knesset,* Supreme Court Cases 2006(2), 1559, in ruling of Justice Cheshin.

34. Once a comprehensive and stable regional peace is reached, there will of course be room to rediscuss this basic premise and its implications.

35. Raz, 1994; Bader, 2007; Mautner, 2008.

36. Initial proposals for Israel's immigration policy have been put forward by human rights organizations and the immigration committee chaired by Prof. Amnon Rubinstein, appointed by Minister of the Interior Ophir Paz-Pines. See Center for Jewish Pluralism, 2007; Ministry of the Interior, 2006.

37. Administrative Appeal 1644/05, *Frieda* v. *Ministry of the Interior,* Supreme Court Cases 2005(2), 4269.

38. Ilan, 2009a.

* *Falashmura* are Ethiopian Jews who had converted to Christianity and are therefore not eligible for repatriation under Israel's Law of Return. They are granted entry as a form of family unification.

39. The Population Administration guidelines were made public following Judge Yehudit Tsur's ruling on Administrative Petition 530/07, *Association for Civil Rights in Israel* v. *Ministry of the Interior* (as-yet unpublished, Dec. 5, 2007). Despite the ruling, the guidelines handed down by senior officials and the Legal Bureau have not yet been disclosed to the public. See Feller, 2005.

40. Quite a few studies have examined the social integration of Israel's *oleh* communities, e.g., those from Ethiopia and the former Soviet countries. However, we have not found studies of the integration and identity of non-Jewish immigrant communities that entered Israel outside the framework of the Law of Return.

41. For a range of estimates, see Goldschmidt, 2006. We remind the reader that additional data in this position paper are merely estimates, some of which are controversial.

42. As noted, we are not concerned in this position paper with the immigration of Jews and others eligible to enter Israel under the Law of Return, even though these migration movements figure importantly in immigration to Israel. This is because immigration under the Law of Return takes place in a manner largely different from the immigration discussed here. On immigration under the Law of Return, see Gavison, 2009.

43. To this legislation one should add the 2001 amendment to the Entry into Israel Law that establishes procedures for the detention and deportation of illegal aliens; the Employment of Workers by Labor Contractors Law, 5756-1996, which controls personnel companies' activities; and pertinent international treaties.

44. Recently, some procedures of the Population, Immigration, and Border Crossings Authority have been posted at the Ministry of the Interior web site: http://www.moin.gov.il.

45. For a comparative survey of the constitutional aspects, see Orgad, 2009b.

46. Neuman, 1996.

47. See 1955 ruling in this matter: *Liechtenstein* v. *Guatemala* 1955, I.C.J. 4.

48. Section 27(2) of the Bulgarian constitution, Section 33 in the Croatian constitution, Section 65 of the Hungarian constitution, Section 16(2) of the German Constitution (Basic Law), Section 10(3) of the Italian constitution, Section 56 of the Polish constitution, Section 48 of the Slovenian constitution, and Section 53 of the Slovakian constitution.

49. This principle is set forth in Section 1(3) of the Treaty on the Elimination of All Forms of Racial Discrimination. In the academic literature, some argue that

the immigration policies of states should also bear in mind considerations of global distributive justice and that such justice entails open borders or the recognition of a "human right to migrate" in some form. This discourse has not ripened to the point of obtaining any kind of international recognition and we shall not address it in this position paper.

50. See Gavison (forthcoming).

51. In June 2008, the Ministry of the Interior decided to appoint an "aliens ombudsman" who would serve as "a provisional administrative authority for objections until the establishment under law of a tribunal for aliens." For the time being, this appeals committee wields rather limited powers and does not provide access to refugees or labor migrants who lack spousal relations with an Israel citizen, among others.

52. The expression "hard outside/soft inside" is borrowed from Bosniak, 2007.

53. United Nations, 2006.

54. Quite surprisingly, 22.4 percent of immigrants to Israel from Latin America and 30 percent of those from Africa cited religious reasons—originating in the idea of pilgrimage—and not economic reasons as the main impetus for their decision to seek work in Israel of all places. See Reichman, 2008/9.

55. With regard to family migrants, see High Court of Justice 7052/03, *Adalah Legal Center for Arab Minority Rights* v. *Minister of the Interior, Pad'or* 28(05) 696 (2006) (henceforth: Adalah Affair), at Para. 16 of Justice Procaccia's ruling: "Since 1994, some 130,000 residents of the area have received some kind of status in the State of Israel." This figure is disputed; there are various estimates. One may also argue that the figure is at least partly explained by natural increase and not by migration balance.

56. See Tsror, 2009. Human rights and immigration rights organizations cite the lower number in the range; Israeli authorities cite much higher numbers, at the top of the range.

57. We note once again that these people—who have settled in Israel under the Law of Return even though they are not Jewish—are not defined as "immigrants"; however, they should be taken into account for the purpose of absorption and integration policies, since some issues of concern in this position paper pertain to them as well.

58. In early 2009, the Immigration Police began to operate as an enforcement unit of the Interior Ministry's Immigration Authority.

59. See Sinai, 2008a. Again, these figures are not confirmed and there is a range of estimates.

60. See Besok, 2008. The Organization for Economic Co-operation and Development (OECD) was established by treaty in 1961 and comprises thirty of the world's most developed countries, all of which are committed to democracy and a market economy.

61. In fact, relative to the population of the country, the extent of *aliyah* today is even smaller than in the 1980s. Then, on average, there were 3.8 *olim* arrivals per thousand residents. Today, fewer than three per thousand are arriving. At the peak period, in the 1990s, the ratio was 17:1000.

62. See Central Bureau of Statistics, 2007. See also Rebhun and Malach, 2009.

63. Sections 3a (a) and (b) and also (1c), respectively, of the Entry into Israel Law.

64. The survey that follows in reference to the criteria in Europe is based on Rubinstein and Orgad, 2006, pp. 246-352.

65. Again we note the lack of clear distinction in the discussion between "immigrants" (who are sometimes persons who seek a open-ended or permanent stay in the country) and "entrants," which may include a very large number of tourists and visitors. Obviously, there is no reason to equate the terms of entry for the former with those for the latter. However, the fact that at times those who enter for visitation purposes stay on illegally also justifies a constraint on the terms of entry of those who do not express their intention to extend their stay in the country beyond a brief visit.

66. These conditions pertain to applicants for residency or being united with a citizen or a resident. Those who state that they are entering for visitation purposes may be asked, prior to the issuance of a visitation visa, to show a return plane ticket or a statement from their employer that the entrant works there and will continue to do so.

67. On the policy of entering Israel at times of emergency, see Orgad, 2009a.

68. Various countries deny entry on an individual basis. U.S. immigration law, for example, prohibits the entry of a person who has been involved in terrorism, belongs to a terror organization, has received training within the framework or on behalf of a terror organization, supports terror activity or a terror organization, etc. See Immigration and Nationality Act at Section 212(a)(3). Countries also apply collective generalizations. For example, the U.S. Immigration and Nationality Act states: "An alien who is an officer, official, representative, or spokesman of the Palestinian [*sic*] Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity. See INA(IX) at Section 212(a)(3)(b)(i).

69. The pledge of allegiance requirement usually pertains to the naturalization proceeding and not that of entry. However, in some types of case the *rationale* for

applying it also pertains to entry. After all, a person who enters Israel for the purpose of marriage or family unification intends to be naturalized and not to stay for a limited period. After only six months, such a person embarks on the "graduated procedure" that continues for a period of four to five years and ends with naturalization, provided that all conditions are met.

70. See European Directive EC/2004/38, 2004, concerning the entitlement of EU citizens and family members to migrate to, and dwell freely in, any part of the European Union.

71. Israel, unlike other countries, does not require immigrants to attend integration courses and sign integration contracts before they enter. Since we do not recommend the adoption of contractual mechanisms such as these, an affirmation in this spirit from those applying to enter the country for purposes of settlement is clearly required.

72. In addition to the documents required for the issuance of a visa, Israel may require a personal interview at its embassy or consulate in the applicant's country of origin. Naturally, immigration is not permitted from countries in which Israel has no diplomatic mission. In special cases, an applicant may be allowed to prove, at the Israel embassy of a neighboring country, that he or she poses no security or other risk. Even then, however, the extent of Israel's ability to verify the data (statement of clean record, etc.) is severely limited.

73. See Orgad, 2009a. However, Israel should allow its citizens to relocate to an enemy country with their spouses. Today, the spouse is not allowed to enter Israel and the citizen is not allowed to emigrate to the enemy country. The only remaining option for the couple is to move to a third country, which is not required to allow them to enter.

74. According to Immigration Authority data, the number of illegal aliens came close to 280,000 by late 2008, including 47,000 Jordanians, more than 20,000 infiltrators who entered via the southern border, and 700 Lebanese who stayed in Israel after the withdrawal from Lebanon and are not members of the Southern Lebanese Army. See Ilan, 2009b.

75. See Central Bureau of Statistics, 2008. The data relate to workers who received work permits in 2007. The data for 1995–2005 are not much different: The guest workers' countries of origin were Thailand (28 percent), the Philippines (26 percent), Romania and China (11 percent each), and so on. Furthermore, a similar number of illegal aliens entered Israel largely on tourist visas. Here the distribution of origins is a little different: former Soviet Union (30 percent), Jordan (10 percent), Mexico (7 percent), Brazil and Colombia (5 percent each), Romania and Turkey (4 percent each), etc.

76. The conclusions expressed in the report of the Eckstein Committee, tasked with formulating a policy on non-Israeli workers, is somewhat exceptional

in comparison to reports studying the effects of migration on the economy in other countries, and there is room for further research on the relationship between immigration policy and the Israeli economy. Kemp and Reichman state, on the contrary, that labor migrants in Israel make an important economic contribution. See Kemp and Reichman, 2003.

77. Ibid., 12.

78. See the British policy document on coping with global migration: British Home Office and Foreign and Commonwealth Office, 2007.

79. Ben-David, 2008. (23% of faculty in Israel!).

80. In 2008 alone, 7,580 infiltrators entered Israel via the southern border—600 on monthly average. See Ilan, 2009a.

81. Cornelius et al., 2008.

82. Central Bureau of Statistics, 2008.

83. WorkPermit 2005.

84. Colussi, 2003.

85. Bertozzi, 2008.

86. These "brokers" play an important role in advising infiltrators and instructing them on when and how to cross the border. The more successful they are, the higher the commission they charge, the longer the infiltrator must stay in Israel to pay back the commission, and the smaller the likelihood of the infiltrator's returning to his country of origin.

87. See Directive EC/2008/115 of the European Parliament and of the Council, Dec. 16, 2008, on common standards and procedures in Member States for returning third-country nationals who have stayed on illegally.

88. HCJ 4542/02, *Kav la-ʿOved* v. *Government of Israel* (as-yet unpublished, March 30, 2006), Berman, 2007.

89. Some countries (Belgium, Germany, the Netherlands, and France) also require proof that it is impossible to find a local worker in the requested field of employment. Other countries insist that employers prove to the authorities that they had tried to find a local worker and had failed and that they cannot train a local worker for the required purpose (Bulgaria) or even that they advertised in a local newspaper for some time in search of a worker before issuing a foreign-worker permit (Estonia).

90. Cf. Principles for the Employment of Labor Migrants in Israel, July 2006, published by several human rights organizations that deal with the issue.

91. Riley, 2008, pp. 63-64.

92. See report on UK immigration policy concerning the contribution of "quality" migrants to the British economy, in Nathan, 2008.

93. Navarrette, 2008.

94. Bartlett, 2007.

95. Aleinikoff et al., 2003, pp. 280–282.

96. See the policy document on coping with global migration: British Home Office and Foreign and Commonwealth Office, 2007.

97. Glass, 2004.

98. Recommendations in this matter lie outside the purview of this position paper but, as noted, the matter should be part of Israel's immigration policy.

99. Appeal 54/09, *Shilat Nursing Personnel, Ltd.,* et al., v. *State of Israel—Ministry of Industry, Trade, and Labor* et al. (as yet unpublished).

100. Adalah Affair (n. 55 *supra*) in Justice Procaccia's ruling.

101. See the Central Bureau of Statistics announcement, 2005. The headline of the announcement states, "7,089 Israelis Married Abroad in 2002." Of them, 2,197 married non-Israelis.

102. HCJ 3648/97, *Stamka* v. *Minister of Interior,* Ruling 53(2) 728 (hereinafter: Stamka affair). In Appeal 4614/05, *State of Israel* v. *Oren* (ruling on March 16, 2006), the applicability of the rule was extended to common law spouses.

103. A bill obliging all illegal migrants who seek naturalization to leave the country for a cooling-off period of up to five years as a condition for receiving status is pending in the *Knesset*. See also Ilan, 2006.

104. The procedures that allow family migration for non-citizen spouses of Israeli citizens were spelled out at length in the Stamka affair (n. 102 above). In principle, they applied to all family migrants who wished to immigrate to Israel via mechanisms other than the Law of Return, 5710-1950.

105. Zilbershats, 2006, pp. 106–110.

106. Citizenship and Entry into Israel Law (Temporary Provision), 5767-2007, *Sefer huqim* 2092, 295. See also Ilan and Yoaz, 2007.

107. See Orgad, 2009a, and Rubinstein and Orgad, 2006. For an opposing view, see Medina and Saban, 2009. As a rule, courts all over the world are loath to meddle with the legislator's discretion when it comes to immigration, which they recognize as being by its very nature a matter of national security and territorial sovereignty. In the U.S., for example, the Plenary Power Doctrine, a creation of the judicial branch, has been practiced in immigration policy for years. The doctrine is based on the determination that the U.S., as a sovereign country, is entitled and

empowered to prohibit immigration for any reason and in any manner whatsoever, and that the courts should not intervene—by imposing constitutional restrictions—in the application of this power. The court regularly notes that Congress has more comprehensive power to legislate on the entry of aliens than on any other matter imaginable. See, for example, *Fiallo* v. *Bell*, 450 U.S. 787, 792 (1997).

108. Aleinikoff et al., 2003.

109. Abrams, 2007.

110. The right to a family life is a fundamental right; some of its aspects enjoy constitutional protection in some countries. Certain aspects of the right to family life, for example, are anchored in Section 14 of the Swiss constitution, Section 41 of the Irish constitution, Section 2 of the Swedish constitution, and Section 6 of the German Basic Law. In the U.S., certain aspects of this right have been recognized as constitutional, as part of the right to freedom and privacy. These protections, however, have not been recognized as conferring on a citizen the constitutional right to bring in an alien family member.

111. Orgad, 2009a; Rubinstein and Orgad, 2006.

112. Adalah Affair (n. 55 *supra*), at Para. 100 of Chief Justice Barak's ruling: "Indeed, I accept that every state, including the State of Israel, may determine for itself an immigration policy. Within this framework, it is entitled to restrict the entry of foreigners (i.e., persons who are not citizens or immigrants under the Law of Return) into its territory. The state is not obliged to allow foreigners to enter it, to settle in it and to become citizens of it. The key to entering the state is held by the state. Foreigners have no right to open the door. This is the case with regard to foreigners who have no connection with Israeli citizens. This is the case with regard to foreigners who are married to Israeli citizens and to their children. All of them need to act in accordance with the Citizenship Law, 1952, and in accordance with the Entry into Israel Law, 1952. According to these laws, the foreign spouse has no right to enter Israel, to settle in it or to become a citizen of it, other than by virtue of ordinary legislation. This immigration legislation can restrict entry into Israel, determine general quotas and impose other restrictions that are recognized in civilized countries."

113. In Adalah Affair (n. 55 *supra*), the High Court of Justice did not rule out the use of across-the-board prohibitions in immigration policy. The majority opinion held that an across-the-board prohibition was preferable to case-by-case review and not constitutionally faulty *per se*. The justices who ruled against the law relied on the argument that the additional increment of security attained by switching from case-by-case review to an across-the-board prohibition, in the case at hand, did not warrant the collateral damage caused by the infringement of the right to family life and equality.

114. Apap and Sitaropoulos, 2001; John, 2004.

115. Palestinian asylum seekers who enjoy the protection of UNRWA are not treated within the framework of the Convention, according to Section D1. For discussion of the unique arrangement that applies to Palestinian refugees, see Kagan and Ben-Dor, 2008.

116. Unless a change occurs in the circumstances under which refugee status was given, a two-year extension is awarded a year later, followed by a three-year extension. This procedure, which may encourage long-term settlement, also deserves attention. In this context, it is noteworthy that repeat reviews may injure the refugee's sense of security and stability and should be held to a minimum.

117. Some 1,300 Sudanese reached Israel in 2006, 5,500 in 2007, and at least 5,000 in 2008. See Kellner, 2009.

118. This is a serious problem in many countries. In the UK, nine of ten persons whose status applications are turned down remain in the country. See Hickley, 2009.

119. In a gradual process that began in March 2008, Israel undertook to deal with the initial phase of identifying and registering asylum seekers from Sudan and Eritrea. About a year later, Israel—with assistance from international agencies and under the leadership of the UN High Commission for Refugees—began to train an independent team that the Ministry of the Interior hired for the interrogation of asylum seekers and the handing down of case-by-case recommendations with regard to them. Once the training is completed, this procedure will no longer be carried out by the UNHCR but by the state, as is the custom in every other Western nation. Israel will thus take over the treatment of asylum seekers from the time they register until the minister renders a decision in their case.

120. See Report of the State Comptroller 58b. The abbreviated proceeding takes six months on average.

121. So stated in the UNHCR annual report on Israel. See UNHCR, 2007.

122. HCJ 5190/94, *Salah Tai* v. *Minister of the Interior,* Ruling 49(3) 843: "The authorities are derelict in their duty if they deport a person to a state where his liberty or life are not at risk without ascertaining that that state will not deport him to a state where his life or liberty will be at risk."

123. This obligation flows from Section 3 of the United Nations Convention against Torture, which Israel ratified in 1991. This principle may lead to situations in which a state has to absorb individuals who do not fit the definition of a refugee and who come—directly or *via* a transit state—from a state that may treat them in a prohibited manner, including cases in which they belong to an enemy state.

124. At the present writing, this question is pending before the High Court of Justice with regard to a practice that has been termed the "hot return procedure" or the "immediate coordinated return procedure." The question at issue is whether

the guarantees that Israel says exist and the procedure that it established to determine the status of persons who cross into its territory assure the upholding of the *non-refoulement* principle. Another question is discussed in this appeal: Is Israel permitted to return asylum seekers to Egypt without having in its hand sufficient guarantees of their safety in the country or a formal contractual agreement that anchors such guarantees? See HCJ 7302/07, Center for Assistance to Foreign Workers vs. Minister of Defense (still undecided).

125. See http://www.migrationinformation.org. See also Clayton, 2006, and Geddes, 2008.

126. The House of Lords ruling in *R.* v. *Asfaw* clarified that the incidence of the exemption is broad due to the underlying humanitarian goal of the convention on refugees, which prohibits sanctions against asylum seekers who identify themselves to the authorities even if they arrive without legal documentation.

127. See the Parliament's explanation: "Excisions from the Migration Zone: Policy and Practice," http://www.aph.gov.au/library/Pubs/RN/2003-04/04rn42.htm.

128. In recent years, the number of applications for refugee status has been trending downward in some European countries. The reasons for this decline include the toughening of the terms of refugeeship in these countries—something that we do not necessarily urge Israel to adopt—and a decrease in the number of applications presented pursuant to violent conflicts from the 1990s, such as those in Yugoslavia and Rwanda.

129. In the late 1990s, Israel had not yet installed an asylum system and many asylum seekers may have been in the country without having been documented as such at all. According to UNHCR data, there were some 1,200 refugees and temporary protectees and 5,762 asylum seekers (whose applications were being reviewed) in Israel at the end of 2007. At the present writing (early 2009), the number of applications presented in Israel has been declining.

130. See Tal, 2007. Additional data were provided by Ms Sharon Harel of the UN Commission for Refugees in Israel. It should be noted that the Israeli data do not correspond to the UN data and the latter also sometimes contain contradictions. It should be recalled that most asylum seekers are not examined individually because they belong to the group that enjoys temporary protection; accordingly, the share of recognized refugees in total asylum seekers in Israel may in fact be larger than stated.

131. The pace of treatment of applications also seems to affect this figure.

132. For a survey of the main provisions of the covenant and the practices of individual states, see publications of the Refugee Rights Forum, 2008: "Arrest of Asylum Seekers and Refugees"; "Principles for the Protection of Asylum Seekers

and Refugees"; and "The Principle of the Injunction against Deportation." See also Ben-Dor and Adut, 2003, and the pamphlet on recognition of refugees that the UN annexed to the Convention, as well as documents related thereto.

133. Seekers of asylum on grounds of famine, natural disaster, or grave health situation may be included in such a quota.

134. Alternatively, the quotas may be applied to protracted stay and not to permanent settlement (but remain differentiated from the granting of temporary asylum, in which no obligation to allow settlement exists).

135. Section 3 of the Convention on Refugees prohibits discrimination on grounds of country of origin. Section 9 allows a state to take exceptional and necessary measures to maintain its security in exceptional situations notwithstanding the provisions of the Convention. Even these measures, however, must relate to the individual asylum seeker and not to a category-based group.

136. Section 44 of the Fourth Geneva Convention states, "In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government."

137. Ben-Dor and Kagan, 2006.

138. According to Section 32(1) of the covenant, a state may also deport an asylum seeker under circumstances of danger to public safety if he or she has been convicted of an especially heinous crime by a final verdict in some other country.

139. The Israeli authorities need to internalize the distinction between infiltrators and asylum seekers. Although Israel is entitled to take action to prevent uncontrolled entry, including the construction of effective barriers along its borders, it must ensure that its legitimate border control measures not lead to a situation that thwarts the entry of persons eligible for asylum. On turning the Israel–Egypt border into an immigration border instead of a "security" border, see Anteby-Yemini, 2008.

140. A refugee may not be sent back to a third country if there is suspicion that this will endanger his or her life or liberty in the third country itself or that the third country will return the person to his or her own country, where said danger exists. Agreements with third countries should include explicit recognition of this rule.

141. See *Canadian Council for Refugees* et al. v. *Her Majesty the Queen* at Canadian Supreme Court Web site, http://scc.lexum.umontreal.ca/en/bulletin/2009/09-02-06.bul/09-02-06.bul/html .

142. Israel's internal procedure concerning the treatment of unescorted minors was formulated pursuant to a petition by human rights organizations; its enforcement with emphasis on the minor's best interests must be confirmed.

143. People eligible for aliyah under the Law of Return qualify for automatic naturalization under Section 2 of the Citizenship Law.

144. Section 3a(2) of the Entry into Israel Law.

145. On the granting of status and citizenship to a person who has resided in Israel for many years, see Zilbershats, 2003.

146. Carrera, 2007.

147. According to a government resolution on civil status for labor migrants' children, adopted on June 26, 2005, such children are entitled to permanent resident status if they fulfill several cumulative conditions: born in Israel, at least ten years of age, parents having entered Israel lawfully before child is born, attended or graduated from an Israeli school, some proficiency in Hebrew, and circumstances in which deportation would mean exile to a country that is culturally foreign to the child. This resolution was a one-time affair. Government Resolution 156, May 18, 2006, eased the criteria, now requiring at least six years of uninterrupted presence in the country, provided that the child entered Israel before reaching fourteen years of age. In June 2007, about a year after Resolution 156 was adopted, the Minister of the Interior, Ronnie Bar-On, relaxed the criteria further by extending the incidence of the resolution to children who have been in Israel for only four years and nine months.

148. The exact number of guest workers' children without status is unclear. The estimate in 2003 was 3,000–5,000, but only a minority of those was aged ten or over; See Lavie, 2003. In many cases, these children hold no citizenship whatsoever. They are not entitled to Israeli citizenship and sometimes are not entitled to the citizenship of their parents' country of origin because said country grants citizenship by birth in accordance with the *ius soli*, i.e., to those born in the country's territory. This state of affairs violates the UN Convention on the Rights of the Child. Therefore, Israel should grant these children some form of civil status or help them to obtain status in some other country by concluding bilateral agreements with the parents' countries of origin.

149. See also "Ministry of Interior Procedure for Treatment of Citizenship Application under Sections 5–8 of the Law," 4.4.0001 (2008).

150. One of the requirements for naturalization by presence in the country is that the candidate qualify for permanent residency. This status is hardly ever granted in Israel. Its criteria are not defined by law and fall into the domain of administrative discretion. In practice, naturalization under the general Section 5 is an anomaly whereas naturalization under the specific Section 7—which concerns

family migration—and permits the waiving of the general requirements in Section 5—has become the rule.

151. See the wordings of various countries' pledges of allegiance (copy in the authors' possession).

152. The tests are usually multiple-choice but some countries also require a personal interview that examines not only cognitive familiarity but also acceptance of the country's basic principles.

153. Orgad, 2009.

154. Such restrictions should not be applied to refugees and, perhaps, to stateless persons, victims of human trafficking, or humanitarian cases. Be this as it may, the restrictions should be subject to an effective exceptions mechanism.

155. See HCJ decision in *Stamka* (n. 102 *supra*).

156. It is of course impossible to deal with all relevant aspects within the framework of this position paper. Important matters including trafficking in women, the status of special population groups, administrative issues (fees, terms of processing, amount of time, etc.), issuance of tourist visas, and revocation of citizenship fall outside this purview. Clearly, these matters should also be attended to.

Sources

Hebrew Sources

Ashkenazi, A., 2009. "Good News for Labor Migrants: Immigration Police Are Shut Down," NRG (Web site of the newspaper *Ma'ariv*), Feb. 4, 2009, http://www.nrg.co.il/online/1/ART1/849/401.html

Ben-Dor, A., and R. Adut, 2003. "The State of Israel—A Safe Haven? Problems in Israel's Treatment of Refugees and Asylum Seekers," Tel Aviv: Law in Service of the Community and Physicians for Human Rights.

Ben-Yisrael, H., and O. Feller, 2006. *There's No State for Love: Infringements of the Right to a Family of Labor Migrants in Israel,* Tel Aviv: Kav la-'Oved and Association for Civil Rights in Israel.

Berman, Y., 2007. *Freedom, Ltd.: The Shackling of Labor Migrants to Personnel Companies,* Tel Aviv: Aid to Labor Migrants Hotline and Kav la-'Oved.

Besok, M., 2008. "Employment of Aliens Prejudices Israelis' Employment Options," *Ha'aretz,* Aug. 22, 2008.

Central Bureau of Statistics, 2005. "7,089 Israelis Married Abroad in 2002," press release, March 13, 2006.

—, 2007. *Emigration and Immigration of Israelis in 2005,* Jerusalem.

—, 2008. "At End of 2007, Approx. 110,000 Labor Migrants Who Entered on Work Permits and 90,000 Workers Who Entered on Tourist Visas Were in Israel," press release, July 30, 2008.

Dobrin, N., 2005. *Divorce in Israel*, Tel Aviv: Central Bureau of Statistics.

Feller, O., 2004. *The Ministry: Human-Rights Violation by the Population Administration,* Jerusalem: Association for Civil Rights in Israel.

Gans, H., 2006. *From Richard Wagner to the Right of Return: A Philosophical Analysis of Public Problems in Israel,* Tel Aviv: Am Oved.

Gavison, R., 2009. *The Sixtieth Anniversary of the Law of Return: History, Ideology, and Justification*, Jerusalem: The Metzilah Center for Zionist Jewish Liberal and Humanist Thought.

Goldschmidt, R., 2006. *Children of Labor Migrants—The Situation and Ways of Coping in the Future,* Jerusalem: Research and Information Center, The Knesset.

Ilan, S., 2006. "The Illegal Aliens Law Will Force Israeli Families to Leave," *Ha'aretz,* Nov. 29, 2006.

—, 2009a. "Despite the Warfare in Gaza: The Wave of Infiltration to Israel Continues," *Ha'aretz,* Dec. 12, 2009.

—, 2009b. "The Immigration Authority: 300,000 Illegal Workers in Israel," *Ha'aretz,* Jan. 13, 2009.

Ilan, S., and Y. Yoaz, 2007. "Citizenship Law Extended to July 2008," *Ha'aretz,* March 22, 2007.

Israel Religious Action Center, 2007. "Israel's Immigration Policy: IRAC's suggestions to Address the Core Issues".

Jacobson, A., and A. Rubinstein, 2003. *Israel and the Family of Nations: A Jewish Nation-State and Human Rights,* Tel Aviv: Schocken.

Kellner, V., 2009. "Jacob (Ganot)'s Dream," *Globes,* Jan. 1, 2009.

Kemp, A., and R. Reichman, 2003. *"Labor Migrants" in Israel,* Tel Aviv: Adva Center.

Lavie, A., 2003. "Three Smacks and You're Out," *Ha'aretz,* May 16, 2003.

Maor, N., 2007. *The Immigration Policy of the State of Israel: Proposals of the Center for Jewish Pluralism to the Main Provisions of the Immigration Policy of the State of Israel,* Jerusalem: Center for Jewish Pluralism.

Medina, B., and I. Saban, 2009. "Human Rights and Taking of Risks: About Democracy, 'Ethnic Labeling,' and Tests of the Restriction Paragraph (Pursuant to Ruling on the Citizenship and Entry into Israel Law)," *Mishpatim* 39.

Ministry of Finance, 2006. *Report of the Committee on Shaping of Policy toward non-Israeli Workers,* Jerusalem.

Ministry of the Interior, 2006. *Advisory Committee for the Review of Israel's Immigration Policy 2006,* Interim Report, Jerusalem.

New Family, 2006. *Report on the State of the Family in Israel.*

Orgad, L., 2009a. "Immigration, Terror, and Human Rights: Admission Policy in Times of Emergency" (pursuant to HCJ 7052/03, *Adalah* v. *Minister of the Interior*), *Mehqerei mishpat* 25(2).

—, 2009b. "A Constitution of Whom and for Whom? About the Extent of Incidence of the Basic Laws," *Mishpat u-mimshal* 12(1).

Reichman, R., 2008/9. "Immigration to Israel: Mapping of Trends and Empirical Studies, 1990–2006," *Israeli Sociology* 10(2), pp. 339–379.

Roberts, S., 2007. "Until Boredom Do Us Part," *Ha'aretz,* July 12, 2007.

Rubinstein, A., and L. Orgad, 2006. "Human Rights, National Security, and Jewish Majority: The Case of Marriage Immigration," *Hapraklit,* 48:315.

Sinai, R., 2008a. "Number of Labor Migrants Verging on Level Preceding Establishment of Immigration Police," *Ha'aretz,* July 17, 2008.

—, 2008b.. "The State of All Its Immigrants," *Ha'aretz,* July 24, 2008.

Tal, A., 2007. *Infiltrators and Asylum Seekers from Sudan in Israel,* Jerusalem: Research and Information Center, The Knesset.

Tsror, R., 2009. "The Zero Line," *Ma'ariv Weekend Supplement,* March 6, 2009.

Yedioth Ahronoth, 2009. "Director General of Ministry of Immigrant Absorption to Head Committee for Encouragement of Immigration of Scientists," *YNET* (the newspaper *Yedioth Ahronoth* online), Feb. 2, 2009, http://www.xoox.co.il/news/item_71859.htm

Zilbershats, Y., 2003. "Freedom of Movement: Entry into, Stay in, and Exit from Israel," in R. Seibel (ed.), *International Law,* Jerusalem: The Harry and Michael Sacher Institute for Legislative Research and Comparative Law, pp. 189–219.

—, 2006. "About Immigration of Non-Jewish Aliens to Israel—Opening of Discussion," *Mishpat u-mimshal* 10(1), pp. 87, 106–110.

Zohar, H., O. Feller, et al. *Principles for Regulation of the Employment of Labor Migrants in Israel,* http://www.hotline.org.il/hebrew.pdf/HRO_071306_ MW_Policy_Paper_Final_Hebpdf

English Sources

Abrams, K., 2007. "Immigration Law and Regulation of Marriage," *Minnesota Law Review* 91: 1625, 1637–1638.

Agunias, D., 2007. *Linking Temporary Worker Schemes with Development*, Washington, DC: Migration Policy Institute.

Aleinikoff, T. A., et al., 2003. *Immigration and Citizenship: Process and Policy*, Los Angeles: West Group, pp. 302–331.

Alon, G., 2007. "Shin Bet: 14 Percent of Suicide Bombers had Israeli Citizenship," *Ha'aretz*, Jan. 1, 2007.

Anteby-Yemini, L., 2008. "Migrations africaines et nouveaux enjeux de la frontière israëlo-égyptienne (Crossing the Egyptian-Israeli Border: A New Migratory Challenge for Israel?), *Cultures and Conflicts* 72: consuleted July 1, 2009, <http://conflits.org./index17307.html>.

A Palestinian Diaspora, 2006. *Global Immigration News*, Dec. 11, 2006.

Apap, J., and N. Sitaropoulos, 2001."The Right to Family Unity and Reunification of Third Country Migrants in Host States: Aspects of International and European Law," retrieved June 20, 2009 from http://www.december18.net/paper53EurFamilyReunification.pdf

Bader, V., 2007. *Secularism or Democracy? Associational Governance of Religious Diversity,* Amsterdam: Amsterdam University Press.

Bartlett, D. L., 2007. *U.S. Immigration Policy in Global Perspective: International Migration in OECD Countries*, Washington, DC: American Immigration Law Foundation.

Bawer, B., 2006. *While Europe Slept: How Radical Islam Is Destroying the West from Within*, New York: Doubleday, pp. 29–32.

BBC News, 2004. "British Emigration Reaches a High," Nov. 4, 2004.

Ben-David, D., 2008. *Soaring Minds: The Flight of Israel's Economists*, London: Center for Economic Policy Research (CEPR).

Ben-Dor, A., and M. Kagan, 2006. *The Refugee from My Enemy Is My Enemy: The Detention and Exclusion of Sudanese Refugees in Israel*, Tel Aviv: Tel Aviv University, Buchmann Faculty of Law Refugee Rights Clinic.

Bertozzi, S., 2008. *Europe's Migration Policy. A Comprehensive International Strategy or a Pressing Domestic Concern?* Barcelona: Center for International Relations and Development Studies.

Blankley, T., 2005. *The West's Last Chance: Will We Win the Clash of Civilizations*? Washington, DC: Regnery Publishing.

Borjas, G.J., 1999. *Heaven's Door: Immigration Policy and the American Economy*, Princeton: Princeton University Press.

Bosniak, L., 2007. "Being Here: Ethical Territoriality and the Rights of Immigrants," *Theoretical Inquiries in Law* 8(2): 389.

Boukhars, A., 2007. "The Threat of Islamist Terrorism to Germany," *Terrorism-Monitor* V(7): 9.

British Home Office and Foreign and Commonwealth Office, 2007. *Managing Global Migration: A Strategy to Build Stronger International Alliances to Manage Migration*, London: British Home Office and Foreign and Commonwealth Office.

Buchanan, P. J., 2006. *State of Emergency: The Third World Invasion and Conquest of America*, New York: Thomas Dunne Books.

Butcher, K., and A. M. Piehl, 2005. *Why are Immigrants' Incarceration Rates so Low? Evidence on Selective Immigration, Deterrence, and Deportation,* Cambridge: National Bureau of Economic Research.

Camarota, S. A., 2008. "How Many Americans," *The Washington Post*, Sept. 2, 2008.

Camberg, K., 2005. "Long-term Tensions behind Sydney Riots," *BBC News on the Web*, Dec. 13, 2005, < http://news.bbc.co.uk/2/hi/asia-pacific/4525352.stm>.

Carrera, S., 2007. *Building a Common Policy on Labour Immigration: Towards a Comprehensive and Global Approach in the EU?* Brussels: Centre for European Policy Studies.

Catt, H., 2002. *Sub-State Nationalism: A Comparative Analysis of Institutional Design*, New York: Routledge.

Chang, H.F., 2007. "The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications," *Temple Political and Civil Rights Law Review* 16(2).

Chapple, S., et al., 1994. *Literature Review on the Economic Impact of Immigration*, Wellington: New Zealand Department of Labour.

Clayton, G., 2006. *Textbook on Immigration and Asylum Law*, Oxford: Oxford University Press.

Colussi, A., 2003. *Migrants' Network: An Estimable Model of Illegal Mexican Immigration*, <http://www.econ.upenn.edu/~acolussi/JMP.pdf>.

Cornelius, W.A., et al., 2008. *Controlling Unauthorized Immigration from Mexico: The Failure of "Prevention through Deterrence" and the Need for Comprehensive Reform*, La Jolla: Center for Comparative Immigration Studies.

Franck, T.M., 1996. "Clan and Superclan: Loyalty, Identity and Community in Law and Practice," *American Journal of International Law* 90: 359–382.

Fukuyama, F., 2006. "Identity, Immigration and Liberal Democracy," *Journal of Democracy* 17(2): 5.

Gavison, R. (forthcoming). "Immigration and the Human Rights Discourse: The Universality of Human Rights and the Relevance of States and of Numbers," *Israel Law Review.*

Geddes, A., 2008. *Immigration and European Integration: Towards Fortress Europe?* Manchester: Manchester University Press.

Glass, H., 2004. *Immigration Policy*, Wellington: New Zealand Business Roundtable.

Graff, J., 2004. "We Need More Babies!" *Time*, Nov. 21, 2004.

Hansen, R., and P. Weil, 2002. *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe: The Reinvention of Citizenship*, New York: Berghahn Books.

Hanson, G.H., 2007. *The Economic Logic of Illegal Immigration*, New York: Council on Foreign Relations.

Hanson, V.D., 2004. *Mexifornia: A State of a Becoming*, San Francisco: Encounter Books.

Harden, B., 2007. "Numbers Drop for the Married with Children," *The Washington Post*, March 4, 2007.

Hathaway, J. C., 2005. *The Rights of Refugees under International Law*, Cambridge: Cambridge University Press.

Hickley, M., 2009. "90% of Failed Asylum Seekers Remain in UK ... and Backlog of Undecided Cases Doubles in a Year," *Mail Online*, Jan. 23, 2009, <http://www.dailymail.co.uk/news/article-1126793/90-failed-asylum-seekers-remain-UK--backlog-undecided-cases-doubles-year.html?ITO=1490>.

Hinsliff, G., and L. Martin, 2006. "How the Baby Shortage Threatens Our Future," *The Guardian*, Feb. 2, 2006.

Huntington, S., 2004. *Who Are We: The Challenges to America's National Identity*, New York: Simon and Schuster.

Jenkins, P., 2006. "Demographics, Religion, and the Future of Europe," *Orbis: A Journal of World Affairs* 50(3): 533.

John, A., 2004. *Family Reunification for Migrants and Refugees: A Forgotten Human Right?* Retrieved June 20, 2009, from <http://www.fd.uc.pt/igc/working_papers/arturojohn.pdf>.

Johnston, P., 2008. "Emigration Soars as Britons Desert the UK," *The Daily Telegraph*, April 19, 2008.

Joppke, C., 2005. *Selecting by Origin: Ethnic Migration in the Liberal State*, Cambridge: Harvard University Press.

——, 2008. "Comparative Citizenship: A Restrictive Turn in Europe?" *Law and Ethics of Human Rights* 2(1).

——, 2010 (forthcoming). "Citizenship and Immigration."

Kagan, M., and A. Ben-Dor, 2008. *Nowhere to Run: Gay Palestinian Asylum-Seekers in Israel*, Tel Aviv: Tel Aviv University's Public Interest Law Program.

Karoui, H., 2006. *Global Trends in Gulf and Middle East Population Evolution*, Retrieved June 20, 2009 from <http://ssrn.com/abstract=942744>.

Kephart, J., 2005. *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel*, Washington, DC: Center for Immigration Studies.

Krikorian, M., 2008. *The New Case against Immigration*, New York: Penguin Group.

Laqueur, W., 2007. *The Last Days of Europe: Epitaph for an Old Continent*, New York: Thomas Dunne Books.

Leiken, R.S., 2005. "Europe's Angry Muslims," *Foreign Affairs* (July/August).

——, 2006. *The Quantitative Analysis of Terrorism and Immigration: An Initial Exploration*, Washington, DC: The Nixon Center.

Le Monde, 2005. "Regroupement familial et polygamie au Banc des accusés," Nov. 11, 2005.

Levitt, P., 2001. *The Transnational Villagers*, Berkeley: University of California Press.

Macedo, S., 2007. "The Moral Dilemma of U.S. Immigration Policy: Open Borders versus Social Justice," in C. M. Swain (ed.), *Debating Immigration*, Cambridge: Cambridge University Press.

Mautner, M., 2008. "From 'Honor' to 'Dignity': How Should a Liberal State Treat Non-Liberal Cultural Groups?," *Theoretical Inquiries in Law* 9: 609.

Moehling, C., and A.M. Piehl, 2007. *Immigration and Crime in Early 20th Century America,* Cambridge: National Bureau of Economic Research.

Nathan, M., 2008. *Your Place or Mine? The Local Economics of Migration*, London: Institute for Public Policy Research.

National Commission, the 9/11 Commission Report, 2004. *National Commission Report on Terrorist Attacks upon the United States*, New York: W.W. Norton.

Navarrette, R., 2008. "Children of Immigrants Dominate the Olympics," *The San Diego Union-Tribune*, Aug. 26, 2008.

Neuman, G.L., 1996. *Strangers to the Constitution: Immigrants, Borders and Fundamental Law*, Princeton: Princeton University Press.

Orgad, L., 2008. "Love and War: Family Migration in Time of National Emergency," *Georgetown Immigration Law Journal* 23(1): 85.

——, 2009. "Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe," *American Journal of Comparative Law* 58(1).

Raz, J., 1994. "Multiculturalism: A Liberal Perspective," *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, Oxford: Oxford University Press.

Rebhun, U., and G. Malach, 2009. *Demographic Trends in Israel,* Jerusalem: The Metzilah Center for Zionist Jewish, Liberal and Humanist Thought.

Riley, J.L., 2008. *Let Them In: The Case for Open Borders*, New York: Gotham Books.

Roudi, F., 2001. *Population Trends and Challenges in the Middle East and North Africa*, Washington, DC: Population Reference Bureau.

Roberts, S., 2008a. "Minorities Often a Majority of the Population Under 20," *The New York Times,* Aug. 7, 2008.

——, 2008b. "In a Generation, Minorities May Be the U.S. Majority," *The New York Times*, Aug. 14, 2008.

Roy, O., 2003. "EuroIslam: The Jihad Within?" *The National Interest* (Spring).

Rumbaut, R.G., and W.A. Ewing, 2007. *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates among Native and Foreign-Born Men*, Washington, DC: American Immigration Law Foundation.

Samuelson, R.J., 2005. "The End of Europe," *The Washington Post*, June 15, 2005.

Selm, J.V., 2005. *The Netherlands: Death of a Filmmaker Shakes a Nation*, Migration Policy Institute, <http://migrationinformation.org/Profiles/display.cfm?ID=341>.

Simon, J.L., 1999. *The Economic Consequences of Immigration*, Ann Arbor: The University Press of Michigan.

Soysal, Y.H., 1998. "Toward a Postnational Model of Membership," in G. Shafir (ed.), *The Citizenship Debates*, Minneapolis: University of Minnesota Press, p. 189.

Spijkerboer, T., 2000. *Gender and Refugee Status*, Surrey: Ashgate Publishing.

The Guardian, 2006. "How Parenthood Lost its Charm," May 3, 2006.

The New York Times, 2006. "To Be Married Means to Be Outnumbered," Oct. 15, 2006.

The Washington Post, 2006. "Seeking Asylum in the U.S.? Choose Your Judge Carefully," Aug. 1, 2006.

United Nations, 2005. *World Migration 2005: International Migration Data and Statistics*, New York: United Nations.

——, 2006. *International Migration 2006*, New York: United Nations.

UN High Commissioner for Refugees, 2007. *UNHCR Country Operations Plan 2007 — Israel*, retrieved May 1, 2008, from <http://www.unhcr.org/refworld/docid/45221d9d2.html>.

Vigdor, J.L., 2008. *Measuring Immigrant Assimilation in the United States*, New York: The Manhattan Institute for Policy Research.

Wallop, H., 2009. "Britons Flee London to Be Replaced by Immigrants," *The Daily Telegraph*, Jan. 1, 2009.

Weil, P., 2001. "Access to Citizenship: A Comparison of Twenty-Five Nationality Laws," in T.A. Aleinikoff and D.B. Klusmeyer (eds.), *Citizenship Today: Global Perspectives and Practices*, Washington, DC: Carnegie Endowment for International Peace.

Wikan, U., 2002. *Generous Betrayal: Politics of Culture in the New Europe*, Chicago: University of Chicago Press.

WorkPermit.com, 2005. *Norway Seeks to Deter Asylum Seekers,* March 1, 2005, <http://www.workpermit.com/news/2005_03_01/europe/norway_seeks_to_deter_asylum_hopefuls>.

—, 2007. *Workers Needed,* May 4, 2007, <http://www.workpermit.com/news/2007-05-04/netherlands/emigration-increasing-skilled-workers-needed.htm>.

The World Bank, 2007. *Meeting the Challenges of Global Development.*

Zilbershats, Y., 2002. *The Human Right to Citizenship*, Ardsley: Transnational Publishers.

Websites and Databases

Israel Central Bureau of Statistics	http://www.cbs.gov.il/reader
Laissez Passer: blog on migrants, migration, and status in Israel:	http://www.mehagrim.org
Center for Immigration Studies	http://www.cis.org
The Centre for European Policy Studies	http://www.ceps.be/index3.php
The Centre on Migration Policy Society [COMPAS]	http://www.compas.ox.ac.uk
Institute for Migration and Ethnic Studies	http://imes.uva.nl/index.html
Institute for the Study of International Migration [ISIM]	http://www12.georgetown.edu/sfs/isim
International Migration Institute	http://www.imi.ox.ac.uk
International Organization for Migration [IOM]	http://www.iom.int/jahia/Jahia/lang/en
Israel Religious Action Center	http://www.irac.org.il

The Migrant Integration Policy Index (MIPEX)	http://www.integrationindex.eu/
Migration Information Source	http://www.migrationinformation.org
WorkPermit.com	http://www.workpermit.com
World Population Prospect 2008, the United Nations	http://esa.un.org/unpp
United Nations Global Migration Database	http://esa.un.org/unmigration
EuroState	http://epp.eurostat.ec.europa.eu