

STILL MOVING

82. Andrew Coyne, "How Do We Know Canada Couldn't Take in a Million People a Year?" *Globe and Mail*, 1 August 1994.
83. See David Matas, *No More: The Battle against Human Rights Violations* (Toronto: Dundurn Press, 1994), Conclusions.
84. The Greater Manchester Immigration Aid Unit, in their newsletter *No One is Illegal*, has published a series of articles arguing against immigration controls of every sort.
85. See David Matas, *No More: The Battle against Human Rights Violations*, Conclusions.

19

Freedom of Migration: Legal Standards and State Practice

Justus R. Weiner

Introduction

Few topics relating to international law and practice have generated the amount of scholarly and popular attention that the migration of persons across sovereign boundaries has engendered. This focus has been all the more intense following the 1975 Helsinki Final Act,¹ the Schengen Supplementary Agreement in June 1990,² and the 1992 Maastricht Treaty on European Union,³ each of which extended, in a *de jure* or *de facto* manner, freedom of movement across certain national borders. Yet despite these and other milestones on the long road toward greater freedom of international migration, various practical issues have made even nations that traditionally receive large numbers of immigrants such as the United States, refrain from embracing open borders in practice. Some scholars, citing economic theory⁴ and/or libertarian concepts of human rights,⁵ advocate virtually unrestricted international movement. Perhaps coincidentally, a popular misconception has emerged which views total freedom of migration as, *a priori*, the moral and practical approach. This misperception may have been caused by the media's highlighting the suffering and privation that exists in

many countries, or by the transparently racist motivations of some who oppose immigration to their countries.

This chapter questions the legal and practical validity of the position that open borders and unrestricted migration are a prudent course of action. In this context the author will examine the legal and practical limitations on international migration with a particular emphasis on the circumstances in the United States and Israel.⁶

Recent Trends of Mobile Populations

Trends worldwide indicate a growing flood of migrants and refugees. Reasons for the burgeoning numbers of migrants vary. Many seek freedom from violence and discrimination. Others desire family reunification. Economic opportunity is another major reason for migration.⁷ Migrants are commonly divided into three categories: legal, illegal, and guest workers.⁸ According to the United States Population Fund there are currently 100 million migrants in the world,⁹ including 15.5 million migrants in Eastern Europe, 20 million migrants in America, 8 million in the Gulf States, and several million in Australia and Canada. Moreover, illegal immigrants are thought to total several million although they do not appear in official census statistics.¹⁰ Refugees represent another category of people not living within the borders of their country of origin. In addition to the migrants, the number of refugees has increased from 2.8 million in 1976 to 8.2 million in 1980, 11.6 million in 1985, 17.2 million in 1992, and 18.9 million in 1993.¹¹

This unprecedented flood of migrants has provoked a backlash. Almost everywhere governments and their citizens have become distressed with the problems posed by international migration.¹² Citizens in many countries:

have become fearful that they are being invaded not by armies and tanks but by migrants who speak other languages, worship other gods, belong to other cultures, and they fear, will take their jobs, occupy their land, live off the welfare system, and threaten their way of life, their environment, and even their polity.¹³

Surveys in the United States and Western Europe reveal growing hostility toward foreigners and support for proposals to restrict further migration.¹⁴ Virtually every country in Western Europe has a right-wing, anti-immigrant political party or movement.¹⁵ In the United States, voters in California recently passed by referendum the controversial Proposition 187.¹⁶ The Proposition denies medical,¹⁷ welfare, and educational benefits to illegal immigrants who are believed to be draining the state's economy.¹⁸ Yet the crisis is not limited to developed countries. Most migrants move from one developing country to another, where they typically place a severe burden on local and international welfare, health, and educational institutions.¹⁹ Violence often erupts as local people fear they will lose their land or jobs to the new arrivals.²⁰

Simply permitting unrestricted entry across all borders is a flawed proposition. Following the 1975 Helsinki Final Act and the 1992 Maastricht Treaty on European Union, massive influxes of refugees from the Balkans and Eastern Europe into Bonn, Paris, Bern, Vienna, and Brussels have given rise to a European Union economic crisis. Those requesting political asylum are fleeing, in most cases, "not political persecution or violence but simply economic deprivation."²¹ Unregulated entry of refugees of war also places considerable burdens on host countries. Jordan, for example, was overwhelmed by hundreds of thousands of Palestinians who were forced to leave Kuwait after the Gulf War. Similarly, a number of African countries are encountering great difficulties attempting to cope economically and ecologically with the influx of refugees from Rwanda, Angola, Liberia, Ethiopia, Somalia, and Sudan.²² Not only is unrestricted freedom of movement problematic for most host countries, but immigration also drains the youth, intellectual, and labor resources of donor countries.²³

Security issues are another component of restricted migration. Immigration can "strain an economy, upset a precarious ethnic balance, generate internal violence, or threaten political upheaval at the national or economic level."²⁴ Unrestricted migration permits an unknown element into a society, and the results can be disastrous.²⁵ In a recent New York City survey, residents believed the number of recent immigrants was too high, and presented a terrorist threat. Many felt the bombing of the World Trade Center was the result of uncontrolled immigration.²⁶ In fact, Northern Irish, Palestinian, Jordanian, Egyptian, Iraqi, Iranian, and Croatian refugees

have been responsible for terrorist attacks within their host countries.²⁷

Control of Borders: The Core of Sovereignty

At least since the development of the modern state in the fifteenth century, governments have regarded control of their borders as the core of sovereignty.²⁸ This applies not only to defending those borders against armed aggression by a foreign army, but also relates to such mundane clerical tasks as passport control at international airports. It is therefore axiomatic that states choose which people to admit and which to turn away. Rules concerning who to admit, what rights migrants should have, whether multiculturalism or assimilation should be the goal, and who should be granted citizenship are difficult issues because they touch upon the very essence of the concept of national sovereignty.²⁹

Despite various international instruments and decisions which can be understood to auger greater freedom of transnational migration,³⁰ states everywhere retain the right to restrict entry into their country.³¹ This reality finds expression in the Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live, approved by the United Nations General Assembly in 1985. The declaration states:

Nothing in this declaration shall be interpreted as legitimizing any alien's illegal entry into and presence in a State, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens.³²

Thus, the power to control national borders, and therefore migration, is legally recognized as a principal component of national sovereignty.

Immigration Policies of the United States and Israel

Immigration to the United States

Policies for admission of aliens vary widely from one country to another. Some nations do not admit migrants,³³ some have quotas, some base decisions on labor needs, and others take family reunification into consideration. Some countries, such as the United States, Canada, New Zealand, and Australia are known historically as immigrant-receiving countries. That does not imply, however, that anyone may immigrate to these countries; rather, it means that they have traditionally allowed many people to immigrate. Nevertheless, certain specific criteria limit who may come. Indeed, every nation exercises some control over migration.³⁴ Significantly, there is no legal basis for claims that individuals possess an international right to unrestricted migration. International agreements and declarations have not taken away the inherent power of states to regulate the flow of immigrants, which, as argued above, is a fundamental tenet of sovereignty.

The United States has accepted more immigrants than any other country. Some 55 million people have immigrated to the United States since English colonists established a settlement in Jamestown, Virginia, in 1607.³⁵ Until 1960 the large majority of these immigrants came from Europe, but thereafter Central and South America, Canada, and Asia became the leading sources of the newcomers.

Free or even liberal migration, however, has never been a popular position in the United States.³⁶ Aside from small groups of libertarians, no major American political party or ideology favors unlimited immigration. Even the economists who view immigration as offering economic benefits to the country have the political sense to campaign for expanded immigration rather than open borders.³⁷

Jewish Immigration (Aliya) to Israel and the Palestinian Reaction

In Tel Aviv, on 14 May 1948, upon the termination of the British Mandate, the leaders of the new Jewish homeland signed the Declaration of the Establishment of the State of Israel. It states, *inter alia*:

THE STATE OF ISRAEL will be open for
Jewish immigration and for the
Ingathering of Exiles....

According to mainstream Zionism, all Jews in the diaspora are considered exiles since they or their ancestors were forcibly removed from the land in which "their spiritual, religious, and political identity was shaped."³⁸ Thus, the birth of the nation of Israel created a putative home for all Jewish people.³⁹ Regardless of their prior citizenship, Israel opened its arms to welcome Jewish immigrants from all nations.

Jewish history recalls the expulsions during the times of the Babylonian and Assyrian kingdoms, the expulsion from England in 1290, the expulsions from France in 1306 and 1394, the expulsion from Spain and Portugal in 1492-1497, the expulsion from Bohemia in 1744, the expulsion from Nazi Germany in the period prior to World War II, as well as numerous other expulsions from cities and regions throughout the world.⁴⁰ Also, geographic limitations on settlement, such as the Pale of Settlement in Czarist Russia and the ghettos of Europe, were often applied to Jews.⁴¹

In the years preceding World War II, Jews encountered great difficulty migrating from Europe to countries more remote from the looming threat of Nazi Germany. Many countries, even those which had previously received Jewish aliens, forbade substantial further immigration.⁴² Books such as *Voyage of the St. Louis*,⁴³ *None is Too Many*,⁴⁴ and *While Six Million Died: A Chronicle of American Apathy*⁴⁵ recount the desperation of Jews in their mostly futile efforts to find a sanctuary.

Even after the Holocaust, survivors faced bleak prospects. Few had any desire to return to their pre-war homes in the countries which had betrayed them to the Germans. Migration to America had been sharply curtailed by the Immigration Act of 1924 discussed

below.⁴⁶ Until the end of the British Mandate in 1948, few Jews were permitted to legally enter Palestine.⁴⁷

In recent decades Jews have continued to suffer restrictive legislation in certain Arab countries. Saudi Arabia, for example, barred the entry of Jews, even as tourists, and absolutely forbids their settling. Other Arab states, most notoriously Syria, for years prevented their Jewish citizens from emigrating.⁴⁸

The founders of Israel sought to remedy the predicament Jews had repeatedly faced in the diaspora — their periodic rejection and exclusion by the gentiles who governed and populated the various countries in which they resided. To this end, Prime Minister David Ben-Gurion defined a central principle of Zionism when, in submitting the draft Law of Return to the Second Knesset, he stated:

The State is not granting the Jews of the Diaspora the right to return; this right preceded the State of Israel, and was instrumental in building it. The origin of this right lies in the historic link between the people and its homeland, and the Law of Nations has recognized this link in practice. The Law of Return has nothing to do with immigration legislation: it is a law perpetuating Israel's history. This law establishes a principle of statehood, by virtue of which the State of Israel was created.⁴⁹

Even today Israel's national immigration policy is defined by the Law of Return, which in Article I states, "Every Jew has the right to come to this country as an *oleh*."⁵⁰ Thus, Israel explicitly defined its immigration policies from the commencement of the state.

Because Israel emerged from the British Mandate of Palestine, the question of citizenship for non-Jewish populations living within the borders of Israel when the state was established needed to be addressed. Apprehensive of being overwhelmed with hundreds of thousands of Palestinians whose allegiance to the state would be doubtful, Israeli immigration and nationality legislation has blocked the mass return to Israel by Palestinian refugees.⁵¹ Pursuant to the Nationality Law of 1952,⁵² a person who resided in Palestine immediately prior to the establishment of the state is automatically considered a resident only if he was registered as a resident before March 1, 1952. This legislation was specifically designed to avoid awarding citizenship to Arabs who had left the country during the 1948 war and had returned illegally thereafter.⁵³ In addition, the

Law of Entry of 1952⁵⁴ directly prohibits entry into Israel except for Israeli citizens or those authorized to enter by the Israeli Interior Ministry. In this way, the return of refugees to Israel without approval is rendered illegal under Israeli law which authorizes the deportation of illegal immigrants pursuant to the above-mentioned legislation.

The Israeli legal system has simultaneously addressed the demographic challenge by encouraging the immigration to Israel of Jews from the diaspora, from which approximately two and a half million immigrants have come.⁵⁵ In accordance with the Law of Return, 1950,⁵⁶ citizenship is acquired automatically upon immigration by a "Jew" as that term is defined within the legislation. These immigrants are entitled to various benefits directed at assisting their absorption into Israeli society. Not surprisingly, Palestinians object strenuously to this enticement for additional Jewish immigration.⁵⁷

Since 1948, the possibility of Palestinian "return" has been viewed by Israelis as both a security⁵⁸ and a demographic threat.⁵⁹ This fear has translated into a long-standing policy of Israeli rejection of the Palestinians' claims of a "right to return."⁶⁰ The favored Israeli solution was to permanently settle refugees in neighboring Arab countries and to offer them compensation for their property losses.⁶¹ Nevertheless, Israeli governments have readmitted over 100,000 refugees and displaced persons as a humanitarian measure, under the framework of family reunification.⁶² This "solution," however, has proven impossible to implement due to opposition by the Palestinian leadership and the unwillingness of the Arab countries.

Palestinians and other Arabs object to Israel's Law of Return. The PLO sees the law as effectively denying Palestinians, who consider themselves refugees and displaced persons, entry into Israel.⁶³ Yet, the security risks of permitting Palestinian Arabs into Israel are considerable.⁶⁴ According to the Palestinian National Covenant, the PLO's charter, the central goal of the PLO is to destroy the State of Israel. Although various efforts have been made to repeal this document, which predates and arguably contradicts the peace process, no such repeal has occurred.⁶⁵ Moreover, Palestinian Authority Chairman Arafat has repeatedly stated that Palestinians should wage a *jihad* (struggle or holy war) against Israel, despite the six interim peace agreements that have been signed.⁶⁶

Allowing immigration of persons, many of whom would be devoted to the destruction of Israel, is clearly not in the interest of the state. Furthermore, permitting entry of individuals with an ideological justification for terrorist attacks places the general population at risk.

Deleterious Effects of Unfettered Freedom of Migration

Risks to the United States

In the summer of 1996, policy changes concerning immigration in the United States rekindled the long-running debate over the nature of America's status as a "melting pot."⁶⁷ Although a nation built by immigrants, recently "natives"⁶⁸ have once again been reacting to a large influx of immigrants, mostly from non-European countries of origin. While the volume of people legally immigrating to America in the late twentieth century is historically unprecedented, unfortunately, negative reactions to immigration in the United States are not.⁶⁹

In the period immediately preceding the Civil War, the Know Nothing populist movement, which protested the wave of Irish Catholic immigrants, had as one of its main planks opposition to further immigration to the United States.⁷⁰ Although the Know Nothing movement declined, other prominent individuals, groups, organizations,⁷¹ and political parties have expressed anxiety, fear, and other negative reactions at the successive waves of tens of millions of immigrants.⁷² The major fears have been that they would deleteriously affect the quality of life, lower the wage levels and standard of living of the wage earners, increase crime, enlarge the illiterate segment of society, augment the indigent, debase the culture, overcrowd the cities, and fragment U.S. values and loyalties.⁷³

These reactions, illustrative of public sentiment at the time, led to the enactment of restrictive legislation by Congress beginning in the 1880s.⁷⁴ Between 1910 and 1917 three literacy acts were passed by Congress and vetoed by the presidents.⁷⁵ Finally, in 1917, an Immigration Act was passed over a presidential veto. This legislation required all aliens over the age of 16 to prove they were literate

in some language to be admitted as immigrants.⁷⁶ Would-be immigrants who failed this test were sent back. In addition, persons from India, Indochina, Afghanistan, Arabia, and East India were barred regardless of their literacy.⁷⁷

However, these measures failed to stem the volume of immigration, and the process of fine-tuning immigration policy to fit the needs and demands of the nation continued. Hence, the Quota Acts of the 1920s were enacted.⁷⁸ They were much more effective with regard to limiting immigration; for example, the 1924 Quota Act limited new immigrants to 2 percent of the foreign-born population from the same country of origin as counted in the 1890 census.⁷⁹ Further restrictive quotas were enacted in the 1950s, although refugees fleeing Communism (initially from Hungary in 1956) were admitted under various special legislative enactments.⁸⁰

It was not until 1965 that national origin was eliminated as a basis of selection for immigration visas.⁸¹ In its place a ceiling of 290,000 immigrants a year was established with a seven-point preference list favoring close relatives of U.S. citizens and those with occupational skills.⁸² Illegal immigration ballooned during the 1970s and 1980s and as a response the Immigration Reform and Control Act of 1986 was passed. It intended to reduce illegal immigration by punishing employers who hire undocumented immigrants.⁸³ The most recent major enactment became law in 1990.⁸⁴ It raised the number of immigrant visas to close to one million a year.⁸⁵

Certainly, the many changes in U.S. immigration policy reflect the fact that "the attitudes of native-born Americans toward each new wave of immigrants have shifted among tolerance, ambivalence, and outright rejection."⁸⁶ The latest trend and the public policy it has inspired leans toward rejection:

Now, as in earlier periods when patterns of immigration changed visibly, isolationist sentiment seems once again to have become a political force in the United States. The present isolationism is characterized by a turning inward, by attempts to protect one's family, community, and nation from unwanted outside influences. This inward-turning, anti-immigrant mood has found public expression in the demands for restricting legal immigration and in the "English only" movement. Over 20 states have passed legislation making English the only official language of state business, and federal legislation to the same end was introduced into Congress in 1995.⁸⁷

For decades public opinion has remained overwhelmingly negative about the "return" on the government's generosity towards immigrants.⁸⁸ None of the American public opinion polls taken since the 1960s favored an increase in immigration; one series of polls revealed that less than 10 percent of the public favors an increase in immigration levels.⁸⁹ Currently, "one survey taken at the time of the 1996 election found that over two-thirds of all respondents felt that President Clinton should 'put stricter limits on legal immigration.'"⁹⁰

In light of this information, the adoption of a policy of "open borders" by the United States would be calamitous regardless of the sensitive and complicated issues of the impacts — positive or negative — that both legal and illegal immigrants make on the economy and society of the United States. History demonstrates the vast fluctuations in the attitude of natives towards immigrants — corresponding both to the actual volume of immigration as well as to their mostly negative perceptions of immigration and new immigrants — and the exclusive legislation that their concerns have inspired. In the future, this trend will certainly continue. Thus, an "open borders" policy, which would inherently preclude any restrictions on immigration into the United States, is fundamentally undemocratic. Aside from the fact that the option of restricting immigration has historically functioned as a safety valve, preventing social instability and massive anti-immigrant backlash when public opinion favored cutbacks, the regulation of immigration is an expression of national sovereignty. In a representative system like that of the United States, where sovereignty is ultimately vested in the nation's citizens, mandating a policy of "open borders" can do nothing but collide with popular sentiment and thereby dangerously undermine democracy.⁹¹

Risks to Israel

Zionist ideology requires the admission of Jews from anywhere in the world regardless of the availability of housing, employment opportunities, and the potential social dislocations that may follow. While it is well known that Israel has a preferential policy for Jewish immigrants, India's preference for Hindus, Nepal's for people of Nepali origin, Pakistan's for Muslims, Germany's for

people of German origin, and Arab countries for Arabs are less highly publicized.⁹² Moreover, no country other than Israel has a strong security argument to support their communitarian preferences. Jews legitimately fear that Israel would cease to be a homeland for Jews if Israel's borders were open to all Arabs and others who wished to immigrate.⁹³

Whatever individual Jews may think about the social, economic, and morality issues connected to immigration, it should be recognized that in addition to offering options to individual Jews (i.e., whether to stay in Russia, make *aliya* to Israel, or to move elsewhere), freedom of migration, in the current political environment, could imperil Israel's demographic survival. This flows from the fact that both Palestinians and Israelis are ideologically committed to the return of their brethren from abroad. The Palestinians aspire to the return of their brethren who, for a variety of reasons,⁹⁴ emigrated during the period of the 1948 war. While Israel has substantially fulfilled this goal, a similar Palestinian yearning has yet to be realized.

If unrestricted freedom of migration were to be universally applied, the composition of Israel's citizenry could be drastically altered and its future as a predominantly Jewish state placed in jeopardy. If, for example, there were no barriers for Israelis to gain U.S. citizenship, it is to be expected that the 100,000 to 500,000 Israelis who have emigrated,⁹⁵ primarily to New York and Los Angeles, would be joined by large numbers of their former compatriots. Their motivations would vary but many would migrate to countries like the United States in search of greater economic opportunities, to obtain a respite from threats of war and terrorism, or to avoid periods of reserve duty in the IDF. Moreover, if millions of Palestinian or other Arabs gained Israeli citizenship, or large numbers of economic migrants moved there for greater opportunity, the demographic foundation of Israel as the Jewish state would disappear. The dream of the rebuilt Jewish homeland, maintained for 50 years with difficulty and against military and political odds, would likely end.

For Palestinians, their claimed "right to return" is the cornerstone of the decades-long struggle against Israel.⁹⁶ It is bound up in their yearning for international recognition of a separate Palestinian national identity which they assert is based, in part, on their residence in British Mandatory Palestine prior to the establishment

of the State of Israel. To Israel, however, a return of large numbers of Palestinians would pose direct ideological and existential threats to Israel. Zionism, the modern migration for the return of Jews to their ancient homeland, views a Palestinian "right to return" as antithetical to the special, even God-given, historical and religious relationship Jews have with the land. These concerns have been exacerbated by the rhetoric of Palestinian leaders who have traditionally advocated the return of their diaspora as a means or step toward the liquidation of Israel and its replacement by a Palestinian state. According to a reported statement by Yasser Arafat to a closed meeting of Arab ambassadors in Stockholm, 30 January 1996:

Within five years we will have six to seven million Arabs living on the West Bank and Jerusalem. All Palestinian Arabs will be welcomed by us. If the Jews can import all kinds of Ethiopians, Russians, Uzbekians, and Ukrainians as Jews, we can import all kinds of Arabs. We plan to eliminate the State of Israel and establish a Palestinian state. We will make life unbearable for Jews by psychological warfare and population explosion. Jews will not want to live among Arabs.⁹⁷

Moreover, given that globally Arabs outnumber Jews by approximately 20 to 1, and Muslims outnumber Jews by about 80 to 1, it is not hard to envision how, even putting the political motivations of Palestinian nationalism aside, free immigration to Israel by persons looking for economic opportunity or seeking an escape from the political or religious oppression that pervades many states in the Middle East could adversely impact the demographic balance between Jews and Arabs. These immigrants, no less than ardent Palestinian nationalists, or perhaps combined with the nationalists, could radically alter the balance between the Jewish and non-Jewish population in Israel. Moreover, since the birth rate of these groups is higher than that of Jewish Israelis, Israel might become initially *de facto* and eventually through democratic means, *de jure*, a binational state. Thus, Israel's future as the Jewish state could be undermined by an influx of large numbers of non-Jews whose role could be that of a Trojan horse.⁹⁷

Notwithstanding the current stalemate in the peace process over Arafat's "green light" to resume terrorism, construction on Har Homa and the extent of Israeli redeployment, demographic concerns have become increasingly immediate since the onset of the

Oslo peace process. This process, which Israel saw as a means to avoid responsibility for the two million Palestinians in the West Bank and Gaza, has stirred the long dormant political controversy over what to do with the Palestinian refugees from the 1948 war and the Palestinian displaced persons from the 1967 war.

The Palestinian refugees from the 1948 war, their spouses, and offspring pose perhaps the most delicate problem in the entire peace process. This stems from the large number of people involved and the dilemma posed by their aspiration to return to homes and lands within the pre-1967 war frontiers of Israel. Wary of establishing precedents concerning the Palestinian refugees from the 1948 war, during the interim negotiations to date both sides have staunchly adhered to their original positions. As a consequence, neither the Declaration of Principles nor any of the five subsequent interim agreements substantively addresses the issue of the 1948 refugees. Instead, this issue is postponed until the permanent status negotiations.

The Declaration of Principles provides a general structure for approaching the issue of the Palestinians displaced during the 1967 war.⁹⁸ It states in Article XVI (2), "The Continuing Committee shall decide on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder." Its language on the outcome, however, is inexplicit and fails to provide any detail on the resolution of the displaced persons issue.⁹⁹ Moreover, the negotiators were unable to reach agreement on even preliminary matters such as the definition of "displaced person" and the modalities for their absorption and repatriation.

Despite the fact that under the present interim agreements Israel has not allowed the Palestinian Authority to adopt its own immigration and repatriation policies,¹⁰⁰ since the signing of the DOP Israel has generally acquiesced to Palestinian demands for repatriation to the Palestinian Authority administered areas.¹⁰¹ Pursuant to this liberal policy,¹⁰² Israel not only allowed thousands of Palestinians who overstayed their visitor permits to remain in Palestinian Authority-controlled territories, but has permitted numerous displaced persons to reenter, including a number of persons expelled for security offenses.¹⁰³ Thus far, over 84,000 Palestinians have been granted residency (including 15,000 who have overstayed their

visitor's permit) in the self-governing areas during the interim period.¹⁰⁴

Even if one disregards the security implications, Israel does have legitimate concerns as regards the prospect for a return of hundreds of thousands of mostly destitute persons from abroad to Palestinian-governed areas. Namely, the returnees would exacerbate the already dangerous shortage of employment and housing. Recent reports from the Palestinian Authority,¹⁰⁵ Israeli,¹⁰⁶ and UN¹⁰⁷ sources indicate that Arafat's administration is teetering on the edge of economic collapse with, in relative terms, a huge budget deficit and high unemployment.¹⁰⁸ Furthermore, the Palestinian Authority currently cannot adequately provide for the existing population in the areas it administers. It follows, therefore, that the peace process can only become more precarious if Israel were to acquiesce in the return of large numbers of additional homeless and indigent people which the Palestinian Authority appears unable to absorb.

Conclusions

While a policy of open borders might strike some as the moral (or economical) approach a country should take, such an approach is not required by international law and no country has adopted this policy. The leading scholar on the law of international migration, Professor Hurst Hannum, has commented, "[I]t must be recognized that at practically no time in history has the freedom of movement across borders, even in the restricted context of the right to leave and return, been unlimited."¹⁰⁹ Hannum continues:

All commentators agree that some restrictions on such movement are legitimate if imposed for limited purposes in a fair and non-discriminatory manner, *e.g.*, on grounds of securing compliance with valid judicial or administrative decrees; *preventing the spread of contagious diseases*; ensuring fulfillment of certain contractual obligations; and, in time of war, regulating movements that may directly affect legitimate national security concerns.¹¹⁰

Clearly, then, it is necessary to address the tension that exists between the individual's preference for open borders and the legiti-

mate interests of the larger community (typically the state) in which he lives or to which he aspires to migrate.

It needs to be reiterated that "there is no internationally recognized right for a non-citizen to enter a country that is not his or her own."¹¹¹ On the contrary, as explained above, international law affirms the right of nations to control their borders as an expression of sovereignty. Moreover, the results of totally open immigration would likely be catastrophic for any secure and affluent nation. Such a country, having taken the "moral" path, would quickly be overwhelmed by a massive influx of immigrants from poor and/or violence-plagued countries, bringing with them different political values, economic demands, cultures, and languages. Risks exist as well for less-developed countries if their borders are open. Many of their most energetic, affluent, and educated citizens could emigrate, in a process commonly referred to as the "brain drain."¹¹² Peasants from a more densely populated neighbor could cross the border in search of land and employment. Furthermore, in a scenario of open borders, a neighboring country could easily expel its ethnic minorities, encourage the emigration of persons carrying infectious diseases,¹¹³ and empty its prison population across the border.

Thus, realistic problems have prevented nations from embracing the principle of freedom of movement. Indeed, nations are faced with a "[c]onflict between moral obligation...to ensure the safety and well-being of their own population and a more universal ethic that values the well-being of all human kind."¹¹⁴ This dilemma, and the consequent need of fashioning an immigration policy that addresses both the opportunities and the risks, remains a complex challenge facing governments today. There are no easy solutions.

Notes

- * The author expresses his indebtedness to Jerry Bien-Willner, Ashley Kushner, and Donyelle Werner for their assistance in this project.
1. The Final Act of the Conference on Security and Cooperation in Europe (the Helsinki Conference) committed virtually all the European states, the U.S., and Canada, *inter alia*, to facilitating "freer movement and contacts, individually and collectively." The signatories also committed their countries to dealing "in a positive and

- humanitarian spirit" with applications for family reunification and marriage to a foreigner.
2. Eight European Community member states (France, Germany, Belgium, Luxembourg, Netherlands, Italy, Spain, and Portugal) agreed to dismantle border controls at their internal borders and to follow agreed-upon arrangements concerning asylum seekers.
3. The Maastricht Agreement enabled European Community institutions to assume responsibility for harmonizing immigration and asylum policies for the member states.
4. For example, economist Julian Simon has stated, "the United States would benefit from admitting many more immigrants than it does now — and far more than are conceivable under existing political arrangements." He has also noted the positive contributions of illegal immigrants to the national economy. See Rita J. Simon and Susan H. Alexander, *The Ambivalent Welcome: Print Media, Public Opinion and Immigration* (Westport: Praeger Publishers, 1993), pp. 227-229.
5. See David Matas, "Freedom of Movement," appearing in this volume; see also Geoffrey Erikson, "Immigration: An Open or Closed Door?" (1997), available online at URL <<http://www.creative.net/~star/immigrant.htm>>.
6. This author will not address the political or economic reasons for the massive increase in the number of migrants. The issue of freedom to move within the borders of a country shall not be considered. Nor will the philosophical and moral considerations of this issue be examined in detail. Finally, this chapter will not consider the practical difficulties arising out of the need for travel documents (i.e., passports and visas), requirements that "travel taxes" be paid, and the non-convertibility of certain currencies.
7. This article will not focus in detail on the complicated economic issues related to international migration. For additional information on these concerns see, for example, Thomas J. Espenshade, Michael Fix, Wendy Zimmermann, and Thomas Corbett, "Immigration and Social Policy: New Interest in an Old Issue," *Focus*, 18 (Fall/Winter 1996-1997):2-10. Also appearing in this issue: Georges Venez, Kevin F. McCarthy, and Julie DaVanzo, "Surveying Immigrant Communities," 19-23 and William H. Frey, "Immigration and the Changing Geography of Poverty," 24-29. See also Guillermina Jamo and Mark R. Rosenzweig, *The New Chosen People: Immigrants in the US Economy* (New York: Russell Sojn Foundation, 1990).
8. Guest workers are employed by a foreign nation to fill particular labor shortages, often seasonal agricultural labor. Their special circumstances will not be discussed in this article.
9. This figure includes legal immigrants and asylum seekers. It does not include refugees. Myron Weiner, *The Global Migration Crisis: Chal-*

- lenge to States and to Human Rights (New York: Harper Collins College Publishers, 1995), p. 2.
10. *Ibid.*, at 2.
 11. United Nations High Commissioner for Refugees, *The State of the World's Refugees* (Geneva: United Nations, 1994), p. 3.
 12. Myron Weiner, *supra* note 10, at x.
 13. *Ibid.* at 2.
 14. *Ibid.* at 3.
 15. *Ibid.*
 16. The referendum was approved by a ratio of 3 to 1. School teachers suspicious of a child's residency status are required to report their suspicions to proper immigration authorities. The constitutionality of the proposition is currently being challenged before the courts and it has not, as yet, been implemented.
 17. The economic impact of immigrants needing medical care is also a topic of concern in Israel. Concern about HIV infection among immigrants to Israel from Ethiopia, which reportedly is 50 times more likely than among the general population of Israel, has resulted in concern about accepting blood transfusions from the blood they donate to blood banks. Daniel Braunschvig and Judy Siegel Itzkovitch, "Blood Testing," *Jerusalem Post*, 11 February 1996. These same concerns could influence the willingness of Israel to receive additional Ethiopian immigrants, particularly from the Falasha Mura who are currently Christian but whose ancestors were Jewish.
 18. Racism plays a very important role in most countries' immigration policies, either implicitly or explicitly. The Irish, who arrived in the United States after the potato famine in the mid-1800s, were the first large wave of non-Protestant immigrants. Their arrival precipitated riots in New York and Philadelphia. Several decades later the wave of Polish, Greek, Italian, and Eastern European Jewish immigrants was greeted with alarm.
 19. Myron Weiner, *supra* note 10, at 3-4.
 20. *Ibid.* at 4.
 21. *Ibid.*
 22. *Ibid.* at 1.
 23. *Ibid.* at 40.
 24. *Ibid.* at 131. See also Faye Fior, "California Braces for 18 Million More People by 2025," *Jerusalem Post*, 28 August 1997, at 7.
 25. Legislation, intending to protect against the introduction of a violent element, has been enacted in the United States. For example, the McCarren-Walter Immigration Act in 1952 excluded any aliens "who might engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States." See *ibid.* at 140. This law was determined to be too broad by

- the Immigration and Naturalization Service as the language could conceivably encompass those legitimately expressing concern or opposition. See also Deborah Sontag, "US Deports Felons But Can't Keep Them Out," *New York Times*, 11 August 1997, at 1.
26. Ron Scherer, "Bombing Trial Begins Amid Terrorism Scare," *Christian Science Monitor*, 4 August 1997, at 1. This topic was again in the news when, during August 1997, the FBI arrested three men of Middle Eastern origin who had built bombs, apparently intending to explode them in the New York subway. *Ibid.*
 27. Myron Weiner, *supra* note 10, at 139.
 28. *Ibid.* at 9.
 29. *Ibid.* at 47.
 30. See, for example, Guy S. Goodwin-Gill, *International Law and the Movement of Persons Between States* (Oxford: Clarendon Press, 1978), pp. 96-197.
 31. Considerable international authority supports the principle that this restriction may not be exercised on the basis of racial, gender, or religious discrimination (see, for example, *International Covenant on Civil and Political Rights*, art. 4 (1); also Myron Weiner, *supra* note 10, at 154) and that refugees may not be returned to their place of persecution. See, for example, Guy S. Goodwin-Gill, *supra* note 31, at 196.
 32. Louis Sohn and Thomas Buergenthal, *Movement of Persons Across Borders* (Washington, D.C.: American Society of International Law, 1992). The balancing test is preserved by the Resolution's subsequent proviso that, "[h]owever, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights."
 33. For example, Japan makes it almost impossible for anyone who is not of Japanese background to become a Japanese citizen. Rita J. Simon and James P. Lynch, "A Comparative Assessment of Public Opinion Toward Immigrants and Immigration Policies" (article forthcoming).
 34. Myron Weiner, *supra* note 10, p. 83. France and the United States determine citizenship largely on the basis of birth, *jus solis*. Other nations, like Germany and Israel, base citizenship on inheritance or lineage, *jus sanguinis*. See Myron Weiner, *supra* note 10, p. 47.
 35. Simon and Alexander, *supra* note 5, at 3.
 36. Interview: Rita Simon, 31 May 1997, Jerusalem.
 37. Simon, *supra* note 37.
 38. "Declaration of the Establishment of the State of Israel" in Daniel J. Elazar, *The Constitution of the State of Israel 1996-5756* (1996), at 22-24.

39. Jews are defined in article 4(b) of the Law of Return as those persons born to a Jewish mother. See Law of Return, 4 Laws of the State of Israel 114, art. 4(b) (1950).
40. See *Encyclopaedia Judaica* (Jerusalem: Encyclopaedia Judaica, 1972), vol. 6, pp. 1070-71; Jean-Marie Henckaerts, "Mass Expulsion in Modern International Law and Practice, International Studies in Human Rights," 41 (1995):257.
41. *Ibid.*
42. In March 1938 only 17 percent of Americans polled favored admitting a larger number of Jewish exiles from Germany. See Leonard Dinnerstein, *America and the Survivors of the Holocaust* (New York: Columbia University Press, 1982), p. 1.
43. See generally Thomas Gordon, *Voyage of the Damned* (Barcelona: Plaza and Janes, S.A., 1976).
44. See generally Irving M. Abella and Harold Troper, *None is Too Many: Canada and the Jews of Europe* (Toronto: Lester & Orpen Dennys, 1982).
45. See generally, Arthur D. Morse, *While Six Million Died: A Chronicle of American Apathy* (New York: Ace Publishing Co., 1968).
46. All told, only 137,450 Jewish immigrants arrived in the United States between 1945 and December 1952, most under special programs (the Truman Directive and the Displaced Persons Acts of 1948 and 1950) and only a smaller number pursuant to the regular immigration quotas. See Leonard Dinnerstein, *America and the Survivors of the Holocaust* (New York: Columbia University Press, 1982), p. 287.
47. See Herbert Agar, *The Saving Remnant: An Account of Jewish Survival Since 1914* (London: Rupert Hart-Davis, 1960).
48. Mitchell G. Bard and Joel Himmelfarb, *Myths and Facts* (Washington D.C.: Near East Report, 1992), pp. 179-181.
49. Moshe Zak, "The Rationale of Return," *Jerusalem Post*, 9 September 1994, at 6. The Law of Return was passed by the Knesset on 5 July 1950. *Ibid.*
50. *Oleh* (plural: *olim*; verb: *aliya*) means a Jew immigrating to Israel from the diaspora. Although the Law of Return stipulates that Jewish identity is determined matrilineally (i.e., inherited from one's mother), many of the Russian Jews claim their Judaism through their father's lineage. It is estimated "that some 1,130,000 Jews remain in the CIS, of whom 700,000 are descended from couples in which both partners are Jewish; 100,000 in families where only the mother is Jewish; and 90,000 in families where only the father is Jewish. All the rest are eligible to immigrate under the Law of Return as the grandchildren of a Jewish grandfather, though they are not Jewish." Liat Collins, *Jerusalem Post*, 11 July 1996, at 3.

51. See, for example, Ariel Bin-Nun, *The Law of the State of Israel* (Jerusalem: Rubin Mass, 1992), p. 15. The reasonableness of this statute is analyzed by Professor Ruth Lapidot. Ruth Lapidot, "The Right of Return in International Law With Special Reference to the Palestinian Refugees," *Israel Yearbook on Human Rights*, 16 (1986):121-123.
52. Nationality Law, 6 *Laws of the State of Israel* 50 (1952).
53. Bin-Nun, *supra* note, at 41.
54. Entry into Israel Law, 6 *Laws of the State of Israel* 159 (1952).
55. The absorption of 600,000 Jews from the former Soviet Union and Ethiopia in recent years is almost universally regarded as the fulfillment of national destiny.
56. Law of Return, *supra* note 57.
57. Palestinian opposition to Jewish immigration has taken various forms over the decades, including denying the historical authenticity of the Jewish claim to the land, isolating and condemning Israel at the United Nations, pressuring governments to prevent their citizens from emigrating to Israel, staging terrorist attacks against immigrants en route to Israel, and most recently, in February 1995, issuing a paper entitled, "Jewish Immigration to Palestine and its Devastating Effects on the Peace Process." It is significant that this paper, written long after the Declaration of Principles and Cairo Agreement were signed, was issued by the Palestinian Authority's Ministry of Information. Structured around the new organizing idiom of the peace process, the paper repeats the claim that, "This task [*aliya*] cannot be accomplished without the confiscation of more Palestinian land in the West Bank and Gaza." Ministry of Information, Press Office, Palestinian National Authority, *Jewish Immigration to Palestine and its Devastating Effects on the Peace Process*, February 1995; see Joel Bainerman, "Russians, Da, Palestinians, La," *Jerusalem Post*, 12 April 1991, at 16; Jonathan Kuttub, "Why the Immigration of Soviet Jews Must be Opposed," *Middle East International* (March 1990):16.
58. According to one assessment:

That the Arab refugee chose to cast his lot with the Arab invaders of Israel is a matter of record. The aggression in which he joined in defiance of the partition resolution of the United Nations created new circumstances, and by no rational, legal, or moral standard could the fledgling unexpectedly victorious, be asked to welcome its enemies. There are, after all, some historical comparisons that are worth making.

...[It is] instructive to recall the attitude of the American revolutionaries toward the Tories who fled the thirteen colonies and made cause with the British. The founding fathers,

notably Ben Franklin, objected not only to their return but to the granting of compensation for their confiscated estates. So long as the young republic was in danger, Franklin, who conducted the negotiations with the British in regard to the Tory refugees, refused to countenance their return. In 1789, he wrote of a group of loyalists who had settled in what was then British territory: "They have left us to live under the government of their King in England and Nova Scotia. We do not miss them nor wish their return." Though the loyalists were of the same stock as the revolutionaries and there was no scarcity of land for them to return to, the Americans were not disposed to trust in their good faith: "I believe the opposition given by many to their re-establishing among us is owing to a firm persuasion that there could be no reliance on their oaths" (Benjamin Franklin, in a letter dated June 26, 1785).

Marie Syrkin, "The Palestinian Refugees: Resettlement, Repatriation or Restoration," appearing in Irving Howe and Carl Gershman, eds., *Israel, the Arabs and the Middle East* (New York: Bantam Books, 1972), pp. 167-168.

59. Shlomo Gazit, *The Palestinian Refugee Problem* (Tel Aviv: Tel Aviv U., Jaffee Center for Strategic Studies, 1995), pp. 8-10. In 1978, in assessing the validity of the Palestinian right to return under the Universal Declaration of Human Rights (GA Res. 217A(III), U.N. Doc A/810, at 71 (1948), Kurt Radley observed:

[I]t can be fairly be stated that the return of potentially some one and one-half million Palestinians of doubtful allegiance to a state whose population itself numbers only somewhat more than three million is as valid a threat to that state's "general welfare" as there is likely to exist.

Kurt Rene Radley, "The Palestinian Refugees: The Right to Return in International Law," 72 *Am. J. of Int'l L* 611, 613 (1978).

60. *Ibid.* at 9-10.
 61. *Ibid.* at 10.
 62. Shamai Cahana, *The Claim of a "Right to Return" for Palestinians and its Meaning for Israel* (Jerusalem: Leonard Davis Institute of International Relations, Hebrew University, 1993), pp. 13, 20-22, 28, 32 (Hebrew).
 63. Even after Egypt signed a peace treaty with Israel, its representative to the UN Conference on the Prevention of Racism held in Geneva (1981) claimed that the Law of Return embodied racial discrimination. Moshe Zak, *Jerusalem Post*, 5 September 1994, at 6.

64. An issue connected to freedom of migration is Israel's deportation of Palestinians accused of terrorist activities who reside in the administered territories. During the decades after the 1967 war, individual Palestinians from the territories were subjected to an administrative-legal process inherited from the British Mandatory government and, if unsuccessful in pressing their appeals, expelled from the West Bank and Gaza. In addition, in 1992 Israel temporarily expelled more than 400 Palestinians affiliated with the extremist Islamic Hamas and Islamic Jihad organizations. Faced with overwhelming international criticism, Israel permitted the expellees to return after spending only half of the period originally intended abroad. Although arguably legal, it is unlikely this method of mass expulsion will be used by Israel in the future. See Justus R. Weiner, "Israel's Expulsion of Islamic Militants to Southern Lebanon," 26 *Columbia Human Rights Law Review* 357 (1995).
 65. See Press Bulletin, Israel Government Press Office, State of Israel, *Amending the PLO Covenant: An Unfulfilled Commitment*, 26 January 1997, no. 21; see also Justus R. Weiner, *The Hebron Protocol: The End of the Beginning or the Beginning of the End of the Israeli-Palestinian Peace Process* (forthcoming, *Boston University Int'l L J.*, available from the author).
 66. After signing the Declaration of Principles on September 13, 1993, Arafat was taped during a speech at a mosque in Johannesburg, calling upon the Muslim people to wage a *jihad*, generally interpreted to mean a holy war, for Jerusalem, and likened the DOP to the peace agreement signed by the Prophet Mohammed with the Quraysh tribe, and then abrogated ten years later. David Makovsky, *Making Peace with the PLO* (Boulder: Westview Press, 1996), pp. 147-148.
 67. Espenshade et al., *supra* note 8, at 1.
 68. Oddly, this term is used in studies on U.S. immigration to describe those citizens who were born in the United States, themselves typically descendants of Western European immigrants to America.
 69. Over 50 percent of all immigrants in the U.S. have arrived since 1980, with approximately 20 percent of the foreign-born population having arrived within the last five years. Espenshade et al., *supra* note 8, at 3, 5.
 70. Simon and Alexander, *supra* note 5.
 71. Today, the scope of groups and organizations that take an anti-immigration or "zero population growth" stance is substantial; among them are FAIR (the Federation for American Immigration Reform) and even the Sierra Club. See Simon and Alexander, *supra* note 5, Appendix B.

72. Professor Francis Walker, a prominent opponent of immigration around the turn of the century, described the Poles, Bohemians, Hungarians, Russian Jews, and South Italians in the *Yale Review* as:

Ignorant, unskilled, inert, accustomed to the beastliest conditions, with little social aspirations, with none of the desire for air and light and room, for decent dress and home comfort, which our native people possess and which our earlier immigrants so speedily acquired, the presence of hundreds of thousands of these laborers constitutes a menace to the rate of wages and the American standard of living, which to my mind is absolutely appalling.... Taking whatever they can get in the way of wages, living like swine, crowded into filthy tenement houses, piecing out their miserable existence by begging and by picking over garbage barrels, the arrival on our shores of such masses of degraded peasantry brings the greatest danger that American labor has ever known.

Francis Walker, *Literary Digest*, 17 September 1892.

73. Simon and Alexander, *supra* note 5.
 74. The Chinese Exclusion Act of 1882 suspended the entry of Chinese workers for ten years and barred all foreign-born Chinese from acquiring citizenship. They were not permitted to enter until 1942 when the United States was engaged in World War II with China as an ally. Simon Interview, *supra* note 37.
 75. Simon and Alexander, *supra* note 5, at 13.
 76. *Ibid.* at 13-14.
 77. *Ibid.* at 14.
 78. *Ibid.*
 79. *Ibid.*
 80. *Ibid.* at 15.
 81. *Ibid.*
 82. *Ibid.*
 83. *Ibid.* at 16.
 84. *Ibid.* at 16-17.
 85. *Ibid.* at 17.
 86. Espenshade et al., *supra* note 8, at 5. See also Celia W. Dugger, "After Crime, She Made a New Life, But Now Faces Deportation," *New York Times*, 11 August 1997, at A8.
 87. *Ibid.*
 88. Simon and Alexander, *supra* note 5, at 246.
 89. *Ibid.* at 246, 257. Simon Interview, *supra* note 37. Free immigration or at least liberal immigration strikes a positive chord for many Jews. This is hardly surprising — many Jewish American families have been

- in the country less than 100 years. Their grandparents or great-grandparents may have fled persecution in Eastern Europe to relative safety in the United States. Indeed, the story of the exodus from Egypt by the Hebrew slaves, reiterated yearly in the *Pesah* liturgy and *seder* dinner, tends to highlight the danger that looms for the Jewish minority when exposed to anti-Semitic threats in the diaspora. This awareness has been driven home repeatedly by pogroms, expulsions, massacres and, ultimately, the Holocaust. American polls reveal that Jewish attitudes towards immigration to the United States are typically more positive than any other identifiable group. Nevertheless, most American Jews probably do not favor unrestricted immigration.
90. Espenshade et al., *supra* note 8, at 2.
 91. While proponents of unregulated migration may claim that freedom of movement allows immigrants to enjoy human rights that are denied in their home countries, careful analysis of this point reveals that in order to enforce a policy of "open borders," one must subvert the basic right of national self-determination as manifested in popularly-approved immigration policy in the target country. Paradoxically, the civil rights of the citizen population are suspended in order to enhance the human rights of the immigrants.
 92. See Myron Weiner, *supra* note 10, at 181.
 93. *Ibid.* at 182.
 94. Justus R. Weiner, "The Palestinian Refugees' 'Right to Return' and the Peace Process," 20 *Boston College Int'l and Comp. L. Rev.*, XX no. 1 (Winter 1997):15-17, 21-27.
 95. From 1948 to 1979, approximately 340,000 people emigrated from Israel. Zvi Sobel, *Migrants from the Promised Land* (New Brunswick: Transaction Books, 1986), p. 13.
 96. Syrkin, *supra* note 59, at 157. The Palestinians are unique among groups of refugees in that they have aspired to repatriation while the political conditions that caused them to be refugees persist. Generally refugees have sought asylum rather than repatriation. Radley, *supra* note 60, at 586, 611. Hence it finds little support in the international law on refugees, principally the Convention on the Status of Refugees (189 UNTS 137, July 28, 1951). See *ibid.* at 609-11.
 97. Andreas Vistnes, "Arafat Spoke About Eliminating Israel," *Dagen*, 16 February 1996, 1. The report was denied by Arafat's office in Gaza, but was confirmed by Israel Television's Arab Affairs correspondent Ehud Ya'ari. Regardless of its accuracy, both its content and strident rhetoric increased Israeli apprehensions about the direction of the peace process. Justus R. Weiner, "The Peace Process and the Right/Claim to 'Return,'" *Survey of Arab Affairs*, 15 May 1996.
 98. See Teddy Preuss, "Refugees: The Real Issue," *Jerusalem Post*, 20 October 1993, 6.

99. Declaration of Principles on Interim Self-Government Arrangements, September 13, 1993, Isr.-Palestine Liberation Organization, 32 I.L.M. 1525, art. XVI (2).
100. *Ibid.*
101. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, Isr.-Palestine Liberation Organization, Annex III, art. 28.11, available online at URL <<http://www.israel-mfa.gov.il/peace/interim.html>>. Indeed, the Palestinian Authority is forbidden to grant permanent residency in the self-ruled areas without the prior approval of Israel. *Ibid.*
102. *The Silent Migration to 1967 Occupied Palestine*, Article 74, April 1996 (Published by the Alternative Information Center/Project for Palestinian Residency and Refugee Rights). Many Palestinians who fail to obtain Israeli approval for an extension of their visitor's permit choose nonetheless to remain illegally in the West Bank and Gaza Strip. Many of these do so because they are unable to return to the country of their previous domicile, like Libya or Kuwait. Interview with Ingrid Jaradat, Alternative Information Center/Project for Palestinian Residency and Refugee Rights, 18 June 1996.
103. Examples of this policy include Israel's allowance of six hundred Palestinian refugees to immigrate from Lebanon, "Palestinians from Lebanese Refugee Camps are Going to Israel," *Davar Rishon*, 29 January 1996, at 1 (Hebrew original); its incorporation of two hundred Palestinians stranded on the Egyptian-Libyan border by Libyan leader Muhammad Qaddafi in an effort to punish and humiliate the PLO for reaching an agreement with the Jewish state, Miles Crawford, "Qaddafi Expels 30,000 Workers," *Biladi The Jerusalem Times*, 15 September 1995, at 7.
104. Included in this number are several hundred persons expelled for security offenses who now work as Palestinian policemen and Palestinian Authority officials. *Ibid.* Danny Rubinstein, "The Little Return," *Ha'aretz*, 23 September 1994, at B3 (Hebrew original); Eytan Rabin and Gideon Alon, "Security Apparatus Considering Possibility of Evacuating Six Cities in West Bank by End of 1995," *Ha'aretz*, 4 July 1995, at A1 (Hebrew original).
105. Jaradat, *supra* note 101.
106. David Harris, "Palestinian Authority: Closure Will Cost \$600m. in 1996," *Jerusalem Post*, 25 August 1996, at 2. According to a report of the Palestinian Economic Council for Development and Reconstruction, unemployment stands at 40 percent in the West Bank and 51 percent in Gaza. This unemployment has caused a reduction in tax revenues for the Palestinian Authority. *Ibid.* at 108.
107. According to an Israeli journalist who visited Gaza to meet with Arafat:

The depressing economic deprivation that we saw — primarily the result of overpopulation, Palestinian Authority fecklessness and corruption, and the six-month-long closure — is a problem that can only be addressed effectively with a large measure of Israeli cooperation and goodwill.

- Yosef Goell, "Clueless in Gaza," *Jerusalem Post*, 23 August 1996, at 4.
108. Jon Immanuel, "UN Coordinator: PA Near Financial Collapse," *Jerusalem Post*, 15 August 1996, at 2.
 109. See generally Hurst Hannum, *The Right to Leave and Return in International Law and Practice* (Bordrecht: Martinus Nijhoff Publishers, 1988).
 110. *Ibid.* at 4. (Emphasis added). In the opinion of the author the AIDS epidemic, which has infected millions of people in certain countries, is likely to become another factor, along with fear of terrorism, which augments the reluctance of certain countries to admit immigrants.
 111. Thus, the refusal of many Arab states to admit tourists who had an Israeli stamp (indicating they had visited Israel) in their passport probably does not violate international law. *Ibid.* at 83.
 112. See Alan Dowty, *Closed Borders: The Contemporary Assault on Freedom of Movement* (New Haven: Yale University Press, 1987), pp. 184-187. Even in the case of Israel, a developed country, if there were no barriers for Israelis to gain U.S. citizenship it is to be expected that the 100,000 to 500,000 Israelis who have emigrated, primarily to New York and Los Angeles, would be joined by large numbers of their former compatriots. Their motivations would vary but many would migrate to countries like the United States in search of greater economic opportunities, to obtain a respite from threats of war and terrorism, or to avoid periods of reserve duty in the IDF. See Zvi Sobel, *Migrants from the Promised Land*, *op. cit.*, p. 13.
 113. "HIV/AIDS: The Global Epidemic," UNAIDS and World Health Organization, (<http://www.us.unaids.org/highband/document/epidemio/situat96.html>, 1996). In certain countries in central Africa, the percentage of persons carrying HIV, the precursor to AIDS, is upwards of 40 percent. *Ibid.* at 12. The AIDS epidemic carries with it enormous medical expenses which, in many countries, are borne by the public.
 114. Myron Weiner, *supra* note 10, at x.