UvA-DARE (Digital Academic Repository)

Illegality rules: Chinese migrant workers caught up in the illegal but licit operations of labour migration regimes

Kalir, B.

Publication date

2012

Document Version

Final published version

Published in

Transnational flows and permissive polities: ethnographies of human mobilities in Asia

[Link to publication](#)

Citation for published version (APA):

Kalir, B. (2012). Illegality rules: Chinese migrant workers caught up in the illegal but licit operations of labour migration regimes. In B. Kalir, & M. Sur (Eds.), *Transnational flows and permissive polities: ethnographies of human mobilities in Asia* (pp. 27-54). (IIAS publications series; No. 7). Amsterdam University Press.

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

PUBLICATIONS SERIES

General Editor

Paul van der Velde

Publications Officer

Martina van den Haak

Editorial Board

Prasenjit Duara (Asia Research Institute, National University of Singapore) / Carol Gluck (Columbia University) / Christophe Jaffrelot (Centre d'Études et de Recherches Internationales-Sciences-po) / Victor T. King (University of Leeds) / Yuri Sadoi (Meijo University) / A.B. Shamsul (Institute of Occidental Studies / Universiti Kebangsaan Malaysia) / Henk Schulte Nordholt (Royal Netherlands Institute of Southeast Asian and Caribbean Studies) / Wim Boot (Leiden University)

The *IIAS Publications Series* consists of Monographs and Edited Volumes. The Series publishes results of research projects conducted at the International Institute for Asian Studies. Furthermore, the aim of the Series is to promote interdisciplinary studies on Asia and comparative research on Asia and Europe.

The *International Institute for Asian Studies* (IIAS) is a postdoctoral research centre based in Leiden and Amsterdam, the Netherlands. Its objective is to encourage the interdisciplinary and comparative study of Asia and to promote national and international cooperation. The institute focuses on the humanities and social sciences and, where relevant, on their interaction with other sciences. It stimulates scholarship on Asia and is instrumental in forging research networks among Asia scholars worldwide.

IIAS acts as an international mediator, bringing various parties together, working as a clearinghouse of knowledge and information. This entails activities such as providing information services, hosting academic organisations dealing with Asia, constructing international networks, and setting up international cooperative projects and research programmes. In this way, IIAS functions as a window on Europe for non-European scholars and contributes to the cultural rapprochement between Asia and Europe.

For further information, please visit www.iias.nl.

Transnational Flows and Permissive Polities

Ethnographies of Human Mobilities in Asia

Edited by

Barak Kalir and Malini Sur

AMSTERDAM UNIVERSITY PRESS

PUBLICATIONS SERIES

EDITED VOLUMES 7

Cover illustration: Traffic passing a movable border checkpoint at the Thailand-Malaysia border, 2007. Photographer: Willem van Schendel

Cover design: Maedium, Utrecht
Layout: The DocWorkers, Almere

ISBN 978 90 8964 408 4
e-ISBN 978 90 4851 587 5 (pdf)
e-ISBN 978 90 4851 588 2 (ePub)
NUR 761 / 906

© IIAS / Amsterdam University Press, Amsterdam 2012

All rights reserved. Without limiting the rights under copyright reserved above, no part of this book may be reproduced, stored in or introduced into a retrieval system, or transmitted, in any form or by any means (electronic, mechanical, photocopying, recording or otherwise) without the written permission of both the copyright owners and the author of the book.

A 003 428 644

1 Illegality Rules

Chinese Migrant Workers Caught Up in the Illegal but Licit Operations of Labour Migration Regimes

Barak Kalir

This chapter explores the immigration of Chinese migrant workers to Israel in light of the 'illegal but licit' analytical framework as advanced by Van Schendel and Abraham (2005). The 'illegal but licit' analytical framework conceptualises a useful distinction between the il/legal and the il/licit, in order to enable us to grasp better, and talk about, what really happens on the ground – in, across and under the formal authority of nation-states. The 'illegal but licit' framework broadens and forces our analysis to include flows and actions that are located in a zone where a mismatch exists between the state's formal political authority and non-formal social authority.¹

The first aim of this chapter is to examine the immigration flow from the viewpoint of Chinese migrant workers, who must go through numerous informal and illegal stages in the process of recruitment and employment. Migrants regularly perceive their own actions as well as those of recruitment companies and employers to be licit. Yet, the licitness in this case is often the product of a culturally infused confusion or plain ignorance regarding the obliging legal systems in China and Israel. Notably, instead of there being an institutional attempt to offset the confusion of migrant workers, this confusion is being systematically compounded by deliberate manipulations of Chinese and Israeli recruitment companies and employers.

The second aim of the chapter is to examine closely the work of the formal authorities in China and Israel. As I shall demonstrate, the two states choose to accommodate and turn a blind eye to the informal and illegal dealings of private and public companies involved in the recruitment and employment of Chinese workers. At times, states also act against migrant workers using illegal methods. I therefore argue that our understanding of the role of the state within the 'illegal but licit' framework should not be confined to policymaking and the fixing of legal boundaries but instead should include a treatment of the executive powers of states within the field of immigration. While the notion of

licitness helps to clarify the meaning of an illegal action that is socially accepted by the people who engage in it, we need to broaden the scope of the 'licit' to include the peculiar situation in which state authorities act in illegal manners according to the national law as well as international conventions, but these illegal actions are perceived to be licit by a majority within the national population.

Chinese Immigration to Israel: A Short History

A series of global and geopolitical changes in the late 1980s and early 1990s prompted Israel to engage, for the first time in its history, in the importation of non-Jewish temporary migrant workers. The first Palestinian intifada in 1987 signalled the end of Israel's ability to rely on an uninterrupted supply of cheap Palestinian labour from the Occupied Territories. The disintegration of the Soviet Union in 1989 and the lifting of the Iron Curtain led to the immigration of nearly one million Jews into Israel in the early 1990s. Having to provide Jewish newcomers with employment and badly needed accommodation, Israel attempted to substitute Palestinian workers with Jewish immigrants. However, for reasons that pertain largely to the status of jobs in the Israeli labour market, most recent Jewish immigrants from the former Soviet Union declined the jobs that had previously been occupied by Palestinians (Kalir 2010).

Facing an acute shortage of unskilled labour, a potential economic recession and massive pressure from the powerful lobbies of Israeli employers, the state of Israel resorted in 1993 to the importation of migrant workers. Migrant workers have been recruited from countries in Asia (e.g. the Philippines, Thailand, Nepal, India and China) and Eastern Europe (e.g. Romania, Bulgaria and Moldova), mainly for jobs in the agricultural and construction sectors. By 1996, there were already 100,000 temporary migrant workers in Israel, which comprised five per cent of the total Israeli workforce (CBS 2002). Work visas for migrant workers were issued for a maximum period of five years, after which workers were obliged to leave the country.

In 1992, Israel and China officially established diplomatic relations. Soon after, Chinese migrant workers started reaching Israel in increasing numbers (see figure 1). The recruitment of workers from China should be seen in a broader context of the rapidly growing economic ties between the two countries. According to the Chinese embassy in Tel Aviv, the Sino-Israeli bilateral trade increased from US\$ 50 million in 1992 to US\$ 3 billion in 2005, and more than 800 Israeli companies are currently doing business in China.²

Figure 1.1 Number of Chinese migrant workers reaching Israel (in thousands)

From an indicative rather than a representative sample of 40 Chinese workers that I interviewed, it appears that most of them come from a poor economic and educational background; they usually earned a pre-migration salary of US\$ 100 per month from work in construction or agriculture, and they had around seven years of education, commonly quitting school at the age of 15 and beginning to work for their household's income. Indeed, the average monthly disposable income per person in the provinces from which migrants reach Israel were in 2006 as follows: Hubei US\$ 90, Anhui US\$ 95, Hebei US\$ 105, Fujian US\$ 130, and Jiangsu US\$ 135 (Israeli Embassy in Beijing, July 2006). In Israel, Chinese workers can earn between US\$ 800 and US\$ 1,200 per month if they work according to standard contracts in the construction sector. This means that an average ratio of around 1:8 exists between workers' salaries in China and the salaries they can earn in Israel (see also Li in this volume).

Chinese workers in Israel are predominantly employed (around 90 per cent) in the construction sector. The other 10 per cent are employed in factories, agriculture and caregiving for disable people.³ Chinese workers were initially recruited from villages across the southern province of Fujian, but in later years, recruitment has spread to other provinces like Jiangsu, Anhui, Hubei and others.

Most Chinese workers (around 80 per cent) are in the age group of 30-44 (CBS 2006), and many of them are married and have children. This latter fact is not a coincidence but rather a deliberate policy of the Israeli government, as it is meant to prevent the possible settlement of workers in the country. It is strictly forbidden for migrant workers to bring over their families to Israel, and the separation from their families undoubtedly wears Chinese workers down emotionally. The Spring Festival, for example, has become known among some Chinese in Israel as 'The Red Eyes Day', referring to the many tears they shed during this festivity while talking on the phone with their family members in China. Some of the migrant workers I met used to count down the years, months and even days to their expected return to their family in China.

As a fact, Chinese workers do not settle down in Israel. This has largely to do with the restrictive Israeli policy and the practical impossibility of receiving Israeli residence (see also Li 2006). Some Chinese told me that, had they been able to receive permanent residence and bring their family to Israel, they would have considered settlement. A few unmarried Chinese workers in their late twenties told me that they thought about marriage to an Israeli woman, which is the only way for them to receive permanent residence in Israel. Yet most interviewees voiced what they perceived to be the practical unfeasibility of marrying an Israeli; as one young Chinese worker bluntly put it: 'Israeli women don't like Chinese men'. And in fact, to the best of my knowledge, there are only two registered mixed marriages between Chinese workers and Israeli women.⁴ And since very few Chinese female migrants reach Israel, the chances for male workers to get involved in a romantic relationship with Chinese women and establish a second household in Israel are low.

Other reasons that Chinese workers mention for not desiring settlement in Israel include the language barrier, the distinctive physical 'otherness' of Chinese in Israeli society, and the fact that their economic future in China is seen preferable to the one they can expect in Israel. In the words of one migrant worker: 'In Israel I can earn good money but I can never do anything else but work in construction. With the money I earn here I can maybe open my own business or manage a team of construction workers in China. I will never work there [in China] like I work here'.

The lack of possibility and/or desire to settle down in Israel led most Chinese migrants not to value integration into Israeli society.⁵ Chinese migrants maintain very little social contact with other Israelis except for their employers. When I asked a few of them about it, they referred to the language barrier as well as to a general lack of interest, beyond the initial anecdotal one, on both sides. Here is how one Chinese worker

summarised it: 'Israelis see us as workers. They can be very nice to you when you work for them but they will not even recognise you if they see you after some days on the street. But it's ok, we come here to work and go back home'.

Chinese migrants who were forced into illegality or knowingly chose to become undocumented (as I will explain later) always eventually decide to leave Israel. This is in contrast to the life strategies of undocumented migrants from Latin America and Africa, who choose to settle down in the country (see Kalir 2005, 2010). As one Israeli activist in a local NGO that deals with undocumented migrants told me: 'On the spectrum of perspectives among illegal migrants in Israel, Chinese represent one end – that of the migrants who are totally busy with saving their money and investing it in China and not in their present or future position in Israel'.

Ubiquitous Informality: The Recruitment of Migrant Workers in China

As several scholars have documented, the transition in China from a planned economy to a market economy has led, among other things, to a proliferation of employment agencies, recruitment companies and labour export companies that deal with the emigration of Chinese workers (Biao 2003; Wu 2005; see also Li in this volume). These new companies are the offspring of the former PRC aid missions to allied countries, which were performed by state companies and 'honorary volunteers' (Li 2004) – a Chinese euphemism for project workers who worked abroad for little or no money.

Chinese labour companies nowadays operate under the authorisation and supervision of four different ministries. This bureaucratic complexity at least partly accounts for the fact that 'labour export from China seems not well regulated, despite the fact that most labour export companies are state-owned' (Biao 2003: 34).

Notwithstanding the federal bureaucratic jumble, labour export in China is by no means confined by regulations that are drafted by the central government in Beijing. Firstly, since the 1980s, the central government has gradually lost its monopoly on regulating the emigration of workers. Local governments in different provinces now exercise a degree of freedom in articulating and carrying out their own policy with respect to emigration. Those local governments that are more worried about demonstrating economic growth view emigration positively and actively facilitate it as a means of creating a flow of remittances and raising the local standard of living (Thunø & Pieke 2005).

Secondly, authorised companies at the federal as well as provincial and local levels do not tell the full story of emigration from China. In post-Maoist China, the right to emigrate has been increasingly allotted to all Chinese citizens, regardless of their personal or institutional position. The strong desire among the Chinese to emigrate has given impetus to a flourishing informal 'migration industry' (Harris 1996). This migration industry consists of private 'entrepreneurs' (known as snake-heads) who arrange for people to emigrate in exchange for payment.⁶ As Biao (2003: 24) reports, irregular emigration services are 'sometimes regarded as local development strategies, and are therefore accorded a certain degree of legitimacy'. In fact, 'emigration companies that drive much of the emigration ... operate in full view of the authorities and are often connected to state-owned enterprises' (Biao quoted in Pieke 2005: 14).

Only a thin dividing line can thus be drawn between the legal work of authorised companies and the illegal work of the informal migration industry in China. In some regions, like in coastal central Fujian, 'individual officials of the government ... had been involved in the illegal emigration business already from the early 1980s' (Pieke 2005: 13). In fact, as I shall describe next, from the perspective of many Chinese migrant workers in Israel, no such line can be drawn at all.

Formally, all Chinese workers who go to Israel pursue a legal immigration channel according to the regulations.⁷ They all receive a passport with a work visa issued by the Israeli embassy in Beijing specifying the name of the Israeli company and the job for which workers are recruited. Israeli companies that recruit workers in China (around 40) must always collaborate with authorised Chinese recruitment and labour export companies (around 30).⁸ Indeed, from a purely formalistic perspective, one can conclude that the recruitment of Chinese workers is processed in an orderly fashion by Israeli and Chinese authorised companies, and in full compliance with formal procedures and state institutions.

Yet a closer examination of the process reveals a distinctively different picture. It is a picture of a process that is fraught with informality and illegality but which nevertheless receives the legal cachet of both the Israeli and Chinese states at the final stage. From this closer examination, the formalistic character of the process appears to be a sheer façade.

The most striking informal side of the process is the illegal fees that Chinese workers are being charged by Chinese recruitment companies for the opportunity to work in Israel. The Israeli Employment Law (1959) forbids Israeli companies or individuals – both in Israel and abroad – to charge a fee for the workers they provide to Israeli employers.⁹ The Chinese law, however, does not directly address this issue;

while there is no mention in the law that charging fees from recruited workers is legal, there is equally no prohibition of such a practice.

In practice, Chinese workers must all pay recruitment companies an informal fee, which has been rising consistently from around US\$ 5,000 in the late 1990s to around US\$ 10,000 in the early 2000s and up to US\$ 30,000 in 2010 (see also Li in this volume). To pay the informal fee, most Chinese migrants take loans from one or all of the following sources: relatives, friends, banks and usurers. Almost all Chinese migrants depend, at least partly, on loans from usurers who charge an interest rate of one to three per cent per month. The willingness of the Chinese to pay high fees undoubtedly reflects their strong desire to emigrate to Israel.¹⁰

The informal fee is regularly paid 'under the table', although it is partly used to cover formal expenses such as flight tickets, medical exams, visa application and other paperwork. The largest part of the fee is taken by the different recruiting agents that stand between potential migrants and their desire to work abroad. Nowadays, most potential migrants learn about the opportunity to work in Israel from their relatives or friends who had been there (to a lesser degree, they hear about it from advertisements in newspapers and from posters in the streets). Potential migrants must first make contact with a recruiting agent, who usually meets them in their village. The recruiting agent usually asks potential migrants to pay a 'registration fee' of around 20 per cent of the total informal fee. This 'registration fee' is meant to demonstrate to the agent that the would-be migrants are sincere about their intentions and can raise the money.

Next, the recruiting agent puts potential migrants in touch with recruitment companies that are based in the capital of the province or other major cities. These provincial recruitment companies might not be authorised labour export companies but they have close ties with authorised companies, which are often based in Beijing. It is mostly provincial companies that directly collaborate with Israeli companies for receiving allocations of work permits for Chinese migrants. In Israel, these semi-authorised provincial companies are also known as 'dealers'. Israeli recruitment companies work with a number of Chinese 'dealers' that recruit workers and charge them the informal fee. Shares of the fee are then given to both the Israeli company and the Chinese state-authorised labour export company in Beijing.

The above is only a sketchy depiction of the recruitment process, which might include more mediation stations before its successful completion. The multiplicity of mediation stations not only inflates the informal fee but also increases the risk that migrants fall victim to criminal schemes or tactical manipulations. I heard several stories about Chinese who paid the 'registration fee' to recruiting agents who then

disappeared with the money. Others who already paid the full fee were told that the process was stalled at a certain mediation station and that it would cost more money to get it through (at times even as much as US\$ 3,000).

The strong desire among the Chinese to emigrate leads in some areas to competition among many people for a limited number of work permits. This not only allows recruitment companies to push informal fees higher, it also forces potential migrants to 'become friends' with senior managers in recruitment companies. The following story illustrates what 'becoming friends' translates into in practice.

Lu and Shen come from the village of Shentan in central Fujian. In 2001, they were put in touch with a recruiting agent in their village who promised to arrange Israeli work visas for them for US\$ 12,000 each. After paying the agent a registration fee of US\$ 2,000, they were instructed to raise the rest of the money within a month while their application was being processed by the provincial company. Having managed to raise the full amount, they contacted the agent who informed them that the provincial company received a reduced number of Israeli work visas, and therefore Lu and Shen would have to wait their turn patiently. Some weeks later, the agent told them that the 'big boss' from the recruitment company in Fuzhou was coming to the main town in the county, and that it would be wise for them to invite him for dinner and see to it that he had a 'good time'.

The two friends had little choice but to accept the advice of their agent, as Lu realised all too well: 'There were too few visas and if we wanted to get one it was not enough that we were willing to pay the fee. We needed to become friends with the big boss, you know, drinking beer together, eating. Then he knows you personally and when the next visa comes in he will think of giving it to you'.

The 'big boss' arrived in town with his entourage, and the dinner in a private room at a fancy restaurant cost US\$ 800. Lu shared with me his astonishment at the luxurious dinner: 'I've never before in my life been to such a restaurant'. The two friends also offered the big boss a massage in a spa and a night in a suite at an expensive hotel. The expenses that the two friends paid reached a total of around US\$ 2,000. 'Sometimes the boss will later deduct some of these expenses from the fee you pay, but sometimes not. In our case, we got visas two months later and the boss also gave us a discount of US\$ 1,000 from the price'. Lu seemed rather content with the deal they had managed.

The informal and illegal dealings that Chinese migrants experience are also evident in the process of signing a working contract. According to Israeli regulations, migrant workers must sign a detailed contract before they reach Israel and receive a copy of it in their own language. Israel formally requires that both Israeli and Chinese recruitment

companies comply with these regulations as a condition for receiving work permits. Yet no effective enforcement of this regulation takes place. Chinese recruitment companies take advantage of the fact that many Chinese workers are illiterate and/or desperate to emigrate; recruitment companies thus offer no written contract to migrants who are too afraid to insist on it or are ignorant about their right to a contract. From a survey conducted by Israeli NGOs among 43 Chinese workers, it was revealed that 12 per cent of them never signed a written contract, and among those who did sign a contract, 45 per cent never received a copy of it (Hotline for Migrant Workers and Kav La'Oved 2007: 22).

The Israeli regulations regarding the signing of contracts could have been easily enforced, for example, by the Israeli embassy in Beijing before the issuing of visas for Chinese workers. However, as the Israeli Consul in Beijing told me: 'I never know what kind of contracts they sign and what is written in them. For me, such contracts do not exist'.¹¹

Based on my own interviews with Chinese workers in Israel, it appears that the only meaningful contract they sign in China is with the 'dealer' (the provincial, semi-authorised recruitment company). This contract usually specifies the responsibility of migrants to work only for the Israeli employer that is indicated in their contract. Some contracts also mention the liability of the recruitment company towards migrants in case of a premature deportation from Israel. As will be explained in detail in the next section, it is often the case that migrant workers lose their legal status soon after their arrival in Israel. If then caught by the Israeli Immigration Police and deported back to China, these migrants find themselves in the impossible position of trying to pay back the loans they took for paying the informal fee to recruitment companies. The contract they sign with 'dealers' is therefore a kind of 'insurance policy' against deportation. As one migrant, Zhong, explained to me: 'If you are deported soon after you reached Israel and the company doesn't give you back at least part of the fee, you are a dead man'. When I wondered if Zhong meant 'dead' literally, he explained in more detail:

If you paid US\$ 15,000 and you were deported after three months, you can never pay back all the people from whom you borrowed money. They will then come to your house every day to ask it back. If you own a house, they will take it from you and sell it. If you have children, they will take them from you and sell them. They can also bring mafia people to threaten you with injuries or even death. That's why you need a guarantee from the company that you'll get back some of the money in such a case [of deportation]. If they give you back US\$ 10,000, then you only

need to pay back US\$ 5,000. Let's say you saved some money in the three months in Israel, so with a lot of hard work in China you'll be able to pay back the remaining US\$ 2,000-3,000.

I then asked Zhoung what happens to all those migrants who have not signed this type of 'insurance policy' with their recruitment company. Zhoung shared with me his knowledge of such cases:

I know of people who were deported back to China but never went back to their village. They stayed in Beijing or Shanghai to work like crazy just so that they can send some money back to their families. Sometime they will secretly call their family and tell them to come to Shanghai, and then they will never return to the village again. Other people who returned to the village went to the big boss in the city and threatened that if he wouldn't pay them back some of the fee, they will kill him or do something crazy.

I interrupted Zhoung, saying that that 'big bosses' surely have bodyguards who can probably inflict more harm on a violent migrant than the other way around. Zhoung quickly agreed:

Of course, in the office you can do nothing. But maybe on the street when he walks with his family, or at night in his home. He can't be all the time with guards around him. And you have nothing to lose. That's why I say a 'dead man'. You might be alive, but owning so much money it is like you are dead. So the boss knows you can do something crazy and it is better for him to pay you back some of the fee. He has millions, maybe even billions. For him, US\$ 10,000 is nothing. So he'll say: 'here, take the money and go away'.

Most Chinese companies never inform recruits about the exploitative contractual relation to Israeli employers, who can fire them at any given moment and thereby instantly invalidate their legal work visa (see next section). Chinese companies also often promise their recruits – albeit never in written form – an employment period of three to five years in Israel. This is a false promise because according to Israeli regulations, the number of migrant workers that employers are authorised to hire is revised each year. Israeli employers can therefore never guarantee migrant workers a period of employment that exceeds one year.

As we can see, the legal and illegal aspects of arranging emigration from China to Israel are completely enmeshed. Legal procedures might be carried out by unauthorised agencies, while illegal procedures (like

charging informal fees or getting paid for having a 'good time') might be performed by officials in authorised companies. Moreover, Chinese companies that process the immigration of workers to Israel (and elsewhere) in this partly illegal and overwhelmingly informal fashion consider their dealings to be licit. They mostly carry out their business openly and often with full awareness (and often also with the informal approval and cooperation) of state authorities.

Ubiquitous Illegality: The Employment of Chinese Migrant Workers in Israel

The state of Israel implemented a highly restrictive importation scheme, allegedly to ensure that migrant workers would never settle down in the country. According to this scheme, work visas are issued for a maximum period of five years, after which migrant workers are obliged to leave Israel. In Israel, migrant workers are restricted to work only for a designated Israeli employer whose name appears on their work visa. If, for whatever reason, migrant workers cannot be employed by their exclusive employer, their visas are instantly invalidated. It does not matter whether Israeli employers arbitrarily decide to terminate the contract with migrant workers or whether migrant workers decide (often after they were exploited) to work for other Israeli employers: the consequence is always the same, that is, an instant loss of the migrant's legal status. This stringent system, which effectively binds migrant workers to a particular Israeli employer, has become publicly known in Israel as the 'binding arrangement', and it resembles the *kafala* system that is in place in the Gulf States (see Gardner 2010; Pattadath & Moors in this volume).

The 'binding arrangement' is to the disadvantage of migrant workers, who are deprived of all bargaining power in the local labour market. Even more disturbing is the way in which this 'arrangement' hands employers the power to systematically exploit their migrant workers. Being able to threaten their workers with dismissal, many Israeli employers regularly exploited migrant workers in different ways (on the different forms of exploitation, see Kav La'Oved 1998, 2000; Schnell 2001).

The fear of being dismissed leads many migrant workers to endure severe working conditions and harsh exploitation. Nevertheless, tens of thousands of migrant workers end up losing their legal status, often without even being aware of it. For example, Israeli employers must renew the work visas of their migrant workers every year. The renewal process involves a fee (of around US\$ 100 in 2005) to be paid by employers to the Interior Ministry. Without ever informing their workers, some employers decide to save on the cost of renewing visas, thereby

rendering their workers' status illegal.¹² The reader might rightly wonder here: after undergoing the process of bringing workers from China (and other countries) to Israel, how could Israeli employers so easily decide to dismiss them or not renew their visas and thereby run the risk that the police would deport them? To answer this question, we must return to the role that recruitment companies play in the importation process.

Employers in Israel must use the services of Israeli recruitment companies that specialise in importing workers. Recruitment companies obviously save employers time and trouble, but they also pay employers kickbacks for the 'right' to provide them with migrant workers. As mentioned in the former section, Israeli companies work together with foreign recruitment companies ('dealers'), which do the actual recruitment abroad and share the collected informal fees with their Israeli 'partner'. In the early 2000s, Israeli recruitment companies were making an estimated average profit of US\$ 3,000 for each migrant worker they provided to Israeli employers (State Comptroller 2003: 649). From my own sources, I learned that in the case of Chinese workers, Israeli companies received in 2005 around US\$ 10,000 for each worker who reached Israel.

Encouraged by these kickbacks, many Israeli employers apply with the Interior Ministry for more work visas for migrant workers than they actually need. Some employers with superfluous migrant workers began to 'sell' their workers to other employers who were not entitled, according to the state's criteria, to an allocation of migrant workers. The 'selling' of workers is strictly illegal under Israeli law and amounts to human trafficking. It also leads, of course, to migrant workers losing their legal status, as they must work for someone other than their exclusive employer. If not able to 'sell' their workers, Israeli employers will simply dismiss them, sometimes even days after their arrival in Israel.

Two questions are pertinent here: first, why have Israel and China not taken action against such a failing labour importation system and the related illegal schemes that it fosters? Second, why haven't Chinese migrants learned their lesson and stopped (paying high informal fees for) coming to Israel? I will first answer the second question, which will also shed some light on a more inclusive discussion of the role of states in the next section.

There are several factors that explain the continued flow of Chinese workers to Israel, despite the exploitative conditions to which they are subjected. First, most Chinese workers who were exploited and deported still managed to earn enough money to pay back their debt and even save some capital. The absolute number of Chinese workers who lost all their investment in immigration to Israel is not high, and as one Chinese 'dealer' explained to me: 'China is big. It is not as if

when some workers from a county in Fujian were cheated that everyone in China knows about it. Even in the same province, in another county people might still know nothing about Israel'. Indeed, as mentioned in the beginning, the recruitment of Chinese workers to Israel has consistently spread across China to include more provinces.

Second, many Chinese migrants never fully understand the Israeli legal and contractual framework that took them in. They often unknowingly violate the conditions of their work visa due to the manipulation of Israeli employers. When arrested by the police and deported, there is little they can advise future migrants, as they rarely grasped the systematic fashion in which the exploitative system worked. This ignorance led many deportees to focus their blame on a particular Israeli employer, a specific recruitment company, or simply their personal 'bad luck'.

The inability of many Chinese to understand the workings of the legal system was compounded by cultural differences. My interviews revealed that many Chinese workers are used to a system that is fundamentally based on hierarchy rather than official law. According to this system, the people who are positioned higher in the hierarchy always represent the law for their subordinates. Thus, when an Israeli employer 'sold' his workers, he could simply order them to work for someone else without having to face questions such as: For whom are we working? Is it legal? Is it according to our contracts?

The final and arguably most important factor that leads many Chinese people to desire employment in Israel despite the exploitative legal system was the paradoxical situation whereby migrant workers who lost their legal status often found themselves in a better economic position as undocumented migrants. An extensive survey revealed that 73 per cent of former migrant workers in Israel improved their salaries once they left their exclusive employers (and thus became undocumented); 45 per cent also reported an improvement in the treatment they received from their new employers (Ministry of Labour 2001: 50).

Undocumented workers are not bound to one employer and can thus offer their services in the 'black' Israeli labour market and earn competitive salaries. Employers of undocumented workers know that ill treatment would almost immediately lead these workers to search for better employers. Thus, in their working relations with undocumented workers, many employers exercised what we can call 'utilitarian opportunism', that is, employers treated their workers with fairness and even kindness, which ensured that workers continued their employment under conditions that were still very profitable for employers. Interestingly, the survey also discovered that 48 per cent of all undocumented workers had been employed in the construction sector, which was also the chief sector for the employment of legal migrant workers

(ibid. 50). Thus, improvement in the conditions of undocumented workers often occurred within the same sector in which they had worked as legal migrant workers.

Over time, many Chinese learned that they could earn much more money by working as independent day workers. They thus often purposely left their exclusive employer for more profitable but illegal independent work. These Chinese workers began hanging out at specific road intersections that were known to Israeli employers and ordinary citizens who wished to contract undocumented workers. Some Chinese gradually acquired a workable command of the Hebrew language and a circle of trusted Israeli employers who regularly contacted them on their mobile phones, thus freeing them from the risk of standing at intersections that were sometimes raided by the Immigration Police.

Chinese workers who forcefully or purposely moved from a legal to an illegal status recall this transition with mixed feelings. In the words of a veteran Chinese:

In that period [of illegal employment], we were making more money than ever before. If you worked at intersections it was up and down, sometimes you had a lot of work and sometimes less, but we were our own boss; we could decide what job we take and where we work. Of course, sometimes you still had to deal with layers who didn't want to pay you for your work. And of course I was afraid [of being arrested by the Immigration Police], everyone was. It was always on your mind but in the period before the Immigration Police [was established], there were not many arrests. You had to be careful but it was ok. I remember thinking to myself that it would be perfect if I could go on working like this but with a legal visa.

Knowing that Israel invested little effort in deportation campaigns, many Chinese migrants arrived in Israel in the years 2001 and 2002 with the clear intention of leaving their designated employers and working illegally. They were often encouraged to act in this way by their relatives and friends in Israel who had already been working successfully in this fashion and could assist newcomers with finding 'black' jobs.

Indeed, until the year 2002 (as illustrated in figure 2) only a tiny fraction of the total number of undocumented migrants in Israel was deported each year. While Israel has always vowed to expel all undocumented migrants, deportation campaigns were regularly undermined by failures to properly budget for the necessary extra police force, juridical personnel and detention facilities.

However, in September 2002, Israel inaugurated a special Immigration Police whose task was to locate, arrest and deport 50,000

Figure 1.2 *Deported undocumented migrants, 1995-2001*

undocumented migrants in its first year of operation and many more in subsequent years. This time, a substantial budget was allocated for executing the task, and more than seventy officers and 400 policemen were recruited. In addition, special courts now operated within detention centres and ruled on cases of arrested undocumented workers. The Immigration Police managed to deport around 25,000 migrants, creating a ripple effect of intimidation that induced an estimated 55,000 more undocumented migrants to exit the country (Kalir 2010; Willen 2007).

The shift in the Israeli approach towards undocumented migrants was the result of two main factors. First, while few undocumented migrants were deported, many increasingly settled down, establishing elaborate communities and networks. The evident settlement of non-Jewish migrants rendered it unsustainable for the state to continue practicing a 'blind eye' policy. Second, from an economic perspective, around the year 2000, Israel needed less migrant workers. The strain in the construction sector eased after the housing crisis of Jewish immigrants had been largely solved. The more acute predicament facing the Israeli economy in the early twenty-first century was the persistently high unemployment rate among Israelis and a looming economic recession. The working assumption of Israeli policymakers was that by

toughening the conditions for welfare benefits and deporting undocumented migrants, jobs would become available for long-term unemployed Israelis (see *The Jewish Week* 10 October 2003; *Haaretz* 15 June 2005).

In its operations against undocumented migrants, Israel regularly ignored its own laws and resorted to illegal methods. In the following section, I highlight the actions that Israeli authorities have been taking in their treatment of migrant workers in general and in their fight against undocumented workers in particular.

The Role of the State

Different Israeli state and non-state actors repeatedly alerted the Israeli government about the structural and legal failings of the importation process, which led to the widespread exploitation of migrant workers. These actors included Israeli academics (Drori & Kunda 1999; Schnell 1999; Kemp et al. 2000), NGOs, the State Comptroller (1996, 1999) and the Bank of Israel, which asserted already in 2000 that 'the current system of granting work permits must be altered' (Press Release December 2000). Despite these repeated calls, the government did little to change the 'binding arrangement'. Israel's insistence on keeping the importation scheme intact reflects its general concern with providing the national economy with cheap labour as well as its particular bias towards the interests of Israeli employers in the construction and agricultural sectors. Israeli employers in these sectors have historically been well organised and exercise significant political power on any ruling government through powerful lobbies. It was indeed due to pressure from these lobbies that the exploitative 'binding arrangement' was applied by Israel in the first place (Bartram 1998).

Besides doing little to amend the 'binding arrangement', the Israeli authorities assisted employers in both direct and indirect ways to exploit migrant workers. The following are a few illustrations of this type of assistance. Israel rarely enforced the living and working conditions that employers were obliged to provide migrant workers. As the State Comptroller (1996: 494) gloomily asserted: 'In practice, employers that accommodated foreign workers in improper conditions are not being penalised. There is a record of only three cases in which the work permits of guilty employers were cancelled'. The government also made little effort to enforce the Minimum Wage Law (1987) in the case of migrant workers. The Bank of Israel found that between 1996 and 2000, an average of 56 per cent of migrant workers were unlawfully paid below minimum wage. Other labour laws like The Hours of Work and Rest Law (1951) and The Severance Pay Law (1953) were also widely

violated by employers, with no serious action taken by the authorities (Schnell 2001). The Ministry of Labour designated only thirteen supervisors for the enforcement of labour laws in sectors where migrant workers were employed, and these supervisors mainly focused their efforts on the detection of undocumented workers, while the actual enforcement of migrant workers' rights was seriously neglected (Yanay & Borowosky 1998).

Israeli employers often confiscated the passports of their workers in order to exercise even greater control over them. Confiscating passports constitutes a criminal offence in Israel that carries a penalty of up to one year in prison (Penal Law, article 376-a). Israeli NGOs assisted hundreds of migrant workers to complain about the confiscation of their passports; nevertheless, the police took little if any action to follow up on these complaints and to bring the violating employers to court. Israeli authorities actually collaborated with employers in this unlawful practice. Officials from the Interior Ministry who were responsible for checking migrant workers' passports upon arrival commonly returned the passports not to the workers but to their Israeli employers, who then kept them (The Association for Civil Rights in Israel 1997: 55).

This more active manner in which state officials assisted employers instead of protecting exploited migrant workers became more evident in the case of undocumented workers. For example, Israeli employers often called the police to arrest their migrant workers who had been dismissed and thus lost their legal status. Employers sometimes used this method to get rid of workers to whom they owed several months' salaries. The police regularly arrested and deported workers before the dispute over their salaries could be resolved in court.

When the Immigration Police began its operation in 2002, it almost exclusively focused its efforts on the detention of undocumented migrants rather than equally targeting Israeli employers who contracted these migrants. Since employing undocumented migrants is illegal in Israel, tackling the phenomenon is arguably more effective when equally enforcing the law on Israeli employers. Yet even on occasions when the police inspected, found and arrested undocumented migrants in construction sites or factories, the Israeli employers were regularly spared from legal charges.

Techniques used by the Immigration Police for apprehending undocumented migrants included knocking down doors with heavy hammers and breaking into suspected undocumented migrants' apartments in the middle of the night, often without warning. Suspects were handcuffed and loaded on to vans or buses as if they were dangerous criminals. While the Immigration Police claims to always act strictly according to the law, the many cases that were reported by NGOs and the media, and at times brought to court, present a different picture – one

of brutal apprehensions with little consideration for the traumatic affects that an arrest could have for the individuals involved. Reports by NGOs detail the recurrent mismanagement of authority by the Immigration Police and the general trampling on migrants' rights throughout the deportation process (see Hotline for Migrant Workers and Kav La'Oved 2003, 2004; *The Jerusalem Report* 21 May 2003; Dahan & Gill 2006).

Once arrested, the legal procedures for treating suspected undocumented migrants were not always kept. From one report that surveyed the legal treatment of 111 detainees, it appears that in 46 per cent of the hearings that were held, there was no presence of a translator, and detainees could not understand what was said nor could they present their version to the court. Consequently, a number of detainees were sentenced for deportation because they allegedly refused to cooperate with the court. Some of these cases were reversed once a translator was found and it became clear that the detainees were very willing to provide their side of the story (Hotline for Migrant Workers 2003b).

The Israeli law stipulates that detainees must be brought to court within two weeks from the day of their arrest, or else they should be unconditionally released. The above-mentioned report documents many cases in which detainees were held in custody for longer than 14 days without seeing a judge. Appeals by NGOs to authorities in the detention centres as well as to officials at the Interior Ministry were never answered. Finally, the report also mentions numerous cases in which suspected undocumented migrants were deported before they were ever brought before a court.

The Accountability Field for State's Actions vis-à-vis Migrant Workers

The illegal manner in which Israel has conducted many of its operations against migrant workers raises the following question: how can the state of Israel get away with its illegal conduct vis-à-vis migrant workers? To attempt to answer this question, we must first delineate the accountability field in which the state operates. There are four potential fronts on which Israel might stand accountable for its conduct vis-à-vis migrant workers. In what follows, I address the influence of each front on the conduct of the Israeli authorities.

Migrants' Sending State

China could undoubtedly exercise some political and economic leverage on Israel to try to have its exploitative policies and illegal actions vis-à-

vis Chinese migrant workers changed. It is nevertheless clear that China has chosen not to interfere with Israel's handling of its immigration process. I mentioned earlier the blind-eye policy that the central government in China adopts when it comes to the informal migration industry. I found much support for this official Chinese line in my interview with the Chinese consul in Israel. Here is the consul's general view on the system: 'In China, we call it a win-win-win situation. All sides win out: China is able to export workers, Israel is happy to receive cheap workers who are willing to do the jobs Israelis don't want to do, and the migrants can earn and save a lot of money for their families'.

When I politely asked the consul if he was aware of the widespread exploitation of Chinese workers by Israeli employers, the consul opined that 'Everything goes well if they [Chinese workers] don't do illegal things'. When I asserted that according to most independent sources, including NGOs and journalists but also some Israeli state institutions, the blame for the systematic exploitation of migrant workers lies with Israeli employers, unfair Israeli regulations and a lack of enforcement of workers' rights by Israeli authorities, the consul laconically reacted: 'If the problem is with the Israeli employer, we try to call him and solve it'.

When I asked about the informal fees that workers pay recruitment companies in China, the consul first dismissed my claim as sheer rumours, but when I insisted that my knowledge in this matter comes from interviews I personally conducted with Chinese in Israel, the consul had this to say:

Listen, in China we have now a free market economy. You probably know that lately we even joined the WTO. It is the market which decides if people will go abroad, not the government. So they pay these fees to agencies, but they still earn a lot of money, otherwise they wouldn't have come here, right? People know how much they have to pay and they can decide if it is good for them to emigrate. Usually, what they pay to agencies is equivalent to two years of work in Israel. But they stay here longer, often even five years, the rest of the time they work and earn money for their families. If they had to work four years to pay agencies they would probably not come here. Did they also tell you how much they save? You know what? It is not a win-win-win situation; it is a win-win-win-win situation. [Laughing out loud at his gag]. The agencies also win, but it is still a good deal for all sides.

This statement demonstrates that the consul is not only fully aware of the informal payment of fees but that he sees it as an unproblematic issue.

International Law, Treaties and Conventions

Israel is a signatory to UN conventions that define and safeguard the working and living conditions of migrant workers, including those of undocumented migrants. Nevertheless, Israel has regularly ignored UN resolutions and violated international conventions whenever they seemed to interfere with what Israel perceived to be its national responsibility. Israel's immigration regime is closely tied to its aspiration to maintain a Jewish state in Israel, and it is therefore considered an internal affair not to be interfered with by other states or international organisations. Nonetheless, some of the changes that resulted from legal appeals to Israeli courts (see section below) were facilitated by an increased Israeli accountability to an emerging global regime of human rights anchored in international conventions to which Israel is a signatory. In these appeals, Israeli courts regularly recognised the responsibility of the government towards migrants as defined in international treaties.

Israeli Courts

The most effective way to influence changes in the Israeli policy vis-à-vis migrant workers has proven to be legal appeals to Israeli courts. Such appeals were mostly filed by lawyers working for Israeli NGOs. The changes that Israeli NGOs managed to achieve through the courts include: temporary halts in deportation campaigns, a reduced period of time in which detainees must be brought before a court, regulated healthcare for migrant workers, the possibility for dismissed migrant workers to find new Israeli employers and thus keep their legal status and avoid deportation, an imperative to abolish the 'binding arrangement' and introduce a new employment scheme for migrant workers, and the permanent legalisation of status for undocumented migrants with children who were born and raised in Israel.

However, even when Israeli courts have given clear verdicts that obliged the state to amend related regulations and enforce the rights of migrant workers, the state often did its utmost to delay the implementation of changes by appealing such rulings to higher legal instances or by asking the court for a lengthy period of time in which to plan and prepare for the necessary amendments. In some cases, as mentioned in the previous section, the state simply disregarded the court's ruling and continued its unlawful treatment of migrant workers.

Civil Society and Public Opinion

Israeli NGOs have undoubtedly played a major role in challenging the exploitative Israeli 'binding arrangement' and in fighting more

generally for the rights of migrant workers. Yet much of the leverage that NGOs exercise in trying to influence migration policy and the treatment of migrants by different state authorities depends on a wider public support that they are able to mobilise for their efforts. Israeli public opinion towards migrant workers can thus be seen as a larger context for the legitimisation of the state's policy and actions. While the state has acted in an illegal and often inhumane manner towards migrant workers, there has hardly ever been a public outcry over the legitimacy of such illegal actions. This leads us to the following question: why was the illegal conduct of various Israeli state authorities against migrant workers perceived by a majority of the Israeli public to be licit?¹³

Before answering this question, I would like first to analytically situate it within the 'illegal but licit' framework as advanced by Van Schendel and Abraham (2005).

Expanding the 'Illegal But Licit' Framework

The 'illegal but licit' framework, while not avoiding the nation-state as a significant point of reference, attempts to relativise the absolute supremacy of the state in the analysis. It does so by calling our attention to the viewpoint of people who are involved in transnational flows. This viewpoint from 'below' can at times be out of sync with the formal view from 'above' – i.e. that which is represented by state laws.

To schematically explain their analytical framework, Van Schendel and Abraham (2005: 20) offer the following matrix of 'spaces of competing authorities', which I reproduce here in table 1.1.

Table 1.1 *Table of spaces of competing authorities*

	<i>Legal</i>	<i>Illegal</i>
Licit	[A] Ideal State	[B] Underworld/Borderland
Illicit	[C] Crony Capitalism/Failed State	[D] Anarchy

The competing authorities here are the formal political authority of states (legal-illegal) and the non-formal social authority of members in societies (licit-illicit). While states hold the capacity to define that which is il/legal under their jurisdiction, members in society can nonetheless perceive things/actions/flows to be licit, given their subjective viewpoint and position as actors.

While a complete overlap between the state's legal definitions and people's perceptions produces a utopian 'ideal state', a negative overlap produces a state of 'anarchy'. Yet the interesting insight and use-value of this

matrix clearly lie in the mismatches it highlights. Cell [C] captures situations in which the laws of the state permit illicit corporative conduct, like money laundering in the Cayman Islands or an 'Enron stage of capitalism' in the US which allows close (and often corruptive and corrupting) ties between politicians and private businesses. In its extreme, cell [C] represents a state's inability to define and protect the 'legal' against the 'illicit', leading to a collapse of the state as a valid political unit of organisation. Cell [B] calls attention to situations in which people routinely and knowingly act not in accordance with the official law but in a way that they take to be – within their social and spatial context – justifiable and rightful. The two prime examples here are the underworld (as in markets for counterfeited goods) and the borderland (as in the illegal cross-border practices that constitute an integral part of the daily life and livelihood of people who reside in the vicinity of international borders).

Notwithstanding the usefulness of this matrix, it is important to carefully examine its contours. The matrix mostly treats the state in its capacity as the legislator, defining il/legality. The state's definitions of il/legality then qualify the actions of people and either correspond to or deviate from their own perceptions of il/licitness. The matrix thus limits our conceptualisation of the state to its role as the producer of il/legality, while it reserves for people in society the role of actors.

Obviously, Van Schendel and Abraham (2005) endow the state with agency in that it responds to people's perceptions and actions, and factors these inputs into a continuous process of renegotiation and amendment of laws. Yet defining il/legality is distinguishable – both theoretically and in practice – from the executive authority of states. Executive authority is manifested in and practiced through the actions of the personnel in various state institutions – i.e. policemen, ministers, judges, civil servants, etc. The state is, of course, not a monolithic entity, and it is not uncommon to find contradictions and ambiguities in and between the actions of different state institutions and functionaries.

We thus should examine the state as an actor in the realm of what it has defined to be il/legal. This exercise amounts to a reversal in the directionality of the relationship between the two protagonists in the 'il-legal but licit' matrix. Consider the following matrix whereby the state (on top) is treated in its executive capacity while the public/society (on the left) is the qualifier of state actions (see table 1.2).

Table 1.2 *Table of legitimacy of state executive power*

	<i>Legal</i>	<i>Illegal</i>
Licit	[A] Legitimate Rule	[B] Undisputed Legitimacy
Illicit	[C] Crisis of Legitimacy/Authoritarian Regime	[D] Occupation

Just like in the first matrix, cells [A] and [D] are straightforward, and the interesting insight results from the odd intersections the matrix foregrounds. Cell [A] represents a complete overlap between the actions of the state and the view of the public regarding these actions, thereby producing an ideal legitimate rule. Cell [D] represents an illegal occupation of the state which is met with a total disapproval by the occupied society. This kind of illegitimate occupation of the state can be external – when it is performed by hostile state(s) – or internal, such as when a coup d'état is led by a minority group that lacks support in society at large. Due to its inherent illegitimacy, occupation must rest on constant intimidation and the use of violence.

Cell [C] stands for a situation whereby the state acts in a legal fashion but the populace perceives it to be illicit. We are then faced with a crisis of legitimacy, which can be resolved in different ways. In a democratic regime, such a crisis can lead to new elections which can renew legitimacy in the elected government. When the crisis cuts deeper, encompassing the very type of regime, we face a potential regime change of the kind we recently saw in Georgia – from a one-party Soviet system to a multi-party democracy – or in Venezuela and Bolivia, where a Western-style democracy was replaced by a socialist system. If the crisis in legitimacy of a governing elite is not resolved, we can usually expect the regime to gradually become authoritarian, relying on coercion rather than consent.

Most relevant for my discussion in this paper is the case captured in cell [B]. This cell highlights the possibility for illegal state actions to be perceived as licit by the majority in society. In this peculiar situation of 'undisputed legitimacy', as I call it, the state can expand its actions beyond the restrictions of its own laws without suffering a major loss in its legitimacy. The most prominent example of this is when a state launches a military offensive against another state in an apparent violation of international law and/or its own constitution but nevertheless receives popular support internally for its actions. The United States' pre-emptive wars in Afghanistan and Iraq are a case in point. The passing of the Patriot Act is another, more sophisticated example whereby the state seeks to expand the existing law to encompass illegal actions it is already taking, and which have broad public support.

Indeed, situations that fit into cell [B] usually occur in times of national emergencies. In fact, the possibility for governments to declare martial law in acute situations is an institutionalised recognition of the need for the state elite to enjoy undisputed legitimacy in times of severe danger to the existence of the state. Given that cases captured in cell [B] mostly represent a state of emergency, it is rather peculiar that many of the actions that states take towards migrant workers also belong in the same category.

Tellingly, states across the world tend to portray (perceived) oversized flows of immigrants – and especially undocumented migrants – as constituting a national threat. It is construed as a threat to the sustainability of the state's infrastructure (hospitals, schools) and resources (welfare), its national security as well as the integrity of its nation and 'culture' (whatever the latter stands for in the eyes of politicians). To combat undesired immigration, states often call for the deployment of means that are associated with an emergency situation: the building of physical barriers, the passing of draconian exclusionary regulations and the deployment of the army or special police force.

Conclusion: Migrant Workers as Non-Subjects in Modern Politics

I would now like to return to the empirical case of Israel and clarify the undisputed legitimacy that Israeli authorities have enjoyed when treating migrant workers in illegal and inhumane ways. The state of Israel has been internationally recognised (UN Resolution 1947) and legally established (The Declaration of Independence 1948) as a Jewish state that fulfills the historical aspiration of the Jewish nation to establish a sovereign state. Israel's declared purpose has been to serve as a 'home' for Jews worldwide. Inspired by the Zionist ideal of the 'foregathering of the diaspora', the criteria for the inclusion of immigrants as Israeli citizens were ethno-religiously defined to conform exclusively to people of Jewish origin.

Surprisingly, perhaps, public opinion in Israel was initially considerably supportive of, and tolerant towards, non-Jewish migrant workers (Bar-Tzuri 1996). While some Jewish Israelis clearly held prejudiced views about 'foreign workers', tellingly, those who came into contact with them held more positive views. Accordingly, the residents of Tel Aviv, where most undocumented migrants resided, displayed the most tolerant attitude towards non-Jewish workers (Nathanson & Bar-Tzuri 1999: 104, 115). This positive attitude was based not least on the cheap labour that migrant workers provided many Israeli businesses and ordinary citizens.

However, Israeli public opinion has proven to be highly responsive to the state's nationalistic rhetoric. Since the government launched its first deportation campaign in 1996, it regularly alleged that non-Jewish migrants were corrupting the Jewish character of the state as well as increasing criminality and unemployment among Israelis (Willen 2007). As a result, support for migrant workers has steadily deteriorated among the general Israeli public (Nathanson & Bar-Tzuri 1999) as well as among the residents of Tel Aviv (Schnell 1999).

It is fair to assume that some Israelis were influenced purely by the state's rhetoric and were not directly affected in a negative sense by the presence of non-Jewish migrant workers. Yet some Israelis, especially unskilled workers, might have suffered from competition with an increasing number of migrant workers. It has been demonstrated that the disadvantaged groups in Israel (those with low income and/or low education, the unemployed, and Palestinian citizens of Israel) were most likely to endorse economic discrimination against migrant workers (Semyonov et al. 2002). Disadvantaged Israelis clearly perceived migrant workers as a threat to their economic interests. However, it was further shown that Jewish Israelis expressed significantly more hostility towards migrant workers than did Palestinian citizens of Israel, although the latter were more prone to suffer from competition with migrant workers. It was thus concluded that the attitudes of Jews are also motivated by 'sentiments which are entirely exogenous to labour market competition ... [and are largely explained by] the ideological commitment (among Jews) to preserve the Jewish character of the State ... non-national workers are evaluated not only as economic competitors, but also as a threat to the very essence of the social and political order of the state and to its national (Jewish) identity' (Semyonov et al. 2002: 428). As we can see, public opinion in Israel is closely influenced by a firm endorsement of the need to maintain Israel's Jewish character and the idea that migrant workers pose a threat to this ideal.

Pierre Bourdieu (1996) argued that Weber's classic definition of the state as holding the monopoly over the legitimate use of violence should be supplemented by its dominance over symbolic power. With this, Bourdieu wishes to draw our attention to the power of the state in shaping the social categories through which members in the polity perceive their own experiences as well as the actions of the state. In other words, the state, according to Bourdieu, 'is not only "out there" in the form of bureaucracies, authorities, and ceremonies. It is also "in here," ineffaceably engraved within us, lodged in the intimacy of our being in the shared manners in which we feel, think, and judge. Not the army, the asylum, the hospital, and the jail, but the school is the state's most potent conduit and servant' (Wacquant 1996: xviii).

Israel has historically insisted on an overt representation of its Jewish character on a symbolic level (e.g. a flag with the Star of David, a national hymn that praises the return of Jews to Israel). Recognising the overall dominance of the Jewish citizenry, some academics have charged that Israel constitutes an 'ethnic republic' (Rabinowitz 1997; Ghanem 1998) or even an 'ethnocracy' (Yiftachel 1997). These critics point to the legal framework that Israel put in place to safeguard the Jewish character of the state. Moreover, national belonging in Israel is overwhelming determined by one's ethno-religious identity – in other

words, one's Jewishness. The validity of this ethno-religious criterion is naturalised by the state and internalised by most Israeli citizens via a particular understanding and teaching of the history of the Jewish nation, the Israeli education system, the army, the celebration of national festivities and Remembrance Days, and so forth.

This symbolic power, which is invested in shaping the perceptions of Israeli citizens, leads a majority to recognise non-Jewish migrants as invalid subjects in the Jewish state. Even when Jewish Israelis show sympathy towards migrants, they often conceive the bigger picture in a way that is neatly captured in the following quote from one of my Israeli informants:

I have nothing against them [non-Jewish migrants], many of them are very honest people who come here because they want to take care of their poor families in their countries. But when they come here they know they come to a Jewish state where they can never stay. They know and take the risk involved. So when Israel decides that they have to leave and deport them, what do they expect? They have to go back to their countries. I'm sorry but it's Israel's right. There are hundreds of states in the world and only one is a Jewish state.

According to widespread perceptions in Israel, non-Jewish migrant workers do not belong in Israel, and they are consequently never fully registered as 'real' subjects in the mindscape of Jewish Israelis. This dynamic is amplified in the case of undocumented migrants, who are often seen as transgressors that disregard the law and disrespect the national sovereignty of the state. In the eyes of many citizens, the illegal actions and status of undocumented migrants justify the hard-line approach of the state, including the 'right' to use illegal methods against them (De Genova 2002).

We can therefore conclude that the illegal but licit actions of the state against migrant workers are by and large the result of hermetic mental borders that are produced by the state with the use of symbolic power and imprinted onto citizens' mindsets. Migrants that cross the territorial borders of the state are often unable to cross the more impenetrable mental borders that are firmly held by many of the recognised members of the nation (see also Wong and Pok Suan in this volume). In this sense, the position of many migrant workers – both legal and illegal, as the case of the Chinese workers in Israel demonstrates – can be equated with the figure of the *homo sacer*, as advanced by the Italian philosopher Giorgio Agamben (1998). The *homo sacer* is a depoliticised human who is not a member of the political community and over whom the sovereignty of the state does not apply. *Homo sacer* can therefore be killed

with impunity, but not sacrificed. It is the non-belongingness and exteriority of *homo sacer* that allows recognised members in the polity to reassure themselves (or hold to the illusion, as Agamben would have it) about the link between membership in a political community, a regime of rights, and territorial sovereignty.

The greater the overlap in the attitude towards migrants between the state's formal approach and people's social perceptions, the greater the chance that the state will enjoy undisputed legitimacy as it acts against migrants, even in an illegal and inhumane manner. Yet a total overlap hardly ever exists, not even in the extreme case of the Israeli state. Many Israeli civil society actors clearly managed to escape the symbolic power of the state and persistently fought to change Israel's exclusionary, exploitative and often illegal treatment of migrant workers. These actors used Israel's democratic characteristics, which included freedom of association, freedom of speech and the government's accountability to Israeli laws and international conventions. Astutely, civil society actors compared the Jewish history of ethnic persecution with the situation of many non-Jewish migrant workers in Israel. This dreadful contrast effectively touched upon the very sensitivity that had historically led most Israeli politicians to vigorously establish and closely protect the Jewish state. Consequently, it led many liberal as well as right-wing conservative politicians to amend existing regulations and to even support the legal incorporation of certain non-Jewish migrants as citizens of Israel.

Notes

- 1 This work is part of the 'Illegal but Licit' research programme, which is financed by the Netherlands Organisation for Scientific Research (NWO). For my research project within this programme, I conducted a non-consecutive ethnographic fieldwork over a period of nine months among Chinese workers in Israel in the years 2006 to 2010. During these years, I also made four field trips to China, each for a period of around two weeks, for visiting potential migrants to Israel as well as deportees and returned migrants from Israel.
- 2 <http://www.chinaembassy.org.il/eng/> (accessed on 12 May 2007)
- 3 A small number of around 100 Chinese 'chefs' are recruited for work in kitchens of Israeli-owned Asian restaurants. In this article, I do not refer to this group of Chinese, who are significantly different in their characteristics and employment conditions in Israel.
- 4 There are, however, several cases in recent years of mixed marriages between Israeli men and Chinese women.
- 5 For how this non-assimilative inclination led some Chinese to seek a conversion to Christianity – and not Judaism – while in Israel, see Kalir 2009.
- 6 When speaking of an informal migration industry, one should not immediately envisage underground operations carried by the Mafia. As Thunø and Pieke (2005: 487) inform: 'no convincing evidence, however, exists that well-organised Chinese triads or

gangs are the primary masterminds and main operators behind smuggling or trafficking of Chinese migrants' (see also Chin 1999; Pieke, Nyiri, Thuno & Ceccagno 2004).

- 7 I disregard here a small number of Chinese who enter Israel as tourists and remain to work illegally, and an even smaller number who get smuggled into Israel from the border with Egypt.
- 8 See Internal Report for the Israeli Parliament 2002.
- 9 In 2006, the law was amended to allow recruitment companies to charge workers a fee of up to US\$ 700.
- 10 The eagerness of the Chinese to go to Israel must be seen in the wider context where by much higher prices (sometimes of around US\$ 100,000) are paid by Chinese in order to get to other, more attractive migration destinations like the US and the UK.
- 11 Interview by author, Israeli Consulate in Beijing, China, December 2007.
- 12 Some employers asked their workers to pay them as much as US\$ 500 for the renewal of visas each year.
- 13 It might even be that the public does not overtly legitimise the state actions vis-à-vis undocumented migrants, but by not voicing contempt, expressing rejection or mobilising resistance, it nonetheless connives with these actions.