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**Wandering Jews in a Jewish Homeland:  
Israel and the Right to Travel Abroad  
1948 – 1961**

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## **Wandering Jews in a Jewish Homeland: Israel and the Right to Travel Abroad 1948 – 1961\***

Orit Rozin

### **Abstract**

*The rise of nation-states during the 19<sup>th</sup> and 20<sup>th</sup> centuries and the resulting definition of a national identity for a state's citizens entailed the institutionalization of such identity, based, in part, on the determination and control of a state's borders – physically, geographically, and particularly in terms of citizenship. During the First World War, the passport came into use as a key method of controlling the movement of populations and restricting freedom of movement. Nowadays, through the use of passports, states exercise almost absolute control over their citizens' ability to travel internationally. Currently, no one even questions that criminals, minors or those seeking to shirk their civic duties may be restricted or even barred from leaving their respective countries. However, during the 1950s, several democratic countries, including Israel, restricted foreign travel by their citizens even on other grounds. This article shall examine the exit policies of Israel in comparison with three models, which served Israeli policy makers as criteria in this regard: the Soviet, British and American models. In contrast to Britain and the United States, in Israel, the citizen "enjoyed" double supervision. In addition to the requirement of a passport, an exit permit, also issued by governmental authorities in Israel, was required. During the years from 1948 until 1961, when the general requirement that all Israeli citizens obtain an exit permit was finally abolished, often heated political and public discussions were conducted regarding this issue. This article shall track such positions. The exit policy promulgated by a country may shed light on its character, society and its perception of citizenship. The objective of this article is, therefore, not only to describe the right to travel abroad as exercised in Israel, but also to open a window onto the conceptual world of those who set such policy. It may be shown that, in addition to Israel's question of survival, with all the challenges to its existence during its early years, the exit policy regarding travel from Israel served as a key component in the way Israeli's policy makers perceived the association between the State and the various sectors of its population. This article shall demonstrate the link between Israel's exit policy and the Zionist ideology, as well as the link between various countries' exit policies, including Israel, and the shaping of an appropriate national, collective identity.*

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## The Case of Mrs. D.

In October 1950, Mrs. D. requested an exit permit. On her application form, Mrs. D. declared that she intended to travel to Switzerland and to the United States for a two-month period. She also notified the authorities that she had already spent time visiting Britain and France during the previous year.

Mrs. D.'s first application had already been denied. Reluctant to be denied again, she hired the well-known lawyer, Yaacov Shimshon Shapira (formerly the first Attorney General), to handle her appeal. As a result, the officials at the Ministry of Internal Affairs were understandably careful in their response.

Accordingly, Mr. Globus, legal counsel for the Ministry of Immigration sent his opinion, copied to the Attorney General, providing a detailed explanation of the grounds for the denial of the application. *Inter alia*, he opined that:

One may think and speculate that the applicant asked . . . only for a period of two months due to Jewish optimism, that later when she is already in the United States she will apply for additional time, as most do . . . The applicant had already spent time abroad this year in England and France . . . And we may suspect that the applicant is sick with the infamous Jewish illness known as 'Travelitis'.<sup>1</sup>

The right to travel abroad is recognized by the Universal Declaration of Human Rights (1948). Moreover, the Declaration of the Establishment of the State of Israel (1948) proclaims that the State shall be based on the principles of freedom. In 1953, this right was defined in Israeli law as a natural right.<sup>2</sup> Yet, despite such recognition in principle, Israeli citizens were severely restricted when the time came for them to actually leave Israel. The focus of this article is to examine the Israeli limitations on foreign travel during the period from the establishment of the State in 1948 through 1961, at which time the general requirement that all Israeli citizens obtain an exit permit as a condition for being allowed to leave Israel was abolished.

## The Right to Travel Abroad

The development of nation-states during the 19<sup>th</sup> and 20<sup>th</sup> centuries and the ensuing definition of the identity of a country's citizens was bound up in the institutionalization of such identity and in determining control of the borders – delineated in terms of geography as well as in terms of citizenship. Passports were first used as a means of controlling the movements of the populace and to restrict freedom of movement during the First World War.<sup>3</sup> Currently, states employ

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<sup>1</sup> Letter to Y.N. Shay from E. L. Globus, Oct. 29, 1950, Israel State Archives (hereinafter, the "ISA"), Ministry of Justice, Gimel 5674/10. See also Letter to E.L. Globus from Attorney General, Nov. 5, 1950.

<sup>2</sup> Yaffa Zilbershatz, "Zkhut Hayetzia Mimedina", *Mishpatim* 23 no.1-3 (1994): 69-108, 70-71, 77-79 (hereinafter, "Zilbershatz").

<sup>3</sup> John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge 2000) 4-20 (hereinafter, "Torpey"); Mark B. Salter, *Rights of Passage: The Passport in International Relations*, (Boulder, Co., 2003), 78; Lesley Higgins et al., "Passport, Please: Legal, Literary, and Critical Fictions of Identity", *College Literature* 25, no. 1, (1998): 99.

passports to impose near absolute control over their citizens' ability to move about globally and no one disputes the fact that a state is permitted to restrict its citizens' right to travel abroad where such citizens are criminals, litigants, minors or those seeking to shirk their civic responsibilities.<sup>4</sup> In the 1950s, several democratic countries, including Israel, also barred foreign travel by their citizens for other reasons. This article shall examine the exit policies of the State of Israel in comparison with three models which served as criteria for determining Israeli policy on this issue during the 1950s: the Soviet model, the British model and the American model.

After the Second World War, the right to leave the Soviet Union was severely curtailed. This approach, claimed Dowty, stemmed, *inter alia*, from specific characteristics of Soviet Marxism (contrast, for example, the stand taken by some of the Eastern European states) including a preference for the collective interest, a sense of threat from a hostile world, and fear of foreign influence.<sup>5</sup>

In the United States, as a result of the Cold War, communists were barred from obtaining a passport. Moreover, the State Department refused to issue passports to persons even suspected of harboring communist sympathies, or whose political opinions and anticipated activities abroad were defined by the State Department as contrary to the best interests of the United States government. After the Second World War and during the 1950s, this policy was publicly criticized giving rise to appeals to the U.S. Supreme Court.<sup>6</sup> However, only in 1958 did the U.S. Supreme Court rule that laws dating from 1926 and 1952 did not afford due process.<sup>7</sup> Furthermore, it reaffirmed that the right to travel abroad was part of the concept of liberty, thus deserving of Fifth Amendment protection. In 1964, the U.S. Supreme Court ruled against the State Department's denial of a passport to a prominent Communist and, in addition, invalidated the section of the 1950 Act which had prohibited the issuance of passports to Communists.<sup>8</sup> The United States' restrictions on the freedom to travel abroad reflected only one aspect of the anti-communist witch hunt which had engulfed the fields of entertainment, communications and education.

In contrast, Britain, at least in theory, permitted freedom to travel abroad even during the years of the Cold War.<sup>9</sup> Nonetheless, travelers' use of foreign currency was severely curtailed, because of the dire economic straits in which Britain found

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<sup>4</sup> Frederick G. Whelan, "Citizenship and the Right to Leave", *The American Political Science Review* 75, no. 3 (September 1981): 636-653, 637 (hereinafter, "Whelan").

<sup>5</sup> Alan Dowty, *Closed Borders* (New Haven & London 1987) 195 (hereinafter, "Dowty").

<sup>6</sup> "Passport Refusals for Political Reasons: Constitutional Issues and Judicial Review", *The Yale Law Journal* 61, no. 2 (February 1952): 171-203, 172-173, (hereinafter, "Passport Refusals"); Stanley I. Kutler, *The American Inquisition: Justice and Injustice in the Cold War* (New York 1982); Daniel C. Turack, *The Passport in International Law* (Lexington Massachusetts 1972), 9-12 (hereinafter, "Turack"); Reginald Parker, "The Right to Go Abroad: To Have and to Hold a Passport", *Virginia Law Review*, 40, no. 7 (November 1954): 853-873, 871, (hereinafter, "Parker").

<sup>7</sup> *Kent v. Dulles*, 357 U.S. 116 (1958).

<sup>8</sup> *Id.*; Dowty, *supra* note 5, 128-129; Turack, *supra* note 6, 11; *Aptheker v. Secretary of State*, 378 U.S. 500 (1964).

<sup>9</sup> Joan Mahony, "Civil Liberties in Britain during the Cold War: the Role of the Central Government", *The American Journal of Legal History* 33, no. 1 (January 1989): 53-100, 63, 65-68; Parker, *supra* note 6, 868.

itself both during the war and the reconstruction period which followed. The most stringent travel restrictions went into force starting in September 1947, when no basic travel allowance was granted for travel to any region. From April 1948 through June 1957, Britons traveling abroad were allowed to take only 20-25 pounds sterling, and travel funds were limited to non-dollar regions only. By 1957, the travel allowance was increased to 100 pounds sterling per annum and British tourists were also permitted to visit the dollar-area. By 1959, Britons were allowed to take out 250 pounds sterling. In the early 1950s, the only exception to the general restriction was travel to Scandinavia.<sup>10</sup>

In Israel, although communists and Arabs also suffered considerable discrimination at the hands of the authorities, the restrictions on traveling abroad were not directed solely at them, (although a stricter stance was adopted with respect to them),<sup>11</sup> but rather were imposed as general categories with the objective of reducing the extent of foreign travel by all citizens. Legally, in Israel, as in Britain and the United States, leaving the country could be proscribed merely by not issuing a new passport or by not renewing or revoking an existing passport.<sup>12</sup> In Israel, in addition to the requirement of a passport, citizens were required to apply for an exit permit from the Ministry of the Interior during the period from 1948 until 1961; that is, they “enjoyed” double supervision. Moreover, during the early years following the establishment of Israel, the majority of those traveling abroad were, almost without exception, prevented from receiving a foreign currency allowance, due to the difficult economic state of the country and the perennial shortage of foreign currency, which was even more acute than in Britain. Furthermore, various levies were imposed upon the travelers, both in the form of fees and taxes.

It is not within the scope of this article to examine the policies with regard to issuing and renewal of passports in Israel (such policies were generally applied only in specific cases, and not as a general measure),<sup>13</sup> but rather this article will address the policy with regard to exit permits which governed the public in general and resulted in extensive public and political debate. Two additional issues which also are beyond the scope of this article concern the policies for granting exit permits to Arab-Israeli citizens, whose right to travel was restricted even within Israel, as well as the question of Jewish citizens traveling to Germany.<sup>14</sup> Against the backdrop of the three models mentioned-above, this article seeks to examine and describe Israel’s policy. It should be emphasized that the issues under discussion here are not

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<sup>10</sup> Walter H. Waggoner, “Britain Ends Curb on Travel Funds”, *New York Times*, October 20 1959; “English Receiving Advice on Spending \$280 in U.S.”, *The Daily Times News*, June 11, 1957 (Burlington North Carolina); “Britain Raises Travel Funds To 100 Pounds”, *The Charleston Gazette*, June 5 1957; “Spending Money”, *Time Magazine*, June 17, 1957.

<sup>11</sup> ISA, Ministry of the Interior, Gimel 2243/10.

<sup>12</sup> To a certain extent, the situation was better in the United States and Britain, as it was possible to travel to certain destinations even without a passport. David .W. Williams, “British Passports and the Right to Travel”, *The International and Comparative Law Quarterly* 23, no. 3 (July 1974): 642-656, 648-649; Passport Refusals, *supra* note 6, 171-173.

<sup>13</sup> ISA, Ministry of Justice, Gimel 5687/13; *Divrey Haknesset* 21, (July 23, 1957): 2480-1.

<sup>14</sup> See, for example ISA Ministry of the Interior, Gimel 2242/37. An additional restriction on the freedom to travel abroad is manifested by the deposit of the passports of soldiers drafted abroad, during the initial months of the War of Independence. This subject, too, is not discussed herein. IDF Archives (hereinafter, the “IDFA”) 6127/49, file 100.

in comparison with the dry law, but rather in comparison with its actual implementation.

The debate in Israel with regard to freedom to travel abroad focused on three facets: First, governmental policy, legislation, and bureaucratic procedure; second, the public and media's positions with respect to governmental policy; and third, the encounter or clash between the positions of the public and the government, and the stance of the courts to which the disputes were addressed. This article, which is part of a more extensive project, primarily concerns the first facet. It will follow the changes which have occurred in the governmental policy over the years and the amendments to legislation by Israel's parliament, the Knesset, while presenting the rationales underlying the determination of those policies justifying or lifting the restrictions.

Nancy Green asserts that the exit policy of a country may reveal quite a bit about the true character of the country and its ruling elite, society and its perceptions of citizenship.<sup>15</sup> The objective here, therefore, is not merely to describe the status of such a right, but also to open a window onto the worldview of those setting the policy. In addition to demonstrating Israel's response in coping with the challenges of its survival during its early years, this article will show that policy makers viewed travel policies as key to strengthening the bond of the State's citizenry to their country.

This article first lays out the factual and statistical data, followed by the historical progression of events, and concludes with the significance of the restriction of the freedom to travel abroad and the changes which occurred in such policy, while presenting the Israeli case in comparison with the other models.

## **The Facts**

As arises from Table 1 in the Appendix, the vast majority of those traveling abroad via sea and air were Jewish. In contrast, the decisive non-Jewish majority traveling abroad crossed the border over the ceasefire lines.<sup>16</sup> The percentage of non-Jews who traveled via sea and air was statistically negligible with respect to their overall representation in the general populace when compared with the percentage of the Jewish travelers.

The Jewish population increased considerably over the years, primarily as a result of governmental immigration policies as presented in Table 1. During the years 1948 through 1960, this community increased by 1,340,725, of which 871,701 were new immigrants.<sup>17</sup> 1952 and 1953 were years which saw little immigration to Israel, while at the same time being difficult years in terms of emigration from Israel as may be seen in Table 3. In 1953, the number of departures exceeded the number of arrivals, and Table 1 shows that population growth almost came to a complete

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<sup>15</sup> Nancy L. Green, "The Politics of Exit: Reversing the Immigration Paradigm", *The Journal of Modern History* 77, no. 2 (June 2005): 263-289, 266.

<sup>16</sup> See also ISA, Ministry of the Interior, Gimel 2243/10.

<sup>17</sup> *Israel Statistical Yearbook* 13 (Jerusalem 1962): 32.

standstill.<sup>18</sup> At the end of 1951, the rate of immigration was curbed pursuant to government policy and in 1952, the government announced a new economic policy consisting in the main of lowering governmental expenses while significantly devaluating Israeli currency. However, this led to a substantial rise in unemployment. In light of these data, it is understandable why the growth rate of the Jewish population dropped sharply and the estimated number of emigrants increased.

Over the long term, it should be noted that the rate of Israeli Jews traveling abroad temporarily was extremely low, ranging from 1.68% in 1949 to as much as 3.28% in 1960. Nevertheless, it should be recognized that, over time, it has steadily risen, although at a moderate rate. In certain years, the rate of travel fluctuated. The number of Jewish travelers increased dramatically in 1950, but plummeted in 1951 and 1952. It rose again in 1953, while dropping in 1954. However, from 1955 onwards, it rose moderately until 1960 when there was a significant rise in the rate of Jews exiting the country. This article analyzes the reasons for such fluctuations.

It may be concluded based on Table 2, that the reasons most Jews traveled were: touring and visiting relatives, business, missions on behalf of business companies, medical reasons, studies, and returning property and inheritances – activities associated with the middle class. Nonetheless, even though the percentage of those exiting Israel was low, it would appear, as discussed hereinunder, that government ministers and various ministries, the Jewish Agency, the Knesset and the media, as well as the courts, were troubled by policy questions regarding travel abroad and concerned themselves with it at length. Thus, it may be possible to assume that, because many travelers belonged to a population group with not only financial means, but also high social stature, their activities and demands enjoyed relatively great public attention. A more extensive discussion of this issue follows below.

There was a persistent disparity as shown in Table 3, between the number of those leaving who announced their intention to emigrate in advance, and those who actually emigrated. This article shall show that this matter concerned the authorities and, thus, affected the resulting policy fluctuations in responding to exit permit applications.

An additional fact relates to the discrepancy between the number of applicants for an exit permit in contrast to the actual number of travelers going abroad. The data on this subject for this time period are incomplete, although sufficient to shed light on the considerations affecting government policy. During the early years of the State, the gap between the number of applicants for an exit permit and the number of actual travelers was quite wide: From Sept. 1, 1948 through June 30, 1951, 64,425 exit permits were granted, out of which 62,166 were actually used. This is out of more than 120,000 applications filed.<sup>19</sup> In comparison, in 1960, all applications for an exit permit were granted (40,476 from January until the end of

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<sup>18</sup> In this year, 10,388 Jews immigrated and 12,500 emigrated. *Israel Statistical Yearbook* 13 (Jerusalem 1962): 32, *supra* note 17, 32, 111.

<sup>19</sup> “Heteri Yetzia Lkhul – Rak Lefi Haikaron Shel Khiyuniut Hayetzia”, *Haaretz*, July 17, 1951 (hereinunder, “Haaretz July 1951”).

November) other than 50, and this because a court order had been issued prohibiting these citizens from leaving Israel.<sup>20</sup>

In comparison with exit data for the pre-1948 British Mandate period, the number of travelers after 1948 was lower, both in terms of absolute numbers as well as relative to the total population. In comparison with the year immediately following the Second World War, in 1946, 89,197 exited British Mandate Palestine out of a population of 1,820,661, constituting 4.8%.<sup>21</sup> These differences in the percentage of those traveling abroad reflect closing of the land borders to Jews, changes in the composition of the population and restrictions on the freedom to travel abroad during the period after the establishment of the State – both those restrictions applying to the Jewish population and those restrictions not examined in this article applying to the Arab population.

## **Review of Exit Policies from Israel**

### **The War of Independence**

In replication of the Mandatory regulations in effect immediately after the outbreak of World War Two in 1939, which required that an exit permit be obtained from the authorities<sup>22</sup> as a condition for exiting the country, in March 1948, the management of the Jewish Agency issued a special order barring the exit of anyone who did not receive an exit permit from its Central Command for Conscription. After the establishment of the State, in August 1948, this authority was transferred to the Ministry of Immigration.<sup>23</sup> The State of Emergency Regulations (Exit from the Country), 5708-1948 (hereinunder, the “Emergency Regulations”) provided the Minister with absolute authority to grant or deny an exit permit from Israel. In the regulations which the Minister of Immigration promulgated, one who applied to leave the State was required to file an application form personally, to which were attached the following travel documents: a passport or laissez-passer, as well as documentation from government institutions and others demonstrating that no taxes were owed, he or she was not subject to conscription in the army or for work and in the event that the exit application was for medical reasons, medical documentation as well.<sup>24</sup> The principle guiding the clerks in the Ministry of Immigration in their implementation of this policy was that, as long as the war was ongoing, exits were not to be permitted even for those who were not fighting, unless essential.<sup>25</sup> The

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<sup>20</sup> *Divrey Haknesset* 31 ( May 16, 1961): 1731.

<sup>21</sup> Justin McCarthy, *The Population of Palestine* (New York 1990), 65, 179.

<sup>22</sup> Emergency Powers (Defence) Act, 1939 (Chapter 27), *Palestine Gazette*, Supplement 2 (to the Palestine Gazette Extraordinary No. 914, Aug. 26, 1939 (Proclamations), 677; *Official Gazette of the Palestine Government*, Dec. 28, 1939, 1218.

<sup>23</sup> IDFA, 580/56 file 389. The explicit prohibition applied to Jews between the ages of 16-40, although, in fact, most of Jews obeyed this order. *Gilyon Minhelet Ha-am Tsavim Ve-hodaot*, May 10, 1948 (Tel-Aviv); ISA, Minutes of the First Government, Vol. 27, July 26, 1950, 55.

<sup>24</sup> ISA, Ministry of Justice, Gimel 5671/14; Emergency Regulations, *Official Gazette* 17, Aug. 25, 1948; See also IDFA, 580/56 file 389.

<sup>25</sup> ”Sikum Tkufa Akhat Bimdiyut Ha-aliya”, May 31, 1949, ISA, Ministry of Justice, Gimel 5671/14; Letter from Yosef Yizraeli to Dr. Shiber, Feb. 2, 1949, IDFA 580/56 file 387; Itzhak Greenberg, “Military Recruitment of Manpower for Vital Services and Economic Enterprises”, in Mordechai Bar-On & Meir Chazan (eds.), *Am Bemilkhama* (Jerusalem 2006) 133-134 (hereinafter, “Citizens at War.”)



practice was intended to prevent the exit of those seeking to evade military duty as well as prevent the transfer of information to the enemy.<sup>26</sup> Nonetheless, it would appear that the rationales for barring foreign travel were not only functional, but manifestations of the perception according to which remaining in Israel was essential to the solidarity shown by the general Jewish public to the soldiers and the nation. For example, Israeli women married to Mahal (foreign) volunteer soldiers who were discharged after their military service at the end of the battles, but prior to signing the ceasefire, were initially not permitted to leave Israel with their partners.<sup>27</sup>

In November 1948, the Emergency Regulations were extended, although in a slightly amended version: the absolute discretion regarding the decision whether to grant or deny an exit permit which had been given to the Minister of Immigration was revoked,<sup>28</sup> enabling the High Court of Justice to intervene in the Minister's decision approximately two years later.<sup>29</sup> In contrast, American citizens were compelled to wait for substantive United States Supreme Court intervention until 1958.

### After the War

After the 1948 war was over, there was a slight trend toward easing the restrictions and the number of travelers increased, as shown on Table 1.<sup>30</sup> In the opinion of Gershon Agron, head of the Government Information Office, 1948-1951 (and founder of the Jerusalem Post), the majority of the public understood the need for continuing the restrictions, but ever-increasing voices of protest began to be heard. Walter Eytan, director of the Ministry of Foreign Affairs wrote to the Foreign Minister that **"A feeling of bitterness, directed towards the State and the government, [was spreading,] giving rise to a psychological mood as though citizens of the State were imprisoned within their borders."**<sup>31</sup>

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<sup>26</sup> Letter to the Minister of Foreign Affairs from Walter Eytan, Aug. 23, 1949, ISA, Prime Minister's Office, Gimel 5552/20. See also Mordechai Bar-On, "Images of the Home Front among the Fighting Units", in *Citizens at War*, note 25 supra, 480-484.

<sup>27</sup> Letter from A. Harris to Levi Eshkol at the Defense Ministry, Dec. 9, 1948, IDFA 121/50 file 181.

<sup>28</sup> The powers of the Minister of Immigration under law and the Emergency Regulations were not transferred to another minister after the dismantling of the Ministry of Immigration in 1951, although, in actual fact, the Minister of the Interior utilized such Regulations until the 1953 and 1955 amendments to the law granted the Minister authority under Regulations 3(c) and (d). During the Interim, First and Second Governments, Moshe Haim Shapira served as Minister of Immigration. In the First and Second Governments, he also served as Minister of the Interior. *Official Gazette* 17, Aug. 25, 1948 (Appendix B), 81.

<sup>29</sup> In H.C. 3/51, *El Sayeed v. Minister of Immigration*, 5 P.D., 1075-78, the Israeli High Court of Justice ruled that, because the Emergency Regulations had been amended, and the "absolute discretion" which had been granted to the Minister of the Interior was deleted from the text of the regulations, the extent of the application of the Minister's discretion was severely curtailed, and that from then on, it would be appropriate for such discretion to meet the test set by the Supreme Court. In the framework of that same ruling, the court compelled the Ministry of Immigration to grant an exit permit to the applicant, and even obligated the respondents to pay legal expenses. ISA, Ministry of the Interior, Gimel 2242/vav 410 (5).

<sup>30</sup> Ministry of Immigration Circular, Oct. 30, 1950, ISA, Ministry of Justice, 5671/15.

<sup>31</sup> Letter from Gershon Agron to the Prime Minister, July 7, 1949; Letter from Walter Eytan to the Minister of Foreign Affairs, Aug. 23 1949, ISA, Prime Minister's Office, Gimel 5552/20.

The initial procedural relief, adopted pursuant to the opinion of the Attorney General in July 1949, proposed establishing an appeals procedure for those refused permission to exit the country. In order to clarify his position, the Attorney General further stated in his opinion that: “**Undoubtedly, the exit permit laws impinge upon human rights, in that a person is always free to travel wherever he [or she] wishes, and where such a right is limited by requiring one to receive an exit permit, his [or her] freedom is thereby restricted.**”<sup>32</sup> The proposed appeals committee was established in the framework of the Ministry of Justice.<sup>33</sup> In comparison, it should be noted that in the United States, a procedural limitation was placed upon the Secretary of State’s discretion by the courts in order to enable those denied an exit permit the right to a hearing.<sup>34</sup>

As a result of public pressure, and despite the actual policy as implemented, in Israel, some Cabinet Ministers were not inclined towards restricting the freedom to travel abroad. Because there was a strong affinity in favor of British law in Israel, the fact that there was no prohibition in principle in Britain against foreign travel after the Second World War<sup>35</sup> apparently influenced Israeli decision makers. In a ministerial committee session which deliberated the subject in September 1949, it was proposed that the requirement for obtaining an exit permit be cancelled altogether or that the procedure be greatly eased. Furthermore, it was proposed to collect a tax on travel tickets.<sup>36</sup> While the Ministers of Immigration and Justice reached the conclusion that the requirement for an exit permit should be completely repealed,<sup>37</sup> such a repeal did not occur because of the strong opposition expressed by the Ministry of Defense and the police force.<sup>38</sup> The restrictions were also grounded in precedent: the British Mandate exit permit policy, the British foreign currency allowance policy, the regulation of foreign currency exchange rates in the majority of European countries and, as stated above, the travel tax imposed on United States citizens.<sup>39</sup>

## Economic Hardship

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<sup>32</sup>Letter from Attorney General to Government Secretary, July 28, 1949, ISA, Ministry of Justice, Gimel 5671/14.

<sup>33</sup> ISA, Ministry of Justice, Gimel 8003/18.

<sup>34</sup> *Bauer v. Acheson*, 106 F. Supp. 445 (D.D.C. 1952); Turack, *supra* note 6, 10; Parker, *supra* note 6, 872.

<sup>35</sup> During the Second World War, formal restrictions were imposed and exit permits were required for British citizens, in addition to restrictions resulting from the war itself; see ISA, Government of Palestine, Mem 230/4.

<sup>36</sup> Letter from Y.N. Shay to Ministers of Justice and Finance, Sept. 23, 1949, ISA, Prime Minister’s Office, Gimel 5421/10.

<sup>37</sup>“Zikhron Dvarim Mevaadat Hasarim Le-inyan Heter Hayetsia”, Oct. 27, 1949 and Letter from Minister of Immigration to Minister of Finance, Nov. 13, 1949, ISA, Prime Minister’s Office, Gimel 5421/10.

<sup>38</sup>Summary of joint meeting held among Legal Counsel to Prime Minister’s Office and representatives of the Ministry of Defense, Police and IDF, ISA, Prime Minister’s Office, Gimel 5421/10.

<sup>39</sup> ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950, 48-9 (Eliezer Kaplan), 55 (Dov Yosef); Minutes of meetings of the First Government, vol. 22, Apr. 12, 1950, 87-9; Letter to Minister of Finance from A. Bergman, Dec. 25, 1949, ISA, Prime Minister’s Office, Gimel 5421/10; Minutes of the meetings of the First Government, vol. 31, Sept. 14, 1950, 37-8.

The increased stream of travelers abroad after the War of Independence, particularly during the first half of 1950, led to yet another review of the right to travel abroad, this time based not on security considerations, but on economic grounds.<sup>40</sup> The Israeli economy, which, by the beginning of 1950, less than two years after the State had been established, had absorbed approximately 350,000 new immigrants (and approximately 750,000 new immigrants by the end of 1951), was taxed in its ability to cope with the burden of absorbing such masses, the majority of whom were impoverished refugees. During this period, Israel suffered from critical shortages of foreign currency and was governed under a severe austerity program.<sup>41</sup>

Despite the economic situation and in light of deliberations held several months earlier at the end of 1949, the restrictions imposed on the freedom to travel abroad were not carved in stone. In yet further deliberations conducted by the government in April 1950, several ministers continued to ponder the justification for restricting the freedom to travel at all and to condition it upon obtaining an exit permit. In addition to Minister of Justice, Pinchas Rosen (Progressive Party), the Foreign Minister, Moshe Sharett (Mapai) also expressed objections to continuing the restrictions. In contrast, the most stringent stance was taken by the Prime Minister, David Ben Gurion. In response to Moshe Sharett's question regarding justification for continuing the exit permit requirement, Ben Gurion declared that there was a state of emergency. Sharett asked, "**Is there a law which determines that the state of emergency still exists?**" and Ben Gurion responded, "**Of course.**" "**And what is the justification for the continued existence of such a law?**" asked Sharett. Ben Gurion answered simply, "**Because there is no peace yet.**" Nevertheless, the discussions resulted in a decision to ease and simplify the process for submitting an application for an exit permit. A tax on foreign travel was also imposed, with the rationale that even the United States imposed such a tax.<sup>42</sup> A similar process of granting relief on the one hand and imposing various taxes on the other hand, also occurred in the future. Over the years, the fees collected for issuing exit permits and passports became a means of increasing the public coffers, as did the travel tax imposed upon travel tickets.<sup>43</sup> Thus travel was made more difficult while presenting the appearance of a relatively liberal policy.<sup>44</sup> Yet such a policy compromised the principle of equality. Consequently, criteria for granting such relief were later developed to minimize any inequality.

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<sup>40</sup> During the months January through March 1950, an average of 2330 permits were issued each month, and from April through July 1950, an average of 3932 permits were issued each month, Letter from Government Secretary to ministers, Nov. 28, 1950, ISA, Ministry of Justice, Gimel 5674/10.

<sup>41</sup> Nachum T. Gross, "Israeli Economic Policies, 1948-1951: Problems of Evaluation", in *Not By Spirit Alone* (Jerusalem 1999), 325, 331-3.

<sup>42</sup> ISA, Minutes of the First Government, vol. 22, Apr. 12, 1950, 87-9.

<sup>43</sup> Letter to P. Rosen from S. Milstein, May 3, 1959, ISA, Ministry of Justice, Gimel 5671/14; "Raising Passport and Exit Permit Fees Haalaat Ha-igrot Al Darkonim Ve-heterei Yetzia", May 6, 1959, ISA, Prime Minister's Office, Gimel 5552/3824.

<sup>44</sup> ISA, Minutes of meetings of the Second Government, Vol. 12, Aug. 14, 1951, 18. In 1957 a proposal to raise the amount of the exit permit fee dramatically (from 10 Israeli lira (pounds) to 150 Israeli lira (pounds) was considered); see note 114 hereinbelow. See ISA, Ministry of the Interior, Gimel 2245/102/3. The Ministers did not deny the fact that the various fees were intended to reduce the extent of foreign travel. See *Divrey Haknesset*, 17, Nov. 24, 1954: 170.

The more the State's foreign currency reserves dwindled, the stingier the Ministry of Immigration became in handing out exit permits. And so, in actual fact, during this period of time, it was the Treasury which controlled the distribution of exit permits.<sup>45</sup> From August 1950, until the first third of 1953, the primary motivation for restricting travel abroad was economic. Due to the country's dire financial straits, the Ministry of the Interior did not authorize travel by persons whose trips were not deemed **essential** in the opinion of the ministry clerks.<sup>46</sup> Mrs. D's case should be viewed in this context. On the other hand, it is appropriate to note that permits were relatively easily granted to new immigrants who did not acclimatize well to life in Israel and requested to leave the country permanently.<sup>47</sup> It should be noted that, during this period, almost no foreign currency was allotted to travelers (they received only \$5-10), other than to those who traveled for what were officially deemed proper purposes, such as government emissaries, or students. Travelers in most categories were even required to pay for their tickets in foreign currency sent from abroad.<sup>48</sup>

The hardships imposed upon the citizens generated several additional problems: first, the reduction in the number of exit permits also meant that the occupancy rates and frequency in air and ocean liners operating between Israel and the world was likewise reduced; second, as a result of an awareness of the obstacles in exiting the country, it was more difficult to attract new immigrants to Israel from Western countries<sup>49</sup>, and third, investors were deterred from investing in Israel.<sup>50</sup>

As a result of the economic crisis, during the summer of 1950, the Minister of Finance directed travel agencies not to sell tickets even to those who had already received an exit permit. This step aroused the ire of the Minister of Immigration. In a key and particularly raucous cabinet meeting on the subject in July 1950, Minister of Immigration Shapira (Religious Front) contended at the meeting that the Ministry of Finance had hijacked the exit permit process, in contravention of the law, and firmly demanded that those who already held exit permits be permitted to travel.<sup>51</sup> Eliezer Kaplan, Minister of Finance, asserted at such meeting that the majority of Israelis traveling abroad were engaged in profiteering and were causing damage to the value of Israeli currency (and this was, in fact, one of the main grounds for restricting travel until 1953).<sup>52</sup> Kaplan, explaining at length that various organizations such as the Israeli Medical Association and the Israel Bar Association (representing the Israeli middle class) had applied to send large groups abroad,

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<sup>45</sup> Ministry of the Interior Circular, Oct. 30, 1950, ISA, Ministry of Justice, 5671/15; ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950.

<sup>46</sup> *Haaretz* July 1951, *supra* note 19.

<sup>47</sup> Ministry of the Interior Circular, Oct. 30, 1950, ISA, Ministry of Justice, Gimel 5671/15.

<sup>48</sup> Letter to Y. Goldin from S. Korolik and D. Melamed, Junr 26, 1952, Letter to Y. Goldin from B. Weinberdg, Oct. 20, 1952, ISA, Ministry of the Interior, Gimel 2242/3.

<sup>49</sup> ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950, 51 (Zalman Shazar), 43 (Moshe Shapira); Letter to members of the Ministerial Committee on Exiting the Country, from Moshe Sharett, July 10, 1950, ISA, Ministry of Justice, Gimel 5674/10.

<sup>50</sup> ISA, Minutes of meetings of the Second Government, vol. 12, Aug. 14, 1951, 19 (Pinkhas Rozen).

<sup>51</sup> ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950, 43.

<sup>52</sup> Minutes of Meeting of the Internal Affairs Committee, June 4, 1952, Letter to the Internal Affairs Committee from Y. Goldin, June 24, 1952, ISA, Ministry of Internal Affairs, Gimel 2242/(5) vav 410. Minutes of meetings of the First Government, vol. 31, Sept. 14, 1950, 37-8.

determined that “**this disease of ‘travelitis’ ceaselessly assails us.**”<sup>53</sup> Dov Yosef condemned the inequitable consequences of the Ministry of Finance’s policy stating that, one who has money is able to travel whereas one who does not have any money is unable to leave the country.<sup>54</sup> At a cabinet meeting, Pinchas Rosen and Minister of Education Zalman Shazar (Mapai and later, Israel’s third president), demanded that citizens be able to travel abroad even for purposes of visiting relatives as well as study. Shazar claimed that, “**Clear thinking requires giving permission to travel under such circumstances and not creating [a state of] panic as though we are creating an iron curtain between our country and the outside world.**”<sup>55</sup>

After this meeting, the government began administratively to reduce the number of permits issued to citizens.<sup>56</sup> In June 1952, Knesset Member Yizhar Harari (Progressive Party) demanded that the right to travel be expanded and that the government be permitted to limit travel only for security reasons. Under existing policy, Harari asserted that those seeking to leave the country permanently receive permits easily while those who apply to leave temporarily, which in the main are veteran citizens (as the majority of new immigrants did not have the financial means to travel), were prevented from doing so. Based upon Harari’s statements, it became clear that the existing policy created a substantial **inequity** between those seeking to emigrate and those seeking to travel and then return.<sup>57</sup>

## **New Government**

At the end of 1952, the General Zionists (a political party leaning toward a free market policy) joined the coalition. The platform of the Fourth Government determined that the requirement for an exit permit would be abolished, other than for security reasons. To this end the party representatives, and particularly the Minister of the Interior, Israel Rokah, worked hard to ease the restrictions.<sup>58</sup> Moreover, the High Court of Justice was not inert, and in a ruling issued on June 9, 1953, Justice Zilberg wrestled with the dry, formalistic reading of the law, preferring instead a creative interpretation, and wrote unequivocally that “**The freedom of movement by a citizen to leave the country is a natural right, recognized as something to be presumed by every democratic country – including ours**” and further stated that it is not the granting of an exit permit, but

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<sup>53</sup> ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950, 47-51 (my emphasis O.R.)

<sup>54</sup> ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950, 41.

<sup>55</sup> ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950, 51 (my emphasis, O.R.).

<sup>56</sup> ISA, Minutes of meetings of the First Government, vol. 27, July 26, 1950, 49; *Haaretz*, July 1951, *supra* note 19. See precise data in letter to the Ministers from the Government Secretary, Nov. 28, 1950, ISA, Ministry of Justice, Gimel 5674/10. This restriction reduced the number of permits issued on average from 2,435 a month (June–December 1949) to approximately 1,600 a month (during the second half of 1950). Letter to Government Secretary from Ministry of Immigration, Table B, Jan. 13, 1950, ISA, Prime Minister’s Office, Gimel 5421/10.

<sup>57</sup> ISA, Minutes of meeting of the Internal Affairs Committee, June 4, 1952, Ministry of Internal Affairs, Gimel 2242/(5) vav 410.

<sup>58</sup> See for example letter from Minister of Internal Affairs to the Minister of Finance, Feb. 11, 1953, ISA, Ministry of Internal Affairs; Letter to the Minister of Internal Affairs from A. S. Moyal, Mar. 4, 1953, ISA, Ministry of Internal Affairs, Gimel 2242/37.

rather its denial, which necessitates providing an explanation.<sup>59</sup> In any case, the Israeli Supreme Court may have been able to so assert for three main reasons. First, the court, in the final analysis, confirmed the State's **refusal** to grant Mrs. Kaufman (a member of the Israeli socialist leftwing party) permission to leave the country for security reasons, without such grounds being divulged before it. Second, in contrast to the American model, leaving Israel was not prohibited to persons with leftist political leanings.<sup>60</sup> Lastly, such a statement, at least publicly, was not a revolutionary one, as already in April 1953, the government (due to the demands made by the General Zionists) had decided to greatly ease foreign travel by its citizens. For the first time, **an exit permit was, in principle, granted to each citizen to leave the country unless a specific entity barred such travel, in direct contrast to the previous situation.**

Concurrently, the process for filing an exit permit application was greatly simplified and the grounds for barring a citizen from travel abroad were formally limited to state security reasons,<sup>61</sup> or criminal, or suspected criminal, behavior.<sup>62</sup> In parallel, new immigrants were required to return property they received from the State prior to being allowed to emigrate permanently<sup>63</sup> and the travel tax was raised, fluctuating between 35% and 100%.<sup>64</sup> In 1953, the number of travelers grew, as it would appear that the relative liberalization enabled those applicants seeking to leave to do so.<sup>65</sup> When it became apparent that year that emigrants exceeded immigrants, it led to initiatives to limit emigration even at a cost of infringing upon the right to travel abroad, although with respect to exit permits, such initiatives did not bear fruit and the law was not amended.<sup>66</sup>

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<sup>59</sup> H.C. 111/53, *Haya Kaufman v. Minister of the Interior*, 7 P.D. 534, 536-7 (hereinafter, "*Kaufman*"). See also Motion 41/49 in C.A. 24/48, *Shimon v. Attorney General*, 4 P.D. 143, 145-6 (the fact that many cultured countries recognize a particular law and act in conjunction therewith, may be sufficient, in the absence of any other provision, to bind Israel as well, which aspires to be a cultured nation). In comparison, it should be noted that the United States Federal Court of Appeals for the District of Columbia recognized the right to travel abroad as a natural right in 1955. *Shachtman v. Dulles*, 96 U.S. App. D.C. 287, 225 F.2d 938 (1955). See also "The Passport Puzzle", *The University of Chicago Law Review*. 23, no. 2 (Winter 1956): 260-89, 264.

<sup>60</sup> *Kaufman*, *supra* note 59, 538.

<sup>61</sup> Summary of Discussions with the Israel Security Service (Shin-Bet), Apr. 12, 1953, ISA, Ministry of Internal Affairs, Gimel 2243/9.

<sup>62</sup> Letter to the District Supervisors from Y.N. Shay, Feb. 28, 1955, ISA, Ministry of Internal Affairs, Gimel 2242/37.

<sup>63</sup> Letter from Dr. G. Yoseftal to Government Secretary, Mar. 9, 1955, ISA, Ministry of Internal Affairs, Gimel 2242/37; Letter from Government Secretary to Attorney General, Apr. 27, 1953, ISA, Ministry of Justice, Gimel 8003/18.

<sup>64</sup> Letter from the Ministry of Finance (Department of Foreign Currency) to the General Director of the Ministry of Justice, July 7, 1953; Order for Foreign Travel Tax (Exemption) 5713-1953, Aug. 25, 1953, ISA, Ministry of Justice, Gimel 8003/18.

<sup>65</sup> ISA, Ministry of Internal Affairs, Gimel 2243/9; Gimel 2243/1. It should be noted that the State permitted non-government entities to peruse the lists of applicants for exit permits as well.

<sup>66</sup> In this year, 10,347 Jewish immigrants came to Israel, whereas, 12,500 Jews emigrated. See Table 1. Gradually, until 1956, the conditions under which passports were issued to those who had been in Israel less than five years were formulated, but these conditions were not intended to completely bar their permanent emigration. See *Israel Statistical Year Book* 12 (1961): 83, 102; Yitskhak Refael, "Keitsad Meakvim et 'Hayerida'", *Hatzofe*, Dec. 25, 1953; B. Meizels, "Lehakhid al Hayetsia Lehakel al Hashiva", *Maariv*, Oct. 10, 1953; "Maskanot Vaadat Hamishne Shel Vaadat Hapnim Leverur Baayat Azivat Haaretz Litsmitut", Central Zionist Archive (hereinunder, the "CZA"), A 430/210/ bet/2. See also ISA, Ministry of Justice, Gimel 5687/13.

## Elections and War

In 1955, two contradictory changes occurred. At the initiative of Knesset Member Harari, the Knesset amended the wording of the Emergency Regulations on June 7, 1955.<sup>67</sup> The authority of the Minister of the Interior was curtailed in that the Minister was limited to denying an exit permit only under circumstances where there were grounds to suspect that travel by the applicant was liable to breach State security or pursuant to a court order. Those subject to conscription for army service and those in the army reserves were required to attach a discharge certificate from the army or the Ministry of Defense to their application. These provisions entered into force as of June 16, 1955.<sup>68</sup> It may be surmised that easing the granting of exit permits as of June 1955 was related to garnering the necessary votes for the upcoming elections. The coalition members, the General Zionists and, in particular, Mapai, which was very concerned with the election results, sought to indicate quietly to their intended pool of voters – that is, the more financially established old timers, who were able to purchase travel tickets to travel abroad – what their future platform would be. The statistical data support this assertion.<sup>69</sup>

After the elections, at the beginning of August 1955, Yoel Marcus, a reporter with the Davar, the Histadrut trade union's daily newspaper, criticized the rapidly expanding phenomenon of traveling abroad and described the exit policy as **“luxuries for a nation struggling for its economic independence.”**<sup>70</sup> Two days later, Davar printed an article that 15,000 Israeli tourists had already traveled abroad that year and the Treasury was criticized for its overly liberal handling of the situation.<sup>71</sup>

In October 1955, approximately two weeks before the new government was inaugurated, in a meeting held between representatives of the Ministry of the Interior and representatives of the Judge Advocate General's Office, it was clarified that the requirement that soldiers serving in the reserves must seek authorization from the military as a pre-condition to traveling abroad had no legal basis. This lacuna was amended in 1956 and will be discussed at greater length below.<sup>72</sup>

The winds again changed direction after the Seventh Government was sworn in and the Ministry of the Interior passed to Israel Bar-Yehuda of the hawkish socialist party (Akhdut Ha'avoda). By the middle of December 1955, the Minister of the Interior sought renewed deliberations by the government on the subject of traveling abroad and proposed: **“to use explanatory activities and other means to stop the**

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<sup>67</sup> *Divrei Haknesset* 17 (June 7 1955): 1817-8.

<sup>68</sup> Letter to the Minister of Internal Affairs from Y. Goldin, June 2, 1955, ISA, Ministry of Internal Affairs, Gimel 2242/37; Letter to District Supervisors from Y. Goldin, June 17, 1955, ISA, Ministry of Internal Affairs, Gimel 2242/6.

<sup>69</sup> In June 1954, 3,785 exit permits were issued, in June 1955, 4,635 permits were issued, in July 1954, 3,805 permits were issued and in July 1955, 5,293 permits were issued (elections were held on July 26, 1955). ISA, Ministry of Justice, Gimel 8003/18.

<sup>70</sup> Yoel Marcus “Bulmus Yetsia Lekhuts-Laaretz” *Davar*, Aug. 8, 1955 (CZA, S71/930).

<sup>71</sup> *Davar*, Aug. 10, 1955 (CZA, S71/930).

<sup>72</sup> “Zikhron Dvarim”, Oct. 16, 1955, ISA, Ministry of Internal Affairs, Gimel 2241/8.

**mass trend to travel abroad.**<sup>73</sup> In a cabinet meeting held on December 18 of that year, the Minister of Finance advised that he had promulgated a directive according to which the foreign currency allowance for travelers abroad was to be reduced by up to fifty percent.<sup>74</sup>

It is important to remember that in September 1955, Israel learned of the huge weapons deal between Egypt and Czechoslovakia, which had the potential of changing the strategic balance of the entire region. The security situation, which had previously been fraught with tension, only intensified. In the end, this transaction led to Israel being heavily outfitted with weapons, although at great financial burden to the economy, and to the subsequent outbreak of the Sinai Campaign at the end of October 1956.<sup>75</sup> Commencing in the fall of 1955, Bar-Yehuda conducted a campaign intended to tighten the exit permit policy yet again.

On January 23, 1956, the Knesset began deliberations on the first reading of a bill intended, for the first time, to grant official authorization to the Minister of Defense for anything related to granting exit permits to soldiers serving in the reserves (prior thereto, the official authority was in the hands of the Minister of the Interior). In his opening remarks, Bar-Yehuda stated that the current law contained no satisfactory solution to the then current security situation.<sup>76</sup> As a result of the on-going military tension, the General Zionists, now sitting in opposition in the Knesset, announced that they would agree to the proposed amendment. Nonetheless, a member of the General Zionist faction, Ezra Ichilov, expressed concern **“that those to whom this authority is granted should not use it unnecessarily.”**<sup>77</sup> Harari asserted that the proposed bill would overturn the rule set in the previous revision made prior to the 1955 elections, according to which every person is permitted to leave the country, and, instead determine that those subject to conscription and soldiers in the reserve, were, first of all, not permitted to leave. The issue according to Harari was whether the country exists for the sake of its citizens or whether all the citizens exist solely for the convenience of the government.<sup>78</sup> Minister of the Interior Bar-Yehuda responded to criticism expressed both by members of the coalition and the opposition, and asserted that the very fact that, less than a year before, MK Harari’s revision permitting liberalization was adopted proved that there was no disagreement between those holding a liberal viewpoint and those wishing to close Israel’s borders hermetically. Bar-Yehuda stated that instead, it was a matter which was time sensitive and should not necessarily be condemned.<sup>79</sup>

Notwithstanding these statements, it appears that the collectivistic viewpoint of Bar-Yehuda, and the security situation mutually reinforced each other and led to the amendment of the law. In contrast thereto, the public’s behavior reflected their

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<sup>73</sup> Letter to Government Secretary from the Minister of Internal Affairs, Dec. 15, 1955, ISA, Prime Minister’s Office, Gimel 5552/3824; See also “Yevakshu Letsamtsem Nesiot Lekhul”, *Yediot Akhronot*, Dec. 15, 1955.

<sup>74</sup> “Hotsaat Matbea Khuts Le Nesiot le Khutz Laaretz”, Dec. 18, 1955, ISA Prime Minister’s Office, Gimel 5552/3824 Kaf Lamed/16.

<sup>75</sup> Mordechai Bar-On, *Gvulot Ashenim* (Jerusalem 2001), 154-60 (hereinunder “Gvulot Ashenim”).

<sup>76</sup> *Divrey Haknesset* 19 (Jan. 23, 1956): 844-5.

<sup>77</sup> *Divrey Haknesset* 19 (Jan. 23, 1956): 845.

<sup>78</sup> *Divrey Haknesset* 19 (Jan. 23, 1956): 845-6.

<sup>79</sup> *Divrey Haknesset* 19 (Jan. 23, 1956): 852-3.



mood, and prior to the second and third readings of the law, the anticipated restrictions led to long lines forming at the Ministry of the Interior. It appears that even those who did not really consider leaving the country applied for an exit permit and passport just to be on the safe side before the restrictions would be implemented, even though they were only to apply to certain citizens. The citizens' actions contradict the collectivist image of Israeli society at the time. It appears that, despite the heightened security threat, the Israeli public (or at least certain members) was not concerned with security but rather with individual affairs and freedom.

On March 22, 1956, the amendment was finally passed.<sup>80</sup> In the Knesset deliberations on the second and third readings, prior to passage of the amendment, the content of the bill was again criticized. Knesset Member Haim Landau (Herut) termed the coalition's approach: 'pesudo-patriotism' and demanded that soldiers in the reserve army who were refused exit permits be permitted to appeal. He was not convinced of the honest intentions of the government and opined that it had a hidden agenda. The Chairman of the Internal Affairs Committee of the Knesset, Yaakov Riftin (Mapam), reinforced this determination when he responded that the security situation was not good and that he did not understand why, under such circumstances, citizens were not prohibited from leaving the country unless absolutely necessary.<sup>81</sup> At the same time (March 1956) Bar-Yehuda sought to introduce two additional amendments to the Emergency Regulations: to shorten the time during which it was permissible to utilize the exit permit from six months to one month, as well as to reintroduce the test of whether the travel was "essential" as a compulsory category.<sup>82</sup> However, despite such sentiments, there was no prohibition enacted on leaving Israel, and Bar-Yehuda was only partly successful. It may be surmised that, following a loss in strength of the ruling Mapai party in the third Knesset elections in the summer of 1955 (from 45 Knesset members down to 40), its representatives were not eager to initiate an even more unpopular platform, unless such was deemed essential to national security and specific military needs. After amending the Emergency Regulations in March, the preferred method became to impose relatively minor restrictions through administrative means and not through primary legislation. Throughout these years, Mapai, was, in any case, absorbed in its struggle with the middle class sectors (which constituted the majority of the travelers) and, *inter alia*, with academics seeking to broaden the economic and social gaps between themselves and other workers.<sup>83</sup> Accordingly, in choosing its battles, it apparently sought to avoid confrontation on this front as well. An additional reason for the lack of enthusiasm for barring travel abroad or imposing further restrictions was the fact that such travel swelled state coffers. Yet, it would seem that financial motivations were not the sole consideration and that at least some of the policy makers did not hesitate to turn the clock back, even without a political sword of Damocles hanging over their necks. Vacillation on the part of Mapai ministers over the years and their need for external confirmation of their

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<sup>80</sup> Letter to District Supervisors from Y.N. Shay, Mar. 25, 1956, ISA, Ministry of the Interior, Gimel 2242/6.

<sup>81</sup> *Divrey Haknesset* 20 (Mar. 12, 1956): 1414-6.

<sup>82</sup> Letter to District Supervisors from Y.N. Shay, Mar. 25, 1956, ISA, Prime Minister's Office Gimel 5552/3824.

<sup>83</sup> Avi Bareli and Uri Cohen, "The Middle Class versus the Ruling Party during the 1950s in Israel: The 'Engine-Coach Car' Dilemma", *Middle Eastern Studies*, forthcoming.

policies, demonstrates that such policies were adopted of necessity and not as a desired ideological principle. Accordingly, Bar-Yehuda's proposal to again restrict travel abroad by imposing a **needs** test was not adopted. Instead, during 1956, complaints regarding delays in issuing passports and exit permits increased, and in July the time period for which the exit permit was valid was shortened.<sup>84</sup> It is therefore, difficult to avoid the impression that the Minister of the Interior's actions were directed at reducing the numbers of those traveling abroad, both because of the security situation as well as because of the moral issues which it raised.

In November, immediately after the Sinai Campaign broke out, the Minister of the Interior cancelled those exit permits which had been granted to reserve soldiers who had not yet left the country.<sup>85</sup> Moreover, the Minister gave directives to the clerks at the Ministry of the Interior orally (because they contravened the law) to severely reduce the rate at which exit permits were issued, even to ordinary citizens and, in actual fact, to issue them solely in urgent and essential situations. This oral directive was gradually rescinded after the war was over.<sup>86</sup> In the final analysis though, as a result of the significant amendments in the law during the summer of 1955, despite the burden on the reserve soldiers (stemming from the March 22 amendment) and the bureaucratic footdragging imposed, the number of travelers abroad during 1956 exceeded previous years. After the war, the Emergency Regulations were extended repeatedly, even after the security situation improved. However, the restrictions were, nonetheless, eased significantly.<sup>87</sup>

### **New Policy**

The requirement that Israeli citizens receive exit permits in order to travel abroad was finally cancelled in 1961, yet again against a backdrop of upcoming elections, where a private members' bill in this vein was submitted by Knesset Member Zvi Zimmerman (General Zionists) and Knesset Member Moshe Haim Shapira (Mafdal), who again held the portfolio of Minister of the Interior. There was no strong opposition to abolishing the need for exit permits by the government, other than opposition by Minister of Finance Levi Eshkol who demanded that alternative financial resources be substituted. The deliberations by the government reflect ministerial concern over the wide popularity enjoyed by the private members' bill and the urgent desire to replace it with a government-sponsored bill, in order to

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<sup>84</sup> M. Shmaryahu, "Bulmus shel Yetsia", *Maariv*, Jan. 27, 1956 (CZA, S 71/930); Letter to Government Secretary from Pinkhas Rozen, Aug. 29 1956, ISA, Prime Minister's Office, Gimel 5552/3824; Minister of the Interior's reply to question of Knesset Member Gershon Schoken, July 25, 1956, ISA, Ministry of the Interior, Gimel 2242/6; Letter to Minister of the Interior from Y.N. Shai, Aug. 31, 1956, ISA, Ministry of the Interior, Gimel 2242/37. It should be explained in this context that shortening the time period for which the permits were valid created a considerable hardship on those traveling, as Israelis could request a visa to visit a country only after obtaining an exit permit. The wait to obtain a visa could sometimes take months, and thus, by the time the citizen received the long-awaited visa, the exit permit would expire.

<sup>85</sup> Official Gazette [Kovets Hatakanot] 650, Nov. 1, 1956, ISA, Ministry of the Interior, Gimel 2245/102/3.

<sup>86</sup> Letter to District Supervisors from Y.N. Shay, Nov. 13, 1956; Letter to Y.N. Shay from A. Silverberg, Nov. 21, 1956, ISA, Ministry of the Interior, Gimel 2242/37.

<sup>87</sup> The processing time for an exit permit application was shortened and the validity of the permit was again extended to six months. Letter to District Supervisors from Y.N. Shay, June 14, 1957; Letter to A. Silverberg from Y.N. Shay, Mar. 10, 1957, ISA, Ministry of Internal Affairs, Gimel 2242/13.

curry favor with the public.<sup>88</sup> During the Knesset's deliberations, representatives of the various parties of both the coalition and the opposition presented themselves as initiators of the amendment abolishing the requirement for exit permits.<sup>89</sup>

The law was not rescinded in its entirety leaving the Minister of the Interior with the authority to bar an individual from leaving the country on the grounds of violating state security. Soldiers in the reserves continued to be required to obtain an exit permit from the Minister of Defense or from the army until the end of the 1980s.<sup>90</sup>

## Discussion

The Universal Declaration of Human Rights states: "The overall right to leave a country was restricted by paragraph 3, which permits limits on the right of movement on the broad grounds of national security and public order."<sup>91</sup>

Yaffa Zilbershatz defined three categories currently justifying restrictions on the right to leave Israel: State security grounds, public order, and the rights of others.<sup>92</sup> Even though a dramatic change in the exit policy had occurred from the time the State was established until the present, these same definitions have served, then and now, as justifications for limiting travel. Thus, objectively, the key difference lies in the interpretation of these categories, both ideologically and practically, and not in the claims themselves.

The multiplicity of opinions regarding the freedom to leave the country which were expounded during Israel's first decade serve as the reference point for an intricate web of conflicting interests and principles based on various cultural and ideological repertoires: On the one hand, an individual's right to freedom and human rights and, on the other, a belief in the supremacy of the public interest, sustained by the duty for individual's behavior to be subservient to the needs of the State, primarily in the arenas of state security and economics. During Israel's early days, the policy makers made their decisions for the benefit of what, in their perspective, was essential to the public interest. An individual's interest, as well as an individual's freedoms, under the circumstances, naturally took a back seat. First and foremost, this approach was rooted in the objective state of affairs.

## Economics

The need to reduce the extent of traveling abroad on economic grounds during the early days of the State was legitimate. Nonetheless, imposing a needs test for such travel undoubtedly substantially infringed upon citizens' rights. After restrictions were eased in 1953, the needs test was replaced by widespread use of economic restrictions. The fact that the percentage of travelers rose only moderately during

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<sup>88</sup> ISA, Minutes of the Ninth Government, May 28, 1961, Government Secretary's Office, Gimel 12969/11, pp. 49-51.

<sup>89</sup> *Divrey Haknesset* 31 (June 5, 1961): 1897-900.

<sup>90</sup> Letter to the Director General of the Justice Ministry from Kh. Kadmon, Sept. 29, 1961, ISA, Ministry of Justice, Gimel 8004/1; ISA, Police Ministry, Gimel 6836/6 (3/1); *Divrey Haknesset* 22 (June 24, 1967): 2218; *Divrey Haknesset* 44 (Dec. 14, 1965): 164.

<sup>91</sup> Dowty, *supra* note 5, 113.

<sup>92</sup> Zilbershatz, *supra* note 2, 90-91.

this year, may demonstrate the effectiveness of these economic measures. According to Minister Rokach, the furor over the liberalization was unjustified, as in 1954, the number of travelers even declined.<sup>93</sup> All the same, the high rate of taxation and the scarcity of travelers going abroad made foreign travel alluring and turned it into a status symbol. Although such economic restrictions may have been an effective step in terms of the country's foreign currency reserves, they impacted negatively on the desired social climate which the decision makers, both on the political left and right, sought to achieve. Evidence for this may be found, *inter alia*, in the statements of Minister Rokach, who was no socialist. He related in the Knesset plenum that, when he himself became ill, he did not go abroad to recover, but rather found an appropriate place in the environs of Jerusalem. He stressed that he, like his socialist colleagues, believed that the affinity for travel abroad did not reflect society's proper values, but he added that he believed the correct way of inculcating these values was through education and not by force.<sup>94</sup>

## Security

As discussed above in more detail, as the Sinai Campaign loomed, security rationales were again trotted out for consideration. In retrospect, as some of the Knesset members from the liberal parties suspected, it was possible to determine that the temporary security tensions were employed to impose long-term restrictions on certain citizens. Nevertheless, the fact that the requirement that reserve soldiers obtain an exit permit was not rescinded until the late 1980s, surviving even changes of the ruling parties, means that it was viewed by Israeli society as legitimate. Whether this occurred as a result of long-standing education on the part of the policy makers or as a result of social developments which imbued the security issue with unique standing, is difficult to determine. Because, in the end, the change in policy was mainly due to public pressure, it would appear the second view is more likely.

## Control and Sovereignty

Upon examining the conduct of the policy makers, the psychological factor must also be considered. In all nations, but all the more so in a country newly-established, the sense of control has a great effect on policy considerations. During the early years of the State, there was little actual control over its geographic borders and even its sovereignty was in doubt. The formal borders were wide-open and infiltrators breaching the young State's sovereignty were a daily occurrence.<sup>95</sup> Just as Israel's retaliation policy was intended both as a deterrent and for the purpose of demonstrating control, it may be argued that its exit policy was also intended to achieve both functional and symbolic aims. In a situation where the borders were porous, exercising control at sites symbolizing the State's sovereignty – that is – at its formal border entry and exit points, and implemented at least with respect to its own citizens, expressed an essential need. In response to the question posed by Knesset Member Shoken (Progressives) to Minister Bar-Yehuda in 1956, the Minister of the Interior responded that “Freedom of movement is assured ... to every honest citizen ... freedom – but not anarchy.” Bar-Yehuda's use of the

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<sup>93</sup> *Divrey Haknesset* 17 (Mar. 15, 1955): 1089.

<sup>94</sup> *Divrey Haknesset* 14 (Aug. 19, 1953): 2430.

expression “anarchy” was intended to describe his sense that his actions stemmed from a need to impose order on a situation where control was absent.<sup>96</sup>

## Emigration from Israel

For the entire period of time during which Israeli citizens were required to obtain exit permits, the frequent amendments in policy were accompanied by close scrutiny by the press.<sup>97</sup> The issue of traveling abroad was deemed central, not only by those who themselves hoped to obtain an exit permit, but because it was also associated with the national sensitivity to emigration, with respect to which there was broad public consensus. Emigration was perceived by everyone to be a social ill.<sup>98</sup> Despite the great waves of immigration, in contrast to other models,<sup>99</sup> the rate of emigration did not endanger the Zionist enterprise. However, because the vast majority of the State’s population had immigrated to Israel at one time or another, thus personally identifying with the positive attribute of immigration, and suffered, collectively and often individually, under difficult conditions, while coping with, and overcoming, a hostile environment, a sense of communal danger triggered by the red flag of emigration had permeated the entire public’s consciousness and society looked askance at Israelis seeking to leave Israel permanently.

The allegation that easing exit permit restrictions would encourage emigration was an oft-repeated mantra.<sup>100</sup> As in other locales around the world, the Israeli police force carefully followed the work of travel agencies, which acted, it was asserted, to encourage travel as well as emigration.<sup>101</sup> This negative association with emigration from Israel was related to the intensity of the national experience which Israeli society was undergoing which at that time was at its height. Thus, Dowty noted in his comparative research:

As national loyalty came to be perceived as the cement of society, emigration was increasingly regarded as deviant behavior. This became especially true as international differences sharpened along ethnic or ideological lines, making emigration seem almost traitorous.<sup>102</sup>

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<sup>95</sup> *Gvulot Ashenim*, *supra* note 78, 148-52.

<sup>96</sup> *Divrey Haknesset* 20 (July 25, 1956): 2416.

<sup>97</sup> CZA, S 71/930.

<sup>98</sup> Shalom Vorm, *Giyora Yoseftal, Khayav Ofoalo* (Tel Aviv 1963), 180-82; Shabtai Klugmann (K. Shabtay), “Ashemim Gam Anakhnu”, *Davar*, Dec. 3, 1953; “Kol Anot Kharata”, *Davar*, Sept. 13, 1953; “38261”, *Kherut*, Dec. 24, 1953; Natan Dornai, “‘Hayerida’ Leor Dmutenu Hakhevratit”, *Al Hamishmar*, Nov. 15, 1953; Paula Appenshlak, “Arbaat Haalafim Shebakharu Begola”, *Al Hamishmar*, Jan. 4, 1954; Yitskhak Rafael, ‘Keitsad Meakvim et H’yerida’”, *Hatsofe*, Dec. 25, 1953; Yael Har-Even, *Hayerida Kebaya Khevratit*, MA Dissertation, (Tel Aviv University 1989), 51-52; Danna Liebermann, *Hashpaat Hamatsav Hakalkali Vehabitkhoni al Yeridat Israelim Mehaaretz*, MA Dissertation, (Tel Aviv University 2006); Yinon Cohen, “Hasikhsukh Hayisraeli Aravi Vehayerida Mehaaretz”, *Megamot* 32, no. 4: 433-48; Reuven Lamdani, “Hayerida Meyisrael”, *Revaon Lekalkala* 30 no. 116: 462-78.

<sup>99</sup> Albert O. Hirschman, “Exit, Voice, and the State,” *World Politics* 31 no. 1 (Oct. 1978): 90-107, 103 (hereinafter, “Hirschman”).

<sup>100</sup> Letter to the Minister of Internal Affairs from B. Gefer, Feb. 10, 1953; Letter to B. Gefer from Minister of Internal Affairs, Feb. 23, 1953, ISA, Ministry of Internal Affairs, Gimel 2242/14.

<sup>101</sup> Ministry of Internal Affairs, Gimel 2242/14; Green, *supra* note 14, 282.

<sup>102</sup> Dowty, *supra* note 5, 57-58; see also Green, *supra* note 14, 279-282.

Nonetheless, notwithstanding the concern over emigration from Israel, and in contrast to the ill will shown by society to emigrants, other than during periods of hostilities, the State did not stop emigrants from leaving, provided they were not subject to the draft, had returned or refunded the value of any material benefits received from the government, did not owe taxes, and later on, also provided proof that they had been granted an appropriate entry visa to their intended country of emigration.<sup>103</sup> This was the declared policy and, other than very specific instances,<sup>104</sup> was apparently the sole policy. Despite the fact that this policy was harsh with respect to emigration, it did not bar it outright. While easy to understand why the State did not favor in emigration, it is difficult at first blush to explain the stringent policy imposed specifically against those Israelis who intended to leave the country temporarily with every intention of returning. Such procedures demand explanation.

Functionally, the data demonstrates that there was a wide discrepancy between the number of those declaring their intention to emigrate and those actually emigrating. It transpires that some Israelis who, on their application forms, declared that their intention was to leave temporarily and then return, sought, in fact, to conceal the true one-way nature of their trip. There were several reasons for this, other than the broad tarring of emigration by society at large described above.

First, those who concealed their intended emigration were able to enjoy the material benefits granted to them by the State as new immigrants, while avoiding any refund of such compensation to the Treasury or the Jewish Agency as required when they left the country permanently. Moreover, these new immigrants often arrived in Israel with their extended families, yet upon leaving permanently, left behind relatives who were unable to fend for themselves, thus compelling the State to assume care for such individuals. A primary rationale for keeping a close eye on those stating that they were leaving the country temporarily was, therefore, financial.<sup>105</sup>

Secondly, the State could not totally prevent those who declared their intention to leave Israel permanently from leaving because that would potentially impact negatively on fostering the policy of continuing to attract new immigrants to Israel, in particular from the West. Moreover, Israel's foreign affairs policy as well as its self-image would be tarnished. Thus, during this period, despite human rights being put frequently to the test, policy makers aspired to distance themselves from the Soviet model (and it is not out of place in this context to remember Minister Zalman Shazar's use of the phrase, "**Iron Curtain**" during the 1950 cabinet meeting

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<sup>103</sup> Letter to the Consular Department, Ministry of Foreign Affairs from the Department for Exit Permits, Oct. 21, 1952; Letter to the Ministry of Immigration from the Ministry's District Office, Tel-Aviv, June 20, 1949, ISA, Ministry of Internal Affairs, Gimel 2242/14; Minutes of the Meetings of the First Government, Vol. 27, July 26, 1950, 41, ISA, Ministry of Internal Affairs, Gimel 2243/9; *Divrey Haknesset* 13 (Mar. 11, 1953): 939; Shimon Sammet, "Rak Kartis Nesia", *Haaretz*, July 23, 1952; "Yinaktu Tseadim Neged Ha'Yerida", *Davar*, Dec. 17, 1953.

<sup>104</sup> Where the authorities suspected travelers of attempting to leave the State under the influence of Christian missionaries and after converting from Judaism to Christianity, ISA, Ministry of Internal Affairs, Gimel 2243/7, or where potential emigrants were of an age when they would soon be subject to conscription in the army. ISA, Ministry of Internal Affairs, Gimel 2242/37.

<sup>105</sup> Minister Bar-Yehuda's reply to MK Gershon Schoken's question, July 25 1956, ISA, Ministry of Internal Affairs, Gimel 2242/37.

mentioned above at note 51,) which served as a warning sign.<sup>106</sup> Thirdly, it is also reasonable to assume that policy concerns with regard to social unrest assisted those who were seeking to emigrate.

Finally, the stringency encountered by those leaving the country temporarily, may, at times, be explained as a desire to educate the public – a desire directed at those whom the State viewed as being part and parcel of its social fabric, and not towards those who elected to leave permanently.

## Politics

The fact that policy makers chose to prefer the public interest over individual freedoms also stemmed from the socialistic background of the ruling Mapai and other leftist parties – Mapam and the Akhdut Ha'avoda. This fact, however, should be qualified in that within Mapai itself there were differences of opinion and that its platform was, at times, linked to transitory circumstances and affected by political considerations.

In the campaign to improve the right to freedom of travel abroad, politicians from a broad spectrum of parties took part, however, the key individual who fought to moderate the restrictions over the years, was Knesset Member Harari, supported for the most part, although not always with the same fervent resolve, by ministers and Knesset members of the General Zionist party. As noted above, Harari's rationale was one of principle – in his view, the State existed for the benefit of its citizens and not the opposite. This individualistic approach<sup>107</sup> stood in direct contrast to the authoritative-collectivist perspective formulated, in the main, by persons from the socialist parties such as Bar-Yehuda (Akhdut Ha'avoda), Ben-Gurion (exemplified in his above-mentioned interpretation of the "state of emergency"), Yitzhak Ben-Aharon (Akhdut Ha'avoda)<sup>108</sup> or Shlomo Lavi (Mapai).<sup>109</sup> According to discussions held in cabinet meetings, it should be recognized that Mapai's platforms had to be responsive to a multitude of needs: the State's, the public's (even if these were psychological needs and not physical ones), the party's, the coalition's and the individual needs of various ministers. Mapai's policy attempted, therefore, to find a balance among conflicting interests. The fluctuations in exit policies thus reflected different weights accorded to different objectives at different times. Nonetheless, three constants leading to easing of the exit policies may be identified: recognition, in principle, by government clerks and publicly elected officials in the coalition of

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<sup>106</sup> Letter from General Director of the Ministry for Foreign Affairs to the Ministry of Defense (Draft Induction Center), July 16, 1948, IDFA 580/56, file 389; ISA, Ministry of the Interior, Gimel 2243/5. Evidence thereof may be found in deliberations held during the cabinet meeting regarding the Kol Ha'am Supreme Court case; see Orit Rozin, "Kol Ha'am' – Portrait of a Struggle" in Michael D. Birnhack, *Sheket Medabrim*, Ramot -Tel Aviv University: Tel Aviv 2006, 95. It is crucial to note here that even during the deliberations regarding the phrasing of the Universal Declaration of Human Rights, the Soviet Union objected to the comprehensive wording regarding the right to travel abroad and return to one's country, demanding that this section, to all extents, be devoid of any real content. See Whelan, *supra* note 4, 641-2.

<sup>107</sup> *Divrey Haknesset* 13 (Jan. 11, 1953): 942.

<sup>108</sup> *Divrey Haknesset* 19 (Jan. 23, 1956): 846-7.

<sup>109</sup> *Divrey Haknesset* 17 (Nov. 24, 1954): 170, 173.

the right to travel abroad, pressure by those applying to travel abroad, and political needs.

## **Ideology**

### **1. The Pioneering Spirit**

The aim of the ministers and members of Knesset, in particular from the left-wing parties, was to maintain the ethos of minimal consumption which prevailed among the Jewish elite during the British Mandate period. In actual fact, however, an urban, industrialized and technological society had sprung up in Israel, one which did not identify with the anachronistic objectives of the pre-State society and sought to ensure, support, demonstrate and enjoy the symbolic capital they had acquired by virtue of their economic status. The bulk of travelers from Israel were middle class. The affinity of Israelis for travel abroad may therefore be understood against the backdrop of the then-ensuing socio-economic struggle.<sup>110</sup> When, at a cabinet meeting, Dov Yosef objected that government policy prevents those with little means from traveling abroad, he clarified that one of the most important values in his opinions is that of equality. Mapai, as stated above, aimed at maintaining as narrow a social gap as possible. In order to create a balance between the various needs of the government – the need to collect taxes and fees from the public, on the one hand, and the need to promulgate equality, on the other – criteria on behalf of those with little means, or those traveling for health reasons were formulated in order to enable these, too, to travel. However, the data demonstrate that it was actually those with means who did the traveling.

The principle of equality was not only the province of Mapai, but Knesset Member Harari also demanded equality, although of a different type, when he objected that the emigrants found it easier to leave the country than those wishing doing so temporarily. The objective of the policy makers to establish a policy of equality, with respect to the entire subject of traveling abroad, was not successful. Nonetheless, imposition of a hefty tax, and the fact that, even in 1960 the number of travelers was less than those who traveled in 1946, testifies as to the creation, in fact, of a reality of compromise, where only a small minority of citizens travels abroad, while the remainder benefits, at least in principle, from the taxes such minority pays.<sup>111</sup>

### **2. The New Jew**

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<sup>110</sup> Orit Rozin, *From "We" to "I" – Individualism in Israeli Society in the Early 1950s*, Ph.D. Dissertation, (Tel Aviv University 2002), 87-90; ISA, Ministry of Internal Affairs, Gimel 2245/102/3; Nathan Altermann, "Hakoakh Hasheni Bamedina", *Hatur Hashvii*, vol. 3 (Tel Aviv, 1973), 291-3; Yosef Margalit, "Mishtar Khalutsi Lamedina", *Ashmoret* 32 (Sept. 20, 1950); A.Y. Yerushalmi "Vayehi Lev Haam Leeven", *Hador*, Jan. 2, 1951; R.C., "Im Haiton Kol Boker", *Dvar Hapoelet* July 21 1950, 182; *Divrey Haknesset* 13 (Mar, 11, 1953): 941.

<sup>111</sup> In August 1957, the Ministry of Finance proposed to raise the exit permit fee from 10 Israeli lira (pounds) to 150 Israeli lira (pounds) to provide funds for housing expenses for new immigrants. This step was met with broad public criticism which eventually led to its being abandoned (although in 1959, the fee was raised to 30-40 Israeli lira); Letter from Y.N. Shai to the Director General, Aug. 7, 1957, ISA, Ministry of Internal Affairs, Gimel 2245/102/3; Letter to the Government Secretary from the Minister of Internal Affairs, May 15, 1959, ISA, Ministry of Justice, Gimel 8004/1.



At this time, in contrast to Britain and the United States, Israel was, in fact, an enterprise in the making. Israeli society had not yet coalesced and the national fervor regarding the collective narrative then under construction was at its height.<sup>112</sup> The policy makers, and in particular, those who wished to restrict travel abroad, felt it was their duty to educate the citizens to become loyal to the new State, even if achieved through coercive means.<sup>113</sup> This education was the result both of the State's needs,<sup>114</sup> as well as being related to the Zionist ideology which sought to establish a society of new Jews in Israel, who had shed any identifying marks of their exile. It may be claimed, therefore, that the use of the term "travelitis" to describe an affinity of Israelis for travel abroad, reflects or contemplates negative anti-Semitic stereotypes representing the Diaspora Jew as detached, ailing or atrophied.<sup>115</sup> Two associations or images bound up in European and Zionist discourse on this subject are fused together – the first carrying associations of medical terms of art in Europe in general and used by Zionist medical personnel in particular, and the second being the image of the wandering Jew to be found in traditional Christian sources. The use of the term "travelitis" to describe a "typical Jewish disease" stems from widespread discussion of the physical and mental essence of the Jew, a discourse which developed over the 19<sup>th</sup> century, principally in Germany. In particular, it preserves the notorious image of the European Jew who, more than others, is susceptible to falling prey to diseases of the nervous system.<sup>116</sup> One of the most conspicuous proofs validating the negative image of the wandering (and atrophied) Jew is associated with the verb "root" which was used extensively in Israel during the 1950s to describe those who had recently come from the Diaspora to work the soil and who held onto their own land. The "rooted Jew" was a Zionist expression meaning the polar opposite of the wandering Jew and it was customarily used particularly in discussions among speakers from the Labor movement.<sup>117</sup> *Travelitis*, or the plague<sup>118</sup> with which Israelis seeking to travel abroad

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<sup>112</sup> In support, see the approach advocated by the General Zionists for an amendment to the Emergency Regulations in 1956 as set forth hereinabove in the text at note 80. See also the statements by Baba Eidelson (Mapai), *Divrey Haknesset* 19 (Jan. 23, 1956): 851.

<sup>113</sup> See for example, Orit Rozin, "Food, Identity and Nation-Building in Israel's Formative Years", *Israel Studies Forum* 21, no. 1 (2001): 54-80; Zvi Zameret, *Alei Geshet Tszar (Across a Narrow Bridge)* (Sde Boker 1997), 83-86, 133-59.

<sup>114</sup> Assaf Likhovski, "'Training in Citizenship': Tax Compliance and Modernity", *Law & Social Inquiry* 32, no. 3 (2007): 665-700.

<sup>115</sup> Steven E. Aschheim, *Brothers and Strangers* (Madison Wis. 1982), 108-10; Anita Shapira, *Kherev Hayona (Land and Power)* (Tel Aviv 1992), 29-33; Dafna Hirsch, "We Are Here to Bring the West": Hygiene Education Within the Jewish Community of Palestine During the British Mandate, Ph.D. Dissertation (Tel Aviv University 2006), 49 (hereinafter, "Hirsch"); Rakefet Zalashik, *The Development of Psychiatry in Palestine and Israel, 1892-1960*, Ph.D. Dissertation (Tel Aviv University 2006), 10; Michael Gluzmann, *Haguf Hatsiyoni* (Tel Aviv 2007), 34-6.

<sup>116</sup> S. Josephberg, "Ha-Ezrakh vaha-Mefake'akh", *Sherut* 3 (December 1956): 17, cited in Assaf Likhovski, "Imun Beezrakhut: Yetsirat Hatsiyut Ledinei Hamas Beyisrael shel Shnot Hakhamishim", *Zmanim* 98 (Spring 2007): 54; Hirsch, *supra*, note 118, 37.

<sup>117</sup> For examples of the Jew as a wanderer or of leaving Israel as a disease, see B. Vinitzky, "Shirat Hayam Bimdinat Israel", *Kherut*, Apr. 23, 1953; Khana Zemer, "Keneged Arbaa Olim", *Davar*, Mar. 20, 1951; *Divrey Haknesset*, 14 (Aug. 19, 1953): 2428-9; for examples of the use of the word "root" as a verb, see Shimon Kushnir, "Beyishuvim Mithavim", *Hapoel Hatzair* 45 no. 34-35: 21; Shmuel Dayan, "Lean Yufnu Haolim", *Davar*, Mar. 11, 1955.

<sup>118</sup> *Divrey Haknesset* 14 (Aug. 19, 1953): 2428.

fell ill, expresses, therefore, a negative self-image.<sup>119</sup> An article about the wandering Jew by Haviva Pedaya, discusses the early poetry of Uri Zvi Greenberg and illuminates this concept: **“Just as at times occurs between an oppressed minority and the cultural majority, the minority adopts the image of the majority governing it, but in doing so, attempts to turn it into a source of power and a base for an account of opposing history. Uri Zvi Greenberg said: Yes. I am Cain. But now the Jew who is Cain does not wait to be exiled, but rather exiles himself.”**<sup>120</sup>

In Zionist code language, entry into and exit from Israel are not merely the prosaic acts of a person traveling from one place to another, but are also highly emotionally charged expressions. Entry is the equivalent of climbing up into the bosom of the motherland, whereas leaving or emigrating from Israel constitutes a descent from the greatest heights into the lowest depths.<sup>121</sup> Absorption and acclimatization with respect to the Land of Israel – the Homeland – are intended to ensure a historical end to the wanderings and exile on the one hand, and a healing or regeneration of Zionist body and soul on the other.<sup>122</sup> That being the case, the functional dialogue over leaving Israel also contains within it this memory or image which also provides yet another, psychological layer to the justifications for restricting exits. Travelitis was deemed dangerous because it cast doubt over the image of the new Jew. This Jew is meant to be fearless and self-confident, but, in actual fact, is occasionally beset by feelings of abandonment, by a fear of failure of the Zionist enterprise generated by a weak morality (for example, during periods of economic or military tension) and by a negative self-image prompted by the portrait of the old Jew returning, threatening to burst forth out of the mirror. The disease of travelitis, though cast at the travelers as an epithet, may also, concurrently, be interpreted as being directed inward, as a query or concern of infection by such disease. Travelitis is, therefore, a subversive and destructive element, not only on the functional level, but, to an even greater extent, on the symbolic level.

## Comparison and Summary

The perception of the right to freedom to travel abroad as a natural right was formally added to Israeli law only in 1953, although such a view had already been

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<sup>119</sup> So, for example, Y. Goldin of the Ministry of Internal Affairs wrote to the Consular Department of the Ministry of Foreign Affairs in 1954: “The aim of the Citizenship Law was to put an end to the legacy of the diaspora which is – lack of citizenship ... we do not believe that we should help a Jew wander from exile to exile.” ISA, Ministry of Internal Affairs, Gimel 2243/3. For an intriguing look at the story of the wandering Jew, see: Hyam Maccoby, “The Wandering Jew as Sacred Executioner,” in Galit Hasan-Rokem and Alan Dundes (eds.), *The Wandering Jew*, (Bloomington, Ind. 1986), 236-260.

<sup>120</sup> Haviva Pedaya, “Walking and Rituals of Exile: Rituals of Expulsion and the Construction of the Self in the Spaces of Europe and the Land of Israel”, in Haviva Pedaya and Ephraim Meir (eds.), *Judaism, Topics, Fragments, Faces, Identities*, Jubilee Volume in Honor of Rivka Horwitz (Beer-Sheva 2007), 142-43.

<sup>121</sup> Translator’s note: the Hebrew word for “immigration to Israel” also means a physical “ascent” or “rising up,” whereas the Hebrew word for “emigration from Israel” also means a physical “descent” or “going downward.” For travel between countries other than Israel, a third, neutral word is used.

<sup>122</sup> Hirsch, *supra* note 118, 45.

expressed by the Attorney General in 1949.<sup>123</sup> Regardless of the various disagreements, the majority of policy makers shared this perception, and only a few believed that this right should be completely negated. Thus, it may be concluded that the principle that citizens should be permitted to travel abroad was accepted by the majority of Israeli policy makers throughout the period which is the subject of this article. The frequent amendments of policy stemmed, therefore, from objective circumstances, divergent subjective interpretations, differing socio-political stances or positions, consequences associated with foreign policy, as well as the metamorphosis of Israeli society over time.

In any event, despite the restrictions with respect to everything connected with emigration from Israel, Israeli citizenship was perceived, at least in theory, to be a matter of intent. An individual had to want to accept the terms of Israeli citizenship freely and not coercively. The fact that an individual could emigrate from Israel freely (provided the financial means to do so existed, which was not necessarily within the capability of an impoverished new immigrant<sup>124</sup>) presents Israeli citizenship as the result of free choice,<sup>125</sup> and the deference of the citizen to the majority rule attaches even greater value to such citizenship. Numerous claims may be made, therefore, on Israeli citizens (military service, reserve duty, high taxes, and a commitment to make do with little), where the door enabling travel opens on the world.

The recognition in principle of the right to travel, and the reservations held by the majority of Israeli decision makers regarding the policy of the Soviet Union, demonstrates that this model served as a negative one. Nonetheless, the collectivist approach which characterized the period of nation-building, the ideology of the majority of decision makers and the objective needs of the country led the Knesset and the government to limit travel abroad even after the War of Independence had ended. Israel used existing models or historical mechanisms, in order to restrict travel abroad. Requirement of an exit permit relied on the British Mandate precedent dating from 1939. Allocation of miniscule amounts of foreign currency to those traveling abroad emulated the British model (in Israel, as in Britain, the policy for allocating foreign currency was deemed an efficient one)<sup>126</sup> Imposition of a travel tax was justified by the fact that even the United States did so. Nonetheless, there is no support that other Israeli restrictions relied on United States passport policy, even though certain restrictions were imposed in this regard in Israel. With regard to other major issues (the austerity program, economic intervention, and absence of a constitution), Israeli policy makers have looked to Britain as an example. This fact served as a catalyst or motivator which led to an easing of the exit policies, even if the timing for easing such restrictions was dependent upon political developments

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<sup>123</sup> Letter to Government Secretary from Attorney General, July 28, 1949, ISA, Ministry of Justice, Gimel 5671/14.

<sup>124</sup> This issue has been researched with regard to earlier periods. See Meir Margalit, "Aspiring Emigrants: Jews who Were Unable to Realize their Desire to Leave Eretz Israel in the 1920s" (Hamishtokekim Laredet: Al Yehudim Shelo Hitslikhu Lemamesh Et Retsonam Laredeth Mehaaretz Bishnot Haesrim), *Cathedra* 125 (Sept. 2007), 79-98.

<sup>125</sup> Whelan, *supra* note 4, 639; see also Hirschman, *supra* note 102.

<sup>126</sup> This, despite the relief granted to British citizens in 1959; when the need arose again in the 1960s, Britain re-imposed the restrictions. F.R. Oliver, "The Effectiveness of the U.K Travel Allowance" *Applied Economics* 3 (1971): 219-226.

and security set backs. For the willingness to change existed, and this occurred when there were sufficient political and public forces to implement it.

At the core of Israel's test to determine how necessary the travel was, lay the obligation to reduce the number of travelers, so as to ensure that the needs of the State were being met as well as the needs of society at large. In the United States, the vague catchall category of in the "best interest[s] of the United States government" was used as a litmus test intended to bar the travel of those whose political position was not acceptable to State Department clerks. The definition of what was in the "best interest[s]" of the country, therefore, enjoyed broad interpretation which greatly exceeded the objective circumstances.<sup>127</sup> The restrictions on foreign travel in these two countries were viewed even then as crude interference in the freedom of the individual, but it would appear that such interference was less justified in the case of the United States. Nevertheless, in Israel, as in the United States, at times, the specific grounds for denying an exit permit or passport were censored and not divulged to the applicant. In Israel, this was generally done within the parameters of "maintaining State security."<sup>128</sup> Because of differences in government structure and circumstances in the two countries, changes regarding the right to travel abroad may be attributed to different environments: in the United States, the courts led the way, whereas in Israel, such development generally occurred in the context of partisan politics.

The restrictions on traveling abroad from Israel, Britain and the United States served not only as functional means for bolstering security or economic objectives, but also as means for strengthening the collective identity and providing what Torpey termed the "controlling embrace of a state in designing such identity."<sup>129</sup> The American government's struggle against communism drew the line separating the model citizen from her negative counterpart – a line which was manifested by barring the right of communists and those suspected of being their fellow travelers to travel abroad. An excellent example of showing loyalty to proper Americanism may be found in a letter which Abba Hillel Silver sent to the director of the United States passport bureau, after his passport was revoked and shortly after he had been warned following the intervention by his acquaintances in the State Department processes. In the letter, Silver presented himself, *inter alia*, as one among many:

Loyal Americans, highly recommended by an impressive list of leaders in American political, educational, and religious life whose Americanism was beyond question.<sup>130</sup>

In Britain, compliance with both the austerity program and restrictions on foreign currency demonstrated not only an understanding of the pressing needs of the country, but was also interpreted as a manifestation of loyalty and affiliation to the

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<sup>127</sup> Parker, *supra* note 6, 858.

<sup>128</sup> Kaufman, *supra* note 59, 534; Divrey Haknesset 17 (Nov. 24, 1954): 171.

<sup>129</sup> Torpey, *supra* note 3, 10-13.

<sup>130</sup> Abba Hillel Silver Archive, Cleveland Ohio, Microfilm 3/270, June 3, 1955; Zohar Segev, "The Jewish State in Abba Hillel Silver's Over-All World View", *The American Jewish Archives* 1-2 (2004): 94-127, 110-111.

state and all its citizens.<sup>131</sup> Even a decade after the Second World War ended, it should be noted that a spirit of obligation continued to pervade British society.

In all three cases, periods of warfare and/or economic threat served to strengthen a mutually reciprocal affiliation between the state and its citizens. The United States was involved, at least in theory, in a new cold war. Britain endured shaky economic conditions after the Second World War. Israel was involved, after the War of Independence, in a struggle which, although primarily economic, also consisted of external threats which had not been completely obliterated. Thus, Israel's physical and mental borders which had been drawn existed subject to an overriding sense of unremitting threat, even if the intensity of such threat was not constant. Additionally, the nascent State was characterized by a constant honing of the society's collective identity and its boundaries.<sup>132</sup> The long-standing arrangement, commencing in 1956 and continuing until the end of the 1980s, according to which those who completed their obligatory army service (consisting of the significant majority of citizens because of the draft) needed an exit permit from the security authorities, demonstrates the uniqueness of the Israeli model and the place of the security ethos in the Israeli identity. In particular, it should be recognized, therefore, that in Israel, the institutionalization, legislation and implementation of the array of restrictions on traveling abroad served not only functional or emergency needs, but also as a tool for defining the collective identity of a model citizen.

In summary, it may be stated that the shifting perspectives regarding the freedom to travel abroad served as a sensitive seismograph for monitoring changes in Israel's security and economic situations, and even socio-political changes, during the formative years of the State of Israel, while providing a window of opportunity for understanding the worldview of those determining State policy and the manner in which Israeli democracy was shaped.

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<sup>131</sup> A critical and ironic view of this loyalty may be found in the well-known novel by Graham Green, *Travels with My Aunt* (Harmondsworth, Middelsex 1971).

<sup>132</sup> Orit Rozin, "Forming a Collective Identity: The Debate over the Proposed Constitution, 1948-1950", *Journal of Israeli History* 26, no. 2 (Sept. 2007): 251-271.