

minority". On the other hand, it deleted the attributes „national and ethnic" restricting the definition solely to the qualification of „minority rights".

Thus the Italian Presidency Proposal was:

Amended Article I-2: The Union's values

„The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

The first compromise package (CIG 73/04) presented by the Irish Presidency contained the Italian Presidency formula. It was approved by the IGC, and thus the above mentioned formula on minority rights became Article I-2 of the *Treaty establishing a Constitution for Europe*, which was adopted by the Heads of State and Government at the Brussels European Council on 17-18 June 2004.

The Charter of Fundamental Rights was also incorporated in the new Constitutional Treaty, so it becomes legally binding upon the entering into force of the Treaty. The ratification process begins after the signature of the Treaty by Member States which is to take place in October or November 2004. The *Treaty establishing a Constitution for Europe* is expected to enter into force on 1 November 2006.

V.

Documents of the Hungarian Standing Conference

Statement Issued by the Conference of Hungary and Ethnic Hungarian Communities beyond the Borders - 1999

Budapest, February 20, 1999

The participants of the conference, representatives of the government of Hungary, Hungary's political parties, ethnic Hungarian organizations beyond Hungary's borders with parliamentary or provincial representation, and Hungarians in the West;

bearing in mind the Statement issued by the First Conference between Hungary and ethnic Hungarian communities beyond the borders held on July 4-5, 1996 in Budapest;

considering that in the process leading to European unification, the preservation and development of linguistic and cultural heritage, and national identity, are in the fundamental interest of every nation;

and fully respecting the documents on national and ethnic minorities issued by the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe, and in harmony with the spirit of these documents;

have agreed upon the following:

1. The ethnic Hungarian communities beyond Hungary's borders welcome the accession of Hungary to NATO and support its efforts to join the European Union. It is in their interest that the countries neighboring Hungary benefit from the advantages of Hungary's accession to the European Union and NATO. They find it desirable that the process of accession - with particular reference to the Schengen agreement - not impact negatively on relations either between Hungary and ethnic Hungarians beyond the borders, or between Hungary and its neighbors. The conference participants believe that institutionalized dialogue between Hungary and ethnic Hungarians beyond the borders contributes to expanded security and economic development, and prevents the emergence of new dividing lines in the region.
2. Ethnic Hungarians beyond Hungary's borders are citizens of other countries. At the same time, based on ties of a common language, culture, history and sense of identity, they are part of the Hungarian nation. The strengthening of regional security and stability is in the interest of both Hungary and ethnic Hungarian communities beyond the borders.
3. The Republic of Hungary provides assistance, through political means, to ethnic Hungarian communities beyond the borders to remain in their homeland and build civil society. A stable parliamentary democracy and the rule of law are necessary preconditions to these communities' freedom to maintain their identity. The Republic of Hungary's policy of assisting ethnic Hungarian communities to survive and prosper in their homelands aims to strengthen the democracies and market economies of those countries where they live.
4. The violation of minority rights, especially when caused by extremist nationalism, can curtail the freedom of ethnic Hungarians beyond the borders to maintain their identity, and may result in their assimilation and emigration. This can trigger political and social tensions, thus hindering the Euro-Atlantic integration of the countries in the region. Hungary, therefore, in concert with the democratic political aims of ethnic Hungarian minority communities beyond the borders, takes initiatives to secure the community and individual rights of ethnic Hungarians living as minorities.
5. The goal of Hungary's national policy is that individual and community rights be guaranteed to Hungarians living in the countries neighboring Hungary in accordance with successful practices found in Western European democracies. To achieve this result in the Central Europe region, further effective legislative and governmental measures are needed to enable minority communities to manage their own affairs in accordance with the principle of subsidiarity.
6. To achieve this objective, the participants shall increase their efforts to promote the Euro-Atlantic integration of the countries of Central Europe. The movement toward closer union with the Euro-Atlantic community creates conditions which favor the strengthening of those political figures in the various states who are committed to democratic principles. This process is further enhanced by the various forms of regional, sub-regional and cross-border cooperation, including cooperation between municipalities located in the immediate vicinity of borders, with the active involvement of ethnic Hungarians living in the individual countries.
7. The ethnic Hungarian communities living outside Hungary - in some cases as members of their respective governments - are able to influence to a significant degree the domestic and foreign policies of those states in which they live. Hungarian national minorities strengthen the system of parliamentary democracy and a free market economy,

because it is in their vital interest to do so. In foreign policy, they assume a role in supporting the Euro-Atlantic integration efforts of these states. The success of these efforts is in the Hungarian national interest, that is, in the common interest of both the Hungarian minorities living in the countries of Central Europe and that of Hungary itself. To realize this purpose, greater dialogue is needed between the Republic of Hungary and the organizations of ethnic Hungarians, which can be achieved through institutionalizing their relations. The forms and institutions of the dialogue will be fashioned in strict compliance with the international legal regulations governing interstate relations and in harmony with the democratic legal systems of the countries neighboring Hungary.

8. In order to promote the implementation of the foregoing principles, and to achieve continuity in relations between Hungary and ethnic Hungarian communities beyond the borders, the participants of the conference made this meeting into a standing conference under the name of Hungarian Standing Conference. The Hungarian Standing Conference will function as a political consultative body, whose members are the representatives of ethnic Hungarian organizations beyond Hungary's borders with parliamentary or provincial representation, Hungary's political parties, the government of Hungary, and Hungarians in the West, but in all instances guaranteeing the participation of each Hungarian national minority community in the region. The Hungarian Standing Conference shall be convened at least once a year through invitation by the Prime Minister of the Republic of Hungary. It will set its own work schedule.

The conference participants also request the government of Hungary to assist the work of the conference by creating committees consisting of experts from ethnic Hungarian communities beyond the borders and from Hungary, to function above all in the fields of education, economic and social contacts, legal and municipal cooperation, cultural matters, as well as questions pertaining to European Union integration (with special attention to the consequences of the Schengen Agreement).

Budapest, February 20 1999.

Closing Document of the Second Meeting of the Hungarian Standing Conference

Budapest, November 12, 1999

The participants of the Hungarian Standing Conference commemorate the one thousandth anniversary of the founding of the state by St. Stephen and of the adoption of Christianity. The coronation of our first king, Stephen, united the Hungarian nation, through the Christian faith, with the peoples of Europe. As the millennium draws to a close, Hungarians, living both inside Hungary and outside its borders, ponder the historic moment — at once uplifting and challenging — to look into the past, taking stock of one thousand years of nationhood, and into the future, to hand on its traditions, its spiritual and material heritage, in anticipation of the new millennium. Hungarians living beyond the borders welcome the intention to commemorate through act of Parliament St. Stephen's role as founder of the state and the Holy Crown.

The historical cataclysms of the Twentieth Century tore the Hungarian nation into several pieces, even as the nation remained united throughout in the spiritual realm. Even today, in

the midst of preparing for the new millennium, Hungarians have much to learn from the life's work of St. Stephen. The Hungarian Government has a profound sense of, and accepts, the responsibility it feels for the segments of the nation living outside the borders. The Government is convinced that, in a unifying Europe, Hungary and its neighboring states, the Hungarians of Hungary and those living outside the borders, along with the nations living with them, will together find the path to prosperity.

The participants of the Hungarian Standing Conference (HSC), consisting of the Hungarian Government, the parties represented in the Hungarian Parliament, representatives of the political organizations of Hungarians living beyond Hungary's borders having parliamentary or provincial representation, and representatives of Hungarians living in the West;

Fulfilling the mandate under section 6.3 of the Constitution of Hungary; confirming the statements issued by a number of conferences on the subject "Hungary and Hungarians Living Beyond the Borders," held in the period following Hungary's political transition; and further based on the Statement issued by the first HSC meeting, and Resolution No. 26/1999. (III. 26.) adopted by the Hungarian Parliament to greet the creation of the Hungarian Standing Conference;

Taking into account the efforts of the expert committees on education, culture, economics, health care, social welfare, citizenship and local administration, and European integration, established under Resolution No. 1079/1999. (VII. 7.) of the Hungarian Government to support the successful functioning of the Hungarian Standing Conference;

Recognizing that in the process leading to a united Europe, it is the inalienable right of every nation, and is in the fundamental interest of a renewing Europe, to preserve and develop each nation's linguistic and cultural heritage, and national identity;

Bearing in mind that the development of good neighborly relations between countries in the region is a mutual interest, and that the reduction of prevailing tensions facilitates the consolidation of democratic systems, which is in the fundamental interest of both the Republic of Hungary and the Hungarian minority communities living beyond Hungary's borders;

Aiming to insure the widest possible guarantee of individual and collective rights for Hungarians living beyond Hungary's borders, while mindful of relevant examples elsewhere in Europe as well as the realistic needs stemming from distinctive national features;

have agreed upon the following:

1. It is a fact of historic significance that on March 12, 1999, the Republic of Hungary along with the Czech Republic and the Republic of Poland gained full membership in the North Atlantic Treaty Organization. The participants are convinced that this greatly contributes to strengthening the security and stability of Central and Eastern Europe, and the successful completion by democratic means of the processes of political and economic transformation in the region.

2. [The participants] welcome the creation of expert committees to help execute the duties of the Hungarian Government relating to ethnic Hungarians living beyond the borders,

and agree with the plans of action drafted by the expert committees at their formation meetings. [The participants] call upon the Hungarian Government, in its decision-making process, to take into account to the maximum extent possible, the expert committees' recommendations.

3. The diversity of contacts between the various parts of the nation living in different countries raises the need for legal regulation in Hungary. The participants, recognizing the wishes of Hungarian minority communities in this regard, call upon the Government of the Republic of Hungary, in order to [more fully] realize the benefits of cooperation between Hungary and Hungarian communities beyond the borders, and to reinforce the sense of national cohesion in harmony with Hungary's and the neighboring countries' mutual aspiration for integration, to examine the creation of legal provisions to regulate the status in Hungary of ethnic Hungarians living beyond the borders. The primary objective of this [undertaking] is to reinforce the prospects and opportunities for remaining in the ancestral homeland.

4. [The participants] determine that in the period since the political transition [in Central Europe], conditions have developed which enable improvements in the situation of Hungarians living beyond the borders. They welcome the efforts of the democratically elected governments of the states adjacent to Hungary to successively abolish those practices which violate the rights of minorities. They attach great significance to measures such as the reconstruction of the Párkány Bridge, the liberation of the Freedom Statue in Arad, the establishment of the Hungarian Educational and Cultural Center in Croatia, as well as the positive government actions taken to provide assistance to flood victims in Sub-Carpathia, and to help establish a direct railway link between Slovenia and Hungary. They welcome that the mechanisms for monitoring compliance with the provisions of the bilateral friendship treaties have begun to operate.

5. At the same time, they express concern that, despite the foregoing, the threat to Hungarian communities living beyond Hungary's borders still continues to exist — albeit, to a degree that varies from country to country — and they believe that the first steps taken to alleviate their disadvantaged situation must be followed by additional measures. A cause for concern was the adoption of Slovakia's Minorities Language Law over the objections of those most directly affected — the representatives of the ethnic Hungarian citizens of Slovakia — in violation of the democratic principle of "good governance". Nor can the intensifying level of activity by Romanian nationalist groups in Transylvania be ignored, along with the feeble and not always adequate response by the authorities. Also troubling is the series of incidents targeting the Consulate General of the Republic of Hungary in Kolozsvár [Cluj, Romania], and the Agache affair, with the subsidiary campaign to provoke public sentiment. [The participants] consider it imperative that the neighboring countries live up to the commitments they assumed when they applied for admission to the Council of Europe.

6. The establishment of the Southeast European Stability Pact is a major step in the process of stabilizing the region. The participants believe that the efforts of the working groups affiliated with the Stability Pact will contribute to the formation of appropriate problem-solving mechanisms, in the interest of a satisfactory resolution to the problems of the region. They express the hope that the Szeged Conference, and the atmosphere it inspired, will help stimulate Yugoslavia to embark on the road to democratic change as early as possible. This was the underlying purpose in creating the "Prospect for Stability" public foundation in Szeged, whose aim is to support local democracy and the independent media. As the winter season draws near, [the participants] appeal to the citizens of Hungary, and to business and civic associations, to increase their humanitarian aid efforts to support the

creation of acceptable living conditions. At the same time, they suggest that humanitarian organizations in Hungary focus greater attention on assisting ethnic Hungarians, living either in compact communities or dispersed and isolated.

7. Since the policies of Yugoslavia's Milosevic regime, which remains in power, place the ethnic Hungarian community of Voivodina under constant threat, prompting further exodus, [the participants] support the unified plan for autonomy, along with the institutions envisaged in the concept, of the Hungarian community of Voivodina, drafted in the spirit of the European principles of self-government and devolution of power. They welcome the dialogue undertaken on the Voivodina-Hungarian draft plan for autonomy between the ethnic Hungarian parties and the Serbian democratic opposition, and welcome the results of that dialogue. They appeal to the ethnic Hungarian parties and organizations in Voivodina to put aside their personal and political differences, and to try and give voice to the common interests of the Hungarian community of Voivodina and the Hungarian people as a whole. They express their satisfaction with the unanimous decision by the United States Senate on November 4, 1999 to adopt a bill [S. 720] which contains a provision calling upon the U.S. administration to support the autonomy concept developed by the Hungarians of Voivodina.

8. The representatives of Hungarians living beyond the borders deem it of historic significance that the draft budget of Hungary for the year 2000 plans the allocation of funds to support the establishment of an independent Hungarian university in Transylvania. They agree that, under present circumstances, support from the mother country must be focused on a single area. At the same time, they call attention to the fact that in the case of Hungarian communities living in other countries as well, the establishment of a system of institutions providing higher education in the native tongue, and the improvement of the standards of education at such institutions, can only be achieved with substantial assistance from the mother country. They also reiterate the need and right, as taxpaying citizens of their respective countries, to be entitled to independent, state-sponsored education in the native tongue at all levels of instruction.

9. The development of cross-border cooperation and the creation of Euroregions, as well as the encouragement of regional economic cooperation, can serve to greatly improve the economic development of areas in the Carpathian Basin which, though traditionally linked to one another, have, as a result of historical events, been pushed to the periphery. The Hungarian Standing Conference considers it vital that the conditions be created for making the Euroregions viable economic units. The representatives of Hungarian communities living outside Hungary will, in the future, do everything possible to make full use of the opportunities offered by this form of cooperation between local and regional governments in Hungary, on the one hand, and their own local and regional organizations, on the other.

10. The participants of the Hungarian Standing Conference welcome the fact that the Country Report of the European Union Commission confirmed Hungary's preparedness for EU accession, and they welcome, also, the proposal of the European Union Commission that the accession negotiations be expanded to include Slovakia and Romania. It is in the fundamental interest of the sizeable ethnic Hungarian communities living in these two countries that their countries fulfill the criteria for accession, especially in the field of minority rights protection and related commitments. Accession at the earliest possible date of Romania, Slovakia and, of course Slovenia, along with movement by the other neighboring states toward the Euro-Atlantic organizations, can contribute positively to the higher level integration of both the Hungarian minorities and Hungary itself. [The participants] affirm that, with regard to international commitments concerning human rights and minority rights, it is the actual implementation of substance, not just form, which is the critical standard. They agree that the maintenance of unfettered contacts between Hungary and Hungarians living

beyond Hungary's borders is in the mutual self-interest of all concerned, both in the period leading up to Hungary's accession to the European Union, and thereafter as well.

Budapest, November 12, 1999

**Final Statement of the Third
(December 13-14, 2000) Session of the
Hungarian Standing Conference**

The participants of the Third (December 13-14, 2000) session of the Hungarian Standing Conference

- confirming the final statements of the February 1999 statutory session and the November 1999 second session of the Hungarian Standing Conference and that of the conference on "Hungary and Hungarians Abroad" organized in 1996,

- with special respect to Hungary's accession to the European Union,

- with the necessity of institutionalizing and laying the legal basis of relations between Hungary and Hungarians abroad in view,

have agreed as follows:

1. They express their satisfaction with the proximity of Hungary's accession to the European Union. It is their conviction that the positive effects of accession will spread towards neighboring countries as well. The representatives of Hungarians abroad solicit Hungary for representing their interest in the permeability of borders, with special respect to the Schengen Agreement.

2. They welcome the decisions made by the EU Nice Summit. The decision to evaluate the candidate countries on the basis of their individual performance and the promises relating to the participation of new member-states in the 2004 parliamentary elections are in line with the interests of all Hungarians. The legitimate organizations of Hungarians abroad will cooperate in the future with the political forces most capable of preparing their countries for accession to the EU. They reconfirm that the accession of neighboring countries to the EU is in the uniform interest of the Hungarian nation.

3. The Hungarian Standing Conference has to establish that the sine qua non of Hungarian minorities in the region has not shown signs of fundamental improvement in the past period.

- In Rumania, the positive developments that have taken shape as a result of the participation of the Democratic Alliance of Hungarians in Rumania in the government coalition and its decision to assume all-social responsibility cannot be viewed as a satisfactory and final normalization of the situation of the Hungarian minority of the country. As a consequence of recent general elections, the extreme nationalist forces on both sides of the political spectrum have gained disquieting strength. The participants of the Hungarian Standing Conference express their hope that despite the outcome of the elections, the positive developments, including the normalization of the situation of the Hungarian minority, will not be interrupted,

Rumania will not change its policy on Euro-Atlantic integration and will honor the international treaties to which it is a signatory.

- They express their concern about the deceleration of reforms affecting the Hungarian minority, and originally part of the government program, in Slovakia. They express their hope that the cohesion between the coalition parties will become stronger, enabling them to focus on the realization of social and economic transformation contained in the government program. They do hope that Slovakia's preparation for accession to the EU will give a new impetus to reforms, including provisions for satisfying the legitimate demands of the Hungarian community of Slovakia.

- They welcome the changes in Yugoslavia and express their hope that the December 23 elections will further strengthen the process of democratization, enabling the settlement of the situation of the Hungarian minority in Vojvodina and the full realization of human and minority rights. They welcome the provisions of the US budget on foreign aid that make the payment of USD 100 million in aid to Serbia contingent upon measures aimed at improving the situation of minorities in Serbia.

- The recent statement by the Ukrainian minister of education raises concerns about the future of the Hungarian education system in Sub-Carpathia.

4. They are pleased to note that the spirit of the Millennium and the anniversary have both contributed to reinforcing solidarity between Hungarians living in Hungary and in neighboring countries.

5. They express their concern about the developments in the World Federation of Hungarians.

6. They welcome the establishment of the Western Hungarian Council, aimed at institutionalizing the relations between the government and the Hungarians living in the West. They ask the Council to integrate the main communities of Hungarians living in the West into its activities. They agree with the intention of the Hungarian Government to take the initiative in forging relations and preserving the mother tongue, the culture and identity of Hungarian minorities. They solicit the Western Hungarian Council to promote the interests of Hungary and the Hungarian nation as a whole in the international arena effectively.

7. They call upon the Hungarians abroad to declare themselves as Hungarians during future population censuses. Declaring themselves Hungarians is one of the pre-requisites of securing rights indispensable for preserving their identity.

8. They express their satisfaction with the work of chairmen, secretaries and members of special committees assisting the work of the Hungarian Standing Conference. In conformity with the final statement of the November 1999 session, their work has resulted in the concept of the act on Hungarians living in neighboring countries. They state, with a view to the reservations declared by the Alliance of Free Democrats (SZDSZ), that the bill drafted on the basis of the concept in question is in conformity with its main principles and objectives and it reinforces the conditions indispensable for remaining on native soil. They solicit the Hungarian Government to finalize the bill according to the statements of the Hungarian Standing Conference and submit it for consideration to the Parliament.

9. When finalizing the bill, the following factors should be taken into consideration:

- Should there be a change in circumstances, the law to be passed by Parliament should be capable of incorporating positive amendments

- In order to realize the objectives of the law in question, the permeability of borders should be secured even following Hungary's accession to the EU. We consider it necessary to insert provisions into the law according to which Hungarian abroad will always be able to cross the borders of, and reside in Hungary under the most favorable conditions possible, in conformity with Hungary's membership in the EU, and their special needs will be taken into account when deciding on those favorable conditions. Furthermore, it is necessary that the special committees address these issues during 2001 and make recommendations on possible solutions.

- In determining the subjects of the law, the principles laid down in the annex of the final statement of the Hungarian Standing Conference should prevail.

- The representatives of Hungarians abroad express their gratitude to the political parties represented in the National Assembly of Hungary for their constructive cooperation in drafting the bill and, in order to pass the law as soon as possible, and solicit them to continue their cooperation and search for a common approach in realization of fundamental national goals.

Budapest, December 14, 2000

Annexes:

1. The dissenting opinion of the Hungarian Socialist Party
2. Statement on determining the subjects of the law on Hungarians living in countries neighboring the Republic of Hungary

*Annex
to the Final Statement of the 13-14 December 2000 Session
of the Hungarian Standing Conference*

**The dissenting opinion of the Hungarian Socialist Party
about the Final Statement of the December 13-14, 2000 Session
of the Hungarian Standing Conference**

1. The Hungarian Socialist Party supports the legal regulation of the constitutional responsibility towards Hungarians abroad declared in section (3) of paragraph 2 of the Constitution of the Republic of Hungary. The law should bring into harmony the interests of the Hungarian society and those of Hungarians abroad simultaneously with meeting the requirements of international treaties in force, the accession to, and future membership in the European Union and our relations with neighboring countries.

2. The Hungarian Socialist Party agrees with the definition of the subjects of the law on Hungarians living in neighboring countries as accepted by the 13-14 December 2000 session of the Hungarian Standing Conference. The law in question must, under all circumstances,

respect the principle that the individual has the unalienable right to identify itself with any nation or ethnic minority.

3. The position of the Hungarian Socialist Party: the law on Hungarians abroad, in line with the Hungarian legal order, must contain the circle of persons entitled to favorable treatment.

4. The Hungarian Socialist Party disagrees with the creation of new so-called recommending organizations. The duty of recommendation can be fulfilled by legitimate organizations and parties of Hungarians with real political weight and by competent civil bodies and churches. Instead of establishing new organizations, the Hungarian Socialist Party proposes that the list of organizations authorized to make recommendations in each country be inserted into the law.

Budapest, 14 December 2000

*Annex
to the Final Statement of the 13-14 December 2000 Session
of the Hungarian Standing Conference*

**Position
on the definition of the subjects of the law on
Hungarians living in neighboring countries**

During its 13-14 December 2000 session, the Hungarian Standing Conference has discussed the definition of the subjects of the law on Hungarians living in neighboring countries and makes the following recommendations to the Government of the Republic of Hungary and the bodies to be established in neighboring countries and entitled to issue recommendations for "Hungarian Cards":

1. Besides the organizations of Hungarians abroad participating in the Hungarian Standing Conference, the representatives of competent civil bodies and churches should also be assigned a role in the recommending organizations.

2. When accepting the recommending organizations as partners, the Hungarian Government should take into consideration the above factors as well as the valid regulations on data processing in both Hungary and neighboring countries.

3. Organizations authorized to issue recommendations should examine whether the statement made by the person requiring the recommendation is authentic and in conformity with reality.

4. In the decision-making process, the recommending organizations should respect the principle of choosing one's identity freely and the historical tradition of Hungary being an integrative nation.

5. In order for the recommendation to be issued, written identification with the Hungarian nation, application for the recommendation and knowledge of the Hungarian language are required.

Under special appraisal, the recommending organization may grant an exemption from the Hungarian language requirement if the applicant meets one of the criteria below:

- a. he or she is considered Hungarian by the country of citizenship
- b. one of his or her parents is of Hungarian nationality
- c. his or her spouse possesses a Hungarian Card
- d. he or she is a member of a registered Hungarian organization
- e. he or she is treated as Hungarian by a church registry
- f. he or she has attended, at least, for four years a public educational institution where the language of tuition was Hungarian, or his or her child or children attend/s/ such an institution.

Should the applicants be capable of providing evidence of meeting the above-listed criteria, the recommendation has to be issued irrespective of his or her origin, religion or political affiliation.

6. The Hungarian Standing Conference requests the Hungarian authorities accepting the recommendations and issuing the Hungarian Cards to follow the above standpoints in their agreements and cooperation with the organizations of Hungarians abroad entitled to issue the recommendations.

Budapest, December 14, 2000

Final Statement of the Fourth Session of the Hungarian Standing Conference

Budapest, 26 October 2001

I.

The participants of the Hungarian Standing Conference (HSC): the Government of the Republic of Hungary, the political parties represented in the National Assembly of the Republic of Hungary, the political organizations of Hungarians living abroad represented in the parliament of their home states and at the provincial level, and the representatives of Hungarians living in Western countries

- express their shock over the terrorist attacks carried out in the United States of America on 11 September 2001, condemn this horrendous act of crime directed against all the values of mankind and consider the eradication of all forms of terrorism necessary;
- regard further active involvement of the North Atlantic Treaty Organization and the European Union, as well as that of other international organizations in the Southeast European region as necessary in order to prevent to developments that, due to the fact that the situation of national minorities remains unresolved, may have a negative impact on the security and stability of our entire region;
- emphasize that given the aforementioned facts, the establishment of a viable international and regional minority protection system providing adequate protection for national minorities

- including the communities of Hungarians living abroad - struggling for their rights through peaceful means at all times has become even more important and lend their support for the endeavors of Hungarians in Voivodina to accomplish autonomy;

- consider the establishment of independent Hungarian higher education in Transylvania as a development of outstanding importance. Initiated by the Hungarian churches in Transylvania, the Sapientia Hungarian University of Arts and Sciences of Transylvania has been established as a result of endeavors by the world of science and the Democratic Alliance of Hungarians in Romania (DAHR), the accreditation of the university by the Government of Romania and significant financial support from the Hungarian State. Participants of the Hungarian Standing Conference regard this case of successful cooperation as exemplary;
- furthermore, they attach outstanding importance to the launching of external courses by the Budapest University of Economic Sciences and Public Administration in Révkomárom (Komarno), the accreditation of the Hungarian Teacher Training College in Beregszász (Beregovo) and encourage the establishment and development of similar institutions elsewhere;
- welcome the reconstruction and inauguration, on 11 October 2001, of the Maria Valeria Bridge linking Esztergom and Párkány (Sturovo). Besides its role in regional development, the bridge carries a symbolic meaning: it expresses the intention of reconstructing and developing cross-border relations;
- welcome the outstanding practical achievements in the life of Hungarian communities living abroad, including, among others, the adoption by Romania of the Act on the Restitution of Agricultural and Forests Lands and the Public Administration Act providing for the use of minority languages; in Yugoslavia, the municipal and governmental involvement in issues vital from a minority point of view, the re-introduction of entrance examinations in Hungarian at the University of Újvidék (Novi Sad) and the favorable reception of the amendment proposal to the Official Languages Act by the Governments of Voivodina and Serbia and encourage the continuation of these processes that play a stabilizing role in the region through contributing to the reinforcement and development of the identity of the communities in question.
- recommend that the competent authorities of the Government of Hungary examine possibilities for relaxing the rules on the naturalization and re-naturalization of Hungarians not covered by the Act on Hungarians Living in Neighboring Countries.

II.

The participants of the Hungarian Standing Conference (HSC) have agreed as follows:

- the adoption by the National Assembly of the Republic of Hungary, with 93 per cent of the votes, of the Act initiated by Hungarians living abroad and referred to by the 12 November 1999 Final Statement of the Second Session of the Hungarian Standing Conference (Act LXII of 2001 on Hungarians Living in Neighboring Countries - hereinafter referred to as "the Act") has laid the foundations for the substantial expansion of contacts between Hungarians in the kin-state and Hungarians living abroad. Entering into force on 1 January 2002, the Act meets the expectations of making a significant contribution to the preservation of the national self-identity of Hungarians living in countries neighboring Hungary and to their continued residence and prosperity in their native land;
- they establish that the Act promotes the security and stability of the region, as well as relations between Hungary and its neighbors, through contributing to the preservation and strengthening of the linguistic and cultural identity of those belonging to the Hungarian

minority. At the same time, however, the implementation of the Act leads to the establishment of such a practice that may become an essential means of resolving the minority question in Central and Eastern Europe;

- they note with satisfaction the Council of Europe's European Commission for Democracy through Law (Venice Commission) Report No. 168/2001 on the Preferential Treatment of National Minorities by their Kin-State adopted on 19 October 2001. The Report confirms that responsibility for minority protection lies primarily with the home-States and preferential treatment and support provided by kin-States to kin-minorities living abroad is interpreted in a positive fashion. It proves the basic notion of the Act according to which Hungary provides assistance to Hungarians living in neighboring countries. At the same time, the Commission's Report confirms that the Act, building on European values, is in conformity with European thought and practice, as well as the general principles of international law;
 - the Act is in conformity with bilateral treaties between Hungary and its neighbors and the relevant international agreements on minority protection. Participants share the view that bilateral treaties and international agreements on minority protection have to be respected and fully implemented by all Contracting Parties;
 - they establish that given the findings of the Report of the Venice Commission, there is no need to amend the Act on Hungarians Living in Neighboring Countries. Executive orders should be in accordance with the conclusions of the Report and, at the same time, some of the Commission's observations may contribute to the implementation in practice of technical questions;
 - the institution of a parliamentary commissioner for Hungarians living abroad could prove effective in the implementation of the Act and safeguarding the rights in Hungary of the communities concerned;
 - they welcome the establishment of recommending organizations by the organizations of Hungarians living abroad, which will assist, in accordance with the provisions of the Annex to the 14 December 2000 Final Statement of the Hungarian Standing Conference, entitled persons in enjoying the benefits and assistance provided by the Act and, therefore, consider the establishment of recommending organizations indispensable where these still do not exist;
 - they consider as necessary the active involvement and initiative of the organizations of Hungarians living abroad in making the concept and practical elements acceptable to the Government and the majority population of home-States concerned. Furthermore, they lend their support for continued consultations with the organizations of Hungarians living abroad and the Governments of neighboring countries on the detailed rules governing the implementation of the Act, provided that the representatives of organizations of Hungarians living abroad concerned are involved. Hungarians living in Western countries actively contribute to the acceptance of the Act in the international arena;
- Budapest, 26 October 2001

Annex

During its 25-26 October 2001 session, the Hungarian Standing Conference discussed the questions related to the implementation of the Act on Hungarians Living in Neighboring countries. Based on this discussion, the Hungarian Standing Conference considers it important that the following criteria for determining the subjects of the Act be taken into consideration in the process of formulating the executive orders:
Hungarian ID may be issued to persons declaring themselves Hungarian and mastering the Hungarian language respectively:

1. he/she is a member of any of the registered Hungarian organizations,
2. he/she is treated as Hungarian by any of the church registries,
3. he/she is treated as Hungarian by the country of citizenship.

The participants of the Hungarian Standing Conference attach importance to placing the Office for Hungarian Minorities Abroad in charge of coordinating the implementation of the Act and ensuring that the institutional background - operating on the basis of uniform principles and responsible for central coordination - necessary for guaranteeing access to benefits provided by the Act is created.

Final Statement of the Fifth Session of the Hungarian Standing Conference Budapest, 17 July 2002

The participants of the July 17, 2002 session of the Hungarian Standing Conference (HSC) being aware of the togetherness of the Hungarian nation, with the preservation of traditions and values, the fulfilment of the mutually professed notion of democracy and solidarity, in view of the development of the relations and co-operation of the Hungarians living in the various parts of the World:

- Welcome, the fact that since the change of regimes the ongoing process of the Hungarian-Hungarian co-operation continues undiminished, with special regard to the highly important July 1996 conference, the February 1999 founding session of the Hungarian Standing Conference and its four previous sessions in November 1999, December 2000 and October 2001.
- Express their satisfaction concerning the initiative of the government inaugurated on May 27, 2002 to convene the Fifth Session of the Hungarian Standing Conference
- Recognise the importance of the mutually shared interests and responsibility towards the relationship between Hungary and the Hungarians beyond the borders, thus strengthening the equality and mutual respect among organisations, resulting in the reinforced commitment and free practice of the national identity
- Based on their responsibility felt towards the entire Hungarian nation affirm their commitment to enhance co-operation with regard to strategic issues of key importance such as the demographic trends shaping the future of the Hungarian population, the improvement of the living standards, and urge HSC to contribute to finding solutions to the above mentioned issues and support the governments measures aiming to these ends.

The participants of the session agreed, that

1. Expressed their satisfaction over the reinforced relations between Hungary and the Hungarian communities outside Hungary. They support the Hungarian government to fulfil the goals contained in the Law on the Hungarians in the Neighbouring Countries through dialogue with the respective governments of the neighbouring countries.
Based on the half year experience of the functioning of the Law on the Hungarians in the Neighbouring Countries, Hungary's international commitments and the recommendations of the Venice Commission, in order to facilitate the smooth implementation of the Law the participants take notice of the necessity of the amendment. They attach great significance to the institutional structure of HSC in reviewing the proposals connected to the amendment, and in order to formulate a common position they urge the forthcoming HSC session to put

this issue on its agenda to provide the concerned parties with the opportunity to contribute to the elaboration of mutually acceptable solutions that are also in line with the European norms and the adequate international practice.

2. They welcome the commitment of the Hungarian government expressed in its platform to continue all existing, working forms of assistance and support favourable for the Hungarians abroad.

They support the intention of the government to provide the opportunity for the organisations of the Hungarians abroad to be involved in the decision making on issues they are directly affected by, including the strengthening of cultural and linguistic identity, the cultivation of traditions and the support of opportunities for remaining in the homeland.

They agree with further extensions of certain elements of the benefit systems based on the practical experience of the Benefit Law. They attach great importance to increasing the level of support and greater transparency. They welcome and support the intention to take the opinion of the legitimate Hungarian organisations from abroad into consideration when formulating the directions and priorities of the future benefits and assistance.

They welcome the steps taken to facilitate and restore the Hungarian language higher education system abroad and agree on common future efforts required to achieve these goals. They support the Hungarian government to conduct talks with the representatives of the respective countries to ensure the conditions necessary for this.

3. They find it needful that the main emphasis and support should be devoted to those forms of co-operation, which open long-term perspectives for prosperity of certain regions to ensure the desire of the Hungarians living abroad to stay in their homeland. Cross border co-operation, the co-operation of euroregions, Hungarian and international investments and the enhancement of bilateral and multilateral business ties belong among these efforts. Also in this respect they look forward with optimism to the European Union membership of Hungary and other countries, which will have a benevolent impact even beyond the new member countries.

4. They welcome the intention of the government to found the „Endre Ady-scholarship”, aiming to help the high quality education of the elementary and high school students in their homeland, with special focus on the disadvantages of those living in sporadic communities. They also welcome the initiative of the government to establish the House of the Hungarian Nation, that intends to provide worthy conditions to maintain and showcase the cultural and historic reminiscences of the Hungarians and to contribute to strengthen the national identity and the feeling of belonging to a common cultural heritage.

Along the main ideas of HSC, they support professional, thematic programs such as the meeting „Talented Hungarians”, the meeting of successful CEOs called „Prosperous Hungarians” and the meeting of Hungarian churches to examine their role in the development of the Hungarian nation urged by the co-operation of Hungary-based organisations and the organisations of the ethnic Hungarians abroad.

The participants agree that the details of the initiatives of the government should be discussed by the expert-level committees of HSC.

5. They find it highly important, that the representatives of the Hungarians outside the Carpathian-Basin („Western Hungarians” – who also supported the Law on the Hungarians in the Neighbouring Countries – take part in the Hungarian – Hungarian dialogue, thus

demonstrating their affection for the Hungarian nation. They agree to take continued steps in order to create institutional ties and to strengthen the practical aspects of co-operation.

6. They express their satisfaction with fact that Hungary's EU accession reached its final stage and welcome the achievements in this area. They think it is a priority to inform the organisations of the Hungarians abroad about those issues arising during the accession talks which they are affected by, and have a say in these matters, which contributes to find mutually acceptable solutions.

7. They welcome and support Hungary's intention to enhance co-operation with the neighbouring countries, to give new impetus to the co-operation of Visegrad countries, which creates new opportunities for co-ordinated efforts along the lines of common interests, strengthening the development and the stability of the region, creating better opportunities for the inhabitants of the region, including members of the Hungarian communities.

8. They support the efforts of the countries of the region intending to join the Euro-Atlantic organisations. Anew, they express their interest in Hungary's neighbours shortly becoming members of NATO, which would strengthen the stability of the region and thus contribute to the acceleration of the socio-economic progress, and the proper practical treatment of minorities in harmony with the European standards.

Similarly, they support the aspirations of the countries of the region to become members of the European Union. The participating representatives of the organisations of the Hungarians abroad express their conviction anew, that their co-operation with the political forces committed to idea of the Euro-Atlantic integration corresponds with the interests of the Hungarian communities represented by them and also the citizens belonging to the majority populations.

July 17, 2003, Budapest

**Final Statement of the Sixth Session
of the Hungarian Standing Conference
Budapest, 17 November 2002**

The Hungarian Standing Conference (HSC) held its regular session in Budapest on 17 November 2002. In the spirit of earlier meetings, the participants had a sincere and open dialogue on developments affecting the fate of Hungarian communities living in the various countries. Members of the Standing Conference reaffirmed that the contacts and cooperation between Hungarians in various parts of the world serve not only to enhance the sense of their common Hungarian identity, but also to consummate the European practice of democracy and solidarity, and to respect and develop good neighbourly relations which strengthen regional security and cooperation.

Members of the Standing Conference expressed satisfaction that in accordance with the consensus decision of the Conference, the Government [of Hungary] conducted substantive negotiations with the various organizations of Hungarians living beyond the country's borders, as well as with the parliamentary parties in Hungary, on amending the Law on Hungarians Living in Neighbouring Countries. They agreed that the Government should

submit to Parliament the proposed amendment which preserves the original objectives of the Law, and expands upon them to the extent possible for the kin-state, while ensuring that it meets international requirements in line with the European practice of minority protection, thus serving the interest of the Hungarian communities concerned, and is also in harmony with the purpose of enhancing good neighbourly relations to serve the interests of the region and Europe as a whole. An ad hoc committee consisting of the participants of the Standing Conference formulated the principles to be observed in drafting the amendment, which are annexed to the Final Statement. In the event that a substantive deviation from the mutually agreed proposal of the amendment should become necessary, the members of the Standing Conference are convinced that a new meeting of the Standing Conference Experts Committee should be convened to consider the changes.

[The members] expressed support for the [Hungarian] Government's efforts to secure the conditions for implementing the Law through bilateral negotiations – and where necessary and possible – through agreements with neighbouring countries.

The participants of the Standing Conference heard presentations on a number of ideas concerning cooperation in the various fields of Hungarian-Hungarian relations. They agreed that discussion should continue on the coordination of programs within the working committees of the Standing Conference, with special emphasis on involving the communities concerned in the preparation and development of particularly important projects. The Standing Conference's members emphasized the importance of ensuring the availability of financial resources to fund the projects thus prepared and developed.

The participants of the Standing Conference expressed their support for the process of European Union accession and preparation for membership. The opportunity for Hungary to join the European Union as a full-fledged member is a major and far-reaching event which serves the interest of all Hungarians. The participants of the Standing Conference support the need to amend the Constitution [of Hungary] in connection with the legal harmonization requirement of the European Union in the knowledge that the constitutional responsibility of the Republic of Hungary for Hungarians living beyond its borders will not diminish but increase to the extent possible after Hungary's accession to the European Union. European Union accession will be a historic opportunity for the advancement of Hungary, for the strengthening of the common cultural and linguistic identity of Hungarians, and for the renewal of the sense of national solidarity and cohesion in a European context. In this regard, the conference participants find important and express their support for the efforts of other countries in the region to seek full integration in the structures of Euro-Atlantic and European co-operation. They agree that the Hungarian communities living in the countries concerned -- Slovakia, Slovenia and Romania -- should play an active role in supporting the process of integration, and express their interest in the further development of minority rights within the European Union.

The Standing Conference participants consider it a common goal to ensure that the Hungarian government and the organizations representing Hungarians in the countries concerned find the solutions necessary to guarantee that the assumption and faithful execution of the responsibilities deriving from Hungary's European Union membership will not create new dividing lines, and that states with various dynamics of development will receive assistance and the opportunity to overcome their shortcomings, and thus have a real opportunity to join the European cooperation process. In developing relations with the countries bordering the European Union, the participants consider it especially important to strengthen the major pillars of European progress, namely, to ensure the freest possible flow of people, ideas and

goods. It is in this manner that the participants find the possibilities to implement the Schengen border regime in a way that will ensure the security of the member states, and also establish the pre-conditions to natural human contacts and economic co-operation. The participants of the Standing Conference will continue to do their utmost to ensure that their countries will work for the elimination of visa requirements.

The participants welcome the intention of the Government [of Hungary] to convene a special session of the Standing Conference in Spring 2003, the primary purpose of which will be to draft joint recommendations in connection with Hungary's accession to the European Union, designed to successfully enhance Hungarian-Hungarian contacts under the new circumstances.

The participants of the Standing Conference welcome the steps taken by Romania — resulting from the consistent efforts of the Democratic Alliance of Hungarians in Romania to represent the interests of the Hungarian community — in the interest of returning nationalized lands, forest and real properties, including the creation of the necessary legal framework to settle the issue of Church properties.

The participants of the Standing Conference find it important that members of the larger Hungarian communities, by establishing a common platform, are able to utilize the means of democracy to achieve the effective representation of community interests. They welcome the fact that the Hungarian Coalition Party has again assumed a significant role in the new governing coalition of Slovakia, and that, from this government position, it will be able to make an effective contribution so that the Slovak Republic achieves her goals regarding Euro-Atlantic and European co-operation.

The Standing Conference expresses the hope that Slovakia will intensify its efforts in the future as well to fully comply with its commitments to international organizations, with special reference to the Council of Europe.

The participants of the Standing Conference welcome the establishment of the Hungarian National Council, which will play a major role in the realization of minority self-government for the Hungarians of Voivodina, vital to the future of the community.

The participants of the Standing Conference welcome the efforts by members of the United States Congress to ensure that in the process of NATO enlargement the member states urge, and closely monitor, fulfilment of the legitimate requirements of Hungarian minority communities in the candidate countries, as an important measure of a democratic society.

The participants support the preparation of a professional sociological survey on Hungarians in the Western countries, conducted with the involvement and participation of those concerned, which can enhance the creation of institutional contacts between Hungary and Hungarians living in Western countries.

The members of the Standing Conference consider it the joint responsibility and task of both the mother country and the Hungarian national communities outside Hungary to achieve a substantial reversal in the negative demographic trend of the past decades by creating the conditions necessary for Hungarians to remain in their own homeland. They welcome the intention of the Government [of Hungary] to utilize the economic benefits resulting from Hungary's accession to the European Union to develop long-term strategies — with the involvement of the organizations representing Hungarians abroad — to increase Hungarian participation in business ventures and the process of privatisation in neighbouring countries. The participants re-affirm that in the coming years this will be the most important objective,

the achievement of which can no longer be delayed, and which requires disagreements to be set aside, a common resolve, joint efforts and the search for new solutions.

Budapest, 17 November 2002

Principles Drafted and for Support Suggested by the Ad Hoc Committee of Experts Responsible for Developing a Common Position of the Participants of the Standing Conference on Recommendations and Comments Relating to the Proposed Amendment of the Law on Hungarians Living in Neighboring Countries

1. Concerning the issue of educational assistance, the Committee:

- supports the expansion of the educational assistance to families with only one child;
- establishes as a basic rule that the beneficiary of the assistance is the child by way of application submitted by parent or legal representative;
- adopts the proposal of the Hungarian Coalition Party that recipient of the assistance may also be the parents' or teachers' association which functions alongside the respective educational institution;
- proposes that the provisions regarding the forwarding procedure be removed from the law, and that this question be regulated at the level of procedural legislative acts.

2. Concerning the issue of employment, the Committee:

- supports language combining the current versions of text into one, as follows: „General rules concerning the authorisation of employment of foreign nationals in Hungary shall be applied to the employment on the territory of the Republic of Hungary of persons falling within the scope of this Law. Derogation from the general rules may be provided for by international treaty.”

3. Concerning the subjects of the law, the Committee:

- agrees that the subjects of the law are defined under Section 1 of the Law;
- agrees that entitlement to receive benefits and assistance shall consist of possession of the „Hungarian Certificate” or the „Hungarian Dependant Certificate”.

4. Concerning the procedure for issuance of the „Hungarian Certificate” and the „Hungarian Dependant Certificate”, the Committee:

- agrees that the Hungarian Government will regulate this matter at the level of executive orders by determining, in each case, the identity of organizations having a role in the practical implementation procedure after consultation with representatives of the relevant member organizations of the Standing Conference.

Budapest, 17 November 2002

**Final Statement of the Seventh Session
of the Hungarian Standing Conference**

Budapest, 24 May 2003

In the name of Hungary and of the Hungarian national communities, the participants of the seventh session of the Hungarian Standing Conference welcome the signature of the Treaty of Accession of the Republic of Hungary to the European Union on 16 April, 2003 in Athens as an event of historic significance which paves the way for reuniting the Hungarians within the European framework.

The representatives of Hungary and of the Hungarians living abroad consider the accession to the European Union as the realisation of the long expressed efforts of the Hungarians which – beside the cultural, economic and political rise of the nation – provides an opportunity for Hungarians to come together again. They welcome the fact that the Republic of Slovakia and the Republic of Slovenia will become members of the European Union together with Hungary, and that Romania and Croatia also have a good chance to gain Union membership.

On the occasion of this very important event, the members of the Hungarian Standing Conference – remembering the final statement of the first Hungarian–Hungarian Conference in 1996 – reaffirm their determination to support the efforts of all countries neighbouring Hungary to join the Euro-Atlantic and European co-operation process. They also welcome the admission of Serbia–Montenegro as a member to the Council of Europe, which paves the way for that country's full participation in European cooperation. They welcome and support the long-term commitment of Ukraine to achieve democracy and firmly join European structures. In this respect, they declare once again that their common goal is the full-fledged participation of Hungary and other countries in the European cooperation process, a participation which will at the same time help other countries with differing dynamics of development to overcome their inherited disadvantages. Moreover, their mutual goal is that the fulfilment of all obligations in connection with EU membership shall be accompanied by the strengthening of the stability and all-round development of the region, and especially the improvement of freedom-rights – which can be summed up as the free flow of people, ideas and goods – and which are the basic pillars of European development.

The members of the Hungarian Standing Conference consider a historical opportunity the fact that Hungarians can determine their future within the framework of the European Union, as an active participant of one of the most important regions of the world. In this future, we shall all be citizens of the European Union, and it is therefore our natural aspiration and wish that all Hungarians be winners of the accession to the European Union. This requires dialogue, consensus, and politics based on mutual respect. In this effort we continuously wish to count upon the Hungarian communities living in the West, and on the devoted work of their representatives. Their support proved to be useful in representing the „Hungarian issue” and keeping attention focused on it. The Hungarian Standing Conference greatly appreciates the efforts made by the Hungarians living in the West in resolving matters crucial to the survival of the Hungarian communities living abroad, thus helping draw the attention of the international community to the „Hungarian issue”.

Europe knows the history of the Hungarians and recognizes their values. Our history, language, culture, and the achievements of our science, the values created by us, our ambitions and talent also enrich Europe as a whole. Hungary – as an equal member of the

European Union – must make her voice heard on all important issues. Outstanding among these is the matter of the European minorities and primarily the matter of the Hungarians living abroad. The progress of the Hungarians is hence a European interest. Our responsibility for each other is a European obligation.

The participants of the Hungarian Standing Conference – recognising the importance of the co-ordination and strategic planning of the activities connected with the younger generations as a particularly crucial element of the desire of the Hungarians living abroad to stay in their homeland – propose the creation of a Youth Division operating within the framework of the Hungarian Standing Conference.

Next to the assertion of minority rights, they consider the economic strengthening of these communities equally important with regard to the survival of the Hungarian communities living abroad. In this regard, the Hungarian Government – making use of the possibilities provided by EU membership and in accordance with them – places special emphasis on deepening regional co-operation with the neighbouring countries, developing cross-border infrastructure, and spreading the achievements of informatics. In this connection, they regard as positive steps in the right direction all those governmental measures – including aid in participating in the privatisation process – which, in line with the efforts of the Hungarian communities abroad, promote their remaining in their native land by creating new jobs through investments and other means.

The participants of the Hungarian Standing Conference consider the Act on Hungarians Living in Neighbouring Countries as a document aimed to promote the prosperity of the Hungarian communities, to strengthen the national identity and the belonging to a common cultural heritage, the assumption of responsibility for each other, and the creation of national solidarity in a European spirit, as well as an instrument to achieve these efforts in practice.

The representatives of the Hungarians living abroad and of Hungary present at the Conference bear in mind Hungary's efforts, in connection with the Act on Hungarians Living in Neighbouring Countries, to ensure that the implementation of the Act shall serve the realisation of its basic goals in accordance with the principles of international law and standard European solutions, and respect for the sovereignty of the neighbouring countries concerned. In this effort, Hungary has enjoyed the full confidence and support of the responsible representatives of the Hungarian communities abroad.

The representatives of the Hungarian Standing Conference discussed the draft amendment of the Act on Hungarians Living in Neighbouring Countries. Expressing their views, they agreed, that

- the original aims of the Act – to preserve the identity of Hungarians living abroad and to promote their remaining in their homeland – shall be preserved;
- the Act must ensure more opportunities for the well-being and prosperity of Hungarians in their native land;
- the Act shall also remain in force after Hungary and other states become members of the European Union;
- the importance of the Hungarian Certificate shall by no means be impaired.

The representatives of the political parties of the Hungarian Parliament and the Government of the Republic of Hungary – complying with the request of the Hungarian organisations

abroad – declare that they will amend the Act along the lines of the principles which enjoy the support of the Hungarian Standing Conference.

VI.

Report of the Venice Commission on the Preferential Treatment of National Minorities by their Kin-State*

* See also [http://www.venice.coe.int/docs/2001/CDL-INF\(2001\)019-e.htm](http://www.venice.coe.int/docs/2001/CDL-INF(2001)019-e.htm)

Strasbourg, 22 October 2001
CDL-INF (2001) 19

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REPORT ON THE PREFERENTIAL TREATMENT OF NATIONAL MINORITIES BY THEIR KIN-STATE adopted by the Venice Commission at its 48th Plenary Meeting, (Venice, 19-20 October 2001)

Introduction

On 21 June 2001, Romania's Prime Minister, Mr A. Nastase, requested the Venice Commission to examine the compatibility of the Act on Hungarians living in neighbouring countries, adopted by the Hungarian Parliament on 19 June 2001, with the European standards and the norms and principles of contemporary public international law.

On 2 July 2001, the Hungarian Minister of Foreign Affairs, Mr J Martonyi, requested the Venice Commission to carry out a comparative study of the recent tendencies of the legislations in Europe concerning the preferential treatment of persons belonging to national minorities living outside the borders of their country of citizenship.

At its plenary session of 6-7 July 2001, the Venice Commission decided to undertake a study, based on the legislation and practice of certain member States of the Council of Europe, on the preferential treatment by a State of its kin-minorities abroad. The aim of the study would be to establish whether such treatment could be said to be compatible with the standards of the Council of Europe and with the principles of international law.

A working group was thereafter formed, consisting of Messrs Franz Matscher, François Luchaire, Giorgio Malinverni and Pieter Van Dijk. A meeting was held in Paris on 18 September 2001. The Rapporteurs met with representatives of the Romanian and the

Hungarian Governments respectively, in order to obtain certain clarifications following the information, which both parties had submitted, at the Commission's request, in August.

The present report was prepared on the basis of comments by Messrs. Matscher, Luchaire, Malinverni and Van Dijk; it was discussed within the Sub-Commission for the Protection of Minorities on 18 October 2001, and was subsequently adopted by the Commission at its 48th Plenary Meeting held in Venice on 19-20 October 2001.

A/ Historical background/1/

/1/ For full reference, see: J. Marko, E. Lantschner and R. Medda, *Protection of National Minorities through Bilateral Agreements in South-Eastern Europe*, 2001.

The concern of the "kin-States" for the fate of the persons belonging to their national communities/2/ (hereinafter referred to as "kin-minorities") who are citizens of other countries ("the home-States") and reside abroad is not a new phenomenon in international law. Besides some few general principles of customary international law, while the pertinent international agreements entrust home-States with the task of securing/protecting to everybody within their jurisdiction the enjoyment of fundamental human rights, including minority rights, national minorities to the relevant home-States, and assign to the international community as a whole a role of supervision of the home-States' obligations/3/. Kin-States, however, have shown their wish to intervene more significantly, and directly, i.e. parallel to the *fora* provided in the framework of international co-operation in this field /4/, in favour of their kin-minorities.

/2/ In the pieces of legislation that will be examined hereinafter, the term "nationality" is at times found with the meaning of "citizenship". For the purposes of this study, however, "nationality" means the legal bond between a person and the State and does not indicate the person's ethnic origin (see Article 2 of the European Convention on Nationality)

/3/ See Article 1 of the Framework Convention for the Protection of National Minorities (hereinafter: "the Framework Convention")

/4/ There are various procedures for minority protection in Europe. In *primis*, the mechanism foreseen by the European Convention on Human Rights (individual as well as inter-state applications). Further, the monitoring of the Framework Convention by the Committee of Ministers of the Council of Europe and by the Advisory Committee on the basis of reports by the States concerned. The activities of the OSCE High Commissioner on National Minorities and of the United Nations Working Group on Minorities must also be recalled

The main tool which kin-States dispose of in this respect is the negotiation of multilateral or bilateral agreements aiming at the protection of their kin-minority, with the relevant home-States.

The bilateral approach to minority protection was first attempted after the collapse of the Russian, Austro-Hungarian and Ottoman empires after the First World War, under the aegis of the League of Nations /5/. It was adopted again after World War II. The experience of South Tyrol is particularly interesting. Following the peace treaty of Saint-Germain en Laye (1919), South Tyrol had been annexed to Italy against the will of the local population (a few thousands Italians and 280,000 South-Tyrolese – the latter acquired Italian citizenship). No protection had been afforded to this minority during the fascist years. In 1945, the South-Tyrolese claimed a right to self-determination. As a measure of compensation, the Allies urged Italy and Austria to find a solution through a bilateral agreement, which was reached on 4 September 1946 (the Gruber-de Gasperi Agreement, later annexed to the Peace Treaty between the Allied Powers and Italy of 10 February 1947). The region was thereby given limited autonomy. After the Vienna Treaty of 15 May 1955 re-establishing the full independence of Austria, Austria/the latter sought a better implementation of the Agreement, and requested further bilateral negotiations, which Italy, between 1958 and 1961, refused. In

1959, Austria brought the case before the General Assembly of the United Nations, which, through two resolutions of 1960 and 1962 respectively, prompted Italy and Austria to engage in negotiations, thus ratifying implicitly the right of Austria to care for the fate of the South-Tyrolese on the basis of the Treaty of Paris. The conflict escalated into terrorist attacks. In 1969, the "package agreements" ("*pacchetto*") in favour of the South-Tyrolese minority were agreed upon. In summer 1992 the Austrian Government issued a statement that the Italian Government had finally implemented the package. In 1996, Austria and Italy informed the United Nations that a mutually satisfactory solution had been found. Nowadays, Austria continues to supervise the implementation of the "package", and, in the light of the good relations which now exist between the two countries, Italy does not challenge Austria's right to do so.

/5/ The settlement of the Aland Islands dispute in 1920 was a success, while the main minority problems originating from the Peace treaties remained unresolved

In the 1990s, subsequent to the end of the Cold War and the collapse of communism, the issue of the protection problem of minorities became a prominent one, and the wish of the countries of Central and Eastern Europe to play a decisive role in the protection of their kin-minorities became even more apparent /6/.

/6/ The present report deals primarily with the protection of minorities in the context of Central and Eastern Europe in the last decade. Indeed, there are numerous other examples (the protection of the Slovenian and the Croatian minorities in Austria by virtue of Article 7 of the Austrian State Treaty of 1955) that can be relevant for its conclusions

Provisions to the extent that the kin-State cares for its kin-minorities abroad and fosters its links with them were indeed included in a number of new Constitutions dating back to those years.

For example, Article 6 of the Hungarian Constitution (revised in 1989) provides:

– "The Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary".

Article 7 of the Romanian Constitution (1991) reads:

– "The State shall support the strengthening of links with Romanians living abroad and shall act accordingly for the preservation, development and expression of their ethnic, cultural, linguistic, and religious identity under observance of the legislation of the State of which they are citizens."

Article 5 of the Slovenian Constitution (1991) provides, *inter alia*, that:

– "Slovenia shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and shall foster their contacts with the homeland. (...) Slovenes not holding Slovene citizenship may enjoy special rights and privileges in Slovenia. The nature and extent of such rights and privileges shall be regulated by law".

Article 49 of the Constitution of the "Former Yugoslav Republic of Macedonia" (1991) stipulates that:

– "The Republic cares for the status and rights of those persons belonging to the Macedonian people in neighbouring countries (...), assists their cultural development and promotes links with them."

Article 10 of the Croatian Constitution (1991) provides that:

– “Parts of the Croatian nation in other states are guaranteed special concern and protection by the Republic of Croatia.”

Article 12 of the Ukrainian Constitution (1996) similarly provides that

– “Ukraine provides for the satisfaction of national and cultural, and linguistic needs of Ukrainians residing beyond the borders of the State.”

Article 6 of the 1997 Polish Constitution provides:

– “The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage.”

Article 7a of the Slovak Constitution (amended in 2001) provides:

– “The Slovak Republic shall support national awareness and cultural identity of Slovaks living abroad and their institutions for achieving these goals as well as their relationships with their homeland.”

In the same period, the treaty approach to minority protection re-emerged – and on a large scale. Germany, in order to secure its borders and to afford protection to its kin-minorities which after World War II had been placed under the rule of central and eastern European states, concluded agreements on friendly co-operation and partnership, notably with Poland, Bulgaria, Hungary and Romania /7/. Hungary concluded similar agreements with three of its neighbouring countries: Ukraine, Croatia and Slovenia /8/.

/7/ Treaty between the Federal Republic of Germany and the Republic of Poland on Good Neighbourly Relations and Friendly Co-operation (17 June 1991); Treaty between the Federal Republic of Germany and Bulgaria on Friendly Relations and Partnership in Europe (9 October 1991); Treaty between the Federal Republic of Germany and Hungary concerning Friendly Co-operation and Partnership in Europe (6 February 1992); Treaty between the Federal Republic of Germany and Romania concerning Friendly Co-operation and Partnership in Europe (21 April 1992).

/8/ Treaty between the Republic of Hungary and Ukraine on the Foundations of Good Neighbourly Relations and Co-operation (6 December 1991); Treaty between the Republic of Hungary and Slovenia on Friendship and Co-operation (1 December 1992); Treaty between the Republic of Hungary and Croatia on Friendly Relations and Co-operation (16 December 1992).

The potentialities of bilateral treaties in respect of reducing tensions between kin-states and home-states (tensions which can rapidly escalate when those in power regard minorities as unreliable and minorities fear that the home-state will not respect their identity) appeared to be significant, to the extent that they can procure straight specified commitments on sensitive issues, while multilateral agreements can only provide for an indirect approach to those issues /9/. Furthermore, they allow for the specific characteristics and needs of each national minority as well as of the peculiar historical, political and social context to be taken into direct consideration.

/9/ The signature of bilateral agreements on the protection of minorities “in order to promote tolerance, prosperity, stability and peace” (see the Explanatory Report to the Framework Convention) is foreseen in Article 18 § 1 of the Framework Convention, according to which States “endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned”. The same is encouraged under the Stability Pact for South Eastern Europe (1999). The United Nations also promotes the stipulation of bilateral and multilateral treaties: see resolution of the Human Rights Commission of 22 February 1995, UN Doc. E/CN.4/1995 L. 32.

Thus, the European Union regarded bilateral treaties as an attractive tool for guaranteeing stability in Central and Eastern Europe. In 1993, it endorsed and launched a French initiative (“the Balladur initiative”) towards concluding a In 1995 the Pact on Stability in Europe. (the

“Balladur initiative”) was adopted by 52 States. It aimed at achieving “stability through the promotion of good neighbourly relations, including questions related to frontiers and minorities, as well as regional co-operation and the strengthening of democratic institutions through co-operation arrangements to be established in the different fields that can contribute to the objective” /10/. The Pact, which was signed by 52 States and was adopted in 1995, concerned Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia, all of which had expressed an interest in joining the European Union. These States were called upon “intensifying their good-neighbourly relations in all their aspects, including those related to the rights of persons belonging to national minorities”; this intensification was deemed to require the effective implementation of the principles of sovereign equality, respect of the rights inherent in sovereignty, refraining from the threat or use of force, inviolability of frontiers, peaceful settlement of disputes, non-intervention in internal affairs, respect for human rights, including the rights of persons belonging to national minorities, and fundamental freedoms, including freedom of thought, conscience, religion or belief, equal rights and self-determination of peoples, cooperation amongst States and fulfilment in good faith of obligations under international law /11/.

/10/ See the “Concluding document of the inaugural conference for a Pact on Stability in Europe” in 94/367/CFSP: Council Decision of 14 June 1994 on the continuation of the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the inaugural conference on the Stability Pact.

/11/ See the Final Declaration of the Pact on Stability, §§ 6 and 7.

About a hundred new and existing bilateral and regional co-operation agreements on, *inter alia*, minority protection were included in the Pact.

The question of minorities’ rights was linked with the principles of the inviolability of frontiers and territorial integrity.

The States participating in the Pact committed themselves, in the Final Declaration, to compliance with the principles of the OSCE. In the event of problems over observance of the agreements, they would rely on the existing OSCE institutions and procedures for preventing conflict and settling disputes peacefully. These include the possibility of consulting the High Commissioner on National Minorities (Article 15 of the Final Declaration) and that of referring disputes concerning the interpretation or implementation of the treaties to the International Conciliation and Arbitration Court (Article 16 of the Final Declaration).

Under the auspices of the Pact, two further bilateral treaties on cooperation were signed, between Hungary and Slovakia (1995) and between Hungary and Romania (1996) respectively /12/.

/12/ Treaty between the Republic of Hungary and Slovakia on Good Neighbourliness and Friendly Co-operation (19 March 1995); Treaty between the Republic of Hungary and Romania on Understanding, Co-operation and Good-neighbourly Relations (16 September 1996).

B/ The bilateral approach to minority protection

Stability and peace, it is well known, cannot be achieved without a satisfactory protection of national minorities. Thus, all the bilateral treaties on friendly relations in question contain provisions on the protection of the (respective /13/) minorities /14/. In the context of these bilateral agreements, kin-States attempt to secure a high level of protection to their minorities (the highest level that can be obtained in conditions of reciprocity), whereas home-States aim at achieving an equal treatment and integration of the minorities within their borders softening nationalism, thus preserving the integrity of their borders latter.

/13/ When both parties are at the same time home- and kin-States, the relevant treaty contains mutual obligations; otherwise, the treaty contains obligations for the home-State only (see, as an example of the latter, the German-Polish Treaty on Good Neighbourly Relations and Friendly Co-operation of 1991).

/14/ It is common practice for States to sign bilateral agreements on cultural co-operation where certain provisions are specifically devoted to the training of and other assistance to teachers involved in the education of national minorities. These agreements are normally implemented and complemented by inter-ministerial agreements.

In certain cases, the friendship treaties refer to pre-existing bilateral instruments specifically concerning minorities (for example, the co-operation Treaty between Hungary and Slovenia follows the *Convention on providing special rights for the Slovenian minority living in the Republic of Hungary and for the Hungarian minority living in the Republic of Slovenia* of 6 November 1992, and the *Treaty between Hungary and Ukraine on the Foundations of Good Neighbourly Relations and Co-operation* follows the *Declaration on the principles of co-operation between the Republic of Hungary and the Ukrainian Soviet Socialist Republic in guaranteeing the rights of national minorities* of 31 May 1991.)

In other cases, a specific instrument on minorities follows in time the bilateral treaty; the Treaty between Hungary and Croatia on Friendly Relations and Cooperation, for instance, was later complemented by a *Convention on the protection of the Hungarian minority in the Republic of Croatia and the Croatian minority in the Republic of Hungary* (5 April 1995). Similarly, the *Declaration on the principles guiding the co-operation between the Republic of Hungary and the Russian Federation regarding the guarantee of the rights of national minorities* of 11 November 1992 follows and refers to the *Treaty between the Republic of Hungary and the Russian Soviet Federative Socialist Republic on friendly relations and co-operation* of 6 December 1991.

These treaties and conventions usually contain mutual commitments to respect international norms and principles regarding national minorities. They often incorporate soft law provisions, such as the Council of Europe's Parliamentary Assembly's Recommendation no. 1201 (1993) and the CSCE Copenhagen Document (1990), and, by doing so, give them binding effect in their mutual relations make them binding.

A detailed comparative analysis of the content of these treaties goes far beyond the object of the present studydocument. It is sufficient for our purposes to point out that they provide for certain "classic" core rights (right to identity; linguistic rights; cultural rights; education rights; rights related to the use of the media; freedom of expression and association; freedom of religion; right to participate in decision-making processes). Sometimes, more rarely, other rights such as that to trans-frontier contacts and preservation of the architectural heritage, are included. Certain treaties grant collective rights or certain forms of autonomy. Further, some of them emphasise the duties of the persons belonging to the minorities in respect of their home-States.

These treaties are, to a greater or lesser degree, framework treaties: they need to be implemented through specific pieces of legislation or through intergovernmental agreements on specific matters.

The implementation of the treaties involves two distinct questions: on the one hand, the parties must respect the obligations which they have reciprocally undertaken; on the other hand, they must pursue bilateral talks on the matters which are the object of the treaties with a view to committing themselves to new or different obligations. The effective and correct implementation of the treaties, however, is generally not subjected to any legal control: indeed, none of these treaties sets up a jurisdictional or legal mechanism of control /15/. Their implementation is rather vested in joint intergovernmental commissions (normally, representatives of the minorities sit in each governmental delegation, but they do not have a veto power). These commissions are to be convened at regular intervals, or whenever it is deemed necessary, and are normally empowered with making recommendations to their respective governments as regards the execution or even the modification of the treaties.

/15/ See, however, the *Agreement between Austria and Italy of 17 July 1971 (concluded in accordance with the "operational time-table" - "calendario operativo" of 1969) submitting disputes concerning the implementation of the Gruber-de Gasperi agreement of 1947 to the mechanism provided for by the European Convention of 29 April 1957 on the Pacific Settlement of Disputes.*

There is no explicit sanction for the failure by one Party to co-operate in implementing a treaty.

Insofar as most of these treaties have been included in the Pact on Stability, any State could apply to the International Conciliation and Arbitration Court, seeking the solution to a dispute or the interpretation of a provision of the bilateral treaty in question. In practice, however, this has never been attempted. Furthermore, the assistance of the OSCE High Commissioner on National Minorities could be sought in pursuance of Article 15 of the Final Declaration of the Pact on Stability, but never was.

In addition, inasmuch as the treaties in question embody provisions of the Framework Convention, their implementation falls, if only indirectly, within the scope of competence of the relevant Advisory Committee and of the Committee of Ministers of the Council of Europe; indeed, States have submitted, though only indirectly, detailed information on these matters in their reports.

As regards domestic remedies, the theoretical possibility, in countries whose constitutional system allows treaty rules to be directly applicable in domestic law, of bringing before a domestic court the matter of the failure to respect a self-executing treaty has not been used so far (and does not appear very likely, due in particular to the little awareness of this possibility amongst the legal practitioners).

It follows that, as things stand nowadays, if a party refuses to participate in bilateral talks on the implementation of a treaty, only political pressure coming from either the other party or the international community can persuade it to do so.

Yet, this refusal would be in breach not only of the specific obligation, undertaken in the treaty, to conduct negotiations on the measures of implementation of the said treaty (a breach, therefore, of the principle *pacta sunt servanda*), but also of the general principle of international law according to which "in their mutual relations, States shall act in accordance with the principles and rules of friendly neighbourly relations which must guide their action at international level, particularly in the local and regional context" /16/.

/16/ See *European Commission for Democracy through Law, Law and foreign policy, Collection "Science and technique of democracy", No. 24, p.14. See Article 2 of the Framework Convention.*

C/ Domestic legislation on the protection of kin-minorities: analysis /17/

/17/ This analysis is based on the material that has been brought to the attention of the Commission Secretariat.

In addition to the bilateral agreements and to the domestic legislation and regulations implementing them, a number of European States have enacted specific pieces of legislation or regulations, conferring special benefits, thus a preferential treatment, to the persons belonging to their kin-minorities /18/.

/17/ This analysis is based on the material that has been brought to the attention of the Commission Secretariat

/18/ Sometimes, certain benefits, concerning matters that are not directly envisaged by the bilateral agreements, e.g. concerning health care or other questions, are regulated by informal (private law) agreements between the regional bodies of the kin-State and the home-State. The beneficiaries of such preferential treatment are not necessarily the members of the minority but all the persons residing in the region where the minority is settled (see, e.g., the relations between Tyrol and South-Tyrol).

The following laws are worth remembering in this context:

• The *Law on the equation of the South-Tyrolese with the Austrian citizens in particular administrative fields*, 25 January 1979 (Austria) (hereinafter: "the Austrian law", or AL) /19/

/19/ This law was amended by a regulation of the Austrian Minister for Science and Traffic in 1997 (see the *Bundesgesetzblatt der Republik Österreich 1. August 1997, Teil I*). Nowadays, South Tyroleans may enrol in

Austrian universities if they have attended a German-speaking high school, and not any more if they belong to the German or Ladin linguistic minorities

- The Act on Expatriate Slovaks and changing and complementing some laws - no. 70 of 14 February 1997 (Slovakia) (hereinafter: "the Slovak Law" or SL)
- The Law regarding the support granted to the Romanian communities from all over the world, 15 July 1998 (Romania) (hereinafter: "the Romanian Law" or RL)
- The Federal Law on the State policy of the Russian Federation in respect of the compatriots abroad, March 1999 (Russian Federation) (hereinafter: "the Russian Law" or RuL)
- The Law for the Bulgarians living outside the Republic of Bulgaria, 11 April 2000 (Bulgaria) (hereinafter: the Bulgarian law" or BL)
- The Law on the Measures in favour of the Italian Minority in Slovenia and Croatia, 21 March 2001 no. 73 (extending the validity of Article 14 § 2 of the Provisions for the development of economic activities and international cooperation of the Region Friuli-Venezia Giulia, the province of Belluno and the neighbouring areas, 9 January 1991, no. 19) (Italy) (hereinafter: "the Italian law" or IL)
- The Act on Hungarians living in neighbouring countries, 19 June 2001 (to enter into force on 1 January 2002) (Hungary) (hereinafter: "the Hungarian law" or HL)

The following are also worth noticing:

- (The Resolution of the Slovenian Parliament on the status and situation of the Slovenian minorities living in neighbouring countries and the duties of the Slovenian State and other bodies in this respect, of 1994) 27 June 1996)
- The Joint Ministerial Decision no. 4000/3/10/e of the Ministers of the Interior, of Defence, of Foreign Affairs, of Labour and of Public Order of 15-29 April 1998 on the Conditions, Duration and Procedure for the delivery of a Special Identity Card to Albanian citizens of Greek origin (Greece) (hereinafter: "the Greek ministerial decision" or GMD)

>> Scope of application *ratione personae*

The Romanian and Italian laws confine themselves to referring to their "communities" or "minorities" living outside of their respective territories. The other laws under examination, instead, set out in detail the criteria that are to be met in order for an individual to fall within their ambit of application. These criteria are as follows:

> Foreign citizenship:

This criterion flows from the very same *ratio* of these laws and is therefore common to them all (with the partial exception of the Russian one). It is not always explicitly set out (see the already mentioned Romanian and Italian laws; the Bulgarian law does not specify this in its Article 2, but it does so in the second chapter). The Hungarian act specifies that Hungarian nationality must have been lost for reasons other than by voluntary renunciation.

> Belonging to the specific national background

While the Italian and Romanian laws do not explicitly set out any criteria for establishing the national background, the other laws do, in greater or lesser detail.

Under the Slovak law, the Slovak "ethnic origin" derives from a "direct ancestor up to the third generation" (article 2 § 3 SL). For the Bulgarian law, it is necessary to have at least one ascendant of Bulgarian origin (article 2 BL). Under the Hungarian law, it is a Hungarian "national" he or she who so declares (article 1 HL). For the Russians, the compatriots are "those who share a common language, religion, culture, traditions and customs, as well as their direct descendants" (article 1 RuL).

As to the proof of the national background, the Slovak law requires a "supporting document" which may consist of a birth certificate, a baptism certificate, a statement by the registry office, a "proof of nationality" or a permanent residence permit; failing these, a written testimony of a Slovak countryman organisation abroad or the testimony of at least two fellow Slovak expatriates is required (article 2 § 4 SL). The Bulgarian law requires a document issued by a foreign authority or by an association of Bulgarians abroad or by the Bulgarian Orthodox Church; failing this, the Bulgarian background can be proved through judicial means (article 3 BL). The Russian law requires, besides the "free choice" of the individual, "supporting documents" of the previous Soviet or Russian citizenship or of the previous residence on the territory of Russia/URSS/RFSFR/FdR, or of the direct descent from immigrants (article 4 RuL).

The proof of the Hungarian background is more complex; if the wording of Article 1 § 1 of the Hungarian law seems to suggest that the mere declaration by the applicant suffices, it appears /20/ that the organisations representing the Hungarian national community in the neighbouring countries will have to investigate the applicant's national background before issuing - or refusing - the relevant recommendation. However, it is not specified in the law what criteria they will be applying.

/20/ The wording of Article 20 of the Law does not clarify the role of the recommending organisations; the Hungarian Ministry of Foreign Affairs, however, has pointed out in its submissions of 14 September 2001 (CDL (2001) 93) that they will be entrusted with the task of verifying the existence of the objective criteria as to belonging to the Hungarian minority.

> Residence abroad

The Bulgarian and the Russian laws require that the person concerned reside on the territory of a foreign country (Articles 2 and 1 respectively), as does the Romanian law (Article 1). The Hungarian law prescribes that only those who reside in one of its neighbouring countries (with the exception of Austria) are entitled to the benefits in question (Article 1 § 1 HL). The Italian law is limited to the Italian minorities in Croatia and Slovenia /21/.

/21/ In this respect, it is worth noticing that the provisions in the Slovenian and Macedonian Constitutions concerning the wish of those countries to be concerned with the fate of their kin-minorities, refer to national minorities "in neighbouring countries" (see above, Articles 5 and 49 of the Slovenian and Macedonian Constitution respectively).

> Lack of a permit of permanent stay in the kin-State

This requirement is contained in the Hungarian Law (Article 1 § 1). In fact, the obtainment of a permit of permanent stay in Hungary constitutes a ground for withdrawing the "Certificate of Hungarian Nationality" (Article 21 § 3 (b) HL). The Slovak law, instead, encourages

expatriates to apply for permanent residence in Slovakia (Article 5 § 3 SL). The Greek special identity card amounts to a permit of stay of three years (Article 3 GMD).

> Language awareness

Under the Slovak law, the "expatriate" must have at least a passive knowledge of the Slovak language, which must be certified by the results of his/her activities, or by the testimony of the Slovak organisation of his/her place of residence or the testimony of at least two fellow expatriates (article 2 §§ 6, 7 SL).

> Cultural awareness

The Slovak law requires a basic knowledge of the Slovak culture, to be proved in the same way as the linguistic knowledge (see above). The Bulgarian law requires a "Bulgarian national awareness" (article 2 BL).

> Spouses and minor children

Under the Hungarian law, cohabiting spouses and minor children are entitled to receive the benefits under the Act (Article 1 § 2 HL). The Greek ministerial decision extends the benefits for the Albanians of Greek origin to their spouses and descendants who can prove their kinship through official documents (Article 1 § 2 GMD). The benefits under the Slovak law are extended to the Expatriate's children under the age of 15 who are mentioned in the Expatriate Card (Article 4 § 1 SL)

> The document proving entitlement to the benefits under the law

The Hungarian, Slovak and Russian laws subordinate entitlement to specific benefits to the holding of a particular document. So does the Greek ministerial decision.

The nature of this document is not always the same.

Under the Greek regulation, it is (and is called) an identity card (bearing a photograph and the fingerprints of its holder), issued for a period of three years (renewable); it also functions as a permit of stay and a work permit (see the relevant statement/circular of the Greek Ministry of Public Order).

The Slovak "Expatriate Card", which is issued for an indefinite period of time, contains the personal data of the holder, as well as his permanent address (the data of minor children can also be included, at the request of the person concerned, insofar as this is compatible with the applicable international treaties). This card does not amount to an identity card in that it is only valid when used together with a valid identification document (Article 4 § 2 SL) issued in the home-State. The holder of the card, however, is admitted to the Slovak territory without written invitation, visa and permit of stay.

The "Certificate of Hungarian Nationality" – which is issued for a period of five years or until the holder turns 18, or for an indefinite time if the holder is over sixty - bears a photograph of its holder and contains all his personal data (article 21 § 5 HL).

The Russian law prescribes that belonging to the category of "compatriots" can be proved – as well as through a Russian passport for Russian citizens or those holding a double nationality - through a certificate issued by the diplomatic or consular representations of the Russian Federation or by the Russian competent authorities (article 3 RuL). This certificate, unaccompanied by a photograph of its holder, does not amount to an identity card.

As regards the procedure for issuing the documents in question, they are issued by the authorities of the kin-State: a "central public administration body designated by the

Hungarian Government (article 19 § 2 HL; the Slovak Ministry of Foreign Affairs (article 3 § 1 SL); the "competent authorities" or the Russian diplomatic missions or consulates abroad (article 3 RuL); the police department responsible for foreigners (article 1 GMD).

The kin-States' consulates or embassies on the territories of the home-States may have a role in the procedure. Under article 1 of the Slovak law, the Slovak missions or consular offices may receive applications for the Expatriate Card, which they forward to the Ministry of Foreign Affairs for decision. Russian diplomatic missions or consulates can issue the certificate proving Russian origin (article 3 RuL). The Greek consular authorities do not and cannot play any role, given that the Greek special identity card can only be delivered to those who find themselves on the Greek territory (article 1 § 1 GMD).

The Hungarian law does not assign any role to the Hungarian consulates or diplomatic missions, but provides for a constitutive role of the organisations of Hungarians abroad in the procedure. The Certificate of Hungarian Nationality, in fact, is issued by the Hungarian authorities if the applicant has been "recommended" by one of these organisations, which have to verify the declaration made by the applicant about his/her belonging to the Hungarian minority, to certify the authenticity of his/her signature and provide, *inter alia*, the applicant's photograph and personal data (article 20 § 1 HL). In the absence of such recommendation, the certificate cannot be issued /22/; no remedy is available against the refusal by an organisation to provide the recommendation. It has been noted above that the criteria, which the organisations are to use, are unclear.

/22/ Pursuant to article 29 § 2(3) of the Hungarian Law, however, the Minister of Foreign Affairs may substitute his own declaration for the recommendation of the organisations "in cases deserving exceptional treatment on ground of equity" and "in cases where the proceedings ... are impeded to ensure the smooth conduct of administrative proceedings".

A quite different role is assigned to such organisations under the Slovak law. Pursuant to article 2 § 5 SL, they can testify that an individual belongs to the Slovak minority in case he or she cannot provide the formal documents listed in article 2 § 4 SL. It must be remembered in this context that the Slovak law provides for a clear criterion for assessing national origin. Similarly, the Bulgarian law (article 3 BL) provides for the possibility of proving one's Bulgarian origin through a statement of an association of Bulgarians abroad; the law, however, specifies what needs to be proved, i.e. to have at least on Bulgarian ascendant.

>> Nature of the benefits

> Benefits relating to Education and Culture

These benefits usually consist of: scholarships to students for the pursuit of their studies in the kin-State; reduction or exemption from fees for the use of cultural and educational facilities (such as museums, libraries and archives); support to educational institutions teaching in the kin-language in the home-States; training for teachers in the kin-language in the home-States (article 6 § 1 SL; article 17 RuL; articles 9 and 10 BL; article 7 BL; articles 4 and 9-14 HL), mutual recognition of academic diplomas (see the numerous agreements between Austria and Italy); access to academic career (articles 2 and 4 § 2 AL).

Article 10 § 1 of the Hungarian Law further provides for the granting of scholarships to students belonging to the kin-minority pursuing any kind of studies in institutions for higher education – irrespective of the language or curriculum - in the home-States.

Article 18 of the Hungarian Law sets out the bases for the assistance by Hungary of organisations operating abroad and promoting the knowledge and preservation of the Hungarian language, literature and cultural heritage.

> Social Security and Health Coverage

Under Article 7 of the Hungarian Law, workers holding the Certificate of Hungarian Nationality are allowed to contribute to the health insurance and pension schemes. They are also entitled to immediate medical assistance in Hungary on the basis of bilateral social security agreements. Article 2 of the Romanian law refers to the possibility for members of Romanian communities to receive individual aid in special medical cases. Slovak expatriates may request exemption from Social Security payments abroad if they meet the conditions for receiving their rights on Slovak territory (article 6 § 1 (d)).

> Travelling benefits

They consist of special rates for those who travel to or within the territory of the kin-State (see article 8 HL; see also article 6 § 3 SL which provides for special rates for retired, disabled or elderly expatriates).

> Work permits

Under the Slovak law, job-seekers holding a Slovak Expatriate Card are not required to apply for a work permit or for permanent residence in Slovakia (article 6 (b) SL). Under the Hungarian law, work permits can exceptionally be granted to kin-foreigners for a duration of three months without prior assessment of the needs of the labour market (article 15 HL). More, kin-foreigners may apply for reimbursement of the costs incurred for meeting the legal conditions for employment (article 16 HL).

> Exemption from visas

Under the Slovak law, holders of an Expatriate Card wishing to enter the territory of Slovakia do not need any visa or invitation, insofar as this is possible under the applicable international agreements (article 5 § 1 SL). Under Article 5 of the Austrian Law, South Tyroleans as defined in the law do not need visas in order to stay in Austria.

> Exemption from permits of stay and reimbursement of/exemption from costs incurred for the stay

Slovak expatriates are admitted to stay for a long period on Slovak territory by virtue of their Expatriate Cards (article 5 § 2 SL). The Greek Special Identity Card amounts to a permit of stay for the duration of its validity (up to three years, renewable) (articles 1 and 3 GMD). Bulgarians are entitled to a special regime of costs relating to their stay or settling down on the Bulgarian territory (article 6 § 2 BL). The Romanian law provides the possibility for students wishing to pursue their studies in Romania to benefit from free accommodation in student hostels for the duration of their stay (other forms of support may be granted from the Government) (article 9 RL).

> Acquisition of property

Under Article 6 § 2 of the Slovak law, expatriates have the right to own and acquire real estate. Under the Bulgarian Law, kin-foreigners can participate in privatisation, be reinstated in their property, inherit real estate (article 8 BL).

> Acquisition of citizenship

Under the Russian law (article 11 RuL), "compatriots" may be promptly granted Russian citizenship upon a simple request. Under the Slovak law, "expatriates" may apply for Slovak citizenship for outstanding personality reasons (article 6 § 1 c) SL).

>> Scope of application *ratione loci*

Benefits are normally granted to kin-foreigners when they find themselves on the territory of the kin-State.

Under the Hungarian law, certain benefits are available in the home-State (see article 10 HL on benefits for students of public education institutions teaching in Hungarian in the neighbouring countries or of "any higher education institution"; article 12 HL on benefits to Hungarian teachers living abroad; article 13 HL: Education abroad in affiliated departments"; article 14 HL on "Educational assistance available in the native country"; article 18 HL on assistance to organisations operating abroad).

D/ Assessment of the compatibility of the protection of minorities by their kin-State through domestic legislation with European standards and with the norms and principles of international law /23/

/23/ Further to the European Parliament's resolution of 5 September 2001 (Resolution on Hungary's application for membership of the European Union and the state of negotiations (COM(2000) 705-C5-0605/2000-1997/2175 (COS)), an evaluation by the European Commission of the compatibility of the legislation on special regulations and privileges granted to persons belonging to national minorities by their kin-States with the *acquis communautaire* as well as with the spirit of good neighbourhood and co-operation amongst EU Member States is currently in progress. For this reason, it will not be the object of the present study

The paramount importance of an adequate and effective protection of national minorities as a particular aspect of the protection of human rights and fundamental freedoms and also in order to promote stability, democratic security and peace in Europe has been repeatedly underlined and emphasised. The full implementation of the international agreements on this matter – *in primis* the Framework Convention for the Protection of National Minorities, and also the Charter for Regional or Minority Languages as well as, be it less specifically, the European Convention on Human Rights – has become a priority for all the member States of the Council of Europe.

Against this background, the emerging of new and original forms of minority protection, particularly by the kin-States, constitutes a positive trend insofar as they can contribute to the realisation of this goal towards the satisfactory solution of this key problem.

The practice of stipulating bilateral treaties in this field has proved effective and deserves continuing efforts and attention. Treaties on friendly co-operation or on minority protection are already the object of encouragement and assistance as well as of close scrutiny by the international community.

The more recent tendency of kin-States to enact domestic legislation or regulations conferring special rights to their kin-minorities had not, until very recently, attracted particular attention, nor aroused much, if any at all, interest in the international community. No supervision or co-ordination of the laws and regulations in question has so far been sought or attempted. Yet, the passionate and at times virulent campaign surrounding the adoption of the Hungarian *Act on Hungarians living in neighbouring countries* shows the impellent necessity of addressing the question of the compatibility of such laws and regulations with international law and with the European standards on minority protection.

In the Commission's opinion, the possibility for States to adopt unilateral measures on the protection of their kin-minorities, irrespective of whether they live in neighbouring or in other countries, is conditional upon the respect of the following principles: a) the territorial sovereignty of States; b) *pacta sunt servanda*; c) friendly relations amongst States, and d) the

respect of human rights and fundamental freedoms, in particular the prohibition of discrimination.

a. The principle of territorial sovereignty of States

States enjoy exclusive sovereignty, hence jurisdiction, over their national territory /24/ *This principle of international law has been codified, in particular, in Article 21 of the Framework Convention.*

This implies, in principle, jurisdiction over all persons, property and activities in their territory, and in their internal waters, territorial sea and the air space above their national territory. No other State or international organisation can exercise jurisdiction in the territory of a State without the latter's consent. Public international law however confers specific powers to States as regards laws related to their embassies, ships or nationals abroad.

Legislative and administrative acts (as well as judicial ones) are emanations of that sovereign jurisdiction: their natural addressees are therefore the relevant citizens/inhabitants, and the natural place of application is the national territory.

A first question arises in this context: can the mere adoption of legislation an act with extraterritorial effects, *per se*, be seen as an interference with the internal affairs of the other State or States concerned and therefore an infringement of the principle of territorial sovereignty of states?

In order to provide an exhaustive answer, it is necessary to make a distinction, as regards the meaning of "extraterritoriality", between the effects of a State's legislation acts on foreign citizens, within that State's territory or abroad, and the exercise of a State's powers outside that State's borders.

i. The effects of a State's legislation acts on foreign citizens

The mere fact that the addressees of a piece of legislation act are foreign citizens does not, in the Commission's opinion, constitute an infringement of the principle of territorial sovereignty. Indeed, there are numerous examples of legislative acts which consider foreign citizenship, not of a specific State but in general (for instance in private international law, regarding the penal jurisdiction of the State etc.), as "connecting points". All these acts are in conformity with the general principles of international law.

A State can legitimately issue laws or regulations an act concerning foreign citizens without seeking the prior consent of the relevant States of citizenship, as long as the effects of these laws or regulations act are to take place within its borders only. For example, a State can unilaterally decide to grant a certain number of scholarships to meritorious foreign students who wish to pursue their studies in the universities of that State.

When the law act specifically aims at deploying its effects on foreign citizens in a foreign country abroad, its legitimacy is not so straightforward. It is not conceivable difficult to consider, in fact, that the home-State of the individuals concerned should not have a word to say on the matter.

In certain fields such as education and culture, certain practices, which pursue obvious cultural aims /25/, have developed and have been followed by numerous States. It is mostly commonly accepted, for instance, at least between States, which have friendly relations, that States grant scholarships to foreign students of their kin-minorities for their studies in the kin-language in educational institutions abroad. These institutions, on the other hand, are often financed by the kin-States. Similarly, it is a common practice for States to promote the study of their language and culture also through incentives to be granted to foreign students, independently of their national background.

/25/ See Article 2 § 2 of the Cultural Convention reads: "Each Contracting Party shall, insofar as may be possible, (...) endeavour to promote the study of its language or languages, history and civilisation in the territory of the other Contracting Parties and grant facilities to the nationals of those Parties to pursue such studies in its territories"

The Cultural Convention was ratified, inter alia, by Bulgaria on 2 September 1991; by Greece on 10 January 1962; by Hungary on 16 November 1989; by Italy on 15 May 1957; by Romania on 19 December 1991; by Russia on 21 February 1991; by Slovakia on 10 May 1990 and by Slovenia on 2 July 1992

In these fields, if there exists an international custom, the consent of the home-State can be presumed and kin-States may take unilateral administrative or legislative measures /26/

/26/ However, these measures are often taken within the framework of intergovernmental agreements

Further, when a kin-State takes unilateral measures on the preferential treatment of its kin-minorities in a particular home-State, the latter may presume the consent of the said kin-State to similar measures concerning its citizens.

In fields, which are not covered by treaties or international customs, instead, the consent of the home-States affected by the kin-State's measures should be explicit. So, to cite an example, if a State unilaterally decided to grant scholarships to foreign students of its kin-minorities irrespective of the link of their studies with the kin-State itself, this decision might be considered as interfering with the relevant home-States' internal affairs (their educational policies, for example).

ii. The exercise of State powers outside the national borders

In the absence of a permissive rule to the contrary – either an international custom /27/ or a convention – a State cannot exercise its powers, in any form, on the territory of other States /28/.

/27/ See, for example, the common consular conventions.

/28/ In this respect, the extraterritorial jurisdiction in civil matters even on foreign citizens residing in their home-country or elsewhere exercised by the United States is largely controversial.

The grant by a State of administrative, quasi-official functions to non-governmental associations registered in another country constitutes an indirect form of state power: as such, it is not permissible unless specifically allowed.

This grant appears to be particularly problematic when these functions are neither allowed nor regulated under the law of the home-State. Under these circumstances, in fact, in performing them the associations in question would not be subjected to any effective legal control: neither from the authorities of the home-State would have jurisdiction but might not recognise the bases for these acts, for the above-stated reason that the latter *se* acts are not foreseen in that legal system; , nor from the kin-State, despite having provided for the bases for issuing the acts in question, would lack jurisdiction thereover, given that the associations y are registered and operate foreign associations acting abroad. This is even more applicable, when the conditions and limits of the exercise of this power are not clearly enunciated in the originating law.

Should a kin-State require any kind of certification *in situ*, in the Commission's opinion the natural "actors" would be the consular authorities: which are duly authorised by the home-State, in conformity with international custom law /29/, to perform official acts on its territory. It is understood that these official acts must be of an ordinary nature, and the consulates must not be vested with tasks going beyond what is generally practiced and admitted.

/29/ See for instance Article 5 of the Vienna Convention of 1963 on consular relations.

In the latter respect, and with reference to the need expressed in various of the laws under examination to obtain proof of the national background of foreigners seeking access to the benefits provided to kin-minorities, the Commission considers that it is necessary preferable

(even if it is not required by international law) that the relevant legislation set out the exact criteria that must be employed in the assessment of the national background. This indication, in fact, would prevent consulates from being given discretionary power that, being exempted from any substantial, not merely formal judicial review, would risk becoming arbitrary. In this respect, the Commission wishes to refer, *mutatis mutandis*, to the Framework Convention, which, while enshrining the principle of the individual's free choice as to affiliation to a minority, does not prevent States from requiring the fulfilment of certain criteria when it comes to granting privileges to the persons belonging to that minority. In other words, the personal choice of the individual is a necessary element, but not a sufficient one for entitlement to specific privileges.

Similar considerations pertain as concerns the associations of kin-minorities abroad. In the Commission's view, a role of these associations cannot be excluded, if they are only required by the kin-States to provide information on precise, legally determined facts, in the absence of other supporting documents or material or if they are only entrusted with giving a non-binding informal recommendation for the consular authorities of the kin-State. For example, they may provide a statement about the circumstance that the grandfather of an individual was a citizen of the kin-State, in a case where any formal documents were missing.

b. The principle that *pacta sunt servanda*

Treaties must be respected and performed in good faith /30/. When a State is party to bilateral treaties concerning, or containing provisions, on minority protection /31/, it must duly fulfil all the obligations contained therein, including that of pursuing bilateral talks with a view to assessing the state of implementation of the treaty and to addressing the possible enlargement or modification of the rights granted to the respective minorities.

/30/ See article 26 of the 1969 Vienna Convention on the Law of Treaties.

/31/ It has to be stressed that the adoption of preferential treatment rules is not necessarily conditioned by the existence of a bilateral agreement between the States concerned. However, if such an agreement exists, the measures in question and the procedure of their application must be in conformity with that agreement.

Should possible difficulties in holding these bilateral talks lead to alternative, unilateral forms of intervention in the matters pre-empted covered by the treaty, this would be in breach of the obligation to perform treaties in good faith, at least unless all the existing procedures for settling the dispute (including requests for intervention of the OSCE High Commissioner for National Minorities and of the International Conciliation and Arbitration Court) had been used in good faith /30/, and had proved ineffective.

/32/ See article 31 of the Vienna Convention, according to which "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its objects and purpose."

Legislation or regulations on the preferential treatment of kin-minorities should therefore not touch upon areas demonstrably pre-empted already covered by existing bilateral treaties, unless of course the home-State concerned had been consulted and had approved of this step or had implicitly – but unambiguously – accepted it, by not raising objections.

Similar considerations are valid in the case that a given area is not covered by specific rules of an existing treaty.

c. The principle of friendly neighbourly relations

The framework of bilateral treaties connecting Central and Eastern European States draws from the principle of good neighbourliness and holds it as the main purpose of the treaties themselves.

The obligation for States to work towards the achievement of friendly inter-state relations derives also from a more general principle; Article 2 of the Framework Convention promotes the principles of good neighbourliness, friendly relations and co-operation among States.

Friendly inter-state relations are indeed nowadays unanimously considered as a precondition for peace and stability in Europe.

States should accordingly abstain from taking unilateral measures, which would risk compromising the climate of co-operation with other States.

The legislation under examination touches upon sensitive areas for the reasons analysed above. One specific particular aspect thereof raises issues that deserve close examination: the issuing by the kin-State of a document that proves that its holder belongs to the kin-minority, and, in particular, the modalities of the issuing of the relevant documents.

This document, in its different forms (see above), has been justified by the States that have introduced it as a means to simplify of the administrative steps that the individual needs to take in order to have access to the benefits provided for by the legislation concerned.

To the extent that it allows easier access to these benefits, the Commission finds that this document can prove useful. However, it observes that in a number of countries this document has the characteristics of an identity document: it contains a photograph of its holder and all of his/her personal data. It makes reference to the national background of its holder. It is highly likely that the holders of these documents will use them as identity cards at least on the territory of the kin-State.

In such form, this document therefore creates a political bond between these foreigners and their kin-State. Such a bond has been an understandable cause of concern for the kinhome-

States, which, in the Commission's opinion, should have been consulted prior to the adoption of any measure aimed at creating the documents in question.

In order to be used solely as a tool of administrative simplification, the Commission considers that the document should be a mere proof of entitlement to the services provided for under a specified law or regulation. It should not aim at establishing a political bond between its holder and the kin-State and should not substitute for an identity document issued by the authorities of the home-State.

d. The respect of human rights and fundamental freedoms. The prohibition of discrimination.

A general principle of international law prohibits gross violations of human rights. Furthermore, States are bound to respect the international agreements on human rights to which they are parties. Accordingly, in exercising their powers, they must at all times respect human rights and fundamental freedoms. Amongst these, the prohibition of discrimination, provided for, *inter alia*, by the UN Charter, by the Universal Declaration of Human Rights /33/, by the International Covenant on Civil and Political rights /34/ and by the Framework Convention /35/.

/33/ Article 7 of the Universal Declaration of Human Rights reads: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination."

/34/ Article 26 ICCPR reads: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

/35/ Article 26 ICCPR reads: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

In particular, States that are parties to the European Convention on Human Rights (hereinafter "the Convention" or ECHR) must secure the non-discriminatory enjoyment of the rights enshrined therein to everyone who is within their jurisdiction /36/. A State is held accountable under Article 1 of the Convention also for its acts with extraterritorial effects: all the individuals affected thereby, be they foreigners or nationals and wherever they reside, may fall within the jurisdiction of that State.

/36/ See Article 1 and Article 14 ECHR. The latter reads as follows: "The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". If Article 14 prohibits discrimination only in respect of the rights and freedoms set out elsewhere in the Convention, a Protocol thereto, the twelfth, containing a general clause against discrimination, has been drafted and opened to signature on 4 November 2000.

The legislation and regulations that are the object of the present study aim at conferring a preferential treatment to certain individuals, i.e. foreign citizens with a specific national background. They thus create a difference in treatment (between these individuals and the citizens of the kin-State; between them and the other citizens of the home-State; between them and foreigners belonging to other minorities), which could constitute discrimination – based on essentially ethnic reasons – and be in breach of the principle of non-discrimination outlined above.

The discrimination must be invoked in relation to a right guaranteed by the Convention. Not all the benefits granted by the legislation under consideration refer, at least *prima facie*, to guaranteed rights. Some ECHR provisions could be pertinent: *in primis* Article 2 of the First Protocol; possibly, Article 8 of the Convention and Article 1 of the First Protocol. However, it must be said in this respect that it is hard to predict whether it would be possible to refer an arguable claim based on the legislation in question to the European Court of Human Rights: the latter, in fact, never examines the compatibility with the Convention provisions of a piece of legislation as such, but takes into account the particular circumstances of the case in relation to the concrete situation of the applicant.

The Strasbourg established case-law /37/ shows that different treatment of persons in similar situations /38/ is not always forbidden: this is not the case when the difference in treatment can be objectively and reasonably justified having regard to the applicable margin of appreciation. The existence of a justification must be assessed in relation to the aims pursued (which must be legitimate) and the effects that the measure in question causes, regard being had to the general principles prevailing in democratic societies (there must be a reasonable relation of proportionality between the legitimate aim pursued and the means employed to obtain it).

/37/ See the leading case on the meaning of "discrimination" within the meaning of Article 14 of the Convention: *European Court of Human Rights, Belgian linguistics judgment of 9 February 1967, Series A no. 6.*
/38/ A claim of discrimination is meaningful only where the applicant seeks to compare his situation to that of those who are in the same or analogous, or "relevantly similar" situation.

Article 14 prohibits discrimination between individuals based on their personal status; it contains an open-ended list of examples of banned grounds for discrimination, which includes language, religion, and national origin. As regards the basis for the difference in treatment under the laws and regulations in question, in the Commission's opinion the circumstance that part of the population is given a less favourable treatment on the basis of their not belonging to a specific ethnic group the targeted population is identified through ethnic criteria is not, of itself, discriminatory, nor contrary to the principles of international law /39/. Indeed, this kind of ethnic targeting is commonly done, for example, in laws on citizenship /40/. The acceptability of this criterion will depend of course on the aim pursued.

/39/ See, in particular, paragraph 3 of Article 4 of the Framework Convention.

/40/ See Article 116 of the German Grundgesetz, which provides: "Unless otherwise provided by Statute, a German within the meaning of this Constitution is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendent of such person. (2) Former German citizens who, between 30 January 1933 and 8 May 1945 were deprived of their citizenship on political, racial or religious grounds, and their descendants, are re-granted German citizenship on application. They are considered as not having been deprived of their German citizenship where they have established their residence in Germany after 8 May 1945 and have not expressed a contrary intention."

In this respect, the Commission finds it appropriate to distinguish, as regards the nature of the benefits granted by the legislation in question, between those relating to education and culture and the others.

Insofar as the first are concerned, the differential treatment they engender may be justified by the legitimate aim of fostering the cultural links of the targeted population with population of the kin-State. However, in order to be acceptable, the preferences accorded must be genuinely linked with the culture of the State, and proportionate. In the Commission's view, for instance, the justification of a grant of educational benefits on the basis of purely ethnic criteria, independent of the nature of the studies pursued by the individual in question, would not be straightforward.

In fields other than education and culture, the Commission considers that preferential treatment might be granted only in exceptional cases, and when it is shown to pursue the genuine aim of maintaining the links with the kin-States and to be proportionate to that aim (for example, when the preference concerns access to benefits which are at any rate available to other foreign citizens who do not have the national background of the kin-State).

E. Conclusions

Responsibility for minority protection lies primarily with the home-States. The Commission notes that kin-States also play a role in the protection and preservation of their kin-minorities, aiming at ensuring that their genuine linguistic and cultural links remain strong. Europe has developed as a cultural unity based on a diversity of interconnected languages and cultural traditions; cultural diversity constitutes a richness, and acceptance of this diversity is a precondition to peace and stability in Europe.

The Commission considers, however, that respect for the existing framework of minority protection must be held as a priority. In this field, multilateral and bilateral treaties have been stipulated under the umbrella of European initiatives. The effectiveness of the treaty approach could be undermined, if these treaties were not interpreted and implemented in good faith in the light of the principle of good neighbourly relations between States.

The adoption by States of unilateral measures granting benefits to the persons belonging to their kin-minorities, which in the Commission's opinion does not have sufficient *diuturnitas* to have become an international custom, is only legitimate if the principles of territorial sovereignty of States, *pacta sunt servanda*, friendly relations amongst States and the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination, are respected.

Respect for these principles would seem to require that certain features of the measures in question be respected, in particular:

- A State may issue acts concerning foreign citizens inasmuch as the effects of these acts are to take place within its borders.
- When these acts aim at deploying their effects on foreign citizens abroad, in fields that are not covered by treaties or international customs allowing the kin-State to assume the consent of the relevant home-states, such consent should be sought prior to the implementation of any measure.
- No quasi-official function may be assigned by a State to non-governmental associations registered in another State. Any form of certification *in situ* should be obtained through the consular authorities within the limits of their commonly accepted attributions. The laws or regulations in question should preferably list the exact criteria for falling within their scope of

application. Associations could provide information concerning these criteria in the absence of formal supporting documents.

- Unilateral measures on the preferential treatment of kin-minorities should not touch upon areas demonstrably pre-empted by bilateral treaties without the express consent or the implicit but unambiguous acceptance of the home-State. In case of disputes on the implementation or interpretation of bilateral treaties, all the existing procedures for settling the dispute must be used in good faith, and such unilateral measures can only be taken by the kin-State if and after these procedures prove ineffective.
- An administrative document issued by the kin-State may only certify the entitlement of its bearer to the benefits provided for under the applicable laws and regulations.
- Preferential treatment may be granted to persons belonging to kin-minorities in the fields of education and culture, insofar as it pursues the legitimate aim of fostering cultural links and is proportionate to that aim.
- Preferential treatment can not be granted in fields other than education and culture, save in exceptional cases and if it is shown to pursue a legitimate aim and to be proportionate to that aim.

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VII.

The original, and later on 23 June 2003 repealed version of the Act on Hungarians Living in the Neighbouring Countries, which was examined by the European Commission for Democracy through Law (Venice Commission)

ACT LXII OF 2001

ON HUNGARIANS LIVING

IN NEIGHBOURING COUNTRIES*

* Adopted by Parliament on 19 June 2001.

Parliament

- In order to comply with its responsibilities for Hungarians living abroad and to promote the preservation and development of their manifold relations with Hungary prescribed in paragraph (3) of Article 6 of the Constitution of the Republic of Hungary,
- Considering the European integration endeavours of the Republic of Hungary and in-keeping with the basic principles espoused by international organisations, and in particular by the Council of Europe and by the European Union, regarding the respect of human rights and the protection of minority rights;
- Having regard to the generally recognised rules of international law, as well as to the obligations of the Republic of Hungary assumed under international law;
- Having regard to the development of bilateral and multilateral relations of good neighbourhood and regional co-operation in the Central European area and to the strengthening of the stabilising role of Hungary;
- In order to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity within their home country;
- Based on the initiative and proposals of the Hungarian Standing Conference, a co-ordinating body functioning in order to preserve and reinforce the awareness of national self-identity of Hungarian communities living in neighbouring countries;

- Without prejudice to the benefits and assistance provided by law for persons of Hungarian nationality** living outside the Hungarian borders in other parts of the world;

Herewith adopts the following Act:

CHAPTER I

GENERAL PROVISIONS

Scope of the Act

Article 1

(1) This Act shall apply to persons declaring themselves to be of Hungarian nationality who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine, and who

- a) have lost their Hungarian citizenship for reasons other than voluntary renunciation, and
- b) are not in possession of a permit for permanent stay in Hungary.

(2) This Act shall also apply to the spouse living together with the person identified in paragraph (1) and to the children of minor age being raised in their common household even if these persons are not of Hungarian nationality.

(3) This Act shall also apply to co-operation with, and assistance to organisations specified in Articles 13, 17, 18 and 25.

Article 2

(1) Persons falling within the scope of this Act shall be entitled, under the conditions laid down in this Act, to benefits and assistance on the territory of the Republic of Hungary, as well as in their place of residence in the neighbouring countries on the basis of the Certificate specified in Article 19.

(2) The provisions of this Act shall be applied without prejudice to the obligations of the Republic of Hungary undertaken in international agreements.

(3) The benefits and assistance claimable under this Act shall not affect other existing benefits and assistance ensured by legislation in force for non-Hungarian citizens of Hungarian nationality living in other parts of the world.

Article 3

The Republic of Hungary, in order to

- a) ensure the maintenance of permanent contacts,
- b) provide for the accessibility of benefits and assistance contained in this Act,

- c) ensure undisturbed cultural, economic and family relations,
- d) ensure the free movement of persons and the free flow of ideas,

and taking into account its international legal obligations, shall provide for the most favoured treatment possible with regard to the entry and stay on its territory for the persons falling within the scope of this Act.

CHAPTER II

BENEFITS AND ASSISTANCE AVAILABLE FOR PERSONS FALLING WITHIN THE SCOPE OF THIS ACT

Education, Culture, Science

Article 4

(1) In the field of culture, persons falling within the scope of this Act shall be entitled in Hungary to rights identical to those of Hungarian citizens. Accordingly, the Republic of Hungary shall ensure for them in particular:

- a) the right to use public cultural institutions and the opportunity to use the services they offer,
- b) access to cultural goods for the public and for research,
- c) access to monuments of historic value and the related documentation,
- d) the research for scientific purposes of archive materials containing protected personal data, if the neighbouring state where the Hungarian individual living outside the borders has a permanent residence is a party to the international convention on the protection of personal data.*

* Act VI of 1998 on the promulgation of the Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, signed on 28 January 1981 in Strasbourg.

(2) Persons falling within the scope of this Act shall be entitled to use the services of any state-run public library, and to the free of charge use of the following basic services:

- a) visit of the library,
- b) on-the-spot use of certain collections determined by the library,
- c) use of stock-exploring instruments,
- d) information on the services of the library and of the library system,
- e) in the case of registration, borrowing of printed library material in accordance with the regulations of the library.

(3) Further benefits with respect to the availability of services offered by state-run museums and public cultural institutions to persons falling within the scope of this Act shall be laid down in a separate legal rule.

Article 5

Hungarian scientists falling within the scope of this Act may become external or regular members of the Hungarian Academy of Sciences.

Distinctions and Scholarships

Article 6

(1) The Republic of Hungary shall ensure that persons falling within the scope of this Act, in recognition of their outstanding activities in the service of the Hungarian nation as a whole and in enriching Hungarian and universal human values, may be awarded distinctions of the Republic of Hungary and may receive titles, prizes or honorary diplomas founded by its Ministers.

(2) In the process of determining conditions for state scholarships, the possibility to receive such scholarships shall be ensured for persons falling within the scope of this Act.

Social Security Provisions and Health Services

Article 7

(1) Persons falling within the scope of this Act who, under Article 15, work on the basis of any type of contract for employment in the territory of the Republic of Hungary shall pay, unless otherwise provided for by international agreements, health insurance and pension contribution of an amount equal to that laid down in the relevant Hungarian social security legislation to the authority designated for this purpose in a separate legal rule. Those contributions shall entitle such persons to health and pension provision specified by a separate legal rule.

(2) Persons falling within the scope of this Act who are not obliged to pay health insurance and pension contributions as stipulated in paragraph (1) shall have the right to apply for reimbursement of the costs of self-pay health care services in advance. Applications shall be submitted to the public benefit organisation established for this purpose.

(3) In cases requiring immediate medical assistance, persons falling within the scope of this Act shall be entitled to such assistance in Hungary according to the provisions of bilateral social security (social policy) agreements.

Travel benefits

Article 8

(1) Persons falling within the scope of this Act shall be entitled to travel benefits in Hungary on scheduled internal local and long-distance lines of public transport. With regard to railways, such benefits shall apply to 2nd class fares.

(2) An unlimited number of journeys shall be provided free of charge for:

a) children up to six years of age,

b) persons over sixty-five years of age.

(3) A 90% travel discount shall be provided on means of internal long-distance public transport for:

a) persons identified in paragraph (1) four times a year,

b) a group of at least ten persons under eighteen years of age travelling as a group and falling within the scope of this Act, and two accompanying adults once a year.

(4) The detailed rules of travel benefits shall be laid down in a separate legal rule.

Education

Article 9

(1) Persons falling within the scope of this Act, in accordance with the relevant provisions of Act LXXX of 1993 on Higher Education applicable to Hungarian citizens, shall be entitled to participate, according to the conditions specified in this Article, in the following programmes of higher education institutions in the Republic of Hungary:

a) undergraduate level college or university education,

b) supplementary undergraduate education,

c) non-degree programmes,

d) Doctor of Philosophy (PhD) or DLA programmes,

e) general and specialised further training,

f) accredited higher education level vocational training in a school-type system.

(2) Students participating in state-financed full-time training programmes specified in paragraph (1), shall be entitled to formula funding on the one hand, and financial and other benefits in kind on the other, both being part of the appropriations of budgetary expenditure for students, as well as to the reimbursement of detailed health insurance contributions provided by Act LXXX of 1993 on Higher Education. The detailed conditions of these forms of assistance and further benefits shall be regulated by the Minister of Education in a separate legal rule.

(3) Persons falling within the scope of this Act may pursue studies in the higher education institutions of the Republic of Hungary in the framework of state-financed training in a fixed number to be determined annually by the Minister of Education.

(4) Students from neighbouring countries participating in education programmes not financed by the state may apply for the partial or full reimbursement of their costs of stay and education in Hungary to the public benefit organisation established to this end.

Student Benefits

Article 10

(1) Registered students of a public education institution in a neighbouring country who are pursuing their studies in Hungarian language, or students of any higher education institution who are subject to this Act are entitled to benefits available under the relevant regulations to Hungarian citizens with student identification documents.

(2) Entitlement to benefits specified in paragraph (1) shall be recorded in the Appendix of the Certificate (Article 19) serving for this purpose. The detailed rules of access to these benefits shall be laid down in a separate legal rule.

Further Training for Hungarian Teachers Living Abroad

Article 11

(1) Hungarian teachers living abroad, teaching in Hungarian in neighbouring countries and falling within the scope of this Act (hereinafter referred to as "Hungarian teachers living abroad") shall be entitled to participate in regular further training in Hungary, as well as to receive the benefits specified in paragraph (2). Further training and the benefits shall be applicable to a fixed number of teachers determined annually by the Minister of Education.

(2) For the duration of further training and to the extent stipulated by a separate legal rule, persons identified in paragraph (1) shall be entitled to request the Hungarian educational institution providing further training to

- a) reimburse accommodation costs,
- b) reimburse travel expenses, and
- c) contribute to the costs of registration.

(3) The detailed rules of further training for Hungarian teachers living abroad shall be regulated by a separate legal rule.

Article 12

(1) Hungarian teachers living abroad, falling within the scope of this Act and those teaching in higher education institutions in neighbouring countries (hereinafter referred to as "Hungarian instructors living abroad") shall be entitled to special benefits.

(2) Benefits available to Hungarian teachers and instructors living abroad shall be identical with the benefits related to Teacher Identity Cards issued to teachers of Hungarian citizenship on the basis of legislation in force.

(3) Entitlement to benefits specified in paragraph (1) shall be recorded in the Appendix of the "Certificate of Hungarian Nationality" serving for this purpose. The detailed rules of access to these benefits shall be regulated in a separate legal rule.

Education Abroad in Affiliated Departments

Article 13

(1) The Republic of Hungary shall promote the preservation of the mother tongue, culture and national identity of Hungarians living abroad also by supporting the establishment, organisation and operation of affiliated Departments of accredited Hungarian higher education institutions in neighbouring countries.

The financial resources necessary for the realisation of these goals shall be set out as targeted appropriations in the budget of the Republic of Hungary. The Minister of Education shall decide on the allocation of the available resources according to a separate legal rule.

(2) The Republic of Hungary supports the establishment, operation and development of higher education institutions (faculties, study programmes, etc.) teaching in Hungarian and seeking accreditation in neighbouring countries. Financial resources required for the realisation of these goals may be applied for at the public benefit organisation established for this purpose.

Educational Assistance Available in the Native Country

Article 14

(1) Parents falling within the scope of this Act and bringing up at least two children of minor age in their own household may apply for educational assistance for each of their children if:

- a) the child attends an education institution according to his/her age and receives training or education in Hungarian, and
- b) the education institution specified in point a) is in the neighbouring country of residence of the parents.

(2) Parents falling within the scope of this Act may receive assistance for books and learning materials (hereinafter referred to as "assistance for learning materials") if the child of minor age living in their own household attends an educational institution in the neighbouring country of residence of the parents and receives education in Hungarian.

(3) Applications for assistance for education and learning materials may be submitted to the public benefit organisation established for this purpose. In the process of evaluating the applications, the public benefit organisation shall request the position, formulated with the consent of the Hungarian Minister of Education, of the recommending body (Article 20) in the neighbouring country concerned whether instruction and education in Hungarian are ensured in the education institution in question.

(4) Persons falling within the scope of this Act may apply for assistance for their studies at the higher education institutions of neighbouring countries from the public benefit organisation established for this purpose.

Employment

Article 15

(1) Persons falling within the scope of this Act may be employed in the territory of the Republic of Hungary on the basis of a permit. Work permits shall be issued under the general provisions on the authorisation of employment of foreign nationals in Hungary, with the exception that the work permit can be issued for a maximum of three months per calendar year without the prior assessment of the situation in the labour market. A separate legal rule may allow for the issuing of work permits for longer periods of time under the same conditions.

Article 16

(1) The persons concerned may apply to the public benefit organisation established for this purpose for the reimbursement of expenses related to the fulfilment of the legal conditions for employment. These expenses include, in particular, the costs of proceedings for the prior certification of the necessary level of education, of specialised training and of compliance with occupational health requirements.

(2) The detailed rules of the proceedings for the issuing of work permits and the registration shall be regulated by a separate legal rule.

Duties of the Public Service Media

Article 17

(1) Public service media in Hungary shall provide, on a regular basis, for the gathering and transmission of information on Hungarians living abroad and shall transmit information on Hungary and the Hungarian nation to Hungarians living abroad. The purpose of this information shall be:

- a) the transmission of Hungarian and universal spiritual and cultural values,
- b) the forming of an unbiased picture of the world, of Hungary and of the Hungarian nation,
- c) the preservation of the awareness of national identity, of the mother tongue and culture of the Hungarian minority communities.

(2) The Republic of Hungary shall provide for the production and broadcasting of public service television programmes for the Hungarian communities living abroad through the establishment and operation of an organisation devoted to such purposes. The financial resources necessary for such programmes shall be provided by the state budget.

Assistance to Organisations Operating Abroad

Article 18

(1) The Republic of Hungary shall support organisations operating in neighbouring countries and promoting the goals of the Hungarian national communities living in neighbouring countries.

(2) The organisations specified in paragraph (1) may apply to the public benefit organisation established for this purpose and operating in a lawful manner if their goals include, in particular, the following:

- a) the preservation, furtherance and research of Hungarian national traditions,
- b) the preservation and fostering of the Hungarian language, literature, culture and folk arts,
- c) the promotion of higher education of Hungarians living abroad by facilitating the work of instructors from Hungary as visiting lecturers,
- d) the restoration and maintenance of monuments belonging to the Hungarian cultural heritage,
- e) the enhancement of the capacity of disadvantaged settlements in areas inhabited by Hungarian national communities living abroad to improve their ability to preserve their population and to develop rural tourism,
- f) the establishment and improvement of conditions of infrastructure for maintaining contacts with the Republic of Hungary,
- g) the pursuance of other activities promoting the goals specified in paragraph (1).

CHAPTER III

RULES OF PROCEDURE OF APPLICATION FOR BENEFITS AND ASSISTANCE

"Certificate of Hungarian Nationality" and "Certificate for Dependants of Persons of Hungarian Nationality"

Article 19

(1) Benefits and assistance specified in this Act may be received by presenting either the "Certificate of Hungarian Nationality" or the "Certificate for Dependants of Persons of Hungarian Nationality", both of which may be issued under the conditions specified in Article 20 at the request of persons of both Hungarian and non-Hungarian nationality.

(2) From the Hungarian central public administration body (hereinafter referred to as "the evaluating authority") designated by the Government of the Republic of Hungary for this purpose:

a) persons of Hungarian nationality falling within the scope of this Act may request a "Certificate of Hungarian Nationality" with a photo,

b) a "Certificate for Dependants of Persons of Hungarian Nationality" with a photo may be requested by spouses of non-Hungarian nationality living together with persons specified in point a) and children of minor age being brought up in the same household, provided that:

the applicant meets the requirements set out in points a) and b) of paragraph (1) of Article 1 and the recommending authority specified in Article 20 has issued the recommendation; and neither an expulsion order nor a prohibition of entry or stay, issued by the competent Hungarian authorities on the basis of grounds determined in a separate Act, is in effect against the applicant in Hungary; and no criminal proceedings have been instituted against the applicant in Hungary for intentional criminal offence.

(3) In addition to the requirements specified in paragraph (2), the "Certificate for Dependants of Persons of Hungarian Nationality" shall also be conditional upon whether the person of Hungarian nationality entitling the dependants in question to submit an application for the "Certificate for Dependants of Persons of Hungarian Nationality" is already in the possession of, or entitled to, a "Certificate of Hungarian Nationality". The withdrawal of the "Certificate of Hungarian Nationality" shall entail the withdrawal of the "Certificate for Dependants of Persons of Hungarian Nationality".

Article 20

(1) The evaluating authority shall issue the "Certificate of Hungarian Nationality" if the applicant is in the possession of a recommendation which has been issued by a recommending organisation representing the Hungarian national community in the neighbouring country concerned, and being recognised by the Government of the Republic of Hungary as a recommending organisation, and which:

a) certifies, on the basis of a declaration made by the applicant (or in the case of a minor by his/her statutory agent), that the applicant is of Hungarian nationality,

b) certifies the authenticity of the signature of the applicant and

c) includes the following:

ca) the application, photo and address of the applicant,

cb) the personal data to be recorded in the Certificate (Article 21),

cc) the name and the print of the official seal of the recommending organisation, the name and signature of the person acting on behalf of the recommending organisation,

cd) place and date of issue of the recommendation.

(2) The recommendation required for the issuing of the "Certificate for Dependants of Persons of Hungarian Nationality" shall certify, instead of the information specified in paragraph (1) point a), the family relationship between the applicant and the person of Hungarian nationality falling within the scope of this Act.

(3) The Government of the Republic of Hungary shall recognise an organisation representing the Hungarian community in the given neighbouring country as a recommending organisation if it is capable of:

a) representing the Hungarian community living in the given country in its entirety,

b) providing for the organisational and personnel conditions for receiving and evaluating applications for recommendation.

Article 21

(1) The period of validity of the Certificate

a) shall expire on the day of the eighteenth birthday in the case of minors,

b) shall be five years in the case of persons between 18 and 60 years of age,

c) shall be indefinite in the case of persons over 60 years of age.

(2) If the period of validity of the Certificate expires, the proceedings specified in Articles 19-20 shall be repeated upon request.

(3) The Certificate shall be withdrawn by the evaluating authority if

a) the recommending organisation has withdrawn its recommendation due to the submission of false data by the bearer of the Certificate in the application process,

b) its bearer has been granted an immigration or permanent residence permit,

c) its bearer has acquired Hungarian citizenship,

d) its bearer has been recognised as a refugee or temporarily protected person by the authorities responsible for refugee matters,

e) its bearer has been expelled from the territory of the Republic of Hungary, or a prohibition of entry or stay has been issued against him/her,

f) criminal proceedings have been instituted against the bearer in Hungary,

g) the Certificate has been used in an unauthorised way or has been forged,

h) the family relationship entitling the bearer to use the Certificate for Dependants has ceased to exist,

i) upon request by the bearer of the Certificate.

(4) The recommending organisation shall also be notified of the final decision on the withdrawal of the Certificate.

(5) The Certificate shall contain the following data of the entitled person:

a) family and given name (also the maiden family and given name in the case of women) as it is used officially in the neighbouring country of residence (in Latin script), and in the case of persons of Hungarian nationality in Hungarian as well,

b) name of the place of birth as it is used officially in the neighbouring country and in Hungarian,

c) date of birth and gender,

d) mother's name as it is officially used in the neighbouring country of residence (in Latin script) and in the case of persons of Hungarian nationality in Hungarian as well,

e) passport photo, citizenship or reference to stateless status,

f) signature in the entitled person's own hand, and

g) date of issue, period of validity and number of the document.

(6) Notes and certifications required for access to benefits and assistance available under this Act shall be recorded in the Appendix to the Certificate.

(7) In order to ensure the authenticity of the Certificate and to supervise the granting of benefits, the evaluating authority (for the purpose of the application of these provisions: the data handling organ) shall keep records of the data of the Certificates, the identification marks in the Appendices, the foreign address of the bearers, the family relationship entitling the bearer to the document, the number and period of validity of the permit entitling to stay as well as the data specified in paragraph (3). The data contained in the records may be handled by the data handling organ until the withdrawal or the expiry of the period of validity of the Certificate. The data contained in the records may be forwarded to the Hungarian Central Statistical Office (KSH) for statistical purposes. Bodies responsible for providing and keeping records of benefits and assistance may also receive those data for the purpose of verifying entitlement and preventing abuse, and so may Courts in charge of criminal proceedings, law enforcement bodies, national security services and the alien policing authority.

(8) For the purpose of evaluating applications and examining the existence of reasons for the withdrawal of the Certificate, the evaluating authority may request information from the following organs:

a) the Central Registry of Aliens on whether the applicant is subject to proceedings under the law on aliens, or on any order of expulsion or prohibition on entry to and stay in Hungary against the applicant, as well as on the details of the residence permit entitling the applicant to stay in Hungary,

b) organs responsible for naturalisation on issues related to the acquisition Hungarian citizenship,

c) the Central Registry of Refugees on recognition as a refugee or temporarily protected person,

d) the Criminal Records Office on criminal proceedings in process.

Article 22

(1) Proceedings of the evaluating authority shall be governed by the provisions of Act IV of 1957 on the General Rules of Public Administration Procedures. The costs of public administration procedures shall be covered by the State.

(2) The applicant may institute proceedings in Court against a final administrative decision on the appeal against the first instance decision regarding the issue or withdrawal of a Certificate by the evaluating authority. The Court may alter the administrative decision and its proceedings shall be governed by the provisions of the Code of Civil Procedure.

(3) The detailed rules of procedure of the evaluating authority and the order of registration of the issued Certificates, as well as the data content and form of the Certificates, shall be regulated by a separate legal rule.

Use of Benefits on the Territory of the Republic of Hungary

Article 23

(1) Hungarian persons living abroad shall be entitled to use the benefits set out in Article 4, paragraph (1) of Article 7, Article 8, Article 10, paragraph (2) of Article 11 and Article 12 — under the conditions determined in the aforementioned Articles — by presenting their Certificates (Article 19) during their lawful stay in the Republic of Hungary.

(2) The state-run organisations and institutions granting the benefits specified in paragraph (1) and economic organisations providing travel benefits shall receive the financial resources necessary for granting these benefits out of the central state budget.

Application Procedures for Assistance Available in the Republic of Hungary

Article 24

(1) The Government shall establish public benefit organisation(s) in order to evaluate the applications of and distribute assistance for persons (organisations) falling within the scope of this Act.

(2) The founding document of the public benefit organisation, taking into account the provisions of Act CLVI of 1997 on Public Benefit Organisations, shall contain the goals of the activities and the range of applications to be evaluated by it and shall determine its main decision-making body as well.

(3) Applications for publicly advertised assistance under this Act may be submitted to the respective public benefit organisation competent according to their subject matter.

(4) Data and documents required in the advertisement by the respective public benefit organisation shall be attached to the applications.

(5) In the case of a favourable decision, the applicant and the public benefit organisation shall conclude a civil law contract containing the conditions of assistance and the amount thereof, as well as determining the purpose of the use of assistance and the rules of rendering accounts thereof.

(6) The financial resources required for the activities of such public benefit organisation(s) shall be provided, on an annual basis, in a separate group of appropriations of the central state budget.

Application Procedures for Assistance Available in Neighbouring Countries

Article 25

(1) Requests (applications) for assistance regulated in this Act may be submitted by persons (organisations) falling within the scope of this Act to lawfully operating non-profit organisations established in the neighbouring country of their permanent residence (registered office) for this purpose (hereinafter referred to as "foreign public benefit organisations")

(2) The civil law contract concluded between the public benefit organisation established in Hungary and the foreign public benefit organisation established for the evaluation of applications and the granting of assistance shall contain the required range of data, which are to be supported by documents, declarations, planning or documentation, etc.

(3) The public benefit organisations operating in Hungary shall evaluate the application based on the data specified in the civil law contract as laid down in paragraph (2) and on the opinion of the foreign public benefit organisation.

(4) Assistance shall be granted to applicants by the Hungarian public benefit organisation on the basis of a civil law contract. This contract shall determine the conditions of the assistance and the amount thereof as well as the purpose of the use of such assistance and the rules of rendering accounts thereof.

Central Registration of Assistance

Article 26

(1) For the purpose of co-ordinating the entire system of assistance, a central registry of applications for assistance and the relevant decisions made by public benefit organisations established for their evaluation shall be set up.

(2) The Government shall designate the central public administration organ responsible for managing the records.

(3) The organ managing the records shall handle the following data:

a) name, permanent address (registered office) and document number of those submitting applications for assistance,

b) the type of assistance sought,

c) the amount of assistance granted.

(4) Data specified in paragraph (3) may be handled by the organ managing the records for ten years from the date of the granting of assistance.

(5) Data from the records shall be made available to public benefit organisations established in Hungary and in the neighbouring countries for the purpose of evaluating applications for assistance, as well as to the central public administration organs of Hungary responsible for providing the financial resources for assistance.

CHAPTER IV

FINAL PROVISIONS

Article 27

(1) This Act shall enter into force on 1 January 2002.

(2) From the date of accession of the Republic of Hungary to the European Union, the provisions of this Act shall be applied in accordance with the treaty of accession of the Republic of Hungary and with the law of the European Communities.

Article 28

(1) The Government shall be empowered to regulate by decree:

a) the provisions on the assignment of the national public administration organ entitled to issue, withdraw and register the Certificates, as well as on the assignment of its superior organ, on the definition of their competencies and on the rules of procedure of the issuing, replacement, withdrawal and registration of such Certificates,

b) the detailed rules of travel benefits for persons falling within the scope of this Act,

c) the detailed rules related to the provision and use of student benefits for persons specified in paragraph (1) of Article 10 of this Act.

(2) The Government shall ensure the establishment of Hungarian public benefit organisation(s) evaluating applications and allocating assistance under this Act. The Government shall also ensure the co-ordination of the activities of public benefit organisations already operating for this purpose, the appropriate modification of their founding documents and the reallocation of resources in this framework.

Article 29

(1) The Minister of the Interior and the Minister of Foreign Affairs shall determine in a joint decree, with respect to educational assistance with the consent of the Minister of Education, the detailed rules on registering the Certificates, as well as the requirements of the content and form of the Certificates.

(2) The Minister of Economic Affairs shall:

a) determine, in a joint decree with the Minister for Foreign Affairs, the rules of procedure and registration related to work permits for Hungarians living abroad and designate the public administration organ responsible for carrying out these duties,

b) be empowered to regulate by decree the conditions for issuing work permits for a period longer than the one specified in Article 15 of this Act with regard to employees falling within the scope of this Act, or for a particular group of employees, in consensus with the Minister for Youth and Sports Affairs in cases involving professional sportspersons.

(3) The Minister of Foreign Affairs shall be empowered to substitute his own declaration for the recommendation specified in Article 20 of this Act in cases deserving exceptional treatment on grounds of equity in the course of proceedings of the evaluating authority designated in Article 19, and furthermore in cases where the proceedings specified in paragraph (1) of Article 20 are impeded, to ensure the smooth conduct of administrative proceedings.

(4) The Minister of National Cultural Heritage shall determine by decree the detailed rules of benefits available to Hungarians living abroad with respect to the use of the services provided by museums and public cultural institutions.

(5) The Minister of Education, with the consent of the Minister of Foreign Affairs, shall determine by decree the detailed rules on further training for Hungarian teachers living abroad, as well as detailed rules on the benefits set out in Article 9, Article 11 and 12, paragraph (1) of Article 13 and Article 14 of this Act, including the extent of such assistance.

**INTERNATIONAL SYMPOSIUM
THE POLICIES ON ETHNIC DIASPORA OF VARIOUS COUNTRIES**

**THE STATE OF ISRAEL AND THE JEWISH DIASPORA:
TRENDS, POLICIES AND CHALLENGES**

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SEOUL, SEPTEMBER 10, 2004**

ABSTRACT

This Report examines in depth the complex relationship that exists between the State of Israel and the Jewish Diaspora. The Report comprises five main parts and several appendices which present some important documents of interest for the Israel-Diaspora relationship.

The first part on **The State of Israel and the Jewish Diaspora** after a review of some general unique and shared patterns of Diasporas, presents an overview of the Jewish People and Israel in historical perspective, followed by a discussion of the peculiar double role of the State of Israel as the State of the Jewish people and the State of its citizens. An overview is also provided of the main legal provisions in the State of Israel concerning the relationship with the Diaspora, namely in the area of citizenship.

The second part presents a detailed overview of the **Demography of World Jewish Population**. Attention is given to the determinants of Jewish population change as is the case of other sub-populations in a broader context, and to the ensuing peculiar conceptual and technical issues. After a discussion of Jews in the global system, detailed data are given on World Jewish population size and geographical distribution in 2004, and an overall picture and prospects for the future are provided.

The third part provides a detailed examination of the **Institutional and Organizational Set-Up** of Jewish communities in Israel and in the Diaspora. It briefly raises some general principles of governance now observable among the Jewish people, and follows describing the main global and international Jewish organizations, the major organizations based in the United States, Jewish organizations in other countries. Some overall analysis and conclusions are presented in the end.

The fourth part discusses **Strategic Challenges** that stand in front of the Jewish people, beginning with an overall balance and followed by a detailed analysis of the impact of external environment on the Jewish people and Judaism, and major internal trends within the Jewish people with special attention to the interactions between Israel and Diaspora.

The fifth part deals with **Future Prospects** with special attention to future common decision-making mechanisms such as the Presidential suggestion to create a Second House devoted to the discussion of common issues between the State of Israel and the Diaspora. The final remarks reconsider the challenges of peoplehood survival and interaction in the current era of globalization.

The Appendices report Israel's Declaration of Independence, Israel's crucially important "Law of Return", Israel's Nationality Law, and the categories of eligibility for assistance from the Ministry of Immigrant Absorption.

ACKNOWLEDGEMENTS

This Report was prepared in the framework of the principal author's research activities at the Division of Jewish Demography and Statistics of the A. Harman Institute of Contemporary Jewry at the Hebrew University of Jerusalem, and at the Jewish People Policy Planning Institute (JPPPI). The author thanks his colleagues Uzi Rebhun and Mark Tolts at Hebrew University, and Avinoam Bar-Yosef, Avi Gil, Naftali Elimelech, Shalom Wald, Ita Alkalay, Nadav Anner, Zvika Arran, Avi Ifergan, Sebastian Klor, Liav Orgad, Sharon Pardo, Rafi Pizov, Israel Pupko, David Shapira and Ahava Zaremski at JPPPI for helpful discussions and suggestions. Parts of this Report were originally prepared for the JPPPI Annual Assessment No. 1, *Between Thriving and Decline: The Jewish People 2004* (Jerusalem: JPPPI, 2004). Responsibility for the contents of this Report solely rests with the principal author.

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1. THE STATE OF ISRAEL AND THE JEWISH DIASPORA

1.1 UNIQUENESS AND COMMONALITIES OF DIASPORAS

The simultaneous presence of a national population resident on a homeland and a dispersion of people of the same origin (Diaspora) living in other countries and maintain a permanent and meaningful relationship with that homeland, is a rather frequent occurrence. In long term historical perspective there have been a relatively small number of such populations. However, especially over the second half of the 20th century, extensive international migration generated significant dispersion phenomena among a much larger number of nations. Some of these Diasporas have been predominantly concentrated over the contiguous territories of countries and nations neighboring the mainland or homeland territory; other Diasporas have developed over a large and not contiguous geographical spread, covering virtually the whole inhabited world.

The Jewish people – which constitutes the main subject of this report – comprises one example of the more ancient and more widely spread Diasporas. While the Jewish Diaspora is one of the most popularly known and extensively investigated, it should be acknowledged that it also has been the subject of much inaccurate speculation, and sometimes negative prejudice. Systematic appraisal of the Jewish Diaspora is a relatively recent development going back to the 19th century's development of the scientific study of *Judaism* – the complex of norms, traditions and knowledge related to Jewish religion and culture – and *Jewry* – the aggregate of the people and institutions broadly related to Judaism. However, historical, and even relatively reliable quantitative notions about the Jewish people and Diaspora have existed for over 3,000 years. Thus, the dialectical tension between a Jewish center in *Eretz Israel* (The Land of Israel, or the Holy Land, later also known as Palestine) and a periphery in exile is frequently addressed in the Biblical text of Pentateuch and Prophets.

The Jews form one of the most ancient Diasporas on earth, along with the Chinese, Armenian, and Indian Diasporas. One of the most intensive periods of spatial diffusion of the Jews, however, came in relation to large scale international migrations during the 19th and 20th centuries, along with the global dispersion of the Italian, the Irish, the Poles and many other people. Other Diasporas have grown significantly toward the end of the 20th century following the recent globalization processes of capital, labor, and know-how. Examples of recent rapid growth involve countries in Eastern Europe, Asia, Africa, Latin America, and in general nearly all nations in the world.

The Jews were long among those people who long did not possess a recognized sovereign political framework, like the Kurds, the Romas, and the Palestinian Arabs. Independence of the State of Israel on May 14, 1948 created a new sovereign political entity for the Jewish nation for the first time since the destruction in the year 70 C. E. of the Second Temple in Jerusalem – the main symbolic center of the ancient Jewish religion. In the course of the last 56 years, as with any other society, emigration movements from Israel have created an Israeli Diaspora, definitely much smaller than the Jewish Diaspora, and significantly related to it.¹ This chapter will mainly refer to the more ancient, more complex and culturally more significant of the two: the Jewish Diaspora in its relation with the State of Israel. Nonetheless, the Israeli Diaspora is also a relevant object of investigation and will be addressed here as a sub-population within the broader complex of world Jewry.

¹Gold, Steven J., *The Israeli Diaspora* (London: Routledge, 2002).

Clearly at the roots of the interest with and study of Diasporas stands the assumption of the existence of some important commonalities between the members of a nation who live on their homeland, and those who live away from it.² In broad generalization, a nation is an integrated society in which different individual ethnic, religious, cultural, linguistic, historical and social interests merge within the political process and are controlled by it.³ The nation, hence, is the attempt to integrate a collection of people into a community of citizens who are united by the values of this society and the search for a common good which transcends individual interests. This model which forms the foundation of the "citizen's state", is today in crisis as a consequence of the tendency towards globalization and the priority given to individual and group interests. In this situation, politics risks to degenerate into a mere management of interests, and democracy into an instrument of welfare which is concerned only with the well-being of each individual citizen.⁴

Interestingly, the joint examination of nations and their Diasporas offers an opportunity to analyze relevant aspects of the interaction between individual and polity in an integrated perspective of contingent interests and value systems. While for the residents of a country, geographical proximity and constraints constitute important bases of interaction reinforcing common experiences and interests (and sometimes conflicts), Diasporas preponderantly stem from migration movements and geographical dispersion. Diasporas are consequently exposed to a twofold challenge:

- the possible *conflicts* of Diaspora members as minorities with the surrounding majorities; and
- the possible *assimilation* of Diaspora members as minorities within the surrounding majorities.

In both occurrences, at the center of recognizable Diasporas must stand certain common sets of values and symbols, on the one hand, and of life experiences, on the other hand. Such common denominators include reference to a common country of origin, a national language, a common historical tradition, common cultural patterns, shared behavioral norms, and also – broadly speaking – a common genealogy and genetic pool. At the same time, the commonalities of experiences that characterize members of a Diaspora often result in strengthened internal links because of the common exposure to similar constraints facing the majority of among the society of settlement. This may generate a perception of common interests, and the need to create organizations by the members of a Diaspora that will defend their common interests. At the same time, it will be wise to recognize the existence of wide internal differences concerning socioeconomic stratification and the patterns of corporate identity among the members of any Diaspora. Hence, generalizations may be useful for analytic purposes but should always be submitted with great caution.

1.2 THE JEWISH PEOPLE AND THE STATE OF ISRAEL IN HISTORICAL PERSPECTIVE

In the context of the present discussion, the case of Israel and the Jews is quite anomalous. The typical chronological situation would be:

- first, the existence of a national population settled on a geographical territory – for our purposes a center;
- second, the creation of a Diaspora through emigration and dispersion over other territories.

²Sheffer, Gabriel, *Diaspora Politics: At Home Abroad* (Cambridge, UK: Cambridge University Press, 2003).

³Schnapper, Dominique, *La communauté des citoyens: Sur l'idée moderne de nation* (Paris: NRF, 1994).

⁴Schnapper, *ibid.*

In our case, at least in the framework of modern and contemporary history, an existing Diaspora – the Jewish people's dispersion worldwide – long preceded the formation of a territorial center in the State of Israel. The Jewish people and Judaic civilization are among the most ancient on earth. They have withstood enormous threats and challenges, including that of genocide; they did not succumb to the temptation of assimilation; and their contributions to humankind, both as individuals and as a civilization, have been impressive, and much greater than their relative share of world population.

The question of the meaning of Judaism, Jewishness, and Jewry from a historical perspective is not trivial. Disagreements over the fundamental meanings of these terms carry significant weight in the contemporary debate about the present and future of the Jewish people in a global context. Key questions include:

- Are the Jewish people a nation within a broader paradigm of civilization inclusive of other nations, or are they a civilization in their own right?
- What is the changing importance of religion as a core component of Jewish identity?
- How can Israel be rated on a scale of normalcy to exceptionalism in comparison with other states?

Without entering into a deeper discussion of the various meanings of the concept of civilization as distinguished from culture⁵, we will assume here that the Jewish people form a civilization and are not merely a national or religious group⁶.

The apparently unique relationship within the Jewish people between the State of Israel and the Diaspora (or world Jewry, as some would prefer) is actually shared by many other nations⁷. However, when one considers the fact that the Jews have existed for over 2000 years without a state, and long before the emergence of modern nation-states, the Jewish experience throughout history has been unique. The Jews, as a people, intimately embraced Judaism, created an original and radical complex of beliefs, norms, values and folklore⁸. An historical discussion about the Jewish people as solely a religion, or solely a nation, or solely an ethnic group is, therefore, misleading⁹.

At the same time, the overlap between the vast majority of the Jewish people and western civilization is constantly growing. Since the period of the Enlightenment and the Emancipation, Judaism in Western Europe became increasingly reduced to a personal religious realm. Jews became, for all intents and purposes, citizens in one state or another, and took an increasingly active role in all aspects of civil life. The one exception to this apparent integration was the preservation of rituals that distinguished Jewish communities. This was the case mainly in Western Europe and in the growing Jewish community in the United States. Modernization of Jewish communities in most of Eastern Europe took other forms, and only reached, to a limited extent, the diverse Jewish communities in North Africa and the Middle East.

Antisemitism was not completely rooted out by emancipation and progress; in fact, it persisted, thereby contributing, ironically, to the enhancement, survival, and even renewal, of

⁵Huntington, Samuel P., *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 1996); Inglehart, Ronald, *Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 societies* (Princeton: Princeton University Press, 1997).

⁶Dubnow, S. M., *Jewish History: An Essay in the Philosophy of History* (Honolulu: University Press of the Pacific, 2003 [First edition 1903]); Kaplan, Mordecai M., *Judaism as a Civilization: Towards a Reconstruction of American-Jewish Life* (Philadelphia: The Jewish Publication Society of America, 1981);

Eisenstadt, S.N., *Jewish Civilization: The Jewish Historical Experience in Comparative Perspective* (Beer Sheva: Ben Gurion University Press, 2002) (Hebrew).

⁷Sheffer, *Diaspora Politics: At Home Abroad*, cit..

⁸Biale, David, ed., *Cultures of the Jews: A New History* (New York: Schocken, 2002).

⁹Jacobson, Alexander, and Rubinstein, Amnon, *Israel and the Family of Nations: The Jewish National State and Human Rights* (Jerusalem: Schocken, 2003).

the Jewish people, which included the Zionist revolution and the establishment of the state of Israel¹⁰. Whatever the reason, without a strong link to the Promised Land, which constitutes a fundamental tenet of Judaism, Zionism would never have arisen, precluding any chance of Israel's independence.

Jews all over the world share a deep belief that the Jewish people are here to stay. But Judaism, in contrast with some other religions and cultures, has never been passive or fatalistic. On the contrary, Jews have historically coped very well with existential challenges and have adjusted themselves to changing conditions.

Ensuring a future in which the Jewish people and Judaic civilization thrive whereas the State of Israel represents a meaningful and attractive central focal point to the world Jewish and Israeli Diaspora requires, first and foremost, a careful assessment of the resources – physical, economical, cultural and spiritual – available to the Jewish people and to the Israeli State, coupled with a sober evaluation of the threats and weaknesses. Once we have accomplished the above, recommendations for the future can be deduced.

1.3 ISRAEL: STATE OF THE JEWISH PEOPLE AND STATE OF ITS CITIZENS

Israel's Declaration of Independence (see Appendix 1) clarifies the complex dualism of the Israeli ethos. On the one hand, Israel aims at being an exemplary democratic state, open to pluralism and adamantly opposed to any form of discrimination based on religious, ethnic, cultural, social or any other categories. Thus civil rights are equally attributed to all of its citizens. On the other hand, Israel's *raison d'être* is its providing a solution to the bimillennarian problems of a people – the Jews – who were historically denied not only equal opportunity but often the very basic minimum civic rights.

The supreme goal to be a state that will be both democratic – hence universalistic – and Jewish – hence particularistic – is expressed in the following passages from the Declaration of Independence:

...By virtue of our natural and historic right and on the strength of the Resolution of the United Nations General Assembly, hereby declare the establishment of a Jewish State in Eretz-Israel, to be known as the State of Israel....

...The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations....

At the same time, Israel not only keeps its doors open to Jewish immigration, but actively seeks and encourages it:

...We appeal to the Jewish people throughout the Diaspora to rally round the Jews of Eretz-Israel in the tasks of immigration and upbuilding and to stand by them in the great struggle for the realization of the age-old dream – the redemption of Israel....

¹⁰Gorny, Yosef, "Klal Yisrael: From Halakha to History," in Eliezer Ben-Rafael, Yosef Gorny, Yaacov Ro'i (eds.) *Contemporary Jewries: Convergence and Divergence* (Leiden and Boston: Brill, 2003) 13-22.

Hence since inception Israel does not look at its own social and political realities exclusively from a limited internal national perspective, but also perceives itself actively involved in a dialectic relationship with the Diaspora. It is not easy to fulfill both roles of a democratic and a Jewish state, and the possible conflict of interests quite naturally has been the subject of constant debate and elaboration.¹¹

1.4 MAIN LEGAL PROVISIONS IN THE STATE OF ISRAEL

1.4.1 Israel's Law of Return

Perhaps the most crucial policy instrument in Israel-Diaspora relations is the Law of Return (see Appendix 2). This Law attributes nearly unlimited rights of immigration, citizenship, and related socioeconomic and civil right benefits to all Jews in the world, as well as to their descendants down to the third generation and to the respective spouses – no matter whether Jewish or not. The Law of Return, by its uniquely liberal admission provisions, as expressed in its Chapter 1: "Every Jew has the right to immigrate to the country" created the legal foundations for large scale immigration that created and consolidated the demographic backbone of Israeli society.

It should be noted that, in terms of right-awarding, its provisions create the symmetric positive of the right-denying Laws of Nierenberg which discriminated against German Jewry and by potential extension the whole Jewish Diaspora. The Law also aims at correcting once and forever the tragic powerlessness that Diaspora Jews experienced at a time of maximum need and danger and nearly complete lack of migration opportunities during the late 1930s and early 1940s.

An important by-product of the Law of Return is the question and controversy about "Who is a Jew?" The Law of Return has been amended several times concerning this point since its first approval in 1950, and the question is still under scrutiny of Israel's Supreme Court 54 years later. The formula adopted eventually was: (Chapter 4b): "For the purpose of this law a "Jew" is anyone born to a Jewish mother or who has converted, and is not a member of another religion."

This apparently simple formulation in reality opens several delicate, controversial and still unsolved questions, namely: What is a conversion? Who has the power and prerogative to convert? Should the conversion have taken place before or after immigration?

In spite of these controversies, the Law of Return remains the most important legal and ethical linkage between Israel and the Jewish Diaspora.

1.4.2 Israel's Law of Nationality

The apparent advantage offered to Jews vis-à-vis the possibilities of immigration and nationality in Israel call for an additional legal instrument not limited to Jews but available to all possible applicants. This is the Law of Nationality (see Appendix 3). As in other countries, the Israeli nationality can be obtained through different ways and conditions: by birth, by residence, by naturalization.

It should be stressed that neither the Law of Return nor the Law on Nationality directly touch upon the religious or ethnic identity of the applicants. Such identities are relevant in making it or not applicable a certain law to a certain potential applicant. While the Law of Return is offered unconditionally to all Jewish eligible persons and members of their families, being therefore unique to the Jewish Diaspora (with the exception of whoever (i) acts against the Jewish nation; (ii) is liable to threaten the public health or security of the state; or (iii) has a

¹¹See, e.g., Gavison, Ruth, "Jewish and Democratic? A Rejoinder to the Ethnic Democracy Debate", *Israel Studies*, 4(1), 1999, 44-72.

criminal past which is liable to endanger the public's peace), the Law of Nationality is subject to certain conditions and restrictions, as in most other countries of the world.

1.4.3 New Immigrants Absorption Basket

As a logical complement to its strive for large scale immigration, the State of Israel offers a wide range of provisions aimed at making the absorption of new immigrants in the new country (see Appendix 4). Ministry of Immigrant Absorption assistance includes the following: Absorption basket; Income insurance during the first year following immigration and for immigrants who do not receive the Absorption basket or who are studying in courses; Hebrew studies (*ulpan*); Assistance in housing; Assistance in employment; Assistance in establishing in independent business – Business Entrepreneurship; Tuition fee Assistance at institutions of higher education; Assistance for soldiers.

These provisions are offered to various categories of individuals: New immigrants; Minor immigrants; Immigrant citizens; Children of immigrants; Immigrant families; Returning minors; Returning residents. The overall impact may be quite crucial in making easier the period of initial integration of new immigrants in the country. However the test of successful immigration can only be the long term willingness of immigrants to stay and their ability to become integral part of the socioeconomic and cultural life of Israeli society.

2. DEMOGRAPHY OF WORLD JEWISH POPULATION¹²

2.1 DETERMINANTS OF JEWISH POPULATION CHANGE

The world's Jewish population was estimated at 12.99 million at the beginning of 2004 – an increase of about 40,000 over the previous year's revised estimate.¹³ The new world Jewish population figure reflects up-dated information on Jewish population that has become available following the major round of national censuses and Jewish population surveys in countries with large Jewish populations over the period 1999-2002. This new evidence usually confirmed our previous estimates but sometimes suggested upward or downward revisions. Over the last decade, a significantly expanded database has become available allowing for critically assessing the worldwide Jewish demographic picture.

Figures on population size, characteristics and trends are a primary tool in the evaluation of Jewish community needs and prospects at the local level and internationally. The estimates for major regions and individual countries reported in this overview reflect a prolonged and ongoing effort to study scientifically the demography of contemporary world Jewry.¹⁴ Data collection and comparative research have benefited from the collaboration of scholars and institutions in many countries, including replies to direct inquiries regarding current estimates. It should be emphasized, however, that the elaboration of a worldwide set of estimates for the Jewish populations of the various countries is beset with difficulties and uncertainties.¹⁵ Users of Jewish population estimates should be aware of these difficulties and of the inherent limitations of our estimates.

Major geopolitical and socioeconomic changes have affected the world scene since the end of the 1980s, particularly the political breakup of the Soviet Union, Germany's reunion, the European Union's gradual expansion to 25 states (including the addition of ten new members on May 1, 2004), South Africa's transition to a new regime, political and economic instability in several Latin American countries, and the volatile situation in Israel and the Middle East. Jewish population trends were most sensitive to these developments. Large-scale emigration from the former USSR (FSU) and rapid population growth in Israel were the most visible effects, accompanied by other significant Jewish population transfers. Reflecting geographical mobility and the increased fragmentation but also new consolidation of the global system of nations, over 80 percent of world Jewry live in two countries, the United States and Israel, and 95 percent are concentrated in the ten largest country communities. Six of the G8 countries¹⁶ (the United States, France, Canada, the United Kingdom, the Russian Republic, and Germany) comprise 87 percent of the total Jewish population out of Israel. The aggregate of these major Jewish population centers virtually determines the assessment of world Jewry's total size and trends.

¹²This section is largely based on this author's article "World Jewish Jewish Population 2004", *American Jewish Year Book 2004* (AJYB), 104 (New York: American Jewish Committee, 2004).

¹³The previous estimates, as of January 1, 2003, were published in AJYB 2003, 103, 588-612. See also Sergio DellaPergola, Uzi Rebhun, and Mark Tolts, "Prospecting the Jewish Future: Population Projections 2000-2080," AJYB 2000, 100, 103-46; and previous AJYB volumes for further details on earlier estimates.

¹⁴Many of these activities are carried out by, or in coordination with, the Division of Jewish Demography and Statistics at the A. Harman Institute of Contemporary Jewry (ICJ), the Hebrew University of Jerusalem. The collaboration of the many institutions and individuals in the different countries who have supplied information for this update is acknowledged with thanks.

¹⁵For overviews of the subject matter and technical issues see Paul Ritterband, Barry A. Kosmin, and Jeffrey Scheckner, "Counting Jewish Populations: Methods and Problems," AJYB 1988, 88, 204-221; Sergio DellaPergola, "Demography" in Martin Goodman, ed., *The Oxford Handbook of Jewish Studies* (Oxford, 2002), 797-823.

¹⁶The eight leading economies in the world, also comprising Japan and Italy.

Before embarking in a discussion of Jewish demographic history, the general mechanisms of the origins and transformation of Jewish populations should be outlined.¹⁷ Jewish communities represent a special case of a group or subpopulation defined by symbolic particularism – be it religious, ethnic, cultural, linguistic, or of any other sort. All along history, countless such subpopulations have come into being, have existed for longer or shorter spans of time, and have disappeared.

The birth, or ethnogenesis, of such a group in a given place may occur because of one of four possible processes: (a) the initial immigration of the given group to a new territory; (b) the annexation of a territory where the given group was already present by another territorial entity where it was not; (c) ideational innovation or split out of another existing group; or (d) the merger of two or more existing groups generating a new group with its own durable characteristics. The opposite phenomenon of ethnoextinction in a certain place may occur under any of five possible circumstances: (a) the total emigration of the given group; (b) territorial cession, including all members of the given group; (c) complete assimilation of the group; (d) extinction as the result of an excess of deaths over births; or (e) genocide. Each of these different mechanisms of population change can be assumed to have operated at various points of time in the case of Jewish demographic history.

One fundamental aspect of population in general and of Jewish population in particular is its perpetual change. Population size and composition reflect a continuous interplay of three major determinants. Two of these factors affecting increases or decreases in the physical presence of individuals in a given place are shared by all populations:

- the balance of vital events (births and deaths);
- the balance of international migration (immigration and emigration).
- The third determinant consists of identificational changes (accessions and secessions) and only applies to populations – usually referred to as sub-populations – defined by some cultural, symbolic or other specific peculiarity, as is the case with Jews. The latter type of change does not affect people's physical presence but rather their willingness or ability to identify with a particular religious, ethnic or otherwise culturally defined group.

The country figures presented here for 2004 were updated from those for past years in accordance with the known or estimated changes in the interval – vital events, migrations, and identificational changes. In our updating procedure, whether or not exact data on intervening changes were available, we consistently applied the known or assumed direction of change, and accordingly added to or subtracted from previous Jewish population estimates. If there is evidence that intervening changes balanced each other off, Jewish population remained unchanged. This procedure proved highly efficient in the past. Whenever improved Jewish population figures became available reflecting a new census or survey, our annually updated estimates generally proved on target.

The more recent findings basically confirm the estimates we had reported in previous AJYB volumes and, perhaps more importantly, our interpretation of the trends now prevailing in the demography of world Jewry.¹⁸ Concisely stated, these involve a positive balance of vital events (Jewish births and deaths) in Israel and a negative one in nearly all other Jewish communities; a positive migration balance for Israel, the United States, Germany, Canada,

¹⁷Sergio DellaPergola, "Some Fundamentals of Jewish Demographic History", in S. DellaPergola and J. Even (eds.) *Papers in Jewish Demography 1997* (Jerusalem: The Hebrew University, 2001) pp. 11-33.

¹⁸See Roberto Bachi, *Population Trends of World Jewry* (Jerusalem, 1976); U.O. Schmelz, "Jewish Survival: The Demographic Factors," AJYB 1981, 81, 61-117; U.O. Schmelz, *Aging of World Jewry* (Jerusalem, 1984); Sergio DellaPergola, "Changing Cores and Peripheries: Fifty Years in Socio-demographic Perspective," in Robert S. Wistrich, ed., *Terms of Survival: The Jewish World since 1945* (London, 1995) 13-43; Sergio DellaPergola, *World Jewry beyond 2000: Demographic Prospects* (Oxford, 1999).

Australia and a few other western countries, and a negative one in Latin America, South Africa, Eastern Europe, Muslim countries, and some western European countries as well; a positive balance of accessions and secessions in Israel, and an often negative, or, in any event, rather uncertain one elsewhere. While allowing for improvements and corrections, the 2004 population estimates highlight the increasing complexity of the sociodemographic and identificational processes underlying the definition of Jewish populations, and hence the estimates of their sizes. This complexity is magnified at a time of enhanced international migration, often implying double counts of people on the move. Consequently, the analyst has to come to terms with the paradox of the *permanently provisional* nature of Jewish population estimates.

2.2 CONCEPTUAL AND TECHNICAL ISSUES

2.2.1 Sources of Data

In general, the amount and quality of documentation on Jewish population size and characteristics is far from satisfactory. In recent years, however, important new data and estimates became available for several countries through official population censuses and Jewish-sponsored sociodemographic surveys. National censuses yielded results on Jewish populations in Ireland, the Czech Republic, India (1991), Romania, Bulgaria (1992), the Russian Republic, Macedonia (1994), Israel (1995), Canada, South Africa, Australia, New Zealand (1996 and 2001), Belarus, Azerbaijan, Kazakhstan, Kyrgyzstan (1999), Brazil, Mexico, Switzerland, Estonia, Latvia, Tajikistan (2000), the United Kingdom, Lithuania, Ukraine (2001), the Russian Republic, Georgia and Hungary (2002). Permanent national population registers, including information on the Jewish religious, ethnic or national group, exist in several European countries (Switzerland, Norway, Finland, Estonia, Latvia, and Lithuania), and in Israel.

In addition, independent sociodemographic studies have provided most valuable information on Jewish demography and socioeconomic stratification, as well as on Jewish identification. Surveys were conducted over the last several years in South Africa (1991 and 1998), Mexico (1991 and 2000), Lithuania (1993), the United Kingdom, Chile (1995), Venezuela (1998–99), Israel, Hungary, the Netherlands, Guatemala (1999), Moldova, Sweden (2000), France and Turkey (2002). In the United States important new insights were provided by two large surveys, the National Jewish Population Survey (NJPS, 2000–2001) and the American Jewish Identity Survey (AJIS, 2001). Several further Jewish population studies were separately conducted in major cities in the United States (notably in New York City in 2002) and in other countries. Additional evidence on Jewish population trends can be obtained from the systematic monitoring of membership registers, vital statistics, and migration records available from Jewish communities and other Jewish organizations in many countries or cities, notably in the United Kingdom, Germany, Italy, Buenos Aires, and Sao Paulo. Detailed data on Jewish immigration routinely collected in Israel help to assess changing Jewish population sizes in other countries. Some of this ongoing research is part of a coordinated effort constantly to update the profile of world Jewry.¹⁹

¹⁹Following the *International Conference on Jewish Population Problems* held in Jerusalem in 1987, initiated by the late Roberto Bachi of the Hebrew University and sponsored by major Jewish organizations worldwide, an International Scientific Advisory Committee (ISAC) was established. See Sergio DellaPergola, Leah Cohen, eds., *World Jewish Population: Trends and Policies* (Jerusalem, 1992). A new *Initiative on Jewish Demography*, sponsored by the Jewish Agency has resulted in an *International Conference* held in Jerusalem in 2002 and a plan of data collection and analysis. The newly established *Jewish People Policy Planning Institute (JPPPI)*, chaired by Ambassador Dennis Ross, provides a framework for policy suggestions namely in relation to population issues. See Sergio DellaPergola, *Jewish Demography: Facts, Outlook, Challenges*, JPPPI Alert Paper 2 (Jerusalem, 2003).

2.2.2 Definitions

A major problem in Jewish population estimates periodically circulated by individual scholars or Jewish organizations is a lack of coherence and uniformity in the definition criteria followed – when the issue of defining the Jewish population is addressed at all. In broad terms of reference, the quantitative study of Jewish populations can only rely on operational rather than normative definitional criteria. Three major concepts should be considered in order to put the study of Jewish demography on serious comparative ground.

The *core Jewish population*²⁰ includes all those who, when asked, identify themselves as Jews; or, if the respondent is a different person in the same household, are identified by him/her as Jews. This is an intentionally comprehensive and pragmatic approach reflecting the nature of most available sources of data on Jewish population. In countries other than Israel, such data often derive from population censuses or social surveys where interviewees have the option to decide how to answer to relevant questions on religious or ethnic preferences. Such definitions of a person as a Jew, reflecting *subjective* feelings, broadly overlap but do not necessarily coincide with Halakhah (rabbinic law) or other normatively binding definitions. They do *not* depend on any measure of that person's Jewish commitment or behavior – in terms of religiosity, beliefs, knowledge, communal affiliation, or otherwise. The *core Jewish population* includes all converts to Judaism by any procedure as well as other people who declare they are Jewish. Also included are persons of Jewish parentage who claim no current religious or ethnic belonging. Persons of Jewish parentage who adopted another religion are excluded, as are other individuals who did not convert out but explicitly identify with a non-Jewish group. In Israel, personal status is subject to the rulings of the Ministry of the Interior, which relies on rabbinical authorities. Therefore the *core Jewish population* in Israel does not simply express subjective identification but reflects definite legal rules, namely Halakhah.

The question whether belonging to a *core Jewish population* definition can or should be mutually exclusive with other religious corporate identities reemerged on a major scale on the occasion of the 2000–2001 NJPS. The solution chosen in this case by the UJC research department – admittedly amidst much debating – was to allow for Jews with multiple religious identities to be included under certain circumstances in the standard definition of Jewish population.²¹ A category of Persons of Jewish Background (PJBs) was introduced: some of these were included in the Jewish population count and some were not. By the same token, Jews with multiple ethnic identities were included in the standard Jewish population count in Canada. The adoption of such extended criteria by the research community tends to stretch Jewish population definitions as against the practice usually predominant in the past. This should be kept in mind when attempting to compare findings for a given Jewish population at different points in time.

The *enlarged Jewish population*²² concept includes the sum of (a) the *core Jewish population*; (b) all other persons of Jewish parentage who are *not* Jews currently (or at the

²⁰The term *core Jewish population* was initially suggested by Barry A. Kosmin, Sidney Goldstein, Joseph Waksberg, Nava Lerer, Ariela Keysar, and Jeffrey Scheckner, *Highlights of the CJF 1990 National Jewish Population Survey* (New York, 1991).

²¹See Laurence Kotler-Berkowitz, Steven M. Cohen, Jonathon Ament, Vivian Klaff, Frank Mott, and Danyelle Peckerman-Neuman, with Lorraine Blass, Debbie Bursztyn, David Marker, *The National Jewish Population Survey 2000-01: Strength, Challenge and Diversity in the American Jewish Population* (New York: United Jewish Communities, 2003). See also the forthcoming volume of *Contemporary Jewry* (the scholarly journal of the Association for the Scientific Study of Jewry edited by Samuel Heilman) entirely devoted to critical essays and analyses of NJPS method and findings.

²²The term *enlarged Jewish population* was initially suggested by Sergio DellaPergola, "The Italian Jewish Population Study: Demographic Characteristics and Trends," in U.O. Schmelz, P. Glikson, and S.J. Gould, eds.,

time of investigation); and (c) all of the respective further non-Jewish household members (spouses, children, etc.). Non-Jews with Jewish background, as far as they can be ascertained, include: (a) persons who have themselves adopted another religion, even though they may claim to be also Jewish by ethnicity or religion – with the caveat just mentioned for recent U.S. and Canadian data; (b) other persons with Jewish parentage who disclaim being Jews. As noted, some PJBs who do not pertain to the *core* Jewish population naturally do belong to the *enlarged* definition.²³ It is customary in sociodemographic surveys to consider the religio-ethnic identification of parents. Some censuses, however, do ask about more distant ancestry. For both conceptual and practical reasons, the enlarged definition does not include other non-Jewish relatives who lack a Jewish background and live in exclusively non-Jewish households.

The *Law of Return*, Israel's distinctive legal framework for the acceptance and absorption of new immigrants, awards Jewish new immigrants immediate citizenship and other civil rights. According to the current, amended version of the Law of Return, a Jew is any person born to a Jewish mother, or converted to Judaism (regardless of denomination – Orthodox, Conservative, or Reform), who does not have another religious identity. By ruling of Israel's Supreme Court, conversion from Judaism, as in the case of some ethnic Jews who currently identify with another religion, entails loss of eligibility for Law of Return purposes. The law as such does not affect a person's Jewish status, which, as noted, is adjudicated by Israel's Ministry of Interior and rabbinical authorities. The law extends its provisions to all current Jews, their children, and grandchildren, as well as to the respective Jewish or non-Jewish spouses. As a result of its three-generation and lateral extension, the Law of Return applies to a large population, one of significantly wider scope than *core* and *enlarged* Jewish populations defined above.²⁴ It is actually quite difficult to estimate what the total size of the *Law of Return* population could be. These higher estimates are not discussed below systematically, but some notion of their possible extent is given for the major countries.

The following rough estimates of Jewish population distribution in each continent (Table 1 below), country (Tables 5–12), and metropolitan area (Table 13) consistently aim at the concept of *core* Jewish population.

2.2.3 Presentation and Quality of Data

Our Jewish population estimates refer to January 1 of the current year of publication. Efforts to provide the most recent possible picture entail a short span of time for evaluation and correction of available information, hence a somewhat greater margin of inaccuracy. Indeed, where appropriate, we revised our previous estimates in the light of newly accrued information on Jewish populations. Corrections were also applied retrospectively to the 2003 figures for major geographical regions so as to ensure a better base for comparisons with the 2004 estimates.

We provide separate figures for each country with approximately 100 or more resident *core* Jews. Residual estimates of Jews living in other smaller communities supplement some of the continental totals. For each of the reported countries, the four columns in Tables 6–10 provide an estimate of midyear 2003 total population,²⁵ the estimated 1/1/2004 Jewish population, the proportion of Jews per 1,000 of total population, and a rating of the accuracy of the Jewish population estimate.

Studies in Jewish Demography: Survey for 1969–1971 (Jerusalem-London, 1975), 60–97.

²³See Kotler-Berkowitz et al., 2003.

²⁴For a concise review of the rules of attribution of Jewish personal status in rabbinic and Israeli law, including reference to Jewish sects, isolated communities, and apostates, see Michael Corinaldi, "Jewish Identity," chap. 2 in his *Jewish Identity: The Case of Ethiopian Jewry* (Jerusalem, 1998).

²⁵Data and estimates derived from Population Research Bureau, *2003 World Population Data Sheet* (New York, 2004).

There is wide variation in the quality of the Jewish population estimates for different countries. For many Diaspora countries it would be best to indicate a range (minimum-maximum) rather than a definite figure for the number of Jews. It would be confusing, however, for the reader to be confronted with a long list of ranges; this would also complicate the regional and world totals. The figures actually indicated for most of the Diaspora communities should be understood as being the central value of the plausible range of the respective *core* Jewish populations. The relative magnitude of this range varies inversely to the accuracy of the estimate.

The three main elements that affect the accuracy of each estimate are the nature and quality of the base data, how recent the base data are, and the method of updating. A simple code combining these elements is used to provide a general evaluation of the reliability of the Jewish population figures reported in the detailed tables below. The code indicates different quality levels of the reported estimates:

- (A) Base figure derived from countrywide census or relatively reliable Jewish population survey; updated on the basis of full or partial information on Jewish population movements in the respective country during the intervening period.
- (B) Base figure derived from less accurate but recent countrywide Jewish population data; partial information on population movements in the intervening period.
- (C) Base figure derived from less recent sources, and/or unsatisfactory or partial coverage of a country's Jewish population; updating according to demographic information illustrative of regional demographic trends.
- (D) Base figure essentially speculative; no reliable updating procedure.

In categories (A), (B), and (C), the year in which the country's base figure or important partial updates were obtained is also stated. For countries whose Jewish population estimate for 2004 was not only updated but also revised in the light of improved information, the sign "X" is appended to the accuracy rating.

One additional tool for updating Jewish population estimates is provided by a recent set of demographic projections developed at the Hebrew University of Jerusalem.²⁶ Such projections extrapolate the most likely observed or expected Jewish population trends over the first decades of the 21st century. Even where reliable information on the dynamics of Jewish population change is not immediately available, the powerful connection that generally exists between age composition of a population and the respective vital and migration movements helps to provide plausible scenarios of the developments bound to occur in the short term. Where better data were lacking, we used indications from these projections to refine the 2004 estimates as against previous years. On the other hand, projections are clearly shaped by a comparatively limited set of assumptions, and need to be periodically updated in the light of actual demographic developments.

2.3 JEWS IN THE GLOBAL SYSTEM

2.3.1 Historical Overview

Table 1 presents a tentative overview of the development of Jewish population worldwide and by major regions of settlement over the past 2000 years. Literary and archeological sources provide the basis for inference about the continuing development of Jewish population in antiquity. In very synthetic generalization, as against a relatively slow and steady development of total world population until the eve of the 20th century, three periods of major Jewish population expansion stand out:²⁷

²⁶See DellaPergola, Rebhun, and Tolts, "Prospecting the Jewish Future."

²⁷Baron, S.W., "Population". *Encyclopedia Judaica*, Vol. 13, 1971, pp. 866-903; de Tudela, B. (ca. 1170). *Sefer Massa'ot*. [The Itinerary of Benjamin of Tudela (Adler, M.N., ed.). London, 1907.]

The first corresponds with the period of the Kings, at the height of Israel's political influence in antiquity. King David's censuses can be interpreted to provide a figure around 2-2.5 million people – possibly including non-Jews under Jewish rule – within the extended boundaries of the Kingdom of Israel. After the fall of the First Temple in Jerusalem, during the 8th century B.C.E., and the consequent deportation of Israelites to Babylon, the permanent bases of a Jewish Diaspora were created.

The emergence of a second Jewish population peak can be posited toward the time of the construction of the Second Temple in Jerusalem during the Hasmonean period (3rd-2nd century B.C.E.). This new peak, variously estimated, and here cautiously put at possibly around 4.5 million people during the first century B.C.E., has been interpreted by some scholars as reflecting, among other factors, significant numbers of non-Jews around the Mediterranean basin joining into the fold of Judaism. On the other hand, the Jews' first and second century's struggle against the Roman Empire and their final defeat determined a dramatic Jewish population decline, possibly down to around 1-1.5 million individuals, or less. Most of this decrease was presumably due to the loss of a distinct Jewish identity and the assimilation of large masses of Jews into the surrounding cultures, under the hegemony of Christianity and, later, of Islam.

TABLE 1. JEWISH POPULATION ESTIMATES, BY MAJOR REGIONS (THOUSANDS) - 1-2004

Year	Number (Thousands)						% in Palestine/Israel out of World
	Total	Palestine/Israel	Other Asia Africa	West Europe	East Europe, Balkans	America Oceania	
1	(3,000-6,000)	(1,000-2,500)		(2,000-3,500)		-	(33-42)
500	(600-1,200)	(200-300)		(400-900)		-	(25-33)
1170	1,200	5	1,045	103	47	-	0.4
1300	1,200	3	747	385	65	-	0.3
1490	1,300	5	695	510	90	-	0.4
1700	1,100	5	372	146	573	4	0.5
1825	3,281	7	533	458	2,272	11	0.2
1880	7,663	24	606	1,044	5,727	262	0.3
1939	16,500	445	1,155	1,350	8,150	5,400	2.7
1948	11,185	650	1,325	1,035	2,515	5,660	5.8
1970	12,633	2,582	693	1,119	1,969	6,270	20.4
2004	12,990	5,165	122	1,068	468	6,167	39.8

Sources: Adapted from de Tudela (ca. 1170), Baron (1971), DellaPergola (1992, 1997, 2004).

The long period of over one thousand years that follows can be defined by "unstable stability": little major Jewish population change in the long run, accompanied by continuous and significant changes in the short run. Operating here is a combination of endogenous and exogenous factors, partly shared with the population at large, partly acting uniquely toward Jewish communities. High mortality due to general epidemics, wars, natural disasters, and more specifically focused expulsions, mass murder, and forced conversions of Jews, periodically wiped out any Jewish population build-up that might have accumulated during more stable times. Most likely the Jewish population at the beginning of the 17th century, here estimated at 1.1 million, was equal to or smaller than that found at the end of the 12th century.

The third Jewish population peak reflects the effects of the modern "demographic transition": modernization and its influences on population processes, namely the general declines in mortality and fertility from high or very high to much lower levels. The impressive Jewish population surge during the late 18th, the 19th, and the early 20th centuries--mostly occurring in Eastern Europe--was mostly driven by early improvements in morbidity and

mortality levels, possibly linked to socio-cultural and socio-economic differences between Jewish communities and the surrounding populations. The Jewish transition to high rates of population growth clearly preceded similar trends that were to emerge among the total population several tens, if not one or two hundreds of years later.

This period of steady demographic expansion, peaking at about 16.5 million, was suddenly terminated by the *Shoah* – the destruction of about 6 million Jews during World War II. The 11 million Jews surviving worldwide after the war are estimated to have grown to about 13 million at present. The Jewish population worldwide has currently reached an overall rate of growth approaching zero.

Migrations in ancient eras and during the early Middle Ages crucially shaped the geographic distribution of the Jews. Influences of that distant past until very recently still decisively affected the main patterns of Jewish population distribution. Given the importance of migrations for population genetics, it may be useful to recapitulate the chronology of some of the main steps in population dispersal in the past. The main migration streams and some of the main areas of settlement and resettlement can be summarized into seven main stages:

- The first Diaspora, from *Eretz Israel* (the Land of Israel) to *Bavel* (Babylon), beginning with the occupation and fall of the First Temple during the 8th century B.C.E.;
- The *Shivat Zion* (Return to Zion) movement which, according to Biblical sources, brought back to the Land of Israel about 40,000 Jews from the Babylonian exile;
- The second Diaspora, parallel to the falling of the Second Temple (1st-2nd century C.E.). Among other lands, the southern part of the Italian peninsula, as well as other areas along the Mediterranean coasts of North Africa and southern Europe, housed the development of Jewish communities;
- The northbound migration from Italy and southern France, possibly since the 4th and through the 10th centuries gave origin to the initial nucleus of Ashkenazi Jewry in the regions around the Rhine Valley, today part of northeast France and northwest Germany;
- The westbound migration from *Babel*, reaching the north shores of Africa and the south shores of Europe – especially the Iberian Peninsula – reaching its peak in correspondence with the westward expansion of Islam (7th-8th centuries and after);
- The eastbound expansion of the Jewish Ashkenazi settlement into Eastern Europe, starting after the 11th century and continuing into the 16th.
- These main migrations were accompanied by other streams to areas such as Yemen, Central Asia, the Caucasus, the northern shores of the Black Sea, and possibly Ethiopia.

In each instance of a significant Jewish migration movement, it can be assumed that a minority moved away from the local established Jewish community while the majority remained. The Jewish migrant community settling and developing in a new place therefore probably included a rather limited and self-selected pool of individuals. On the other hand, the communities that remained in the pre-existing locales were exposed to processes of change which possibly often led to serious demographic erosion if not disappearance.

Benjamin de Tudela's (ca. 1170) travel itinerary probably provides the most comprehensive description of the geographical distribution and main characteristics of Jewish population in the world of the Middle Ages. Generally considered authoritative and reliable, withstanding the scrutiny of modern historiography – at least for those locales he unquestionably visited – de Tudela provides plenty of statistical data. Some of these can be accepted at face value, some others surely need some adjustment. For the areas better documented by Benjamin, such as Western Europe and the Near East, we considered his data as representing households, and multiplied them by a cautious factor of 4.375 persons per household. Data for other areas, whose descriptions appear to be less reliable, were taken as total population figures.

After adjustments of the original figure of about 975,000 Jews, a total estimate of 1.2 million obtains around the year 1170. Over 80% of the adjusted Jewish population were located on the Asian continent. Some of de Tudela's figures, namely the huge Jewish concentrations reported in the Arabian Peninsula, admittedly appear quite unreliable, and occasionally quite fantastic. On the other hand, the reported information about the large communities in Constantinople or Baghdad appear reliable, as surely is the case for the smaller communities visited in western European countries, or the report of Benjamin's visit to the sparsely inhabited and desolate Holy Land.

Overall, the crucial fact provided by de Tudela about the Jewish world in the Middle Ages, confirmed by numerous other observations, is that at this stage the Jews still featured a predominantly Middle Eastern geography, while their presence in Eastern Europe was extremely sparse and scarce. During the successive two or three centuries the demography of world Jewry would be transformed by migrations from the southeastern Mediterranean to Western Europe, and from Western to Eastern Europe. The growth of these regional communities would also be significantly affected by the differential impact of birth and death rates. On the other hand, some of the communities that de Tudela was able to describe or at least to mention in South and Central Asia, would disappear through complete assimilation, thus fueling the myth of the "lost tribes".

Within a world Jewish population of rather stable total size between 1170 and 1700, the roughly estimated Jewish population of Europe tended to grow, while – assuming we can accept the figures for the earlier date – the tentatively combined estimates for the communities in Asia and Africa tended to decline. Between 1170 and 1490, while the center of gravity of the Jewish people moved westward to Europe, the main Jewish population centers in Western Europe were periodically wiped away by several successive expulsions, most importantly from Spain and Portugal at the turn of the 15th and 16th centuries. But, besides the dispersive effects of emigration, the major Jewish population shift occurred within Eastern Europe. In the course of the 17th century, despite the mid-century Chemelnitzky massacres, Eastern Europe was to become the leading center of Jewish population growth.

The crucial process in modern demographic history was the reduction in the levels of mortality and subsequently of natality, usually described as the "demographic transition".²⁸ Modern Jewish and total population growth reflects the different timing in the modernization of the different factors of population change. Jews generally preceded the non-Jewish population in the same places in undergoing these demographic transitions. Consequently the Jews anticipated the early take-off of rapid population growth, as in due course they would anticipate the modern slowing down of population growth.

The major shifts in Jewish population size and geographic distribution by major regions between 1700 and 1939 are outlined in Table 1, showing the different rhythm of growth of Jewish populations in East Europe, West Europe, Asia and Africa, and in the newly settled worlds across the Ocean, the Americas and Oceania. The late Jewish population surge in America is obviously explained by international migration.

Viewed in historical perspective, migrations unquestionably had deep consequences in reshaping the social and cultural profile of Jewish communities globally. Not only the geographic center of gravity, but also the predominant focus and character of Jewish society were repeatedly and decisively shifted as a consequence of massive migratory movements. Migration disconnected and reconnected Jewish individuals and organized communities in ways that promoted social and cultural change. Although similar interconnections can be

²⁸Bachi, Roberto, *Population Trends of World Jewry*. Jerusalem: The Institute of Contemporary Jewry, The Hebrew University, 1976); Sergio DellaPergola, "Major Demographic Trends of World Jewry: The Last Hundred Years." In: Bonné-Tamir, B. and Adam, A., eds. *Genetic Diversity among the Jews*, (New York: 1992), pp. 3-30.

found in the migration experiences of other ethnoreligious or sociocultural groups, the Jewish case appears to extend over a longer time span and is geographically more complex and articulated.

However, it is the unfolding of demographic processes within Eastern European Jewry that commands special attention. A few thousand Ashkenazi Jewish households in the Middle Ages would multiply into several hundreds of thousands by the 18th century, and into several millions toward the end of the 19th. The partial demographic evidence that is actually available from censuses and vital records, combined with relatively simple and plausible assumptions about the main factors of population change, i.e. life-expectancy and fertility levels, allows for an attempt to reconstruct this crucial phase of Jewish demographic history. It should be stressed that the geographical definition of our estimates does not refer only to the central nucleus of the Polish-Lithuanian communities, which were the main centers of Jewish population growth, but also to a much broader territory including the lands from Bohemia eastwards, Galicia, Hungary, Romania, the whole southeastern extensions of Ukraine, and Russia. This is done to take into account the likely existence of a small pre-Ashkenazi Jewish population in Eastern Europe, and more significantly, the geographical mobility from and into each of these areas as an important factor in the coalescence over time of the Jewish population in Eastern Europe.

The observed (or assumed) Jewish population increase in such an all-inclusive definition of Eastern Europe would possibly correspond to 25,000 persons in 1300, 50,000 in 1490, 250,000 after the mid-17th century Chemelnitzky massacres, 910,000 in 1765 at the time of the major census of Polish Jewry,²⁹ two and a quarter million in 1825, over five and a half million in 1880, and over eight and a half million in 1900. These developments would correspond to annual rates of population growth gradually passing from about 0.3-0.4% during the earlier stages of Jewish settlement (14th-15th centuries), to somewhat above 2% at the end of the 19th century. The higher initial Jewish population growth rates are also meant to account for immigration, although this was relatively small in terms of the absolute numbers involved. One can further assume that the Jewish population growth rates in the central area of Poland/Lithuania would be somewhat higher than the average for the whole region considered here, higher growth setting in at somewhat anticipated dates. These rates of Jewish population growth are generally higher than those for the total population, and imply a gradual increase in the proportion of Jews out of total inhabitants.

Early improvements in the longevity of the Jews, against comparatively lower life-expectancies for contemporary populations, would be facilitated by the adherence of Jewish communities to traditional ritual prescriptions, including quality control over food, personal and family hygienic norms, some input offered by relatively frequent Jewish physicians and, significantly, social assistance traditionally awarded to the Jewish poor. At a later stage, the impact of socioeconomic differences most likely tended to become the main determinant of persisting mortality and fertility differentials between Jews and non-Jews. More widespread urbanization and significant differences in educational levels and occupational concentrations could translate into relative advantages for Jews in terms of survivorship levels.

Comparatively, though not exceptionally, high Jewish fertility levels would be enhanced by the traditional support for, and active community mobilization to achieve, universal marriage at relatively young ages, and frequent remarriage of widowers in the closed and strictly endogamous cultural context of Jewish communities. It should be noted that average total fertility rates equivalent to 6-7 children have been customarily found among historical populations. Eventually, many of the same social factors responsible for the early

²⁹Stampfer, Shaul, "The 1764 Census of Polish Jewry." *Bar Ilan Annual*. 24-25, 1989, pp. 41-147.

decline in Jewish mortality also translated into an earlier beginning and quicker development of the transition toward lower levels of Jewish fertility.

Apparently while the diffusion of demographic modernization during the 19th century implied a general lowering of fertility rates, modernization trends by no means synchronically involved the whole Jewish population, not even in the same place. Within each Jewish community, side by side and along with the modernizing majority, a minority was resilient in its more traditional family behaviors. Similar differentials in fertility patterns characterized different social strata as well. Significantly, what most likely characterized the East European Jewish context in an earlier past was an overlap between the higher social classes and the more religiously observant strata of the Jewish population. These trends consistently imply differential Jewish population growth between communities, as well as between different sectors within the same community.

The 20th century witnessed two revolutionary series of events for the demography of world Jewry: the *Shoah* during World War II, and the independence of the State of Israel. Table 1 reflects the dramatic wiping out of the large Jewish communities in Eastern and Central Europe, and the consequent move of the center of gravity of world Jewish population to the West. On the other hand, since 1948 Israel quickly became the major focal point of Jewish population growth, both in absolute and relative terms. Between the end of World War II and 2004, the Jewish population in Israel grew by more than 10 times, and its share of the world total passed from 5% to 40%. It is remarkable that Israel's current share of the total world Jewish population is comparable with the situation that prevailed about 2000 years ago, whereas in the long interim period the percentage of Jews living on their ancient homeland has ranged between minimum and very small.

TABLE 2. JEWISH POPULATION BY MAJOR REGIONS, 1948-2004

Region	Number (thousands) ^a			Percent ^a			Percent change		
	1948 ^b	1970 ^c	2004 ^d	1948 ^b	1970 ^c	2004 ^d	1948 ^b -1970	1970-2004	1948-2004
World total	11,185	12,633	12,990	100.0	100.0	100.0	+13	+4	+16
Asia	1,275	3,080	5,206	11.4	24.3	40.1	+142	+69	+308
Thereof: Israel	650	2,582	5,165	5.8	20.4	39.8	+297	+89	+695
Former USSR in Asia	350	394	21	3.1	3.1	0.2	+13	-92	-94
Other ^e	275	104	20	2.5	0.8	0.2	-62	-80	-93
Africa	700	195	81	6.2	1.6	0.6	-72	-58	-88
North Africa ^f	595	71	5	5.3	0.6	0.1	-88	-89	-99
South Africa ^g	105	124	76	0.9	1.0	0.6	+18	-33	-28
Europe	3,550	3,088	1,536	31.7	24.5	11.8	-13	-50	-57
West Europe ^h	1,035	1,119	1,068	9.3	8.9	7.9	+8	-5	+3
East Europe and Balkan ⁱ	665	212	94	5.9	1.7	0.7	-68	-56	-86
Former USSR in Europe ^{ij}	1,850	1,757	374	16.5	13.9	3.3	-5	-79	-80
America	5,620	6,200	6,059	50.2	49.1	46.6	+10	-2	+8
North America ^k	5,100	5,686	5,661	45.6	45.0	46.0	+11	-0	+11
Latin America	520	514	398	4.6	4.1	3.2	-1	-23	-23
Oceania^l	40	70	108	0.4	0.5	0.8	+75	+46	+54

a Minor discrepancies due to rounding. b May 15. c December 31. d January 1. e Asian parts of Turkey included in Europe. f Including Ethiopia. g South Africa, Zimbabwe, and other sub-Saharan countries. h Without countries admitted in the European Union on 1.5.2004. i Including countries admitted in the European Union on 1.5.2004. j Including Asian parts of Russian Republic. k U.S.A., Canada. l Australia, New Zealand.

Changes in the distribution of world Jewish population over the second half of the 20th century are outlined in greater detail in Table 2. We note again the unique growth in the size of the Israeli component, along with the collapse of the Jewish presence in other countries in

Asia, Africa, Eastern Europe, significant decline in South Africa and South America, stability in Western Europe and North America, and significant growth in Oceania.

2.3.2 World Jewish Population at the Dawn of the 21st Century

At the turn of the 21st century, international political and military interventions, socioeconomic development and transactions, and no less significantly, cultural interactions and communication networks, reached a definitive stage of globalization. Epochal events of global significance included: the fall of the Iron Curtain and the demise of the Soviet Union as a superpower; the reunification of Germany; the revival of religious fundamentalism – particularly Islam; the return of “ethnic cleansing” in parts of Europe and Africa; new waves of mass international migration; the beginning and subsequent suspension of the peace process in the Middle East; the Catholic Church's new position on the Shoah and the Jewish people and its historic recognition of the State of Israel; the European Union's expansion and monetary union; and the inception of global communication networks incorporating television, cellular phones and the Internet.

Shifts of the global polity, economy and communications generated perceptions of a shrinking of time and physical space as well as a greater frequency of mutual interactions – and with it, interdependency – between previously more remote points on earth. These changes profoundly and swiftly affected daily life and identity, and redefined the boundaries between nations, communities and individuals in world society. World Jewry has not been immune to these dynamics and their far-reaching social and historical implications. The magnitude and pace of the changes in, and characteristics of, Jewish populations, reflecting both biological-demographical and cultural-identificational determinants, are intimately intertwined with the major turning points in contemporary Jewish history and society. A powerful geographical redistribution of the Jewish population around the globe has ensued, and diverse and sometimes competing cultural and socioeconomic focal points have emerged.³⁰

The general societal context of population trends needs to be fully appreciated.³¹ Between 1970 and 2003, the world's total population grew by nearly 2.5 billion, an increase of over 70%. In contrast, the total Jewish population increased by only 250,000, or 2%. Jewish population growth approached zero, at 13 million people (by the “core” definition, as defined above) in 2004. In the U.S. 2000–2001 National Jewish Population Survey, persons who reported a “non-monotheistic religion” and at least one Jewish parent or a Jewish upbringing were included in the Jewish population.³²

The Jewish share of total world population remains extremely small – little more than 2 per thousand of the world's population, but Jews comprised more than 2% of the population in the United States and approximately 1% in Canada and in France. Between 1970 and 2003, the number of Jews diminished by nearly 80% in the European section of the Former Soviet Union (FSU), by 91% in the Asian section of the FSU and in North Africa, 56% in the rest of Eastern Europe and the Balkans, 36% in Southern Africa, and 22% in Latin America. Minor

³⁰DellaPergola, Sergio, “Changing Cores and Peripheries: Fifty Years in Socio-demographic Perspective,” in Robert S. Wistrich (ed.) *Terms of Survival: The Jewish World Since 1945* (London and New York: Routledge, 1995) 13-43.

³¹DellaPergola, Sergio, *Jewish Demography: Facts, Outlook, Challenges*. (Jerusalem: The Jewish People Policy Planning Institute, 2003) (Alert Paper No. 2); DellaPergola, Sergio, Rebhun, Uzi, and Tolts, Mark, “Contemporary Jewish Diaspora in Global Context: Human Development Correlates of Population Trends”, *Israel Studies*, 2004.

³²Kotler-Berkowitz, Laurence, Cohen, Steven M., Ament, Jonathon, Klaff, Vivian, Mott, Frank, and Peckerman-Neuman, Danyelle, *The National Jewish Population Survey 2000-01: Strength, Challenge and Diversity in the American Jewish Population* (New York: United Jewish Communities, 2003).

reductions occurred also in North America (-0.5%) and in Western Europe (-5%). In contrast, the Jewish population increased by nearly 53% in Oceania, and by over 97% in Israel.

There has been a concentration of Jews in countries that offer better socioeconomic opportunities, and maintain a well-established tradition of political stability and legal equity. At the beginning of the 21st century, 92% of the total Jewish population lived in the top 20% of countries ranked by standard of living. There appears to be a growing correlation between the number of Jews in a given country and that country's major social indicators such as the UNDP Index of Human Development.³³ The Jewish presence in less-developed countries has become negligible. This represents a significant departure from the situation that prevailed throughout modern history until the first half of the 20th century.

2.3.3 The Role of International Migration

International migration patterns have long represented a critical factor affecting Jewish population size and distribution, and have provided the context for shaping the development of Jewish life.³⁴ Since World War II, approximately 4.8 million Jews were involved in international migration: 1.9 million between 1948 and 1968; 1 million between 1969 and 1988; and 1.9 million between 1989 and 2003. Israel received 59% of the 2.9 million Jewish migrants since 1969, while 41% dispersed across the major western countries (see Table 3).

Of the total Jewish migrants, 55% came from Eastern Europe, 16% from Asia and Africa, 13% from western countries, and 16% from Israel. The frequency of emigration (relative to the Jewish population in their countries of origin) was highest in numerically depleted communities in Asia and Africa, followed by Eastern Europe, and at a much lower rate by Israel and the western countries.

Theoretical explanations need to be incorporated in the analysis of *aliyah* and other Jewish migrations, at least from the perspective of the preference given to Israel over competing countries of destination.³⁵ As a rule in recent years, the rate of *aliyah* is strongly and negatively correlated with general measures of development in countries of origin such as the Index of Human Development. Conditions in the countries of destination also affect the migrants' choices once the propensity to leave has been determined. Countries with lower than expected *aliyah* propensities include the leading English-speaking societies (United States, Canada, Australia) whose high standards of living function as a deterrent to emigration, and which constitute in themselves key destinations for Jewish migration, in competition with Israel. Jewish emigration from several Latin American countries is also lower than anticipated, where at least in the past the favorable proximate environment enjoyed by local Jewish communities contrasted with the problematic conditions in the respective societies. Nor do the recent antisemitic episodes in France seem to have generated, so far, the wave of immigration that was expected by some observers. One plausible reason for these moderate emigration levels and propensities³⁶ is the powerful hold exerted by an affluent and sophisticated French society over its Jewish population.

³³United Nations Development Programme, *Human Development Report 2004: Cultural Liberty in Today's Diverse World* (New York: Oxford University Press, 2004).

³⁴DellaPergola, Sergio, "Aliya and Other Jewish Migrations: Toward an Integrated Perspective," in Usiel O. Schmelz and Gad Nathan (eds) *Studies in the Population of Israel in Honor of Roberto Bachi*, Scripta Hierosolymitana 30, 1986 (Jerusalem: Magnes Press) 172-209; DellaPergola, Sergio, "The Global Context of Migration to Israel," in Elazar Leshem and Judith T. Shuval (eds.) *Immigration to Israel: Sociological Perspectives*, Studies of Israeli Society 8, 1998 (New Brunswick and London: Transaction) 51-92; DellaPergola, Sergio, Rebhun, Uzi, and Raicher, Rosa Perla, "The Six-Day War and Israel-Diaspora Relations: An Analysis of Quantitative Indicators," in Eli Lederhendler (ed.), *The Six-Day War and World Jewry* (Bethesda, MD: Maryland University Press, 2000) 11-50.

³⁵Israel Central Bureau of Statistics, *Immigration to Israel* (Jerusalem: 2004).

³⁶Cohen, Erik H. with Ifergan, Maurice, *Les Juifs de France: Valeurs et Identité* (Paris: Fonds Social Juif Unifié,

TABLE 3. JEWISH INTERNATIONAL MIGRATION, BY MAJOR AREAS OF ORIGIN AND DESTINATION - ABSOLUTE NUMBERS, PERCENT DISTRIBUTION, YEARLY RATES PER 1000 JEWISH POPULATION IN COUNTRIES OF ORIGIN, 1969-2002

Areas of origin and destination	1969-1976	1977-1988	1989-1996	1997-2002	Total
<i>Absolute numbers, thousands</i>					
Grand total	451	589	1,240	535	2,815
Yearly average	56	49	155	89	83
<i>Percent</i>					
Grand total	100	100	100	100	100
From East Europe	39	41	64	62	55
To Western countries	8	29	23	25	22
To Israel ^a	32	12	41	36	33
From Asia-Africa ^b	14	14	19	10	16
To Western countries	5	7	1	1	3
To Israel ^a	9	8	18	9	13
From Israel to West countries	20	24	11	17	16
From Western countries to Israel ^a	27	20	5	12	13
<i>Regional subtotals</i>					
To Western countries	33	60	35	43	41
To Israel ^a	67	40	65	57	59
<i>Yearly emigration per 1000 Jews in country of origin</i>					
Grand total	4	4	12	7	6
From East Europe	10	12	110	97	51
To Western countries	2	8	38	40	20
To Israel ^a	8	3	72	57	31
From Asia-Africa ^b	44	73	146	134	97
To Western countries	14	32	42	13	27
To Israel ^c	30	40	94	121	70
From Israel to Western countries	4	3	4	3	4
From Western countries to Israel ^a	2	1	1	1	1

^aSince 1970 includes immigrant citizens (from West).

^bSince 1990, Asian regions of FSU included in Asia-Africa.

^cAll emigration from Israel included here.

Source: Adapted from Sergio DellaPergola, "The Global Context of Migration to Israel" (1998) 58. Based on data from Israel Central Bureau of Statistics; HIAS; and various other sources.

Interestingly, the frequency of emigration from Israel (*yeridah*) exactly mirrors the levels that might be expected for *aliyah* from a country with an equivalent level of socioeconomic development as Israel. Similarly, decision-making processes concerning Jewish migration are strongly affected by practical considerations, such as lifestyle, socioeconomic constraints and opportunities, and personal security, in both the Diaspora and Israel.

Given aspiration to further population and community growth, the capacity to create conditions that would attract more Jewish migrants, and hold the Jewish residents is a crucial policy priority in Israel and elsewhere.

2.3.4 Indicators of Jewish Identification

Jewish identification is a powerful and attractive motivating force and determinant of Jewish experience in the long term³⁷. Contemporary Jewish identification reflects multiple changes in historical perspective as well as the variable political and cultural contexts of

2002).

³⁷Herman, Simon, *Jewish Identity: A Social Psychological Perspective*. (Beverly Hills and London: Sage Publications, 1977).

current Jewish population locations³⁸. No single indicator can grasp the complex relationship between Jewish individual and his or her collective identity. Jewish identification comprises different possible dimensions in relation to religious beliefs and behaviors, ethnicity, socialization and knowledge, social networks, activism in the communal sphere, and attachment to Israel. While some correlation may exist between these various aspects, they may also be manifested irrespective of each other. Jewish identification, therefore, offers multiple possibilities of classification regarding intensity, from very high to non-existent, and regarding contents, in relation to each of several possible options.

A look at selected indicators of Jewish identification reported below unveils significant variation across countries. The reach of full-time Jewish education (day-schools) is expectedly much higher in Israel than across the Diaspora. In Israel all Jewish school-age population – with the exception of now relatively few drop-outs – is exposed to regular Hebrew and Jewish instruction through the different available State and independent (though State subsidized) educational programs. In other countries, recent years witnessed stability or growth in the percentage of Jewish school-age children attending full-time Jewish educational programs. Such growth has been particularly significant in countries where the impact of Jewish day-school was previously low, as in France, extremely low, as in the U.S., or non-existent, as in the Former Soviet Union. Strong Jewish educational facilities and high enrollment percentages traditionally prevail in several Latin American countries, in South Africa and in Australia. Some of the recent increase in Jewish day-school attendance has gone at the expense of other Jewish educational programs such as afternoon schools and Sunday schools.

Out-marriage is in a sense a reverse indicator of Jewish identification. Its extent testifies of the routine interaction and mutual acceptance of Jews and non-Jews. This in turn reflects the depth and intensity of particularistic values and community frameworks on the side of the Jewish minority, and normative openness and social affinity on the side of the majority of society. An extremely wide range of variation in out-marriage frequencies prevails across countries, reflecting different historical patterns of assimilation and the opportunities of Jewish mate selection related to Jewish population size. In Israel where until recently marriages between Jewish and non-Jewish spouses were quite exceptional, the recent growth of non-Jewish immigrants in the framework of the Law of Return has created a new situation. For the first time an actual statistical measure of out-marriage can be computed for Israel's Jewish population approaching 5 percent of total spouses. Out of Israel, a roughly reverse relationship appears between higher rates of Jewish day-school enrollment and lower rates of out-marriage. Countries with comparatively low frequencies below 30% of recent marrying partners include Mexico, South Africa and Australia, whereas very high rates between 60% and 80% prevail across the FSU, in other Central and Eastern European countries, and in other Western countries with smaller Jewish populations. Growing out-marriage rates in the U.S. – now well above 50% - demonstrate that large Jewish population size alone is no more a sufficient determinant of frequent Jewish intra-group interaction, socialization and marriage.

Immigration to Israel, besides playing a crucial role in building Israeli society, provides an indicator of mental and physical proximity of Diaspora Jewry to the Jewish state. In 2003, the lowest *aliyah* return obtained since the inception of the major exodus from the FSU in 1989. Notably, of the 23,000 new immigrants, about 80% came from countries less

³⁸Liebman, Charles S., Cohen, Steven, M., *Two Worlds of Judaism: The Israeli and American Experiences* (New Haven: Yale University Press, 1990); Horowitz, Bethamie, "Reframing the Study of Contemporary American Jewish Identity". *Contemporary Jewry*, 23, 2002, 14-34; Gitelman, Zvi, Kosmin, Barry, Kovács András, *New Jewish Identities: Contemporary Europe and Beyond* (Budapest and New York: Central European University Press, 2003).

developed that Israel. As already noted, when it comes to the decision to make *aliyah*, cultural and identificational attachment to Israel is overwhelmingly dominated by practical considerations related to physical danger, political constraints, and socioeconomic opportunities.

Visits to Israel provide a further significant indicator of Jewish identification. In the case of most western countries a majority of all Jews ever visited Israel, with the notable exception of U.S. Jews only about one third of which ever did. However, the cumulated number of visitors has significantly increased over the last 20 years, especially among older persons. Previous visits were also quite infrequent from the FSU because of the past isolation of these communities, and the costs involved with traveling.

Table 4 provides a synthesis of some of the main indicators of Jewish identification in the context of the life quality offered by each major country and region in the world.

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Country/Region	Population (Millions)	Jewish Population (Millions)	% Jewish	Day-School Enrollment (%)	Out-Marriage (%)	Visits to Israel (%)
Israel	6.5	6.5	100	100	5	100
USA	270	6.5	2.4	10	55	30
France	63	0.5	0.8	40	20	80
UK	58	0.3	0.5	5	45	50
Germany	82	0.2	0.2	2	40	60
Canada	32	0.2	0.6	3	40	70
Australia	20	0.1	0.5	1	20	90
South Africa	43	0.1	0.2	1	15	95
Mexico	105	0.05	0.05	0	10	10
FSU	280	0.05	0.02	0	70	10
Central Europe	100	0.05	0.05	0	60	10
Latin America	500	0.05	0.01	0	10	10
Other	1000	0.05	0.005	0	10	10

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TABLE 4. SELECTED INDICATORS ON WORLD JEWRY

Country	Jewish Population (Core Definition)		Projected 2020 ^c	Index of Human Development 2002 ^d		Jewish Day-school Attendance Rate (%) ^a	Recent Out-marriage Rate (%) ^a	Aliyah 2003 ^e	Ever Visited Israel (%) ^a
	1970 ^a	2003 ^b		Value	World Rank				
WORLD	12,633,000	12,950,000	13,558,000	.956-.273	1-177	97	5	23,226 ^f	-
ISRAEL	2,582,000	5,094,000	6,228,000	.908	22			1,873	
NORTH AMERICA	5,686,000	5,671,000	5,581,000	.939-.943	4-8	29 ^h	54	1,687	35
United States	5,400,000	5,300,000	5,200,000 ^g	.939	8	55	35	186	66
Canada	286,000	371,000	381,000	.943	4			2,493	
LATIN AMERICA	514,000	401,000	364,000	.888-.463	29-153	50-55	45	1,371	>50
Argentina	282,000	187,000	149,000	.853	34	71	45	205	>50
Brazil	90,000	97,000	87,000	.775	72	85	10	72	>70
Mexico	35,000	41,000	42,000	.802	53	75	15-95	845	>50
Other countries	107,000	76,000	86,000	.888-.463	29-153			2,691	
EUROPE NON-FSU	1,331,000	1,161,000	1,030,000	.956-.734	1-88	40	40-45	1,789	>70
France	530,000	498,000	482,000	.925	16	67	40-45	330	78
United Kingdom	390,000	300,000	238,000	.930	12	<20	>60	57	>50
Germany	30,000	108,000	108,000	.921	19	<15	60	37	
Hungary	70,000	50,000	34,000	.837	38	10-25	33-67	253	>50
Other EU ⁱ	171,000	151,000	134,000	.946-.842	2-42	5-20	50-80	225	
Other non-EU	140,000	54,000	34,000	.956-.751	1-88			12,383	
FSU ^j	2,151,000	413,000	173,000	.853-.671	36-116	<15	80	4,824	
Russia	808,000	252,000	130,000	.795	57	<15	80	3,853	
Ukraine	777,000	95,000	25,000	.777	70	<15	65-75	1,209	
Rest FSU Europe	312,000	43,000	15,000	.853-.681	36-113	<15	50-75	2,497	
Other FSU Asia	254,000	23,000	3,000	.766-.671	78-116			370	
ASIA (REST) ^k	104,000	19,000	21,000	.938-.482	9-149			3,342	
AFRICA	195,000	84,000	60,000	.853-.273	35-177	85	20	88	70
Thereof South Africa	118,000	75,000	57,000	.666	119			61	
OCEANIA	70,000	107,000	101,000	.946-.542	3-133	65	22	60	79
Thereof Australia	65,000	100,000	95,000	.946	3				

a Source: Division of Jewish Demography and Statistics, The A. Harman Institute of Contemporary Jewry, The Hebrew University of Jerusalem.

b Source: DellaPergola (2003a).

c Source: adapted from DellaPergola, Rebhun, Toits (2000), medium variant.

d A measure of a country's public health, educational attainment, and economic standard of living. Source: United Nations Development Programme (2004).

e Israel Central Bureau of Statistics (2004).

f Including country not reported.

g After downward reduction following NJPS 2001.

h Based on incomplete sample from NJPS 2001.

i Without Baltic states.

j With Baltic states. Revised population projections for 2020.

k Without Israel and FSU.

2.4 WORLD JEWISH POPULATION SIZE AND GEOGRAPHICAL DISTRIBUTION, 2004

2.4.1 Global Overview

The size of world Jewry at the beginning of 2004 was assessed at 12,989,700. World Jewry constituted 2.06 per 1,000 of the world's total population of 6,314 millions. One in about 488 people in the world is a Jew. According to the revised figures, between January 1, 2003 and 2004 the Jewish population grew by an estimated 41,500 people, or about 0.3 percent. This compares with a total world population growth rate of 1.3 percent (0.1 percent in more developed countries, 1.6 percent in less developed countries). Despite all the imperfections in the estimates, world Jewry continued to be close to "zero population growth," with increase in Israel (1.4 percent) slightly overcoming decline in the Diaspora (-0.4 percent).

The number of Jews in Israel rose from 5,094,200 in 2003 to 5,165,400 at the beginning of 2004, an increase of 71,200 people, or 1.4 percent. In contrast, the estimated Jewish population in the Diaspora diminished from 7,854,000 (according to the revised figures) to 7,824,300 – a decrease of 25,700 people, or -0.4 percent. These changes reflect the continuing Jewish emigration from the FSU and other countries, but also the internal decrease typical of the aggregate of Diaspora Jewry. In 2003, the estimated Israel-Diaspora net migratory balance (immigration minus emigration) amounted to a gain of 5,200 core Jews for Israel.³⁹ This calculation includes Israeli citizens born abroad who enter Israel for the first time. Therefore, internal demographic evolution (including vital events and conversions) produced nearly all of the growth among the Jewish population in Israel, and most of the decline in the Diaspora.

Recently, instances of accession or "return" to Judaism can be observed in connection with the migration and integration of people from Eastern Europe and Ethiopia, and the comprehensive provisions of the Israeli Law of Return. The return or first-time access to Judaism of some of such previously unincorporated or unidentified individuals contributed to slowing down the pace of decline of the relevant Diaspora Jewish populations and some gains for the Jewish population in Israel.

As noted, corrections should be introduced in previously published Jewish population estimates in the light of new information that has become available. Table 5 provides a synopsis of the world Jewish population estimates relating to the period 1945–2004, incorporating all pertinent revisions. These revised data correct, sometimes significantly, the figures published until 1980 by other authors and since 1981 by ourselves. Thanks to the development over the years of an improved database, these new revisions are not necessarily the same revised estimates that we published year by year in the AJYB based on the information that was available at each date. It is likely that further retrospective revisions may be necessary reflecting ongoing and future research.

The figures in Table 5 clearly portray the slowing down of Jewish population growth globally since World War II. Based on a post-Shoah world Jewish population estimate of 11,000,000, a growth of 1,079,000 occurred between 1945 and 1960, followed by growths of 506,000 in the 1960s, 234,000 in the 1970s, 49,000 in the 1980s, and 32,000 in the 1990s. While it took 13 years to add one million to world Jewry's postwar size, the next 45 years were not enough to add another million. Table 5 also outlines the slow Jewish population growth rate versus total population growth globally, and the declining Jewish share of world population. In 2004 the share of Jews per 1,000 world population was less than half that it was in 1945.

About 47 percent of the world's Jews reside in the Americas, with about 44 percent in North America. About 40 percent live in Asia, including the Asian republics of the former USSR (but not the Asian parts of the Russian Republic and Turkey) – most of them in Israel. Europe, including the Asian territories of the Russian Republic and Turkey, accounts for 12 percent of the total. Fewer than 2 percent of the world's Jews live in Africa and Oceania. Among the major

³⁹ Israel, Central Bureau of Statistics, *Monthly Bulletin of Statistics* (Jerusalem, 2004).