

INTERNATIONAL COMMISSION OF JURISTS
INDIAN COMMISSION OF JURISTS
MYSORE STATE COMMISSION OF JURISTS

International Year of Human Rights

REPORT & CONCLUSIONS OF
THE CONFERENCE OF JURISTS

ON

Right to Freedom of Movement

Bangalore, India

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* Elected at the Plenary Session on 10-11-1968.

INTRODUCTION

The choice of Mysore as the venue of this important Human Rights Year Conference on the Right to Freedom of Movement proved to be a happy one. Mysore is not only an ancient seat of Indian culture; it is also a State which has had over the centuries political, social and cultural relations with other powerful and ancient States in India as well as with other South-East Asian civilizations. The International Commission of Jurists favoured the Bangalore project as its first major contribution to Human Rights Year as it felt that India, the largest democracy in the world and a country which has always stood for the Rule of Law and fundamental rights, would provide the most suitable venue for a Conference of this nature. Further, India, unlike the affluent countries of the world, has real problems in relation to human rights and the Rule of Law calling for urgent examination and solution within the democratic framework.

I think I would be correct in saying that the seeds of the Bangalore Conference were sown as far back as 1963 when the General Assembly of the United Nations designated 1968, the year during which the twentieth anniversary of the Universal Declaration of Human Rights falls, as the International Year for Human Rights. Thereafter the General Assembly, at its twentieth session in 1965, adopted a Resolution entitled "International Year for Human Rights". By this Resolution the General Assembly, "considering that the further promotion and development of respect for human rights and fundamental freedoms contributes to the strengthening of peace throughout the world and to friendship between peoples," called upon, *inter alia*, "the national and international organisations concerned to devote the year 1968 to intensified efforts and undertakings in the field of human rights, including an international review of achievements in this field."

In the same year the Secretary-General of the United Nations, U Thant, issued a message in which he called upon governments,

organisations and individuals alike to seize every opportunity and undertake every kind of positive effort to promote the peace and well-being of mankind.

Human rights are not only of direct relevance to the activities of the International Commission of Jurists, but indeed form the very basis of the Rule of Law. Therefore, in response to these calls, the Commission has, both directly and through its National Sections, made its contribution to Human Rights Year by spreading the message of the Universal Declaration through its publications, through conferences and seminars and through local and regional action.

The International Commission of Jurists therefore welcomed the initiative which the Mysore State Commission of Jurists had taken to convene, in collaboration with the International Commission of Jurists and the Indian Commission of Jurists, a Conference on the Right to Freedom of Movement in Bangalore early in January 1968. Apart from the undoubted importance of the right examined, the importance of the Conference was enhanced by the fact that it was the first major event in the International Year for Human Rights.

The theme of this Conference was chosen in consultation with the Indian Commission of Jurists and the Mysore State Commission of Jurists. Its choice was actuated by two important considerations. The first was the fact that the growing tendency of States to restrict this right has made this topic one of prime importance for the individual today. Secondly, freedom of movement had attracted particular notice in India in view of certain recent illuminating judgments of the Supreme Court of India relating to freedom of movement both within and outside a country.

The three Working Papers, which provided a basis for the discussions both in the Committee and in the Plenary Sessions of the Conference, were prepared by distinguished Indian lawyers. Our special thanks are due to the authors, Mr. Purshottam Trikamdas, Mr. Chandra Kantaraj Urs, Mr. A. N. Jayaram, Mr. C. R. Somasekheran and Mr. S. Vijayashankar, and also to Mr. J. M. Mukhi of the Indian Commission of Jurists for some useful notes submitted on passports and the right of exit.

The Conclusions arrived at by the Conference are the result of careful examination and discussion of the various aspects of the right to freedom of movement and careful consideration of the limitations which could be legitimately placed on the right. They will doubtless make a valuable contribution to the jurisprudence on human rights.

Attention should also be drawn to the fact that a Special Committee was constituted at the Bangalore Conference to consider a proposal for the setting up of a Council of Asia and the Pacific on lines similar to the Council of Europe. It is my hope that, through its deliberations, this Special Committee has laid the foundations for the creation of a regional institution analogous to the Council of Europe which will be capable of affording effective protection to the rights and freedoms of the citizens of its member States.

In conclusion, I should be failing in my duty if I did not offer my heartfelt thanks on behalf of the International Commission of Jurists to the members of the Executive Councils of the Indian Commission of Jurists and the Mysore State Commission of Jurists but for whose untiring efforts the Conference would not have been the success it turned out to be.

SEAN MACBRIDE
Secretary-General
International Commission of Jurists

WORKING PAPER
on
RIGHT TO FREEDOM OF MOVEMENT WITHIN
A COUNTRY

By

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INTRODUCTION

Article 13(1) of the Universal Declaration of Human Rights states that:

“Everyone has the right to freedom of movement and residence within the borders of *each* state.”

The purpose of this working paper is to examine the importance of Freedom of Movement within the borders of a country and the necessity for safeguarding it against executive, legislative or other abuse, detrimental to the development of the human personality.

The enshrining of the Freedom of Movement in Article 13 of the Universal Declaration of Human Rights is an affirmation of the importance of the right in a document which has been characterised as the ‘International Magna Carta’. In the year dedicated by the United Nations as the ‘HUMAN RIGHTS YEAR’,

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it is but appropriate that a closer examination be made of the scope and extent of this right as it now exists in several states and of the means by which its enjoyment may be made more effective. It is also necessary to examine the present basis of the right and to redefine it in the light of the recent experience which led to the Universal Declaration of Human Rights.

The right to Freedom of Movement is an important aspect of the personal liberty of the individual. A deprivation of this important right results in many cases in the deprivation or restriction of many cognate freedoms. Consequently, while it is true that all rights in an organised society are relative rather than absolute, in the ultimate analysis, it is only respect for freedom that will give beauty and meaning to men's lives.

SCOPE AND EXTENT OF THE RIGHT

The Magna Carta is among the earliest documents to enshrine this Freedom. It declares:

"No free man should be arrested or imprisoned or disseised or outlawed or exiled or in any way molested; nor will we go upon him, nor will we send upon him, except upon a legal judgment of his peers or by the justice of the King in cases in which this has been the common procedure, the law of the land in effect everywhere and accepted as such."

While the right to protection of the human person from physical restraint or, to use Herbert Spencer's phrase, "the right of motion and locomotion" had been recognised even from early times, the protection of such rights was not from any refined respect for the human personality, but by reason of the apprehended inconvenience to established authority or threat to social order that might have resulted from a denial of the right. The protection then extended to the right had no political or moral import to it, such as is contemplated in Article 29 (2) of the Universal Declaration of Human Rights, which runs:

"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

By the time of Blackstone, however, the right to such Freedom of Movement had received its affirmation on the modern basis which gives recognition to the deep spiritual need of a human being to develop his personality to the fullest extent. In dealing with the right to free enjoyment of personal liberty, Blackstone says:

“Next to personal security, the law of England regards, asserts, and preserves the personal liberty of individuals. This personal liberty consists in the power of locomotion of changing situation, or removing one’s person to whatsoever place one’s own inclination may direct; without imprisonment or restraint, unless by due course of Law”.¹

Dicey has stated that the right to personal liberty means in substance “a person’s right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification”.²

In Ridge’s Constitution, it is said:

“that the right to personal freedom means simply that the person may do what he likes or go where he likes provided he breaks no law and does not infringe the rights of others”.³

More recently in his book “The Idea of Law”, Dennis Lloyd in listing ten main values of legal freedom includes personal freedom among them and says:

“Freedom to travel, both within and outside the confines of the territory of the State, raises important issues of personal freedom. This type of freedom has largely been regarded as axiomatic in modern times in Western Europe, but certainly not in Eastern Europe, where restrictions on travel and residence in particular cities or territories have been traditionally severe”.⁴

Harry Street in his book “Freedom, the Individual and the Law”, says

¹ Blackstone Commentaries, Vol. 1, page 105.

² Dicey, “Law of the Constitution”, Ninth Edition, page 207.

³ Ridge’s Constitution, Eighth Edition, page 371.

⁴ Dennis Lloyd, “The Idea of Law”, page 160.

"The freedom to travel is of course an important freedom; men want to travel abroad on business, for family visits, to consult with experts in their profession for educational and recreational purposes".⁵

Justice Subbarao of the Supreme Court of India, speaking of freedom of movement in a free country, defined a free country as:

"A country where a citizen may do whatever he likes, speak to whomsoever he wants, meet people of his own choice without apprehension, subject of course to the law of social control."⁶

MODERN STATES AND THE RIGHT TO FREEDOM OF MOVEMENT

Modern states have generally recognised the importance of the right to Freedom of Movement and there is no definite tendency among them to arbitrarily deny it. It is, however, true that the number of states permitting Freedom of Movement within their borders is relatively larger than those that permit such freedom in regard to exit from and entry into the state.⁷ In some countries such as the United Kingdom where there is no specific incorporation of this right in any law, the Courts traditionally protect the right on the assumption that the enjoyment of such a right is permitted by the law of the land. In others, it is embodied in a basic document such as in a Constitution or any other law. It is also to be noticed that many countries which have attained freedom subsequent to the adoption of the Universal Declaration of Human Rights, have incorporated this right to Freedom of Movement in their Constitution in language closely similar to that of the Declaration.⁸

Examples of the incorporation of this right in some Constitutions are cited below.

⁵ Harry Staect, "Freedom, the Individual and Law", page 273.

⁶ *Kharak Singh v. State of U.P.* AIR, 1963 S.C., page 1295 at page 1301.

⁷ According to a United Nations Survey.

⁸ See, as examples, provisions of the Constitutions of Senegal and Cameroun set out below.

France: "To every *man* is guaranteed as a natural and civil right the power to go, to remain or to depart without being arrested or detained except in accordance with the procedure established by the Constitution."—Article 1, Constitution of France, 1791.

Argentina: "All *inhabitants* of the nation enjoy the following rights in conformity with the laws which regulate their exercise; viz., . . . to enter, to remain, to traverse and to depart from Argentinian territory."—Article 14, Constitution of Argentina, 1853.

Switzerland: "No Swiss citizen shall be expelled from the territory of the Confederation or from his Canton of origin."—Article 44, Constitution of Switzerland, 1874.

Mexico: "Every *man* has the right to enter and depart from the Republic, to travel across its territory, and to change his residence without the necessity of a card of identity, passport, safe conduct or any other formalities. The exercise of the right shall be subject to the authority of the Courts in cases of civil or criminal responsibility, and to that of the administration in respect of the restrictions which may be imposed by laws in the matter of emigration, immigration or of public interest or which may be imposed on resident foreigners dangerous to peace."—Article 11, Constitution of Mexico, 1917.

Brazil: "In time of peace, any *person*, together with his property, may enter the national territory, remain there in or leave it, provided that the requirements of the law are duly fulfilled."—Article 142, Constitution of Brazil, 1946.

Italy: "Every citizen may freely circulate and remain in any part whatsoever of the national territory subject to such limitations as law may generally establish on grounds of health or security. No restriction may be imposed for political reasons. Every citizen is free to leave the territory of the Republic and to re-enter, subject to the obligations imposed by law."—Article 16, Constitution of Italy, 1948.

India: "All citizens shall have the right . . . to move freely throughout the territory of India . . . Nothing in the . . . said clause shall affect the operation of any existing law in so far

as it imposes or prevents the state from making any law imposing reasonable restrictions on the exercise of...the right(s)...either in the interests of any Scheduled Tribe"—Article 19(1)(d) and 19(5) of the Constitution of India, 1950.

Germany: "All Germans shall enjoy freedom of movement throughout the federal territory. This right may be restricted only by law and only in cases in which there exists no adequate ground for the existence of the right and as a result a special burden would fall upon the public, or in which restriction is necessary for the protection of Juveniles against neglect, or for combating danger from epidemics or to prevent criminal acts."—Article 11, Constitution of the West German Republic, 1949.

Cyprus: "Every person has a right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by Law and which are necessary only for the purpose of defence or public health or provided punishment to be passed by a competent Court."—Article 13, Constitution of Cyprus, 1960.

Nigeria: (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof; and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(a) restricting the movement or residence of any person within Nigeria in the interest of defence, public safety, public order, public morality or public health;

(b) for the removal of persons from Nigeria to be tried outside Nigeria for criminal offences or to undergo imprisonment outside Nigeria in execution of the sentences of courts in respect of criminal offences of which they have been found guilty;

(c) imposing restrictions upon the movement or residence within Nigeria of members of the public service of the Federation or the public service of a Region, members of the armed forces of the Federation or members of a police force."—Section 27, Constitution of the Federation of Nigeria, 1963.

Ghana: ".... subject to such restrictions as may be necessary for preserving public order, morality or health, no person should be deprived...of the right to move and assemble without hindrance."—Article 13 of the Constitution.

Senegal: All *citizens* of the Republic shall have the right to freedom of movement and the *residence* throughout the Republic of Senegal. This right may be restricted only by law. No persons may be subjected to security measures except in cases provided by law—Article 11, Constitution of the Republic of Senegal, 1960.

Cameroun: "Everybody shall have the right to freedom of residence and movement, subject to the regulations concerning public order and public health."—Cameroun Constitution of 1960.

Somalia: "All citizens shall have the right to reside and travel freely in any part of the national territory and shall not be subjected to any deportation."—Article 11 of the Constitution of the Somali Republic, 1960.

NEED FOR RESTRICTIONS ON THE FREEDOM OF MOVEMENT

The conflict between man and the State is as old as human history. It is trite to observe that in an organised society, there can be no absolute liberty without social control. In the words of Edmund Burke "Liberty too must be limited in order to be possessed." While the imposition of social control delimits personal liberty, it also results in the enlargement of general personal liberty, for, in the modern state, liberty is dependent on the existence of authority. "Liberty, in a word, has to be reconciled with the necessities of the social processes; it has to find terms upon which to live with authority."⁹

The following may be regarded as the essential functions of a Government:

- (a) Maintenance of order
- (b) Ensuring the proper functioning of public services

⁹ Laski, 'Liberty', IX, page 444.

- (c) Ensuring the survival of the nation
- (d) Protection of its own authority and safety.¹⁰

All the rules of social life impose restrictions on the freedom of individuals. The rules, however, must allow the maximum of freedom that is compatible with the general interest and the harmonious adjustment of individual relations.

Having thus stated the need for restriction on the right to Freedom of Movement in the larger interests of the preservation of the right itself, it is now necessary to examine the nature and extent of the restriction generally imposed by states on the enjoyment of this freedom.

NATURE OF RESTRICTION IMPOSED BY STATES

The restrictions imposed by a state on the enjoyment of the Freedom of Movement can assume one of three forms:

- (a) Prohibition of entry of a person into a specified area in the state;
- (b) Prohibition of exit of a person from a specified area in the state
- or
- (c) Expulsion of a person from a specified area in the state.

The restrictions imposed by the states may broadly be categorised as:

- (a) the restrictions imposed on the basis of citizenship and
- (b) general restrictions applicable to citizens and non-citizens alike.

In the Constitution and other laws of some countries, the right to Freedom of Movement is sought to be secured only for the citizen. For example, in the Constitution of the United States of America, India, Ghana, Senegal, Nigeria, the Federal Nigeria, the Federal Republic of Germany and Italy, this right is available only to citizens. In the Constitution of some countries, for example, Japan, Ghana, Cyprus, France, Argentina, Mexico

¹⁰ Levasseur: 'Justice and State Security', Journal of the International Commission of Jurists, Vol. V, No. 2 (Winter 1964), page 234 et seq.

and Brazil, the right to Freedom of Movement is available to all persons regardless of their citizenship.

The pattern of restrictions that are imposed by states on the enjoyment of this freedom are of a wide range. Thus, for instance, a country like South Africa has legitimised the imposition of various restrictions on this right on the sole basis of race,¹¹ whereas countries such as France, Japan and Argentina have attempted to secure this freedom for all persons irrespective of their citizenship. A few examples of restrictions imposed are given below.

REASONABLENESS OF RESTRICTIONS IMPOSED BY STATES

Generally speaking, the states imposing restrictions on Freedom of Movement seek to do so only by the authority of law. This by itself is no safeguard against the abuse of the right by an act of the legislature, unless the right is embodied in the Constitution which prohibits the making of a law imposing restrictions on the enjoyment of this freedom except upon the grounds stated in the Constitution. While it is the prerogative of a state to impose such restrictions on the enjoyment of this freedom for the protection of any interests which it may regard as vital to its security or welfare, yet the restriction imposed should conform to the standards laid down by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (1966) which embody the ideals and aspirations of all civilised peoples. The International Covenant on Civil and Political Rights states:

- “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are

¹¹ See Report of the International Commission of Jurists on “South Africa and the Rule of Law”; also Bulletins of the I.C.J. No. 22 (April 1965, pages 35-42), No. 28 (December 1966, pages 65-66) and No. 30 (June 1967, pages 26-30).

necessary to protect national security, public order ("Ordre public"), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country."¹²

Having regard to the practice of states, there is a broad consensus which appears to recognise restrictions imposed on the following grounds as reasonable restrictions:

- (1) Security of State;
- (2) Public Order, Health, Morals or Safety;
- (3) Proper functioning of Public Services and maintenance of supplies essential to the Community;
- (4) Protection of any particular interest regarded by the State as important.¹³

It may also be stated that restrictions imposed only on grounds of nationality, race, religion or political views would be unreasonable when tested by the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which extend this freedom to all persons lawfully within the territory of a state regardless of their Citizenship.

COURTS AND THE FREEDOM OF MOVEMENT

The following decisions have been cited only for the reason that they embody the cumulative judicial experience of several states and may therefore be regarded as indicative of views shared by many other states.

Where there is no express provision in the Constitution of the United States dealing with the Freedom of Movement, it has been held that the term "Liberty" in the Fifth Amendment means

¹² Article 12 of the Covenant; see also Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination.

¹³ Thus for example, Article 19(5) of the Indian Constitution provides for the imposition of restrictions "for the protection of interests of any Scheduled Tribe." The Assam High Court has upheld these restrictions in *Dhan Bahadur Ghorthi v. State*—AIR 1953 Assam, page 61.

not only the right of the citizen to be free from mere physical restraint of his person but also the right to be free in the enjoyment of all his faculties and freedoms and includes the right of locomotion, i.e., the right to remove oneself from one place to another according to one's inclination.¹⁴

In the *State of Madhya Pradesh v. Thakur Bharat Singh*¹⁵, decided on January 23, 1967, the Supreme Court of India considered the validity of Section 3(1)(b) of the Madhya Pradesh Public Security Act 1959, which purported to authorise the State to order a person to reside in the place where he was ordinarily resident, as well as to order a person ordinarily resident in one area to go to another area or place within the State and stay within that area or place. The Act also provided that, if a person served with an order under the Act failed to carry out that order, he could be removed to the area or place designated in the order, and also be punished with imprisonment and/or fine. It gave no opportunity to the person affected of being heard before the place where he was ordered to go or remain was selected. The Supreme Court held that Section 3(1) (b) of the Act purported to authorise the imposition of unreasonable restrictions on the freedom of movement of the individual and held that the clause was therefore void.

In *Minister of the Interior v. Madame Vicini*¹⁶, the *Conseil d'Etat* of France stated that Article 107 of the *Code de l'Administration communale* enabled a Prefect (an administrative head of a region) to take all measures necessary within his area of administration for the maintenance of public health, security and peace. He could therefore regulate the movement and the stay of nomads for the purpose of avoiding any danger to public health, security and peace. The *Conseil d'Etat* held, however, that a Prefect infringed the fundamental right of the individual to freedom of movement when he prohibited permanently and in absolute terms the camping and the stay of nomads in all or any part of the

¹⁴ *Bauer v. Acheson* (1952) 106 F. Supp., page 445.

¹⁵ See Weeramantry, *Digest of Judicial Decisions on Aspects of the Rule of Law*, Journal of the International Commission of Jurists, Vol. VIII, No. 2, Special Issue, International Year for Human Rights, Part I, page 133.

¹⁶ See *Digest of Judicial Decisions on the Rule of Law*, Journal of the I.C.J. Vol. VII, No. 1 (Summer 1966), pages 142-3.

areas under his administration. General prohibitory orders, in the absence of exceptional circumstances, could not be justified.

In *Williams v. Majedodunmi*¹⁷, the Federal Supreme Court of Nigeria held that every citizen of Nigeria was entitled to move freely throughout the Federation, and that the movement or residence of any person within Nigeria could be restricted only in the interest of defence, public safety, public order, public morality or public health.

In *Jeshingbhai v. Emperor*¹⁸, the High Court of Bombay interpreting the provisions of the Bombay Security Measures Act, held that the restrictions imposed thereunder were void as they imposed unreasonable restrictions. The Act in question (a) had not imposed a maximum limit on the duration of the time for which restrictions could be imposed; (b) provided no right to the person to be heard in his defence and (c) imposed no obligation upon the authorities concerned to furnish the ground for such restriction. The Court also held that, in order to decide whether or not the restriction was unreasonable, the entire nature of the restriction must be looked into.

The Supreme Court of India upheld the restrictions imposed on the Freedom of Movement of a person under the provisions of the City of Bombay Police Act, 1902, under which it was possible to restrict the movements or acts of any person causing harm to person or property or under circumstances when there were reasons for believing that such person was engaged or was about to engage in the commission of an offence. The Act was upheld as it fixed not only the maximum period for imposition of restrictions but also made provision for furnishing in writing to the person charged with the offending acts the grounds upon which he was charged.¹⁹

Section 20 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, enabled the magistrate, on receiving information that any woman or girl within the limits of his juris-

¹⁷ See *Digest of Judicial Decisions on the Rule of Law*, Journal of the I.C.J. Vol. VII, No. 1, pages 143-4; see also (1962) 1 All Nigeria Law Reports, page 324.

¹⁸ AIR 1950 Bombay, page 363.

¹⁹ *Gurbachan Singh v. State of Bombay*—AIR 1952 S.C., page 221.

diction was a prostitute, to record the substance of such information and call upon her by a notice to show cause why she should not be required to "remove herself from the place and be prohibited from re-entering it". Relying upon an earlier judgment, the Supreme Court of India held that the reasonableness of a restriction depended on "the values of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar others". Once the conclusion was reached that the activities of a prostitute in a particular area, having regard to the conditions obtaining therein, are so subversive of public morals or so destructive of public health that it was necessary in the public interest to deport her from that place, the restriction thereafter imposed on the person cannot be said to be unreasonable.²⁰

In *State of Madhya Pradesh v. Baldeo Prasad*²¹ the Supreme Court of India struck down Section 4 and 4(a) of the C.P. & Berar Goondas Act, 1946, as contravening the freedom of movement guaranteed in Article 19(1) (d) of the Indian Constitution. "Goonda" was defined as meaning "a hooligan, rough or a vagabond" and as including a person who is "dangerous to public peace and tranquillity". On the grounds that the definition was inconclusive and that no opportunity was given to the person to show that he was not a goonda, the Court struck down the section as violative of the Constitutional provision guaranteeing the right to Freedom of Movement.²²

ENJOYMENT OF THE FREEDOM DURING AN EMERGENCY

The right to Freedom of Movement assumes great importance during emergencies like war, civil commotion, etc., when the enjoyment of the right is subjected to great stress and strain.

For the enforcement of the Rule of Law and the protection of this valuable basic right, it is necessary to define the ambit of

²⁰ *State of Uttar Pradesh v. Kaushaliya*—AIR 1964 S.C., page 416.

²¹ AIR 1961 S.C., page 293.

²² See also *Ibingira and others v. The Government of Uganda*, *Digest of Judicial Decisions on the Rule of Law*, Journal of I.C.J. Vol. VIII, No. 1 (Summer 1967) at page 116.

state action relating to this right. Adequate provision must be made for the proper adjudication of the grievances of persons whose freedom is curtailed and the best procedure will have to be evolved to ensure the same. Ordinarily, the Courts should be the custodians of the right. The experience of even such established democracies as the United Kingdom shows that the power to determine whether in the circumstances prevailing in the country a person's right to this freedom may be curtailed has been left to the subjective satisfaction of a Minister or other state official. An honest though erroneous decision of the state officer or Minister concerned often places the matter beyond judicial review. The question attracted great public attention when the decision in *Liversidge v. Anderson*²³ was delivered and the debate still continues. In many countries that gained independence in recent times, the rule in *Liversidge v. Anderson* has come to be followed.

Sir Carleton Allen supported the minority opinion of Lord Atkin and observed: "The hinge of Lord Atkin's speech is that the term 'reasonable cause' has up to the date of this decision had one clear meaning, and one plain effect, in every branch of our law, whether common or statutory. It has involved an objective test, by an independent tribunal, of the reasonableness claimed for the conduct which is impugned. Lord Atkin had supported this proposition by abundant illustration and has stated categorically that there is no known exception to it. . . ."

Sir Carleton vehemently argued for the position that in all such cases the test ought to be the objective satisfaction that will stand the test of scrutiny by Courts of Law before which the order is assailed; in any event, the conclusion of Sir Carleton is very relevant when the result of the many decisions of various Commonwealth countries is reviewed. It is important to note the observation of Sir Carleton that "The spectacle of dispassionate justice and of calm adherence to the law of the land, even in the face of imminent danger, will always be more admired. . . . than the immunity of executive action on any grounds of temporary urgency; and it will be particularly admired at a time when the nation is embattled against no enemy more sinister than the odious doctrine that the administration of justice is subservient

²³ 1942 A.C. 260.

to the requirement of 'policy'". In view of the clear enunciation in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights of this precious right, and the restrictions that could be legitimately imposed to secure the competing state interest, it has become imperative that the position declared in the "Law of Lagos"²⁴ must be secured. The relevant portion of the Law of Lagos reads as follows:

"That fundamental human rights, especially the right to personal liberty, should be written and entrenched in the Constitutions of all countries and that such personal liberty should not in peace time be restricted without trial in a Court of Law".

Whether an aggrieved person whose freedom of movement is curtailed during an emergency is permitted to resort to the ordinary Courts of the land or not, he must be afforded an opportunity of vindicating his rights at least before an impartial administrative tribunal with adequate safeguards for his defence, with aid of Counsel where necessary. The law permitting the deprivation of the right during the periods of emergency should, besides stipulating the maximum period of the deprivation of the right, also contain provisions requiring the Government to submit periodical reports to the legislature.

REMEDIES FOR ENFORCEMENT OF THE RIGHT TO FREEDOM OF MOVEMENT

Ordinarily the Courts of the State are entrusted with the power to enforce this right and to deal with cases of denial of this freedom, in accordance with the provisions of the Constitution or any other law made by the State. If, however, the right is conferred upon any other authority and the power of the ordinary courts is ousted, it would be necessary to examine whether adequate safeguards have been provided for the enforcement of the right. The writ of Habeas Corpus which originated in England, now shorn of all its crippling technicalities, is yet the most effective mode by which freedom is assured to the individual in most of the "common law" countries. In others, the access

²⁴ See Report of the International Commission of Jurists on 'African Conference on the Rule of Law' (1961), page 11.

to courts competent to grant relief affords the necessary protection. Except in times of war or other emergency, the ordinary courts should be vested with the power to grant the necessary relief. If for compelling reasons the jurisdiction is vested in special tribunals, their decisions should be made justiciable.

SOME SUGGESTED CONCLUSIONS

The following Conclusions may be suggested:

1) The right to Freedom of Movement is a right which is vital to the full development of the human personality and must be recognised and protected by every State in adherence to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

2) The right to Freedom of Movement and residence within the borders of a State must be made available to every person lawfully upon the territory of a State irrespective of his citizenship, race, colour, religion or political affinity. Incorporation of the right in substantive law as well as procedural safeguards for its enjoyment must be ensured.

3) Considering the need to maintain a balance between the freedom of the individual and the general welfare of the community, reasonable restrictions may be imposed on the enjoyment of the right by or under the authority of law. Such restrictions may, however, be imposed *only* if the following conditions are satisfied:

a) The law provides for the imposition of restrictions necessary for the security of the State, public order, health, morals or safety, or the proper functioning of the public services and the maintenance of supplies essential to the community, or for the purpose of securing due recognition and respect for the rights and freedoms of others.

b) The restrictions are not arbitrary, excessive or greater in respect of time or area than what is required in the interests of the general public and necessary in the particular situation nor constitute an abuse of authority.

c) The method of the restrictions are reasonable in their operation and application.

d) The validity of such restrictions is made justiciable before the ordinary Courts of the State.

e) The restrictions in times of war are open to review before the Courts, or at least an impartial administrative tribunal whose procedure conforms substantially to the procedure of ordinary courts, and is subject to final judicial review.

f) The law permitting the imposition of the restrictions fixes the maximum limit of the period of restriction, requires the making of periodical public reports to the appropriate constituted authority and provides similar safeguards against arbitrariness and abuse.

4) Jurists the world over and all persons and bodies interested in the promotion and protection of rights taken in pursuance of such law, should build up public opinion which will impel States to recognise the importance of this freedom and to act conformably to the letter and spirit of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

WORKING PAPER
on
**RIGHT TO FREEDOM OF MOVEMENT OUTSIDE
ONE'S COUNTRY**

By
M. P. CHANDRA KANTARAJ URS *

INTRODUCTION

Freedom of movement is one of the most important of the fundamental freedoms of mankind. The evolution of man and the growth of man's sophisticated concepts of freedom of speech, freedom of association, freedom of religion and the like have assumed great significance and importance in modern times and tend to attract greater attention than freedom of movement. These other freedoms or fundamental rights of man are social and political in concept and value. But freedom of movement was the very factor which helped man to survive and evolve himself into what he is today. It will always remain basic and vital to the enjoyment of many other rights and freedoms.

This Working Paper is concerned with the right to freedom of movement outside one's country, or, in other words, with the right to exit, of travel abroad and of return to one's State. It has often been correctly stressed that this right is no less natural a right than is freedom of movement within a country, freedom of expression or freedom of religion. Louis L. Jaffe, comparing it with these other rights, said:

Like these other rights, it nourishes the self-determining creative character of the individual not simply by the mere enlarging of his freedom of action, but by expanding the scope of his experience. Nor is the value limited to the individual. It attests to the community of nations; brings its

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peoples together ; promotes familiarity and understanding ; enriches and diversifies our science and culture. It is this movement of men and ideas on which our very culture rests. Even where the object of the visit is criticism, it promotes that continuous human dialogue whose aim is mutual adjustment and toleration.¹

In an article on 'Freedom of Movement: Right of Exit' which appeared in the *Journal* of the International Commission of Jurists, Vol. IV, No. 1 (Summr 1962) Dr. Rudolf Torovsky², in dealing with the nature and significance of that right, says:

The individual Human Rights do not exist in isolation and the granting or refusal of one basic right may decisively affect enjoyment of one or more other basic rights. This is particularly so in the case of freedom of exit, for it is an important prerequisite or at least an important additional factor in the enjoyment of several other basic rights. In specific cases, for instance, the absence of freedom of exit may eliminate either wholly or partially the practical possibility of enjoying the right to life, freedom and inviolability of the human being, the right of religious freedom, the right of free expression and formation of opinion, and the right to work and a decent standard of living, to name only a few.

In conclusion it may be said that freedom of exit is by *nature one of those basic freedoms which result logically* from the principle of individual freedom and that it is of outstanding importance in view of its relationship to the other human rights and of its vital contents with regard to human existence and development potentialities. Freedom of exit is, for these various reasons, essential to a free and democratic society. Although it cannot be claimed that democracy cannot exist without freedom of exit,—but there can be no liberal democracy without it—it can nevertheless be said that one of the first actions on the part of any dictatorship or police State is very often to deny the population freedom of movement in the broadest sense.

¹ Louis L. Jaffe on 'The Passport Problem', *Foreign Affairs*, Vol. 35, page 25.

² Dr. jur. (Vienna); former member of the Legal Staff of the International Commission of Jurists.

HISTORICAL BACKGROUND TO RESTRICTIONS ON RIGHT

Down the ages man has learnt to conquer the natural obstructions to his freedom of movement and has now reached a stage where he is well on his way to mastery of the space around the earth and perhaps in due course of the universe itself. However, man-made restrictions persist; indeed, the progress and acceleration of the technical aspects of transportation on one hand and the widening of the scope of human rights on the other make them appear more anachronistic and objectionable than ever.

It would not be necessary here to make a detailed historical survey of the reasons and circumstances that brought about and maintain the curtailment of man's freedom of movement. One could briefly sum up these reasons and circumstances by stating that the crystallisation of the concepts of "State" and "Sovereignty" in modern societies was the basic factor which brought about restrictions on the freedom of movement of man outside his own country, and rendered him unable to use to best advantage his conquest of barriers imposed by nature. The reasons that impel many modern States to insist on restrictions on the freedom of movement outside the country appear to fall under two broad heads. One is *economic* and the other *political*. They are closely interrelated, each having had at various historical stages precedence over the other.

In the early period of the history of civilisation the need for peaceful travel beyond the frontiers of an individual's community arose mainly for two reasons. One was trade and commerce and the other the pursuit of knowledge. In the absence of powerful national states in the modern sense independent medieval cities and feudal territories exercised strict controls over the movement of merchandise, and the exchange of goods was then, if anything, more cumbersome than in our time. By the same token, cogent restrictions were imposed on individuals seeking to ply their trade in foreign lands. The reasons for such limitations on persons were primarily economic and social. They reflected the protection of influential local guilds against outside competition; often were they motivated by the defence against epidemics which could then be fought only by an effective quarantine. The resulting situation must be viewed from the historical

perspective of the period; by and large, however, the innocent traveller was not subject to the multitude of bureaucratic procedures imposed by present-day political and economic considerations often constituting a serious invasion of privacy.

With the advent of the modern age, the concept of trade and commerce across national borders has undergone a basic review. The political upheavals in Europe, the emergence of independent young States in the new world, the dynamics of the industrial age and the race for colonisation with its consequent commercial rivalry, are all among the factors which hastened this process. In the place of a relatively simple exchange of goods there sprang up monopolies, tariffs and other restrictions on free trade.

Looking at the political reasons, one finds that with the development of national States and their growing emphasis on unfettered sovereignty, freedom of movement of the individual began to be gradually regulated on political rather than economic grounds. World War One brought about an almost total prohibition of innocent travel in the world; in its aftermath, the control over individual travel exercised by the State of origin as well as by that of destination, remained greatly strengthened. After World War Two, the aggressive assertion of competing ideologies provoked a wave of security consciousness with the maze of protective measures against political subversion we know today.

Only slowly does the realisation dawn in some parts of the world of the advantages to be derived from the abolition of travel restrictions for the furtherance of mutual understanding among peoples and, ultimately, of permanent peace.

SCOPE AND CONTENT OF THE RIGHT

The growing tendency of States to place restrictions upon the right to travel abroad had made it all the more important that the scope and content of the right to freedom of movement should be closely examined and defined.

From the standpoint of the object of travel abroad, travel outside one's country can be classified under three distinct headings:

- 1) Travel in pursuit of knowledge and recreation or to improve one's professional qualifications or commercial prospects.

- 2) Travel for purposes of earning a livelihood temporarily in another country.
- 3) Travel with the intention of settling down permanently in another country.

In the case of the first and second of these categories, there is always an *animus revertendi* or an intention to return to one's state of origin. In the case of the third category there is no such intention, the intention being to set up a new life in another state permanently, often involving the renunciation of citizenship rights in the country of origin.

When considering the scope of the right to freedom of movement outside one's country as it is understood today, one finds that it consists of three limbs, namely, the right of exit, the right of movement, sojourn and residence abroad and the right of return.

The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10, 1948, enunciates the right to freedom of movement in the following terms:

Article 13 (1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

The member states of the UN, by adopting the Universal Declaration, have in effect agreed to restrict neither the right of their citizens to freedom of movement within their country nor their freedom to leave and return to their country. They have by implication also agreed not to refuse entry to citizens of other countries except for a valid reason.

Provisions relating to the right to leave and to return to one's country are found in certain international instruments other than the Universal Declaration of Human Rights. The International Covenant of Civil and Political Rights, which was adopted by the General Assembly of the United Nations on December 16, 1966, specifies that everyone shall be free to leave any country, including his own.³ The same provision is to be found in the

³ Article 12 (2) b.

Draft Central American and Inter-American Conventions of Human Rights.⁴ These Draft Conventions also secure to the individual the right to enter his own country.⁵

Article 18 of the European Social Charter signed by the member States of the Council of Europe on October 18, 1961, deals with a more particular aspect of the right to leave one's country. By that Article the contracting States expressly acknowledge the right of their nationals to leave their country to engage in a gainful occupation in the territories of any one of the contracting States.

Many countries, some of them before and others since the adoption of the Universal Declaration of Human Rights, have incorporated several of the principles underlying the Declaration in their Constitutions. India is one such country. Some democratic countries which do not have a written constitution, such as England, and others which have a written constitution but not one which incorporates guarantees of fundamental rights, such as Ceylon, have had the benefit of a liberal executive and effective Judiciary to ensure that most of the basic human rights and fundamental freedoms are protected.

The provisions of Article 13, para. 2 of the Universal Declaration of Human Rights relating to freedom of movement outside one's country, have been incorporated in the written constitutions of quite a few countries. Noteworthy examples are the following:

Japanese Constitution of 1946, Article 22, paragraph 2:

"Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate."

Indonesian Constitution of 1950, Article 9, paragraph 2:

"Everyone has the right to leave the country and—being citizen or resident—to return thereto."

Italian Constitution of 1948, Article 16, paragraph 2:

"Every citizen has the right to leave the territory of the Republic and to re-enter it, provided the obligations of law are respected."

⁴ Articles 16 (1) b and 15 (1) b respectively.

⁵ Articles 16 (2) b and 15 (2) b respectively.

Argentine Constitution of 1949, Article 26:

“All inhabitants of the Nation enjoy the following rights, in accordance with the laws which regulate the exercise thereof. . . . of entering, staying in, travelling over and leaving the Argentine territory.”

In the Indian Constitution of 1950 there is no specific provision in the Chapter dealing with the fundamental rights of Indian citizens guaranteeing the right of exit or the right to travel outside the country. During the days of British rule, the issue of passports or other travel documents was the prerogative of the Crown. The early attempts made by a few citizens at the time when the Constitution of Independent India was being discussed to have the freedom of movement outside the country declared as one of the fundamental rights guaranteed did not meet with success.

PASSPORTS

The “passport” as a requirement for exit from one’s country and travel abroad is a modern innovation. Inasmuch as the holding of a valid passport is today a *sine qua non* for travel almost everywhere, it is important to examine what is a passport, what is its real function and why a state considers that it is necessary for its citizens to hold one in order to travel abroad.

The passport is in a sense a travel document. It is an official certificate of identity and nationality granted by the home country in a form recognised and accepted by the foreign country of sojourn as evidence of the “returnability” of the holder, that is of the obligation in international law of the issuing country to take him back, and therefore of his acceptability as entrant in the foreign country. It has no legal bearing on either the power or the obligation to give diplomatic protection.⁶

The passport is also an “exit permit” in countries which require their citizens to be in possession of passport as a condition of departure. Some other countries require a special exit permit to be endorsed in the passport in respect of each journey. Different considerations apply to return to one’s country, for a country

⁶ See Weis, ‘Nationality and Statelessness in International Law’; Diplock, ‘Passports and Protection in International Law’; in Grotius Society Transactions, 1946, Volume 32, page 42.

has no right to refuse entry to its citizens. Thus, while a passport provides simple and immediately acceptable proof of nationality, and hence of the right to enter the country, it is not a legal requirement of entry for nationals of the country, who may prove their nationality in other ways.

A passport today may therefore be necessary in the first place in order to leave one's country. Even if it is not—as is the case for some countries—it is nonetheless essential for travel abroad, for all countries normally require a foreigner to produce a passport or other acceptable travel document before they will allow him to enter their territory, and in some countries before they will allow him to leave. It is of little value for a man to be able to leave his country without a passport if no other country will permit him to enter, so that all persons, whatever the attitude of their own country, in practice require a passport in order to leave their country.

There are certain other kinds of travel documents issued and accepted in special cases. These apply mainly to refugees and stateless persons, to whom travel documents are issued by host countries under international agreements. These include Nansen certificates, issued during the life of the League of Nations, and documents issued under the Convention relating to the Status of Refugees of 1951 and under the Convention relating to the Status of Stateless Persons of 1954.

Most, if not all, states claim an absolute right to grant or refuse a passport in the discretion of the appropriate government department. The result is that a citizen's freedom of movement abroad is made subject to the exercise of governmental discretion in his favour. While it must be accepted that there may be valid grounds on which a State may refuse to let a citizen leave the country—these are discussed below—it would seem to be clearly contrary to the letter and spirit of the Universal Declaration of Human Rights to leave the decision whether to grant or refuse a passport entirely to the executive. The Rule of Law would seem to require rather that the fundamental principle should be established that every citizen has a right to a passport; the circumstances in which a passport can be refused should then be defined by statute and their application in a particular case should be subject to challenge in the Courts, which should have power to decide whether the particular refusal was justified or not.

In certain countries—particularly where freedom of movement is guaranteed by the Constitution and thus provides a basis for judicial intervention—there is already a movement in this direction. Recent decisions of the Indian Courts on the subject are examined later in this Working Paper.

At the present time, however, it is still normal practice for governments to retain their discretion in the field of passports. In addition to refusing to grant a passport at all, they may limit and control the movements of a person whom they do permit to leave the country by endorsing the passport for certain countries only. Such restrictions on the countries which may be visited may be imposed on individuals whose activities the government wishes to control, or may be imposed generally on all citizens travelling abroad in order to prevent them from visiting specific countries.

Even though a passport has been issued, this is not a guarantee that the recipient will be able to travel freely on it for the period of its validity. It may be cancelled and impounded at any time; its renewal may be refused. Other more subtle forms of control may be exercised: a passport may be issued valid only for one specific journey: the grant of an application for a passport may be delayed so long that the object of the applicant in travelling abroad is frustrated. A person living or making a long stay abroad may be compelled to return home by the refusal to renew his passport abroad.

In addition to the need to work towards the establishment of the *right* to a passport, in the sense suggested above, it is also important to encourage the conclusion of bilateral or multilateral treaties between States under which nationals of the States parties to them may move between the territories of those States without a passport. Such treaties exist, for example, between the six members of the European Economic Community, between the Scandinavian countries and between a number of Latin-American States. In each case, the person's national identity card is all that is needed to travel to any of the States parties to the treaty.

ADDITIONAL FORMS OF CONTROL OVER EXIT

In addition to passport legislation, each country has a number of other provisions restricting freedom of exit, chief among these

being measures to protect emigrants, public health standards, currency regulations, and customs regulations.⁷

There are also some special requirements in certain countries which persons desiring to leave those countries have to satisfy before they are granted permission to leave.

Some countries require that the prospective traveller should satisfy the income-tax authorities that he has paid all taxes due or that he has made suitable arrangements for payment of balance taxes due during his absence and obtained from them a Tax Clearance Certificate before permission to leave is granted.

A requirement peculiar to India is that the prospective traveller should fill in a 'P' form containing questions relating to currency and foreign exchange involved in his trip and have it approved by the Reserve Bank of India before being permitted to leave the country.

The grounds on which the right has been denied have included:

- (1) Lack of qualification, especially absence of citizenship rights.
- (2) National Security, National Interest, National Economy, Public Order, Public Health, Public Morals.

Examples are:

“Errands hostile and injurious to the peace of the country”

Taking part in “insurrectionary assemblages”

Enlisting in foreign armies

Taking part in Communist or other subversive organisations

“Prejudicing the orderly conduct of foreign relations”

Prejudicing the “national interest”

Speaking and agitating abroad against the policies of the Government, or speaking contrary to the national interest, or committing other *lese majeste*

Fleeing from the obligation to pay taxes

Avoiding military service

Avoiding paying civil debts

⁷ Torovsky on ‘Freedom of Movement : Right of Exit’, *Journal of the International Commission of Jurists*, Vol. IV, No. 1 (Summer 1962), page 84.

Fleeing from the course of justice after having committed
a crime or fraud

Prostitution

(3) Protection of the citizen:

Examples are:

Prevention of slave traffic

Prevention of exploitation of labour

(4) Friendly and peaceful relations with foreign countries,
for example, participation in political opposition,
terrorism or insurrection prejudicing the good relations
between the national's State and the State visited.

It is important, as has already been stated in connection with
passports, that the grounds on which a person can be refused
permission to leave his country and denied a passport should not
be left to the discretion of the Government but should be laid
down by law. Article 12 of the Covenant on Civil and Political
Rights recognizes that the right to freedom of movement,
including the right to leave one's country,

shall not be subject to any restrictions except those which are
provided for by law, are necessary to protect national
security, public order (*ordre public*), public health or morals
or the rights and freedoms of others, and are consistent with
the other rights recognized in the present Covenant.

Limitations imposed in accordance with this provision should
be sufficient to protect the interests and welfare of the country
concerned, while at the same time leaving free to travel those
whom there are no compelling reasons to prevent from leaving
the country.

ENTRY INTO FOREIGN COUNTRIES

The Universal Declaration of Human Rights and the Inter-
national Covenant on Civil and Political Rights do not recognise
freedom of movement as extending to the right to enter a foreign
country. They go no further than providing that all persons
lawfully resident in a country—including foreigners—shall have
the right to move about within that country and to leave it.

The extent and the method of control over the entry of
foreigners into a country vary according to the purpose for which

the foreigner wishes to enter. In nearly all cases, however, states invariably reserve to themselves the right to refuse to admit a foreigner without giving reasons. The reasons for the retention of this right—which is an aspect of national sovereignty—are many and complex. Social and economic factors—overcrowding and the threat of unemployment—are involved as well as considerations of national security and defence.

While there is thus little likelihood of freedom of movement being extended to include the right to enter foreign countries, a good deal has been and can still be done to simplify the formalities involved and to define and limit the grounds on which entry may be refused.

In the first place, certain countries have by treaty extended full freedom of movement, including freedom of entry, to nationals of the other states parties to the treaty. This is the case, for example, in the European Economic Community, in Scandinavia where the countries have joined in the Nordic Council, and between a number of countries of Latin-America. The network of such treaties could be extended.

Secondly, the practice of requiring visas for persons entering a country could be, *if not abolished, at least modified*, so that visas be required only in cases where there is seen to be a real need for the country concerned to exercise the additional control involved in the grant of a visa. Indeed, it can be argued that this control can be exercised by methods other than the grant of a visa, and that the visa system could be completely abolished without damaging any essential interests.

The purposes for which a foreigner wishes to enter a country can be divided into five broad categories: permanent settlement; work; study; tourism; a visit connected with business or professional activities. In the last two cases, the visit is of short duration and it is difficult to see what purpose the visa serves that is not adequately served by the passport. In the case of persons wishing to settle permanently, it would be sufficient to require the granting of a residence permit either before arrival or within a specified period of arrival. Similarly, in the case of persons wishing to enter to take up employment the granting of a work permit—either in respect of a specific job or enabling the person concerned to seek work—would seem to permit the exer-

cise of the necessary control. In the case of students, all that they have a place at a school or college, or that they have sufficient means of support to enable them to pursue private studies or research.

The number of bi-lateral and multi-lateral treaties under which visas are no longer required by nationals of the States parties has grown encouragingly in recent years. Even more encouraging is the practice adopted by some states of unilaterally abolishing visa requirements for visitors, to which considerable impetus was given during International Tourist Year, 1967. It is to be hoped that the practice of concluding such treaties will continue until the visa has become a thing of the past.

It has to be recognised that in the present world context States must retain the right to refuse permission to foreigners to settle permanently or obtain employment in their country, since control over these matters may be essential in order to preserve political, economic and social stability. On the other hand, there seems to be no reason why States should not recognise the *right* of foreigners to visit their country for purposes of study, tourism or of their business or profession. The recognition of such a right, with a list of clearly defined exceptions (such as lack of funds, reasonable grounds for suspecting an intention to commit a criminal offence) would be an important step forward in opening up the world to freedom of movement for all.

COURTS AND THE RIGHT

Recently, both the Supreme Court and some of the High Courts of India, notably those of Maharashtra and Mysore, have in some important judgments recognised the right of exit as a fundamental right of the individual. In doing so, the Courts based their judgments on the view that the refusal to issue passports to citizens who applied for them was a violation of Article 21 of the Indian Constitution which states:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

In the case of *Sadashiva Rao v. the Union of India*,⁸ Mr. Justice K. S. Hegde of the Mysore High Court (now a Judge of the Supreme Court of India) held,

⁸ per Hegde and Honniah JJ.—Mysore Law Journal, Volume 44, 1965 (2) at page 605.

For the reasons mentioned above, we are of the opinion that the Government, by refusing to issue the passports asked for by the petitioners, have deprived the petitioners of their 'personal liberty', and thereby they have infringed Art. 21 of the Constitution.

In coming to the conclusion that personal liberty included freedom to travel outside the country, considerable reliance was placed on the judicial views expressed in other democratic countries, notably those of the Supreme Court of the United States of America. In the *Rockwell Kent Case*⁹ Mr. Justice Douglas observed as follows:

The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. So much is conceded by the Solicitor General. In Anglo-Saxon law that right was emerging at least as early as the Magna Carta. Chafee, 'Three Human Rights in the Constitution of 1787 (1956), 171-181, 187, etc. seq., shows how deeply engrained in our history this freedom of movement is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of value.

In the case of *Satwant Singh Sawhney v. Assistant Passport Officer*¹⁰ the Supreme Court of India, having considered conflicting decisions of the Indian High Courts on the question of the right of exit, held by a majority judgment that the right to travel was part of the personal liberty of an individual within the meaning of Article 21 of the Indian Constitution and a right of which he could not be deprived except according to procedure established by law. The majority judgment, delivered on April 10, 1967 by Mr. Justice Subba Rao, the then Chief Justice, also held that

⁹ *Kent v. Dulles*, Supreme Court, 12 L. Ed., 2d, page 992.

¹⁰ Writ Petition No. 230 of 1966; also Weeramantry, *Digest of Judicial Decisions on Aspects of the Rule of Law*, Journal of the International Commission of Jurists, Vol. VIII, No. 2, page 134.

the discretion claimed by the Indian Government to issue, deny, withdraw or cancel a passport was a violation of the doctrine of equality before the law enshrined in Article 14 of the Constitution.

The judgment also observed that, as a result of international conventions and usage among nations, it was not possible for a person residing in India to visit foreign countries, with a few exceptions, without the possession of a passport. A passport was required for protection; it was a document of identity and was *prima facie* evidence of nationality: in modern times it not only controlled exit from the State to which one belonged but also entry into other States. It had in effect become a condition of free travel. The want of a passport prevented a person from leaving India, and the Government, by withholding such passport, deprived him of his right to travel abroad. This right was a right which every person living in India, whether a citizen or not, enjoyed. No person should be deprived of this right to travel, except according to the procedure established by law. There existed no law made by the State regulating or depriving persons of the right to travel.

In dealing with the doctrine of equality before the law enshrined in Article 14 of the Constitution, the Court expressed the view that this doctrine was a necessary corollary to the high concept of the Rule of Law accepted in the Indian Constitution and continued:

Secondly, such a law would be void, if it discriminates or enables an authority to discriminate between persons without just classification. What a legislature could not do, the executive could not obviously do. But in the present case the executive claims a right to issue a passport at its discretion; that is to say, it can at its discretion prevent a person from leaving India on foreign travel. Whether the right to travel is part of personal liberty or not within the meaning of Art. 21 of the Constitution, such an arbitrary prevention of a person from travelling abroad will certainly affect him prejudicially. A person may like to go abroad for many reasons. He may like to see the world, to study abroad, to undergo medical treatment that is not available in our country, to collaborate in scientific research, to develop his mental horizon in different fields and such others. An executive

arbitrariness can prevent one from doing so and permit another to travel merely for pleasure. While in the case of enacted law one knows where one stands, in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such a discretion patently violates the doctrine of equality, for the difference in the treatment of persons rests solely on the arbitrary selection of the executive. The argument that the said discretionary power of the State is a political or a diplomatic one does not make it any the less an executive power. We therefore hold that the order refusing to issue the passport to the peitioner offends Article 14 of the Constitution.¹¹

SECURITY OF MOVEMENT AND RESIDENCE ABROAD AND THE RIGHT OF ASYLUM

Besides the right of exit from and return to one's own country, the other important aspects of freedom of movement are the right to security of movement and residence when abroad and the right of asylum.

Right to Security of Movement and Residence:

In the case of persons who have left their country only temporarily for such purposes as travel, acquiring knowledge or furthering their commercial interests, it is vital that their stay abroad should be secure in the sense that there should be no restrictions placed on their right of movement during such time either by their own State or by the State in which they happen to reside. This right to security of movement and residence will be dealt with in greater detail in the section of this Working Paper dealing with Abductions, which applies both to persons residing abroad with the consent of their country on valid passports and, more particularly, to those who have been granted political asylum.

¹¹ See also *Aseerwatham v. Permanent Secretary, Ministry of Defence and External Affairs and Others*, Digest of Judicial Decisions on the Rule of Law, ICJ Journal, Vol. VI, No. 2 (Winter 1965), pages 319-320, and *Gooneratne v. Permanent Secretary, Ministry of Defence and External Affairs and Another*, same Vol. of above Digest, page 320.

The Right of Asylum

The right of asylum, enshrined in Article 14 of the Universal Declaration of Human Rights, confers an important right on the refugee from persecution. The Article provides that:

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

One can well imagine the serious implications of being compelled to take an irrevocable decision to leave one's country because of persecution in whatever form and because one fears for one's life and freedom. In such a situation to find, after a long, exhausting and sometimes dangerous journey to the frontiers of the country in which it is hoped to find asylum, that entry is refused is perhaps "the unkindest cut of all".

The refugee problem is an age-old one. Today the word "refugee" has been defined to mean a person who is outside his former home country because of fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion and who cannot or will not avail himself of the protection afforded him, if any, by his country of origin. Dealing with the old and the modern approach to the refugee problem, Prince Sadruddin Aga Khan, the United Nations High Commissioner for Refugees, says¹² :

History relates how particular groups fled in times of disturbances because their lives or their property were in danger, or they were not allowed to live according to their creed. They found asylum in other countries, very often receiving help from people who thought like them or belonged to the same religion. Such active generosity was sometimes viewed with considerable suspicion by the State from which the refugees had fled and denounced as an unfriendly act. Even in more recent times, help to refugees was the subject of much controversy. There has, however, been a definite change of heart in this respect. More and more, the refugee problem has come to be regarded as a matter of concern to the international community as a whole, calling

¹² Prince Sadruddin Aga Khan—*Asylum—Article 14 of the Universal Declaration of Human Rights*, Journal of the International Commission of Jurists, Vol. VIII, No. 2, Special Issue for International Year for Human Rights, Part I, pages 27-28.

for action of a purely humanitarian and non-political nature, which needs the support and co-operation of all States irrespective of their attitude towards the political or other causes that are at the root of the problem.

There is unhappily a growing tendency among States to refuse to accept the fact that political opponents have received asylum abroad, and to attempt to secure their return, if necessary by unlawful and forcible means. Examples of this practice are given in the next section. It is important to emphasise at this stage, however, that it is essential that the fact that asylum has been granted should be recognised not only by the State granting it and third-party States, but also by the State of which the refugee is or was a national. He must be able to live in his State of Asylum, and to travel to other States, free from the danger of being returned against his will to the State from which he has sought asylum.

Unlawful Interference with Freedom of Movement Abroad:

Without the security that enables one to profit from it, freedom to travel abroad is nothing more than a declaration of good intention. The abduction or kidnapping of persons sojourning or travelling abroad constitutes a grave violation of the right to security of movement and residence outside one's country. The only procedure by which such persons can be lawfully removed or repatriated to their country of origin is provided by the Law of Extradition as recognised by the Rules of International Law.

It will be useful to refer to the following observations on abduction outside national territory in violation of the Law of Extradition and the Right of Asylum:

As intercourse between nations became more frequent, the principle of international solidarity gave birth to the law of extradition, which is the corollary of the right to asylum in a foreign country. Thus, a person who has fled to another country can be brought back to the jurisdiction of the country from which he has fled in various ways: first, legally by virtue of regular extradition proceedings; or illegally by irregular extradition proceedings, or, even more serious, by an abduction which may be effected by agents of the state which wants to try the person abducted, but also by

agents of the state giving asylum, perhaps even by private individuals, or with their collaboration.¹³

In recent years, such abductions have occurred with increasing frequency. They have involved both persons who have been granted asylum and persons who have left their country legally and are living or travelling abroad on valid passports. They have taken place both on the territory of foreign states and in the course of journeys. Somewhat different legal considerations arise according to whether the abduction took place on foreign territory or in a place having an international character.

(a) Abductions from Foreign Territory¹⁴

A recent case of abductions from the territory of a foreign state occurred in June 1967 when a number of South Korean nationals lawfully residing in the Federal Republic of Germany and France were forcibly removed to South Korea by agents of the South Korean Government. It is clear that in international law such action amounts to a violation of the territorial sovereignty of the State from which the abduction was effected. This fact was recognised by the South Korean Government, which formally apologised to the Governments of Federal Republic of Germany and of France and gave an undertaking that nationals who had been forced to return to South Korea against their will would be allowed to leave the country. In spite of this assurance a number of those concerned were tried on charges of spying for North Korea and sentenced either to death or to terms of imprisonment.

It should be borne in mind that an abduction carried out on foreign territory constitutes a violation of two fundamental principles of international law; first, the abduction undermines the territorial sovereignty of the State on whose territory it is carried out and, second, it is contrary to one of the fundamental rights of the individual who has received asylum in the State whose sovereignty has been infringed, namely, the right to 'liberty and security of person' (Article 3 of the *Universal Declaration of Human Rights*).

¹³ Daniel Marchand, "Abductions effected outside national territory", *Journal of the International Commission of Jurists* (Winter 1966), Vol. VII, No. 2.

¹⁴ See ICJ Bulletin No. 32, December 1967.

As far as the first principle is concerned, the great jurist Vattel wrote, as early as 1773, in his work: *The Law of Nations or the Principles of Natural Law Governing the Behaviour and Practice of States*:

Not only is it unlawful to usurp another's territory, there is also an obligation to respect it and to forbear from any act infringing its sovereignty, for no Nation may assume any rights thereover. To enter another's territory under force of arms in order to pursue and abduct a wrong-doer is to commit a tort against that State.

A striking fact in connection with the second principle, which is illustrated by the case of the Koreans referred to above, is that the individuals involved, whose freedom of movement had been interfered with in a dramatic manner, had no right of redress. The great weakness of the traditional concept of international law, which recognises only states as subjects, is that it provides no means by which the individual whose rights have been infringed can obtain a remedy. The individual who is lawfully residing on the territory of a state of which he is not a national, whether he has left his own country in the ordinary way on a valid passport or whether he has been granted asylum, should, when his freedom of movement has been violated by his forcible return to his state of origin, be able to obtain reparation for the prejudice sustained: he should be restored to his previous condition of liberty, and he should be able to institute proceedings to this end himself and not be dependent upon action being taken by the State whose sovereignty was violated by his abduction.

(b) Abductions from Ships and Aeroplanes

There have recently been a whole series of abductions from aeroplanes in transit from one country to another. The most recent cases include the following:

On October 29, 1966, the members of the Guinean delegation to the Summit Conference of the Organisation of African Unity, headed by the Minister of Foreign Affairs, were arrested in Accra when the aeroplane in which they were travelling made a scheduled landing there. After considerable pressure had been brought to bear, the delegation was released on November 5, and able to attend the Meeting of OAU, which had been delayed.

On October 31, 1966, an abduction took place during an emergency landing made necessary by a technical fault in the aeroplane (though the fact that there really was such a fault has been contested). This abduction was carried out in Prague from an aeroplane of the Soviet airline Aeroflot. The victim was Mr. V. J. Kazan, an American citizen of Czech origin, who had in 1963 been accused in Prague of high treason, espionage and attempted assassination. He was sentenced to eight years' imprisonment on February 1, 1967 by the Prague Municipal Court, but was immediately released and allowed to leave the country.

On June 27, 1967, the Guinean delegation to the United Nations General Assembly, which was on its way home from New York, was arrested in Abidjan where the aeroplane had been forced to land as a result of bad weather. The delegation included the Minister of Foreign Affairs and the Permanent Representative of Guinea to the United Nations. After numerous protests, a number of citizens of the Ivory Coast who had been in detention in Conakry were released and the Ivory Coast Government released all the Guinean nationals detained in the Ivory Coast, including the two Ministers.

On July 1, 1967, Mr. Moise Tschombe, the former Prime Minister of the Congo, who had been condemned to death in his absence and was living in Spain, was flying in a private aircraft between two of the Balearic Islands when the pilot was compelled by threats of violence to change direction and land in Algeria. As soon as it became known that Mr. Tschombe was in Algeria, the Government of the Democratic Republic of the Congo requested his extradition, and an order to this effect was made by the Supreme Court of Algeria. It has not so far been carried out and Mr. Tschombe is still in detention in Algeria.

These repeated abductions raise the following question: Does a State have the right to seize a person on board an aircraft or a ship making a regular or emergency landing on its territory?

In relation to acts committed on board a ship or an aircraft, the first principle to be considered in deciding which State has jurisdiction over such acts is the law of the flag.

The relevant rules of international law are the same for ships and aircraft. For aircraft the relevant provisions are as follows: "Aircraft have the nationality of the State in which they are registered".¹⁵ The State in which an aircraft is registered has jurisdiction over offences and acts committed on board."¹⁶

Thus ships and aircraft are assimilated to the State whose flag they bear. Consequently, everyone on board the ship or aircraft, including foreigners, is subject to the law of the flag. An example of the consequences is to be found in the period of prohibition in the United States: from the moment any person boarded an American ship, even in a foreign port, he was subject to the prohibition laws and could not have any alcohol in his possession while on board.

However, when a ship or an aircraft is in a foreign port or airport, the law of the flag comes into competition with the law of the foreign State. As a general rule, the laws of the foreign State relating to police, security, health and customs apply. For example, when slave-dealing was still lawful in the United States, foreign ships transporting slaves which put into the port of an anti-slave State found that the law prohibiting slavery was applied and the slaves on board were freed.

However, there are certain exceptions to the principle that the law of the country concerned prevails over the law of the flag.

(i) *Forced Landings*

Forced landings occur when a ship is compelled to put into a foreign port as a result of an act of God: the state of the sea, damage to the ship, mutiny or acts of violence on board, etc. In such a case, the ship and its passengers do not fall within the jurisdiction of the law of the foreign port. For example, during the French revolution a number of royalist exiles landed on the French coast as a result of a shipwreck. They were arrested but released and allowed to leave the country on the ground that it was contrary to the principles of the law of civilised nations to take advantage of a shipwreck to bring its victims to justice.

¹⁵ Article 17, Convention of Chicago relating to International Civil Aviation of December 7, 1944.

¹⁶ Article 3, para. 1 of the Convention of Tokyo relating to offences and certain other acts committed on board aircraft of September 14, 1963.

Similar principles apply to forced landings by aircraft as a result of atmospheric conditions, technical faults or acts of violence on board, etc. Thus, the Convention of Tokyo of September 14, 1963, provides that, when an aircraft has been forced to make an unscheduled landing as a result of acts or threats of violence of a passenger,

“Every State party on whose territory the aircraft lands shall allow the passengers and crew to continue their journey as soon as possible. It shall restore the aircraft and its cargo to those who have a right thereto.”

Thus, it is clear that in the case of a forced landing the State on whose territory the landing has occurred cannot arrest any of the persons on board the ship or aircraft involved.

(ii) *Regular Landings*

In the case of regular landings the law of the foreign State normally applies, as has already been stated. There is, however, one important restriction to this principle: the foreign State can only exercise its jurisdiction to the extent that it is directly interested in or affected by events occurring on board, or when it appears to be in a better position than any other State to administer justice in the case in question. Thus, when events occurring on board involve exclusively persons travelling on the ship or aircraft, they remain within the jurisdiction of the State whose flag it flies.

This is expressly provided for, as far as aircraft are concerned, by the Tokyo Convention of September 1963.

There is one further rule which is generally respected under international law in those cases in which the State on whose territory the landing has been made claims jurisdiction.

When making an arrest the authorities usually request the presence of the consul of the country whose national is involved. This rule is incorporated in many consular conventions and provides valuable protection for the individuals concerned.

The most important limitation on the competence of the foreign State is found in the prohibition of action contrary to the rules of international law. This rule finds expression in two important decisions of the International Court of Justice: the *Fisheries Case* of December 18, 1951 and the *Nottebohm Case*

of April 6, 1955, in which the Court held that an act of naturalisation which has the result of extending the jurisdiction of the naturalising State to the person naturalised—and the position resulting from an arrest is comparable—can only be invoked against a third State if the act, which is unilateral, conforms to the relevant principles of international law.

(c) **Methods of Redress**

The rules of international law relative to cases of abduction have been worked out essentially with reference to abductions effected on foreign territory. Abductions from a ship or an aeroplane flying the flag of a foreign country are a recent phenomenon and no precise rules have yet been evolved to cover them.

This Conference provides a useful opportunity for the adoption of conclusions covering this important topic, which could form the basis of an international convention. Such a convention should not only lay down clearly the rules of international law relating to abductions, but make provision for an effective remedy for the individual who is the victim of such an abduction.

It must be strongly stated that the individual who has been irregularly returned to his country, whether from a foreign country or in the course of a journey, should be himself able to institute proceedings for the purpose of having his rights and liberty restored to him, even in cases in which the State whose sovereignty has been violated does not protest. It is obvious that the only minimum reparation in the matter is the release of the individual, which involves giving him the opportunity to return to the State in which he was resident, or towards which he was travelling at the time of his abduction. In appropriate cases, reparation should include compensation for damage or injury sustained. Such reparation could be granted either through the national tribunals of the State which has effected the abduction or through appropriate international tribunals.

It can be argued forcibly that it is the duty of national jurisdictions to extend their protection to the individual who is brought before them in violation of the rules of international law. Thus, if a state which has unlawfully abducted a citizen from a foreign country brings him to trial before the national courts, those courts should refuse to try him on the ground that he has not been properly brought before them.

In cases where the individual's rights are not protected at the national level, he should be able to have recourse to an international tribunal such as the European Commission and Court of Human Rights. Such an international jurisdiction, not being subject to the pressures and influences which could be exerted on domestic courts, should, with due impartiality, be able to protect the freedom of the individual.

SOME SUGGESTED CONCLUSIONS

Scope and Content of the Right

1) Freedom of movement outside one's country may involve three elements:

- a) departure from one's country;
- b) entry into, travel within and exit from a foreign country; and
- c) return to one's country.

Somewhat different considerations apply to each of these elements. Nevertheless, if freedom of movement is to be enjoyed to the full, they should each receive the widest possible protection that is compatible with all legitimate interests involved.

2) It should be recognised by each State that its citizens have a right to leave their country, whether temporarily or permanently, and to visit without restriction by their State the foreign countries of their choice. This right should be protected by legislation, and the grounds on which it can be refused should be clearly defined. Such grounds should be limited to those which are necessary to protect national security, public order, public health or morals or the rights and freedoms of others. They may include grounds based on exchange control regulations where these are necessary to protect the economy of the country; failure to pay outstanding taxes; an outstanding criminal investigation or trial; an attempt to avoid military service.

A refusal of permission to leave one's country or to travel to a specific foreign country should be subject to an appeal to a Court of Law.

3) The right of the individual to return to the country of which he is a citizen should be recognized without limitation. At the most, a State should have power to detain a citizen returning to his country for such period as is necessary, (a) to establish

his nationality if it is in doubt; or (b) for the protection of public health.

4) With some exceptions established by treaties, States do not permit foreigners to enter their country as of right. While it must be recognised that States must continue to control the entry of foreigners for the purpose of long-term or permanent residence or of employment, there seems to be no reason why foreigners should not be accorded a right to visit a State for a limited period as tourists, for business or professional purposes or for study. Such a right, if granted subject to clearly defined grounds on which it could be refused in specific cases, would not appear to infringe any vital interest of the State granting it.

5) The adoption of treaties under which citizens of the States parties thereto are accorded full freedom of movement within the territories of the contracting States should be encouraged.

6) The right of a person to leave a foreign country should be guaranteed subject to two limitations only. He may be refused permission to leave (a) for such period as is necessary for reasons of public health; (b) if there are reasonable grounds for suspecting that he has committed a criminal offence in the foreign country concerned, until he has been tried and acquitted or found guilty and served any sentence of imprisonment or paid any fine imposed on him.

Passports and Visas

7) Since a passport is generally necessary for travel abroad, the right of the individual to a passport valid for travel abroad generally should be recognised. The grounds on which a passport may be refused or issued subject to limitations should be clearly defined by law in terms of Conclusion 2 above.

8) Refugees and stateless persons should have a right to a travel document acceptable to States in lieu of a passport. Insofar as current international instruments do not make comprehensive provision for the granting of universally acceptable travel documents to such persons, they should be completed by further international agreements, the full and effective application of which should be subject to the supervision of the United Nations.

9) The conclusion of treaties under which citizens of the States parties thereto may travel freely between the territories of those States without a passport should be encouraged.

10) States should be encouraged to examine their visa requirements with a view to their eventual abolition as in most, if not all, cases it does not appear that the visa serves any essential purpose. While the abolition of visa requirements has usually been achieved by treaties between the States concerned, the unilateral abolition of visa requirements undertaken by some States is a simpler procedure and is to be recommended.

Security of Movement and Residence Abroad

11) It is vital that the freedom of movement of those travelling outside their country should be secure and should not be unlawfully interfered with either by their own State or by the State in which they are present.

12) This principle applies both to those who are abroad with the consent of their country and to those who have received political asylum. In the case of the latter, the fact that asylum has been granted should be recognised and accepted by the State of which the refugee is or was a national. He must be able to live and travel free from the danger of being returned against his will to the State from which he has sought asylum.

13) The abduction of persons from the territory of a foreign State is a violation of territorial sovereignty and contrary to the rules of international law. Abductions of persons from foreign ships or aircraft by the authorities of a State at whose port or airport a landing has been made of persons not intending to terminate their journey at that stage should, insofar as is not already the case, also be condemned and internationally outlawed.

14) The individual whose freedom of movement has been infringed by his unlawful abduction from foreign territory or from a ship or aircraft should enjoy the right to have recourse to the Courts of the State which abducted him to secure his release and return to the State from which he was abducted, and to obtain compensation for any loss or damage sustained as a result of his unlawful abduction. Where he does not have such recourse, he should be able to have recourse to an international tribunal for the protection of his rights.

15) The principles embodied in this section of the Conclusions could conveniently be incorporated in an international convention.

WORKING PAPER
on
**PROPOSAL FOR THE SETTING UP OF A COUNCIL
OF ASIA AND THE PACIFIC**

By
PURSHOTTAM TRIKAMDAS*

At the Ceylon Colloquium, which was convened by the Ceylon Section of the International Commission of Jurists in January 1966, a Resolution in the form of a proposal was accepted. The Resolution reads:

- “1. On the Asian Continent and in the Pacific Region there are many countries which have achieved their independence in recent years. These and other countries in the area have numerous problems of common interest and urgency relating to fundamental freedoms and social, economic and cultural matters.
2. This Conference considers that the sharing of experience by these countries would be of great value to them all.
3. This Conference therefore considers that machinery for debate, consultation and co-ordinated action at Parliamentary and Governmental levels is necessary for implementing the common aspirations and needs of these countries, resolving their problems, and promoting peace based upon social justice and international co-operation.
4. This Conference therefore favours the establishment of an organization representing Parliaments and Governments for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social development based on the Rule of Law and social justice.

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5. Participation in this organisation shall not affect the collaboration of its Members in the work of the United Nations and of other international organisations or unions to which they are parties.

6. Matters relating to National Defence shall not fall within the scope of the Council of Asia and the Pacific.

7. In this connection it would be relevant to have regard to the manner in which similar problems in Europe have been dealt with by the Statute and the working of the Council of Europe."

While it must be recognised that in the conditions prevailing in Asia and the Pacific region it may not be possible to accept the Council of Europe as a blue-print, it can, generally speaking, be considered as a model because its work has very great relevance to any proposal to set up a Council of Asia and the Pacific.

It is true that there are numerous international and regional organisations in which many of the Asian and Pacific countries participate. These, however, meet once in a while and by and large disperse after discussions on certain specific subjects. Further, such Conferences have the dead weight of officials confined to their respective briefs. Such conferences, from their very nature and composition, are not capable of breaking fresh ground, nor from such barren soil does one expect the sprouting of any original ideas. A Council of Asia and the Pacific would be entirely different from these, because it would be an organ of permanent discussion and co-operation, representative of Parliaments and Governments, which can achieve a great deal more than occasional meetings on specific questions. Once the question of national defence is eliminated from its purview, non-aligned countries would not find it difficult to join and participate in the work of such an organization along with the aligned. An organisation of that nature should be able within a short space of time to have to its credit many achievements in the field of mutual co-operation. The Asian and Pacific Council, unlike the Council of Europe, would not have the aim of ultimate political unity, but this would not in any way detract from its value and it may be stated that a proposal to create such an organisation would be worthy of consideration by all countries that accept a democratic way of life.

There are many regional organisations in the world which have schemes of co-operation on paper but where the representation is confined to Governments. Further, they are more concerned with political and military questions than with questions of economic and social co-operation. The Arab League and the Organisation of African Unity are two such organisations. If these organizations have not made the headway they should have made in economic and social co-operation, the reasons would be found in their heterogeneous character and the absence of any representation of the people which can only be possible when representative government exists.

Against this background, let us now consider in detail the proposal put forward at the Ceylon Colloquium. Paragraph 1 states that in the newly independent countries numerous problems of common interest and urgency relating to fundamental freedoms and social, economic and cultural matters exist. This paragraph and second paragraph have got to be considered together.

There are the most important problems of political freedom, economic development, education, health, housing and similar other social problems. There are also the problems of co-operation in the intellectual and social fields. Then again there is the question of exchange of information in these which would be of common interest to all.

The economic problems would include agricultural and industrial development of these areas and would embrace the bigger questions like currency reform and common market. It is well known that many of these countries have debased currencies, often due to the mis-management or the grandiose programmes of development undertaken without the resources needed for such programmes. Constant exchange of information on these subjects as well as of skills would undoubtedly be to the benefit of all.

It is almost axiomatic that a country which loses political freedom would be subject to the vagaries of the coterie in command.

On December 10, 1948, the UN Assembly passed the Universal Declaration of Human Rights. It may be noted that this

Declaration, without anything more would not be binding on the member nations and, although the UN has been working on the task of putting its provisions into the form of conventions, the completion of such a task will take a long time, in view of the heterogeneous character of the UN itself. As matters stand, the Universal Declaration is but hope, an aspiration and a norm to which all civilised countries should adhere. An organisation, as envisaged by the Colombo Resolution, could undertake to implement the basic human freedoms by a convention agreed to by its constituent members.

In Europe, the Council of Europe, which has a magnificent record, undertook soon after its organisation the task of formulating a convention of Human Rights and this convention became effective in 1950. This was a great step forward even in Europe where most of the constituent countries had a democratic basis. This convention gave to an individual citizen of any of the member countries the right to complain to the Commission of Human Rights of infringement of his basic human rights. Every year hundreds of such complaints are entertained by this Commission and, if necessary, the question goes to the European Court of Human Rights, organised by the Council of Europe and the decisions of this Court would be binding on the member countries. It may be noted here that, to some extent, each of the member countries has agreed, by this convention, to surrender part of its sovereignty by accepting the decisions of a supra-national organisation. In a world, which is compelled to become more interdependent in the face of modern development and technical advancement, it is not unnatural that in order to achieve a common goal the ideas of national sovereignty will have to be substantially modified by common consent and for a common endeavour.

Apart from the Convention of Human Rights, the Council has to its credit co-operation in many social, economic and cultural fields. The Council has also been responsible for taking the initiative in the numerous organisations of co-operation which exist in Europe today, notably the Coal and Steel organisations and the European Common Market.

The question then arises as to what form such an organisation should take in order to be effective. Paragraphs 3 and 4 deal with this subject.

It will be noticed that paragraph 3 of the proposal stresses consultation and co-ordinated action at parliamentary and governmental levels. The proposal also mentions that economic and social development based on Rule of Law and social justice would be also the basis of such an organisation.

In the organisation of the Council of Asia and the Pacific, paragraphs 3 and 4 must be borne in mind. It is also to be hoped that the countries in our part of the world will pay a little more attention to economic and social co-operation than purely political summits. Such co-operation, it is necessary to repeat, can only be meaningful if it is undertaken by countries who, generally speaking, accept democracy and people's participation in such an organisation.

Here again it is possible to take the Council of Europe as a model. As it is constituted, each member country sends representatives elected by its Parliament. These representatives are not delegates for such country and carry no mandate with them. In the meetings of the Council, they do not sit in blocks and they freely put forward their views while considering the topics which they are discussing and their recommendations are forwarded to the Council of Ministers, which consists of the Foreign Ministers of those countries, and the Council of Ministers, when they take any decision, recommend to the various countries that these decisions be implemented.

It is necessary to remember that the organisation, visualised by the Colombo Resolution, can only bear fruitful results if the members have basically a common social and political objective. The Council of Asia and the Pacific would, therefore, not be a conglomeration of all the countries in the region, not a gathering of heterogeneous ideas and ideologies, not a Bandung. The members of such organisation would have to subscribe to the Rule of Law and their representatives will be elected by their Parliaments so that it does not become another purely governmental organisation. The representation by Parliaments ensures that the people in member countries are effectively represented and ultimately it is their recommendations which would be carried into effect.

Paragraphs 5 and 6 may be taken together. Paragraph 5 makes it clear that the member countries would be free to colla-

participate in the work of the United Nations and other organisations or unions to which they are parties.

Paragraph 6 is very important. It states:

“Matters relating to National Defence shall not fall within the scope of the Council of Asia and the Pacific.”

When the Council of Europe was being organised, there were in Europe countries which belonged to NATO and others like Ireland and Sweden which were neutral. It was the wisdom of the organisers to invite the two neutral countries to participate in the work of organising the Council of Europe, which both of them joined because matters of national defence were kept out of the scope of the Council of Europe. It may be noted that later Switzerland—which carries its neutrality to the extent of not joining the UN—and Austria also joined this organisation.

In our region also, there are countries that belong to various defence organisations like CENTO and SEATO and others with *ad-hoc* defence arrangements. A clause of the nature mentioned in paragraph 6 would enable the neutrals and others who are parties to defence organisations to come together in a common endeavour and for a purpose common to all. It may also happen that with an organisation of this nature, the smaller countries in the region would not feel isolated and might be enabled to disencumber themselves after some time from these defence arrangements. Even if such a thing does not come to pass, mutual co-operation in many fields of common interest would be a positive gain. In this region, it is sad to say, the various countries know little about each other although they might know a little more about Europe and the United States.

In recent months, two organisations for mutual co-operation have come into existence in South East Asia and the Pacific of which note must be taken. These are: (1) Asian and Pacific Council (ASPAC) consisting of Japan, South Korea, Taiwan, The Philippines, South Vietnam, Thailand and Malaysia; and (2) The Association of South-East Asian Nations (ASEAN) composed of Thailand, The Philippines, Malaysia, Singapore and Indonesia. This is a revival of the Association of South-East Asia (ASA), which was formed as early as 1960. The membership at that time was Malaya, Thailand and the Philippines. However, this Association remained practically moribund because,

before it could function, the Sokarno's confrontation policy had begun.

It is very heartening to learn that these organisations have come into existence. It will be noticed that some of the countries are members of both and it may be desirable if the two organisations join together into a single organisation, leaving it open to Australia and New Zealand to join at a later stage.

Attention has been drawn to the Council of Europe, which has in the past few years chalked out a magnificent path in international co-operation. It will therefore be useful to consider briefly the Council of Europe and its work.

THE COUNCIL OF EUROPE

It is in this context that an examination of the origin, structure and the work of the Council of Europe becomes relevant.

The Council of Europe has from its inception become an inspirer of many ideas of co-operation. It acts also as a clearing house between the many European international organisations.

The two Wars and the expansion of aggressive and totalitarian communism in Europe gave rise to a feeling that those countries in Europe which accepted democracy should be brought together in an organisation to deal with common problems with the ultimate objective of political unity. However, this could not be achieved in a day with each country jealous of its sovereignty.

After the establishment of the United Nations, many in Europe had the feeling that because of the heterogeneous character of the organisation itself, it was not possible to implement with reasonable speed many of the proposals of the United Nations and that regional organisations may be more suited for this purpose. For example, the Universal Declaration of Human Rights of 1948 was one of those documents, the implementation of which would be the very foundation of a society based on the Rule of Law. Left to the United Nations, a covenant based on the Declaration would possibly take many many years before being generally subscribed to by its member nations.

In view of this, many leaders of non-communist Europe called for the establishment of a Council of Europe.

The idea of such an organisation had, in fact, been broadcast by Winston Churchill as early as 1943.

With this end in view, the signatories of the Brussels Treaty 1948 (Belgium, France, Luxemburg, the Netherlands and the United Kingdom) convened a conference to which Denmark, Ireland, Italy, Norway and Sweden were invited. This conference, in which, it should be noted, two neutral countries like Ireland and Sweden participated, drafted the statute of the proposed Council of Europe and they signed it on May 5, 1949 at London. All the participants became signatories to the statute and the Council of Europe came into existence. The signatories were conscious that such a body, in order to be effective, must be composed of countries which were like-minded and accepted that individual freedom, political freedom and Rule of Law were the principles which form the basis of all genuine democracy, as stated in the Preamble.

Aim of the Council

The aim of the Council, as set out in Article 1, is to achieve greater unity between its members for the purpose of realising the ideals and principles, which are their common heritage, and facilitating their economic and social progress. The same Article made it clear that the said aim was to be achieved by discussion on questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms. The same Article made it clear that the fact of its membership did not affect the collaboration by the members in the work of United Nations and other international organisations, to which they may be parties.

Realising that any organisation, for the achievement of the aims already mentioned, had to keep itself clear of questions of national defence, the statute provided that matters relating to national defence did not fall within the scope of the Council. This made it possible for Ireland and Sweden and later on Austria, Cyprus and Switzerland (all believing in neutrality and non-alignment) to become members of the Council.

Membership

Article 3 specifically provided that every member must accept the principle of the Rule of Law and the enjoyment by all persons within its jurisdiction of Human Rights and Fundamental Freedoms.

Article 4 states that the existing members of the Council would invite any other European state, which is considered able and willing, to fulfil the requirements stated above, to become a member of the Council.

From its original membership of 10, it has now 18 members.

Structure

The structure of the Council consists of the Committee of Ministers and a Consultative Assembly. The Committee of Ministers consists of the Foreign Ministers of the member states. So far as the Consultative Assembly is concerned, the structure is of an extremely revolutionary character. The Assembly consists of representatives of each member state, elected by its Parliament or appointed in such manner as that Parliament shall decide. The representation has been fixed bearing in mind the population of each member state, but not on a proportional basis. The lowest number of seats, to which a member state is entitled is 3 and the highest number of seats is 18. For example, Iceland with its population of 180,000 gets 3 members and the German Federal Republic with 54 million gets 18 members. Although the Consultative Assembly consists of representatives of various member states, almost from its inception, in actual practice the members do not sit in blocks in the Assembly and matters of common interest, therefore, are easier to discuss on their merits. Each member expresses only his personal views and not those of his country's government and everybody expresses freely what he thinks on any question, the member governments having undertaken to respect the representatives' freedom of speech and not to make them accountable for any statements made in the Council. Thus, each member is a representative of his country but not a delegate. The sessions of the Assembly are held publicly and the Assembly expresses itself freely. One of the important characteristics of the Assembly is majority voting without any veto. It is also to be noted that there is no single executive. However, single executives have been created as a result of some

of the Conventions, notable among which is the European Convention of Human Rights. The Assembly meets at least once a year and the average length of the sessions has been about 30 days. The Council of Ministers meets more often.

The Assembly is free to make any recommendations to the Committee of Ministers and the Consultative Assembly. According to the statute, the Committee of Ministers, on the recommendations of the Consultative Assembly or on its own initiative, considers the adoption by governments of a common policy with regard to particular matters. Conventions are drawn up and on ratification come into force.

This process short-circuits the more cumbersome method of *ad-hoc* and sporadic conference for the purpose of arriving at an agreement on questions of common interest. It is because the process is continuous and permanent that in the short time since its inception the Council has been able to achieve so much.

There is a permanent secretariat, which is at the seat of the Council at Strasbourg.

In 1951, by an amendment of the statute, a Joint Committee representing the Assembly and the Council of Ministers was provided for. This Joint Committee is expected to perform, more particularly, the following functions:

- (a) To examine the problems which are common to those organs;
- (b) to draw the attention of those two organs to questions which appear to be of particular interest to the Council of Europe;
- (c) to make proposals for the draft Agenda of the sessions of the Committee of Ministers and of the Consultative Assembly;
- (d) to examine and promote means of giving practical effect to the recommendations adopted by one or other of these two organs.

The Joint Committee is composed of 12 members, five representing the Committee of Ministers and seven representing the Consultative Assembly. The number of members of this Committee may be increased by an agreement between the

Committee of Ministers and the Assembly. The conclusions of the Joint Committee are reached by consensus and not by voting.

Finance

The finance for the work of the Council is raised from members, in proportion to their reputation.

Work of the Council

During the short time of its existence, what may be described as the legislative work of the Council has produced more than 50 Conventions, which are akin to common laws for these various countries. These Conventions are in the field of Human Rights, Social Questions, Public Health, Cultural Questions, Intellectual Property, Legal Questions and Settlement of Disputes and Travel in Europe.

One of the first tasks undertaken was a draft Convention for the Protection of Human Rights and Fundamental Freedoms and by November 1950, the Convention of Human Rights was opened for signature and it came into force on 3rd September 1953.

Since July 1955, the right of an individual to bring a case against a State including his own has been in force in those countries which have subscribed to that provision. On January 21, 1959, the European Court of Human Rights was elected. The Court of Human Rights consists of as many judges as there are members of the Council. These Judges are elected by the Consultative Assembly from among the persons nominated by members of the Council of Europe. Each member is entitled to nominate 3 candidates, of whom two at least should be its nationals.

The European Convention of Human Rights

This Convention has taken from the list of Human Rights, enumerated in the Universal Declaration, certain rights which may briefly be described as fundamental rights of the individual, such as:—

- (1) right to life;
- (2) right not to be subjected to torture or to inhuman or degrading treatment or punishment;
- (3) right not to be held in slavery, or be compelled to perform forced labour;

- (4) liberty and security of person;
- (5) fair and public hearing by an impartial tribunal in any civil or criminal trial;
- (6) provision against retrospective creation of criminal offences;
- (7) protection of private and family life, home and correspondence;
- (8) freedom of thought, conscience and religion;
- (9) freedom of expression;
- (10) freedom of peaceful assembly;
- (11) right of men and women of marriageable age to marry and to found a family;
- (12) right to a remedy in the national courts against any violation irrespective of the fact that the violation has been committed by public officials;
- (13) prohibition of discrimination on the ground of sex, race, colour, language, religion, political or other affiliation, national or social origin, association with national minority, property, birth or other status.

By a Protocol dated March 20, 1952, among other rights, it is provided that no person shall be denied the right to education and parties have undertaken to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

By this Convention was set up the European Commission of Human Rights and the European Court of Human Rights. The Convention provided, among other things, the right of the individual to petition to the Commission for alleged violations of the rights guaranteed by this Convention. This again is a very extraordinary and revolutionary measure because the governments have, to some extent, surrendered their sovereignty in favour of an International Commission and an International Court, whose decisions would be binding on those members who have agreed to accept the jurisdiction of the Court and the right of individual petition.

Today 11 countries have accepted the right of individual petition under Article 25 of the Convention of Human Rights

and 10 countries have accepted the compulsory jurisdiction under Article 46 concerning the interpretation and application of the Convention of Human Rights.

By the end of 1965, more than 2,698 petitions were received. These petitions are looked into by the Commission of Human Rights and thereafter, if the Commission so decides, some of these are referred to the Council of Ministers to try to bring about a settlement. If this fails, the matter is referred to the Court. So far, two cases have been referred to the Court. The importance of this Convention can be judged by the fact that one of the signatories had to amend its Constitution and three others their Criminal Codes to bring them in line with the provisions of the Convention.

The process of guaranteeing social and economic right was later undertaken and it resulted in the European Social Charter, which came into force on February 26, 1965. The rights in the Charter are akin to those mentioned in the Chapter on Directive Principles in the Indian Constitution.

It may be mentioned that, encouraged by the European Convention of Human Rights, the Central American Draft Convention and the Inter-American Draft Convention have been drawn up and are under consideration by the relevant countries.

Travel in Europe

So far as the member countries are concerned, by the elimination of visas and simplification of the process of obtaining travel documents valid throughout the member countries, the freedom of movement has been, to a large extent, secured.

Refugees

The problem of the settlement of refugees in Europe has been successfully tackled.

Education

In the educational field, a Convention on the equivalence of diplomas leading to admission to universities, of periods of university study and of academic recognition of university qualifications has also been signed.

Law

In the legal field, Conventions have also been signed regarding extradition, legal assistance, commerce and arbitration. Work has also been done regarding the unification of the Law of Patents.

Medicine

Work also is in progress in connection with a common pharmacopea for the member countries.

Other Matters

There are numerous other subjects on which Conventions have been prepared. These and the others already referred to have, in effect, created a European Community of Law. All this has been made possible because the Council is able to legislate without reference to governments and Parliaments.

There are numerous organisations in Europe which have been built up for co-operation in several fields like the European Coal and Steel Community, the European Economic Community and others. Many of these organisations originated in the Council of Europe and, although they are autonomous, they work in close co-operation with the Council of Europe. The Council also works in close co-operation with larger international organisations like the United Nations and its permanent agencies. It may be fairly said that, while the Council of Europe is primarily concerned with work among its members, it is by no means a parochial or an exclusive organisation working in the closed circle of its members.

ASIA AND PACIFIC REGION

The question then arises whether there is a possibility of creating a similar organisation for Asia and the Pacific. It is true that the members of the Council of Europe have territories which are contiguous to each other and in Asia and the Pacific the countries are far-flung. Nevertheless, it may be worthwhile to take into serious consideration the question of close co-operation in numerous matters of common interest to the Asian and Pacific countries. It is necessary to point out again that such co-operation can only be possible between like-minded countries, countries accepting the common ideals of the Rule of Law and Fundamental Human Rights, which alone are capable of creating a community of the free and the equal dedicated to the pursuit of common aims in cultural, economic and social matters.

PROGRAMME

Venue : RAVINDRA KALAKSHETRA, BANGALORE
INDIA

Dates : 10th-14th January 1968

TUESDAY

9th January 1968

Arrival of Participants
Registration of Participants at the
Hotel Bangalore International

WEDNESDAY

10th January 1968

8-30 A.M.

Inauguration of the Conference by His
Excellency Sri Gopal Swarup Pathak,
Governor of Mysore

Inaugural Speeches

10-30 A.M.

Coffee Break, Registration of Parti-
cipants and Observers

11-30 A.M.

Committees begin their deliberations

1-00 P.M.

Lunch adjournment

2-30 P.M.

Committees resume deliberations

4-30 P.M.

Adjournment

5-00 P.M.

Reception by the Mysore State Com-
mission of Jurists

6-30 P.M.

Cultural Programme at Ravindra
Kalakshetra

10-00 P.M.

Meeting of the Steering Committee

THURSDAY

11th January 1968

9-30 A.M.

Committees resume deliberations

11-30 A.M.

Coffee Break

11-45 A.M.

Committees resume deliberations

1-00 P.M.

Lunch adjournment

2-30 P.M.

Committees resume deliberations

5-00 P.M.

Adjournment

5-15 P.M.

Reception by the Vice-Chancellor of
the Bangalore University

6-30 P.M.	Cultural Programme at Ravindra Kalashetra
8-30 P.M.	Buffet Dinner by the Governor of Mysore at Raj Bhavan

FRIDAY

12th January 1968

8-30 A.M.	Departure to Mysore for sight seeing Lunch and Dinner at Krishnaraj Sagar
5-00 P.M.	Reception by the Vice-Chancellor of the University of Mysore
11-30 P.M.	Return to Bangalore

SATURDAY

13th January 1968

9-30 A.M.	Committees resume deliberations
11-00 A.M.	Coffee Break
11-15 A.M.	Committees resume deliberations
1-00 P.M.	Lunch adjournment
2-30 P.M.	Committees resume deliberations and adopt their reports and conclusions
5-00 P.M.	Adjournment
5-30 P.M.	Reception by the Chief Justice & Judges of the High Court of Mysore
8-00 P.M.	Dinner by the International Commission of Jurists at Hotel Bangalore International
10-00 P.M.	Meeting of the Steering Committee

SUNDAY

14th January 1968

10-00 A.M.	Plenary Session for discussion of Reports
11-00 A.M.	Coffee Break
11-15 A.M.	Plenary Session
1-00 P.M.	Lunch adjournment
2-30 P.M.	Closing Plenary Session
4-00 P.M.	Plenary Session ends Departure of Delegates

CONFERENCE ON FREEDOM OF MOVEMENT BANGALORE

January 10-14, 1968

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REPORT & CONCLUSIONS

BANGALORE CONFERENCE ON FREEDOM OF MOVEMENT

The first international Conference of Jurists to discuss the important right to Freedom of Movement took place in Bangalore (India) from January 10-14, 1968. It was held under the auspices of the Mysore State Commission of Jurists in Collaboration with the Indian Commission of Jurists and the International Commission of Jurists. In addition to the Right to Freedom of Movement as defined by Article 13 of the Universal Declaration of Human Rights, the Conference discussed a proposal for the establishment of a Council of Asia and the Pacific. Designed as a contribution to the International Year for Human Rights, this Conference was the first international event to be held within the framework of the Year.

The Conference brought together some 100 jurists from 18 countries of Asia and the Pacific Region as well as observers from leading international organisations both governmental and non-governmental, and from countries outside the Region. The work of the Conference was conducted in three committees, dealing respectively with 'the Right to Freedom of Movement within a country', 'the Right to Freedom of Movement outside one's Country' and 'the Proposal for a Council of Asia and the Pacific'.

The Conference was opened by Shri G. S. Pathak, Governor of the State of Mysore, and the plenary session elected the officers.*

The reports of the three Committees were, after discussion in plenary session, adopted unanimously by the Conference, which was closed by its Chairman, Mr. M. C. Setalvad. The Conclusions and Resolution of the Conference are set forth below.

* See page 4.

THE RIGHT TO FREEDOM OF MOVEMENT

INTRODUCTION

1. The United Nations has designated 1968 as International Year for Human Rights. This Conference of Jurists, called by the Mysore State Commission of Jurists, in co-operation with the Indian Commission of Jurists and the International Commission of Jurists, offers its contribution to that year in the detailed study which it has made, and in the Conclusions which it has reached concerning the Right to Freedom of Movement, recognised in Article 13 of the Universal Declaration of Human Rights (1948) in the following terms:

- (1) Everyone has the right to Freedom of Movement and residence within the borders of each State,
- (2) Everyone has the right to leave any country, including his own, and to return to his country;

and also recognised in Article 12 of the International Covenant on Civil and Political Rights (1966).

2. Freedom of movement of the individual within a country, in leaving his own country, in travelling to other countries and in entering his own country is a vital human liberty, whether such movement is for the purpose of recreation, education, trade, or employment or to escape from an environment in which his other liberties are suppressed or threatened. Moreover, in an inter-dependent world requiring for its future peace and progress an ever growing measure of international understanding, it is desirable to facilitate individual contacts between peoples and to remove all unjustifiable restraint on their movement which may hamper such contacts.

3. To the extent that freedom of movement is formulated as a legal right, it has to be recognised that this right may be subject to certain limitations. But it is important to assert that there is in the first place a right to freedom of movement; it is for those who would challenge it to show that in a particular instance the right can be justifiably withdrawn or restricted.

CHAPTER I

FREEDOM OF MOVEMENT WITHIN A COUNTRY

4. The right to freedom of movement and residence within the borders of a State must be made available to every person lawfully upon the territory of a State irrespective of his citizenship, race, colour, religion or political affiliation. Incorporation of the right in substantive law as well as procedural safeguards for its enjoyment must be ensured.

5. Considering the need to maintain a balance between the freedom of the individual and the general welfare of the community, reasonable restrictions may be imposed by or under the authority of law on the enjoyment of the right. Such restrictions may, however, be imposed *only* if the following conditions are satisfied:

- (a) The provisions relating to the imposition of restrictions, appeals from such restrictions and their review by the courts and independent administrative bodies contained in Chapter III of these Conclusions are observed.
- (b) The law permitting the imposition of the restrictions fixes the maximum limit of the period of restriction and requires the making of periodical public reports to the appropriate constitutional authority giving adequate particulars of all executive action in pursuance of such law.

CHAPTER II

FREEDOM OF MOVEMENT OUTSIDE ONE'S COUNTRY

Scope and Content of the Right

6. Freedom of movement outside one's country may involve three elements:

- (a) departure from one's country;
- (b) entry into, travel within and exit from a foreign country;
- (c) return to one's country.

Somewhat different considerations apply to each of these elements. Nevertheless, if freedom of movement is to be enjoyed to the full, they should each receive the widest possible protection.

Right to Leave a Country

7. Every State should recognise that its citizens have a right to leave their country, and to proceed to the countries of their choice. This right should be protected by legislation. Any restrictions should be imposed only in accordance with the rules set out in Chapter III hereof, both as to the imposition of restrictions and as to the appeals from such restrictions and their review by administrative bodies and the Courts.

Right to Enter a Country

- (a) The right of a citizen to enter his own country should be recognised without limitation. The re-entry of long-term residents, including stateless persons, may be refused only in the most exceptional circumstances.
 - (b) Deprivation of citizenship should not be used for the purpose of circumventing this right.
 - (c) Where citizenship of a person extends to both metropolitan and non-metropolitan territories, it is recognised that this right may be limited to entry into the territory to which he belongs.
9. (a) As the first step towards removing all barriers to freedom of movement, foreigners should be accorded a right, subject to clearly defined grounds on which it could be refused in specific cases, to visit a State for a limited period as tourists, for business or professional purposes or for study.
- (b) Recognition should be given to the right of refugees, stateless persons and persons seeking political asylum to seek to enter a country in accordance with the terms of Article 14 of the Universal Declaration of Human Rights and of the United Nations Declaration on Territorial Asylum of November 30, 1967. Where a State finds difficulty in granting or continuing to grant asylum, it should grant to the person concerned an opportunity, either by way of provisional asylum or otherwise, of going to another State of his choice.

- (c) An effective procedure for appeal from, and the administrative review of, refusal of entry, should be provided.
- (d) States should be encouraged to adopt treaties, such as those existing between the members of the European Economic Community, between the Nordic countries and between certain States of Latin-America, under which citizens of each of the States parties to the treaty are accorded full freedom of movement throughout the territories of all those States.

Inclusion of Family

10. No restriction on exit from one's country, or on entry into a foreign country, should be inconsistent with the right to protection of family life accorded by Article 12 of the Universal Declaration of Human Rights and Article 17 of the Covenant on Civil and Political Rights.

Limitation on Right to Leave

11. The right of a person to leave a foreign country should be guaranteed subject to three limitations only. He may be refused permission to leave (a) for such period as is necessary for reasons of public health; (b) if there are reasonable grounds for suspecting that he has committed a criminal offence within the jurisdiction of the foreign country concerned, until he has been tried and acquitted or found guilty and served any sentence of imprisonment or paid any fine imposed on him; the investigation and trial should take place within a reasonable time; (c) until he has paid or made provision for the payment of any taxes payable by him.

Passports and Visas

- 12: (a) Since a passport is in practice necessary to proceed to other countries, the right of the individual to a passport should be recognised. The procedure for obtaining a passport should be simple, speedy and inexpensive. The ground on which a passport may be refused, issued subject to limitations, cancelled or withdrawn should conform to the principles laid down in paragraph 7 of these Conclusions in relation to the right to leave one's country.

- (b) The principles relating to appeal and review contained in Chapter III apply equally to the refusal, the issue subject to limitations, the cancellation and the withdrawal of passports.
- (c) The need to have a passport renewed when abroad should not be used by a Government as a means of bringing pressure to bear on its citizens in foreign countries to compel their return.

Refugees and Stateless Persons

13. Refugees, stateless persons, and those unable to obtain a passport from the country of which they are citizens should have a right to a travel document acceptable to states in lieu of a passport. Such a document is at present obtainable by those who fall within the provisions of the Convention relating to the Status of Refugees, 1951, the Protocol relating to the Status of Refugees, 1966, and the Convention relating to the Status of Stateless Persons, 1954. In so far as these instruments do not make comprehensive provision for the granting of universally acceptable travel documents to such persons, they should be completed by further international agreements, the full and effective application of which should be subject to the supervision of the United Nations.

Free Movement Treaties

14. States should be encouraged to adopt treaties, such as those existing between the members of the European Economic Community, between the Nordic countries, and between certain States of Latin-America, under which citizens of the States parties thereto may travel freely between the territories of those States without a passport.

Elimination and Simplification of Formalities

- 15. (a) States should be encouraged to examine their visa requirements with a view to their eventual abolition in so far as they are not strictly necessary. The abolition of these requirements should extend to refugees, stateless persons and any other persons travelling on a travel document other than a passport.

- (b) In so far as visas are retained, the procedure for obtaining them should be simple, speedy and inexpensive, and the refusal of a visa should be subject to appeal and review.
- (c) Once a visa has been granted refusal of entry should, in view of the hardship which may be involved, be limited to those cases in which it is strictly necessary in view of facts or circumstances which have arisen or been discovered since the issue of the visa.

Frontier Formalities

16. The procedure and formalities applied at frontiers for entry to and departure from countries should be simplified.

Security of Movement and Residence Abroad

17. It is vital that the freedom of movement of those travelling outside their country should be secure and should not be unlawfully interfered with either by their own State or by the State in which they are present.

18. This principle applies both to those who are abroad with the consent of their country and to those who have received political asylum. Such persons must be able to live and travel free from the danger of being returned against their will to the State from which they have sought asylum.

Abductions from Territory or Aircraft

19. The abduction of persons from the territory of a foreign State by the agents of any State, and the removal of passengers from on board foreign ships or aircraft which have made unscheduled stops, whether by the authorities of the State on whose territory the stop has been made or by any other persons, seriously contravene the individual's right to freedom of movement.

20. The individual whose freedom of movement has been infringed by his unlawful abduction from foreign territory or removal from a ship or aircraft should enjoy the right to have recourse to the Courts of the State which abducted him to secure his release and return to the State from which he was abducted, and to obtain compensation for any loss or damage sustained as a result of his unlawful abduction. Where he does not have

such recourse, he should be able to have recourse to an international tribunal for the protection of his rights. These principles apply whether the abduction was effected by agents of the State to which the person concerned was abducted or by private individuals.

CHAPTER III

RULES APPLICABLE TO RESTRICTIONS ON FREEDOM OF MOVEMENT

General

21. Save in so far as is otherwise provided in these Conclusions the Rules set out in this Chapter shall apply to all restrictions on the right to freedom of movement dealt with in the preceding Chapters.

22. The right of a citizen to re-enter his own country is absolute and not subject to any limitation.

Limitations on Rights

23. In respect of other aspects of the right to freedom of movement, only such limitations as are consonant with the Rule of Law and as are reasonably necessary in a democratic society may be imposed.

Furthermore, Article 12(3) of the International Covenant on Civil and Political Rights recognises that the right of freedom of movement

shall not be subject to any restrictions except those which are provided for by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights and duties recognized in the present Covenant.

It should, however, be recognised that these heads of restriction may by the very generality of their expression encourage limitations on freedom of movement. Therefore, to the extent that any of them is adopted by a legislature, their scope should be strictly construed so that any question of doubt is resolved in favour of freedom of movement.

24. Such restrictions as are imposed must be reasonable in their operation and application, and should not be arbitrary, excessive or greater in respect of time or area of application than is required in the interest of the general public and necessary in the particular situation nor constitute an abuse of authority.

25. The exercise of the right to freedom of movement being a vital human right, any limitation on this right should be imposed only by or under the authority of law enacted by the legislature and such measure should set out the precise grounds on which it is sought to justify the limitation.

War or Emergency Situations

26. In so far as it may become necessary to impose special restrictions on the right to freedom of movement owing to an emergency situation such special restrictions should only be permitted in time of war or other public emergency threatening the life of the nation and should be limited to the extent strictly required by the exigencies of the situation. In such situations the safeguards for the protection of fundamental rights during such period recommended by previous congresses and conferences of the International Commission of Jurists and by the United Nations Seminar on Civil and Political Rights* (Jamaica 1967) should be respected.

27. No restriction should be imposed which is inconsistent with the right to protection of family life accorded by Article 12 of the Universal Declaration of Human Rights and by Article 17 of the Covenant on Civil and Political Rights.

Family

28. Any limitation of freedom of movement or refusal to grant a travel permit or passport in a particular case should be communicated to the individual concerned without unreasonable delay and should state in writing the reasons for such limitation or refusal.

29. The validity of any restriction imposed on a person's right to freedom of movement should in all cases be subject to ultimate review by the Courts to ensure that such restriction complies with the criteria adopted in these conclusions.

* The conclusions of the Seminar will be published in Journal of the International Commission of Jurists, Volume IX, No. 1.

30. An effective procedure for the independent administrative review of and appeal from administrative decisions restricting the right to Freedom of Movement with ultimate recourse to the courts should be provided.

31. In all cases the onus of justifying any restriction on a person's right to freedom of movement should rest on the authority seeking to impose such restriction.

32. The several safeguards relating to administrative orders (notice to interested parties, right to be heard and represented, judicial review, etc.) recommended by previous congresses and conferences of the International Commission of Jurists and by the United Nations Seminar on Civil and Political Rights* (Jamaica 1967) should be complied with.

CHAPTER IV

INTERNATIONAL PROMOTION OF THE RIGHT TO FREEDOM OF MOVEMENT

33. Jurists the world over and all persons and bodies interested in the promotion and protection of Human Rights should build up public opinion which will impel States to recognise the importance of this freedom and to act conformably to the letter and spirit of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

34. It is recommended that the United Nations should promote the preparation and adoption of an International Convention relating to freedom of movement. While such an International Convention should be as comprehensive as possible and should ensure the maximum degree of freedom of movement, making provision in particular for all the matters set forth in these conclusions, it could by means of optional clauses allow for reservations on the part of States which are unable or unwilling to grant full freedom of movement in existing circumstances.

35. Having regard to the increasing frequency of the abduction or kidnapping of passengers in the course of travel it would be

* See preceding note.

desirable to consider the adoption of an international convention for the protection of passengers in transit by ship or aircraft.

36. The Conference requests the International Commission of Jurists to transmit these Conclusions to the United Nations International Conference on Human Rights to be held in Teheran on April 22-May 13, 1968.

PROPOSAL FOR A COUNCIL OF ASIA AND THE PACIFIC*

The Conference of Jurists from sixteen nations, assembled at Bangalore in January 1968, at the invitation of the Mysore State Commission of Jurists, the Indian Commission of Jurists and the International Commission of Jurists, having considered and noted the Resolution adopted by the Conference of Jurists from the Asian and Pacific Region assembled at Colombo in January 1966.

Believes

1. That on the Asian Continent and in the Pacific Region there are many countries which have achieved their independence in recent years; and these and other countries in the Region have numerous problems of common interest and urgency relating to human rights and fundamental freedoms and social, economic and cultural matters in their bearing on the Rule of Law; and
2. That the sharing of experience by those countries would be of great value to them all;

And therefore RECOMMENDS

- A. That consideration be given to the establishment, by the Governments and Parliaments of such Region, of an organisation analogous to the Council of Europe for the purpose of realising their common aspirations and fulfilling the Rule of Law, by discussion of questions of common concern, and by agreement and common action upon economic, social and cultural matters for the furtherance of the Rule of Law and the fuller realisation of human rights and fundamental freedoms;

* Special Resolution adopted by the Bangalore Conference.

- B. That such Organisation be representative of the Governments and Parliaments of such Region;
- C. That participation in such Organisation be upon such a basis that it shall not affect the collaboration of its Members in the work of the United Nations Organisation or of any other organisation or association to which they are parties;
- D. That the matters which should be within the scope of such Organisation should not include matters relating to national defence;
- E. That membership of such Organisation should be open to all States in such Region which adhere to the Rule of Law and the maintenance of human rights and fundamental freedoms;
- F. That a copy of these Recommendations be forwarded by the International Commission of Jurists to the Governments of all States in such Region;
- G. And that the National Sections of the International Commission of Jurists take appropriate steps to further the establishment of such Organisation.

INTERNATIONAL YEAR FOR HUMAN RIGHTS

CONFERENCE OF JURISTS ON THE RIGHT TO FREEDOM OF MOVEMENT

Bangalore, India
January 10-14, 1968

OPENING PLENARY SESSION

Wednesday, January 10, 1968

8.30 A.M.—11.00 A.M.

Mr. S. Gundappa, President of the Mysore State Commission of Jurists, in welcoming the participants, said:

“I extend a hearty welcome to all of you on behalf of The Mysore State Commission of Jurists, The Indian Commission of Jurists and The International Commission of Jurists.

We deem it a great honour that the first of the major Conferences in the ‘ HUMAN RIGHTS YEAR ’ is being held in India and particularly in Bangalore, our beautiful city.

It is indeed gratifying to us in India that the Government of our country has decided to lift the Declaration of Emergency (effective from this very day), which means that the right to move the Courts will be available without restriction to all those seeking redress for violations of their fundamental rights.

The propagation, preservation and operation of Human Rights depends upon an enlightened appreciation of the Rule of Law and the democratic way of life. One of the

prime objects of this Commission is to induce every country believing in the Rule of Law to incorporate Fundamental Human Rights in its constitution. All this necessarily implies that the burden of creating strong public opinion, which is the foundation on which any democracy must rest, devolves on the enlightened members of society. They must make a constant effort to promote liberal ideas and to create greater respect for human dignity. Coercion, brain-washing, economic exploitation and indeed any blatant or insidious devices to take advantage of weaker human beings is a negation of fundamental human rights and a violation of the dignity of man. Greed for political power has often manifested itself in the past and persists even to-day, and can be checked only if the larger sections of any society aspire to follow the democratic way of life.

The successful adoption of the Declaration of Human Rights by the United Nations and the aims and achievements of The European Convention of Human Rights should make the nations of the world realise that, if only conventional thinking based on national sovereignty could be revised, much progress could be made. That is the task to which we are devoted and all right-thinking and well-meaning people should welcome our efforts. Stone walls do not a prison make, and so human thought cannot be restrained by pressure whether economic, military or otherwise. Violation of human rights in a systematic way has ceased to be a domestic problem and concerns all humanity. It is of particular concern to us—lawyers, judges, jurists and teachers of law.

Hence it is but just and proper that we should meet and deliberate on upholding the Rule of Law and preserving the very important right of freedom of movement as well as all other human rights not only for ourselves but for posterity.

The holding of this Conference in Bangalore has been possible only because of the massive aid and assistance given us by the enlightened Government of Mysore to whom we, the members of the Mysore Commission of Jurists, tender our heartfelt and sincere thanks.”

Mr. Gundappa then requested His Excellency the Governor of Mysore, Shri Gopal Swarup Pathak, to inaugurate the Conference.

MR. PRESIDENT, DELEGATES, LADIES AND GENTLEMEN,

I deem it an honour and a privilege to be invited to inaugurate the Conference of Jurists on the right to freedom of movement. I value this privilege all the more by reason of my association with the Indian Commission of Jurists as a member of that body for a number of years.

It is a matter of great pleasure and pride to me that Bangalore has been selected as the venue of the first Conference on Human Rights in this the Human Rights Year. This is a great event in the history of Mysore State. One of the reasons for this selection is that India is the largest democracy in the world and a country which has always stood for the Rule of Law and fundamental rights. We are highly appreciative of this honour. People of India not only gave to themselves a Constitution in which human rights are enshrined on a very wide basis but also guaranteed the enforcement of the fundamental rights through the Supreme Court of India. We are fortunate in this country to have an independent Judiciary, vigilant Parliament and State Legislatures, a free Press and informed public opinion. I take this opportunity of paying my humble tribute to the Judiciary in the country which is playing a significant role in ensuring the enjoyment of civil and political rights by people. In the advancement of social, economic and cultural rights, we can, in spite of difficulties, claim notable progress. Weaker sections of the people are an object of special consideration to the Government and the Parliament. As a result of a constitutional requirement a Commissioner for Scheduled Castes and Scheduled Tribes is functioning in the country. His duty is to investigate all matters relating to the safeguards provided for Scheduled Castes and Scheduled Tribes under the Constitution and report to the President upon the working of these safeguards. These reports are laid before the Parliament. In his Report the Commis-

sioner mentions the complaints also which are received by him and the results of his investigation. It appears that the Union Government has recently decided to appoint an Ombudsman for a restricted purpose. In the United Nations and International Organisations India can legitimately claim to have made her contribution in the matter of enforcement of human rights and fundamental freedom. I welcome you all to the capital of this State and I thank you for giving me this opportunity.

The year 1968 was selected by the General Assembly to mark the 20th anniversary of the Declaration of Human Rights. During this period events have disclosed two opposite trends. On the one hand the knowledge of science and technology which increased at an amazing pace was utilised for the manufacture of known and unknown weapons of mass destruction and man has now acquired the power to annihilate mankind itself and all the values gained by civilisation through centuries. Armaments have piled up at a terrific rate involving colossal expenditure. The world's military expenditure today is estimated at the incredible figure of about 1,05,000 crores of rupees a year and at no time during these 20 years has the world population enjoyed real freedom from fear, and the bulk of it has always been suffering from want.

On the other hand these 20 years—and indeed since the Charter—there has been persistent and incessant effort to define and develop the Rights of Man on global scale, to raise the dignity of man and to secure the development of his personality. The Universal Declaration of Human Rights, which was hailed with universal acclaim enumerated human rights and supplied the omission in the Charter whose persistent theme was respect for human rights and fundamental freedoms. This was the first milestone after the Charter on the road to human freedom. The Declaration had a world-wide effect. It gave a great impetus to human thinking on the Rights of Man. Constitutions of many countries including that of India which were enacted after the Declaration received

inspiration to a considerable extent from it. The Declaration had a distinct bearing on the formulation of legislative enactments and a number of treaties. Judicial decisions sometimes made pointed reference to the Declaration and Judges were influenced by it in the interpretation and application of existing laws. Investigation into methods of implementation of human rights has been a subject of anxious consideration by statesmen and jurists. A close-knit body of European Nations created a regional organisation for the protection of human rights and for redress in case of violation. A number of resolutions were passed by the General Assembly and a series of Covenants were brought into force so that man may enjoy human freedom in a larger measure. The two Covenants of human rights and the Protocol accompanying them are the latest fruit of hard labour and strenuous effort spent during these 20 years.

These two trends—the danger to human existence and the enlargement of human freedom do not really create a dilemma. The greater the peril to human existence, the greater the need for intensification of the effort to make man free and to preserve the values gained by him after age-long struggle. It is increasingly realised that unless an organised order governed by the Rule of Law is established, world peace cannot be secured and human happiness will remain in danger.

One remarkable feature of the present-day world is that statesmen and jurists, whether working in the United Nations or outside, are incessantly engaged in raising the dignity of Man and in achieving freedom for him, in whatever part of the world he may be living. No barriers of territory are recognised. The effort is united. Mankind is becoming one. An individual's rights are a matter of deep international concern. The movement is towards further integration of the human society. The fact that the two Covenants on human rights were passed unanimously was the most significant event of current times. When these Covenants come into force, they will impose a legal obligation on every party-State

to take steps in its own country to secure the enjoyment by its people of the rights enumerated in the Covenants, and to enforce respect for them throughout the world. It is obvious that primarily it is the obligation of every State to promote human rights within its territory, and it is only in a case where the State refuses or neglects to carry out its obligation, that recourse to international machinery should be had. That is the only practical and effective method. Conditions must be created to ensure observance of human rights. The statement of the Secretary-General of the International Commission of Jurists in his report dated 30th September—October 2, 1966 with reference to social tasks of lawyers I heartily endorse.

It is necessary to advert to one aspect of human rights which appears to me of primordial importance. It is not only the State which owes an obligation to the world community to promote human rights, but every individual and every organisation owes a duty to other individuals and to the community to strive for the promotion and observance of human rights. Every one must see that all others enjoy human rights without discrimination. That is patent both from the Declaration and the Covenants. Sometimes, it happens that it is not the State which violates human rights, but it is a private organisation or an individual or groups of individuals who deprive the common man of his basic rights. For instance, when a violent mob clashes with the forces of law and order and causes a turmoil, the human rights of the common man for the time being are virtually suspended and completely disregarded. In recent years such a situation has arisen in a number of countries. People have been deprived of their general right of locomotion and also of their right to carry on their ordinary avocations. Wade and Philips in their treatise on Constitutional Law, speaking in another context, refer to "the public nuisance aspect of public demonstrations which is more prominent today". Such demonstrations sometimes become violent in the extreme. This aspect underscores the necessity of educating public opinion and disseminating knowledge of

human rights widely. Peaceful demonstration is a natural incident of democratic life. But when a demonstration takes the form of mob violence and results in gross violation of human rights of the common man, depriving him of his freedom of locomotion and of his right to follow his ordinary avocations, and private and public property is destroyed, is it not then a matter for which the responsibility rests on the individuals and groups of individuals who commit such acts, as much as on the State whose duty it is to see that the lives, the liberties and the safety of individuals are not jeopardised? It has sometimes happened that groups of people surrounded a person and deprived him of his freedom of movement for a certain period. I venture to suggest that the Commission may consider the advisability of reiterating that the responsibility of promotion and observance of human rights rests on the State as well as individuals and organisations.

I wish to mention now the right to freedom of movement more specifically. The right to freedom of movement and the right to choose residence are interlinked and the latter is the corollary of the former. They may be treated as parts of one concept. It is interesting to note that Section 28 of the Constitution of Uganda, while defining the right to freedom of movement expressly includes within that right the right to reside in any part of Uganda. I must not enter into further details on the subject beyond stating that the right to travel should be treated as an essential aspect of man's liberty. Where the purpose of visit to another State is education, holiday tour, business or profession, there should be no restriction except that of a regulatory character or as required in the interests of the State concerned. It is a matter for consideration whether the limitations permitted on this right by the Universal Declaration and the Covenant are comprehensive enough to give protection to the interests of the State on the territory of which the right is to be exercised.

It is a matter of vital importance that public opinion should be properly educated on the question of human

rights. There must be adequate dissemination of the knowledge regarding the nature and character of human rights so that people may acquire full consciousness thereof. It has been truly said that democracy must live in the hearts of the people, otherwise it will not live at all.

The office of the Commissioner for Human Rights will be a most important institution. A Commissioner appointed by the United Nations will be in possession of full facts relating to human rights as existing in the territories of various Member-States. His functions are already adequately mentioned and may in course of time be enlarged. The States are really trustees for the welfare of the people. The trust has to be faithfully discharged and the facts of national life concerning human rights should be available for all to see.

The idea of the establishment of an Asiatic Council of Human Rights deserves serious consideration. A Council, if established, will become a powerful instrument for the enlargement of human freedom in this part of the world.

Let me offer my congratulations to the International Commission of Jurists on their achievements. They have investigated cases of violation of human rights and have exposed to the public gaze injustice suffered by man; they have given concrete shape and definition to the concept of the Rule of Law and have studied and indicated methods by which human rights can be implemented and achieved.

The Commission has not been merely concerned with the theoretical aspect of the Rule of Law. The Declarations made, from the Act of Athens to the Colloquium of Ceylon, have relation to concrete facts of life. The concept of the Rule of Law is dynamic. It is liable to vary with the change of times and its contents may become fuller and richer as we progress. Our liberties expand by judicial interpretation also. The work of the Commission will be continuous and cannot be complete, unless a stage is reached when it is possible to predicate

that human freedom extends to the enjoyment of not only civil and political rights, but also social, economic and cultural rights in the fullest measure and there is complete freedom from fear and want. Then alone world peace will be guaranteed.

I offer my best wishes for the success of this Conference and I am sure its deliberations will yield fruitful results and its contribution will be most valuable. I have now great pleasure in inaugurating this Conference."

Shri B. S. Puttasiddiah, Vice-President of the Mysore State Commission of Jurists, read out the many messages received. These included messages from the Union Law Minister of India, the Attorney-General of England and Justices Hidayathullah and Hegde of the Supreme Court of India.

Shri M. C. Setalvad, President of the Indian Commission of Jurists and Chairman of the Conference, made the opening speech.

"It is a great privilege to have the opportunity of presiding at this Conference of Jurists on the Right to Freedom of Movement. This gathering reminds me of the International Congress of Jurists consisting of 185 Judges, practising lawyers and teachers of law from 53 countries, assembled at New Delhi in January 1959 under the aegis of the International Commission of Jurists when I had the honour of inviting Prime Minister Nehru to inaugurate the Congress and at which the Congress adopted the important Declaration of Delhi.

The right to freedom of movement, which is the subject-matter of our deliberations, is embodied in Article 13 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on the 10th of December 1948. It is a comprehensive formulation of the right. It provides that every one shall have the right to freedom of movement and residence within the borders of each State and the right to leave his country including his own and to return to his country. That Declaration does not of course have the legal status of a binding

convention and its significance lies more in the political and moral fields than in the legal field. The right to leave and return to one's country which is a part of the general right to freedom of movement has also found a place in certain international instruments. The International Covenant of Civil and Political Rights which was adopted by the General Assembly of the United Nations on December, 1966 provides that everyone shall be free to leave any country including his own Arts. 16 (1)(b) and 15 (1)(b).

The International Commission of Jurists has dealt with numerous aspects of the Rule of Law including the right to the freedom of movement and residence in one's country and the right to leave a country. In defining the minimum conditions of a juridical system in which fundamental rights and human dignity are respected the Congress of Athens in its Committee on Public Law resolved among other things that "No one can be expelled from his residence, deported, or exiled except in the case of a court decision with final validity, based on a restrictively interpreted legal provision". But this is, as far as I know, the first occasion on which the right to freedom of movement is being discussed at a conference of jurists under the auspices of the Commission of Jurists. It is a matter of deep gratification that the Mysore State Commission of Jurists should have conceived the idea of holding this conference with the co-operation of the Indian Commission of Jurists and the International Commission of Jurists early in the year 1968 which has been designated by the United Nations as the International Year for Human Rights. I have no doubt that the large number of jurists gathered here representing different countries will be able to reach conclusions which will make a notable contribution towards a greater appreciation and recognition of the right to freedom of movement which is a valuable human right.

Personal liberty is perhaps the most valued human right and freedom of movement is only an aspect of personal liberty. It has been stated by a distinguished writer (Professor Chaffee) that there are four different

aspects of the right to freedom of movement: "(1) Internal mobility, from one part of the country to another; (2) freedom to go out of the country; (3) freedom to come into the country; and (4) the right not to be exiled from the country". He asserts "the liberty of all human beings which cannot be taken away without due process of law includes liberty of speech, press, assembly, religion and also liberty of movement". Living in democratic countries we are happily so accustomed to freedom of movement in our own countries that the importance of this right is not fully appreciated by us. But if we look round and see some of the absolutist regimes the citizens of which do not enjoy rights of freedom even in their own countries we shall more vividly appreciate the great importance of this aspect of personal liberty.

The right to freedom of movement naturally divides itself into two broad aspects which are the subject-matter of the two main Working Papers prepared for this conference. The first aspect relates to the right of freedom of movement within a country and that right is, notwithstanding the citizens in a democratic country taking it for granted, perhaps the more important of the two aspects. The second aspect is the right to freedom of movement outside one's country which has recently received much publicity by reason of restrictions placed by the Executive on that freedom. Valuable Working Papers have been presented for discussion at this gathering on both these aspects and I am sure that they will be of great assistance to all the participants in the discussion.

The first aspect of the right to freedom of movement is essentially "the right of motion and locomotion" recognised from early times. Among the very early documents embodying this aspect of the right is the Magna Carta which provides that "No free man should be arrested or imprisoned or diseized or outlawed or exiled or in any way molested". The concept has been enlarged in Article 90 (2) of the Universal Declaration of Human Rights which provides that "in the exercise of his rights and freedom,

every one shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and general welfare in a democratic society". The Indian Constitution gives effect to this aspect of the right to freedom of movement in Article 19 of the Constitution which enumerates among the rights to freedom to a citizen the right "to reside and settle in any part of the territory of India". This right like some others however is subject to the right of the State to impose by law reasonable restrictions on the exercise of the right in the interests of the general public. The constitutions of numerous other States make similar provisions protecting the right to freedom of movement within the country. Broadly this right is subject in most of these constitutions to restrictions necessary for the maintenance of health, morality and public order and the protection and safety of the State.

The second aspect of the right to freedom of movement is, as already pointed out, the freedom to go out of and to come into the country. Though the right to go out of the country briefly described as the right of exit is normally availed of by a comparatively small number of citizens of the State, it is no less 'natural' a right than freedom of movement within a country or freedom of expression or freedom of religion. In common with the other human rights, it nourishes the independent and self-determining creative character of the individual, not only by extending his freedom of action but also by extending the scope of his experience. Thus it is a right which gives intellectual creative workers in particular the opportunity of extending their spiritual horizon through study at foreign universities, through contact with foreign colleagues and through participation in conferences and congresses. The right also extends to private life; marriage, family and friendship are human ties which can sorely be affected through refusal of freedom of exit and therefore offer clear evidence that freedom of exit is a genuine human right. Freedom of exit is such a right in the most elementary forms where a

man finds himself obliged to free because he is unable to serve his God as he wished at his previous place of residence or because his personal freedom is threatened for reasons which do not constitute a crime in the ordinary meaning of the word or because his life is threatened either for religious or political reasons or through the threat to maintenance of a minimum standard of living compatible with human dignity. These circumstances visualising the right in its most elementary form show that freedom of exit when preservation of life in a manner compatible with human dignity is imperilled is not only a matter of the general freedom of action and the human being but also represents an essential element in the general right of self-preservation. Indeed it can well be said that freedom of exit is the important ultimate refuge of liberty when other basic freedoms are refused.

It may be pointed out that individual human rights do not exist in isolation and they are all closely inter-linked. The granting or refusal of one basic right often decisively affects the enjoyment of one or more other basic rights. This is particularly so in the case of freedom of exit for such freedom is an important prerequisite or at least an additional factor in the enjoyment of several other basic freedoms. For example, the absence of freedom of exit may in certain circumstances eliminate either wholly or partially the practical possibility of enjoying the right to life, freedom and inviolability of the human being, the right to religious freedom, the right of free expression and formation of opinion, and the right to work and attain a decent standard of living.

It may also be said that freedom of exit is by its very nature one of those basic freedoms which flow logically from the principle of individual freedom. The freedom of exit is also of outstanding importance in view of its relationship to the other human rights and of its vital contents with regard to human existence and development potentialities. The freedom of exit can therefore well be said to be essential to a free and democratic society. Although it may be an overstatement to urge that de-

mocracy cannot exist without freedom of exit there can be no doubt that this freedom forms an essential element of true and liberal democratic regime.

We may not forget that one of the first actions on the part of any dictatorship or police state is very often to deny the people the freedom of movement in its various aspects. Where a regime limits freedom of movement and free exit as a general rule there is the danger that it wishes to keep cheap labour within the country or to conceal its political and social shortcomings. The refusal of the right to leave the country may easily lead to a system of forced labour, social oppression and denial of basic human rights.

It has been said that "travel abroad is as much a natural right as the right to move or speak freely within the country or to practise one's religion; that it cannot therefore be subject to any different restrictions. Like these other rights, it nourishes the self-determining creative character of the individual not simply by the mere enlarging of his freedom of action but by extending the scope of his experience. Nor is the value limited to the individual. It attaches to the community of nations; brings its people together; promotes familiarity and understanding; enriches and diversifies our science and culture. It is this movement of men and ideas on which our very culture rests. Even if the object is criticism it promotes that continuous human dialogue whose aim is mutual adjustment and toleration". Indeed the right to exit can without exaggeration be described as essential to the ultimate building of a universal human society in which there shall be mutual understanding and adjustment and complete friendliness.

The rights of movement within the country and of leaving the country have by reason of various acts of the Executive been the subject of decision by courts. In India the right to personal liberty set out in Article 21 has been given the widest interpretation. The Supreme Court of India has stated that "personal liberty is used in the article as a compendious term to include within itself all the varieties of rights which go to make up the personal

liberties of man other than those" specified in Article 19. Says the Court "While Article 19(1) deals with particular species or attributes of that freedom, 'personal liberty' in Article 21 takes in and comprises the residue". We have thus in India Article 19(1) (d) which ensures freedom of movement throughout the territory of India and Article 21 which would, according to the wide interpretation given to it, include all the residuary freedom taking within its scope freedom to leave the country and to enter it. In a recent judgment this wide interpretation of the expression 'personal liberty' in Article 21 was given effect to when the court struck down the refusal to give a passport to a citizen holding that the right to travel abroad was a fundamental right. In substance the Court held that a person could not be denied a passport to travel abroad by mere executive action. If the State desired to put restrictions on foreign travel by citizens the State would have to enact a law seeking to restrict such liberty as required by Article 21. The law when enacted would be open to examination by the courts to see whether the restrictions on foreign travel imposed by it on the citizen are not unreasonable and are called for in the public interest.

This Conference concerns itself with one other subject which though not related to the freedom of movement is a subject of very great importance. My friend Shri Purushotam Tricumdas who is a staunch supporter of the idea of the setting up of a Council for Asia and the Pacific has brought up this subject again for discussion at this Conference. The conference convened by the Ceylon Section of the International Commission of Jurists in January 1966 passed a resolution in the form of a proposal on this subject. This conference will elicit further ideas on this important proposal and I am sure the Paper contributed by my friend will greatly assist our deliberations on this topic.

Let me conclude with the hope that our committees will by their labours be able to arrive at conclusions which will help to advance these important human

freedoms and that we shall have taken a step forward at our plenary concluding meeting by adopting these conclusions.

Thank you."

The Chairman then invited the Hon'ble Shri H. Hombre Gowda, Chief Justice of Mysore, to address the Conference:

"It gives me great pleasure to be present and to be able to participate in this International Conference of eminent Jurists at Bangalore. I believe it was in 1964, when Mr. Vivian Bose, the then President of the International Commission of Jurists, came to Bangalore, that an appeal was made by the then President of the Mysore State Commission of Jurists that Bangalore might be considered for the South East Asian and Pacific Regional Conference of Jurists. That Conference was finally held at Bangkok. But I did not expect, however, that so soon thereafter Bangalore would be chosen as the venue of an International Conference and that too during this year, which is being celebrated as the International Human Rights Year. This only shows the abundant goodwill which the International Commission of Jurists has towards India and more particularly towards Bangalore, where Judges and Lawyers have been co-operating in working out programmes which are in conformity with the basic objects of the International Commission of Jurists.

Speaking on this occasion, one may briefly refer to the achievements of the International Commission of Jurists during the several years of its existence. It should be remembered that no other single organisation in the world has done so much to advance the cause of the Rule of Law in the different countries of the world. By the several documents adopted and published by the International Commission of Jurists from time to time, such as the Act of Athens, the Declaration of Delhi, the Law of Lagos and the Declaration of Bangkok, the International Commission of Jurists has provided a proper definition of the "Rule of Law" and has explained its true scope and nature both in the abstract and with reference to specific

issues, such as the Rule of Law in developing countries. The International Commission of Jurists has also gone into important questions involving allegations regarding violations of human rights and has published illuminating and instructive reports on incidents which took place in Hungary, Bizerta and Panama. In addition to this, millions of copies of Journals, Bulletins and Newsletters in four languages published by the International Commission of Jurists have carried the message of the Rule of Law to all the corners of the world. All this has been possible only on account of the sincere and strenuous efforts on the part of the successive office-bearers of the International Commission of Jurists, who deserve universal praise and the gratitude of the common man whose welfare is the concern of all of us.

In spite of the efforts of the International Commission of Jurists, the United Nations and other world organisations, we still find that in some parts of the world there appears to be a gradual erosion of the basic tenets of freedom owing to the totalitarian or anti-humanitarian ideologies adopted there. More effort is therefore required to be put forward by all sections of civilized nations, including Judges, Lawyers, Journalists, etc., to prevent a further fall in the standards set by the Rule of Law. The situation calls for intense research in this direction for evolution and application of the principles of the Rule of Law, in the several countries of the world with diverse political and economic conditions. I hope that deliberations of this Conference would result in tangible progress towards solutions to meet the gigantic problems involving conflicts between individual and society.

I wish all success to the Commission in its noble endeavours."

The Hon. Mr. Justice T. S. Fernando, Q. C., President of the International Commission of Jurists, speaking next, said

"On behalf of the International Commission of Jurists it is my humble duty to express our gratitude to Your Excellency the Governor of Mysore State, firstly, for

honouring this Conference by taking time to be among us this morning, and secondly for the inspiring words in which Your Excellency was gracious enough to inaugurate this meeting of Judges, Lawyers and Teachers of Law. Your Excellency's presence among us, we consider as an acknowledgement of the non-political and non-partisan nature which the work of the International Commission has been doing for several years. There was a time when Conferences and Congresses organised or sponsored by our Commission did not have the blessings of persons occupying such high positions as the eminent one Your Excellency currently adorns; but, in more recent years, a recognition of the valuable and impartial study and analysis of questions affecting the observance and maintenance of that code of conduct for Governments which we have chosen to call the Rule of Law has brought in its train a certain reward. That reward is a good name. It is the good name that the International Commission enjoys that has spurred its daughters to action; and we take pride in claiming both the Indian Commission of Jurists and the Mysore State Commission of Jurists as being in the nature of our progeny.

Your Excellency, Judges and delegates from many countries, ladies and gentlemen, judged by the number of years that the International Commission has existed, it is but a youngster. It is withall a lusty vigorous youngster. The aims it seeks to foster are desirable ones, and the membership it attracts throughout the democratic world is ample testimony to the urge among large and varied groups spread throughout the five continents to find some firm basis for stability in law. Our Organisation does not seek to compete with any other; on the contrary, it seeks to add some strength to that hope of civilised countries which is the United Nations Organisation.

We express our deep gratitude to the Government of this State of Mysore for assistance and facilities which would further our work this week. I have little doubt that most of you are already aware tht this Conference

has become a reality through the co-operation of the three bodies, the names of which appear on the working paper which is itself the product principally of Indian Jurists.

The name of the Conference is an attractive one, and highlights one of the aspirations of every human being, the right to move freely, without undue let or hindrance, not only within his or her own country, but from one country to any other. In an age where the advances of modern scientific and engineering skill have made it possible for man to travel from one end to the other of this Earth within a matter of hours, it may appear ironical that in certain countries nationals find themselves hedged in and restricted by rules and pinpricks which have the effect of denying to a human being one of his fundamental rights. It is, therefore, appropriate that this year of 1968, which the United Nations Organisation has chosen to designate as the International Human Rights Year, is opening the celebration of the Universal Declaration with a Conference in this ancient country, where its modern judiciary has in recent years been underlining this particular important human right. No doubt, the participants at the Conference will have ample opportunity to indicate the reasons for and against the advancement of this right and the ultimate consensus of opinion will be awaited by us all with interest.

The interest the theme has evoked could perhaps be gauged by the most encouraging nature of the personnel participating in this Conference and the wide range of countries from which the participants come.

Our own gratification over the response to the call for attendance here this week must, I feel certain, be eclipsed by the gratification of the members of the Mysore State Commission that so many busy men of distinction from countries ranging from the United States of America to New Zealand have thought it worthwhile to come over and exchange views. We have, moreover, a fair number of persons attending this Conference as Observers, and this fact is again significant as a measure not only of our

growing strength, but also as an indication of recognition of past undertakings well performed.

Your Excellency, this Conference seeks to discuss and carry a step further an idea that emerged at a conference held just two years ago in neighbouring Ceylon, namely, that of forming a Council of Asia and the Pacific after the manner of the Council of Europe which has significant achievements to its credit. Countries in the Asian and Pacific regions have so many problems of development in common that association together with the object of speeding development to assure the greater happiness of their peoples is not only laudable but, as many thinking persons of this region consider, urgently necessary if peace is to be maintained or revolution stemmed. Participants will therefore have an opportunity of contributing to the forging of ideas so that the several Governments of this region can in due course be urged to look upon the concept of Council of Asia and the Pacific not only with favour but as a hope to ensure the betterment of the inhabitants.

No one is too old to learn, and no one country and no one government has the answer to the multitude of problems which assail governments today. Asia can and must learn from Europe, and some of us are vain enough to think that Europe too can still learn from Asia.

We have the good fortune of enlisting one of our old and staunch friends, Shri Setalvad, to steer this Conference, and with one of the greatest living Indian Jurists at the helm we have no doubt of a successful outcome of our labours.

And finally, Mr. President, although you referred to possible shortcomings, we are conscious of none on the part of the Mysore Commission. May I say that we who have already received many courtesies and every consideration from our hosts are happy to have the opportunity of making closer acquaintance with them and the vast sub-continent that is India. More particularly we are glad to be able to visit and work in this historic State of Mysore and we look forward not only to a successful outcome

of our labours this week, but also to a renewal of old friendships and the making of new ones. And in this let us hope that the pledge to advance the Rule of Law in this world will be honoured from day to day."

Following the address by Mr. Justice Fernando, Shri Setalvad introduced Mr. Sean MacBride, the Secretary-General of the International Commission of Jurists:

"The history of the world to a certain extent gets equated with the people's struggle for human liberty, sometimes for personal liberty, sometimes for national liberty. In the course of history there have been many important landmarks in this struggle. Some of them such as the Magna Carta and the Constitution of India, have already been referred to by some of the speakers this morning. In the field of personal liberty, it will probably be true to say that the most important universal document in the whole history of mankind is the Universal Declaration of Human Rights adopted by the United Nations twenty years ago. I say so because, first of all, it has been adopted by all nations of the world and it has been ratified on many occasions since by implication. It is the first universal document that defines in detail the rights of individuals in the modern world. It is a detailed document that deals with individual rights.

The United Nations some years ago, fully conscious of the importance of this document, felt that this year should be observed throughout the world as the International Year for Human Rights. Elaborate programmes are being prepared to celebrate the 20th anniversary of the Universal Declaration. It is in pursuance of this decision of the United Nations and in order to pay a tribute to the Universal Declaration that this Conference has been convened. This is the first International Conference held in the Human Rights Year. There will be many more to come during the course of the year.

I must pay a tribute to the Indian Commission of Jurists and the Mysore State Commission of Jurists for having taken the first initiative to honour Human Rights Year

and to make its contribution to the preservation of human liberties in the world. Quite apart from the Human Rights Year, the purpose of this Conference is to elaborate and define in detail a most fundamental human right in all its aspects, the right of movement, the right to leave one's home, the right to leave one's State and enter another and the right to move from one country to another. It has been the function of the International Commission of Jurists to examine and define in greater detail each of the different human rights and each of the major problems relating to the application of the Rule of Law. This Conference will add another chapter to the work of the International Commission of Jurists in this field by defining more specially and in greater detail the right to freedom of movement and the limitations which have to be recognised on the exercise of that right.

We are extremely happy that this Conference has been convened in India. This is a country in which there is probably greater philosophical recognition of human dignity than in most of the countries in the world, a country which is facing tremendous economic problems which have posed a threat to the rule of law, a country which enjoys a noble tradition and history, a country which has a courageous, independent and able judiciary. This has made an ideal choice for this Conference. All our expectations have been more than fulfilled by the tremendous help and immense co-operation which we have received at every stage from everybody in Mysore and the Mysore State Commission of Jurists, as well as, of course, the Indian Commission of Jurists.

You have the Working Papers and I think it is my duty to pay a tribute to its authors for their valuable work. You will find that they cover more than adequately the various issues which we shall have to consider and discuss during the course of this Conference. I should like to join the President of the International Commission of Jurists in thanking His Excellency the Governor for having honoured us by his presence and for his most

valuable contribution today. We are all aware that the Governor himself is a man who believes firmly in the rule of law and in the protection of human liberty and dignity."

His Excellency Bouavan Norasing of Laos was the last speaker. He said:

"The gathering together of so many jurists from Asia and the Pacific in this charming City of Bangalore represents a great success for the International Commission of Jurists and the Indian Commission of Jurists. The success of this event is also due to the effort that all the participants have put into making this meeting an exceptionally brilliant event at the beginning of the International Year for Human Rights.

The success of the previous Congresses and Conferences of the International Commission of Jurists, and the world-wide reputation which this organisation enjoys, are well known. It is with real pleasure that I find myself among you, and it is a great honour for my country, Laos, to be able to send a representative to participate in your deliberations in spite of the difficulties it is undergoing at the present time.

It is perhaps right to say that the most vital problem for us who live in Asia, is to have enough to eat and to have peace in order to be able to devote all our efforts to the development of our resources. But, in my opinion, respect for fundamental human rights is just as essential for us. No further proof is needed of the interest that this Conference has aroused than that Jurists are present in large numbers from nearly all the countries of Asia and the Pacific.

The subject chosen is in my opinion a most suitable one, for freedom of movement, which is one of the surest methods of promoting individual contacts between men but is yet so often restricted, deserves particular attention.

I am very happy to be able to discuss these problems with you and to find that we are able to do so in such

pleasant conditions. For this, thanks are due to the members of the Mysore State Commission of Jurists who have given us such a warm welcome. We give them our warmest congratulations and our most sincere thanks."

The Conference elected the following Office-Bearers:

Chairman of the Conference: M. C. Setalvad (India)

Secretary: E. S. Venkataramiah (India)

Press Officer: C. R. Somasekheran (India)

Committee I

Chairman: H. Jayawardene, Q. C. (Ceylon)

Vice-Chairman: Parviz Kazemi (Iran)

Rapporteur: A. N. Jayaram (India)

Secretary: L. G. Weeramantry (International Commission of Jurists)

Committee II

Chairman: John F. Kearney, Q. C. (Australia)

Vice-Chairman: Jean Morice (Cambodia)

Rapporteur: Chandra Kantaraj Urs (India)

Secretary: Hilary Cartwright (International Commission of Jurists)

Committee III

Chairman: V. Krishnamurthi (India)

Vice-Chairman: Ruperto G. Martin (Philippines)

Rapporteur: D. S. Wijewardene (Ceylon)

Special Adviser: Purshottam Trikamdas (India)

Secretary: C. Selvarajah (Ceylon)

The Opening Plenary Session was then adjourned.

CLOSING PLENARY SESSION

Sunday, January 14, 1968

10.30 a.m.

Mr. Setalvad of India, the Chairman of the Conference, called upon the Chairmen of the three Committees to make brief statements on the Conclusions of their respective Committees.

After Mr. H. W. Jayawardene of Ceylon, Mr. John F. Kearney of Australia and Mr. V. Krishnamurthi of Bangalore, the three Chairmen of the Committees, had spoken, the Chairman of the Conference put to vote the Conclusions of the three Committees which were carried unanimously.

Mr. Setalvad then called upon Mr. S. Gundappa, the President of the Mysore State Commission of Jurists, to address the Plenary Session. Mr. Gundappa thanked Mr. Setalvad who, in spite of his other heavy commitments, was kind enough to accept the Mysore State Commission's invitation to preside over the Conference. He continued:

"The respect for Mr. Setalvad, if I may be permitted to say so, is universal. Everyone of us has a very high admiration for his learning, dignity and nobility.

About you, Sir, Mr. Justice Fernando permit me to say a few words. I had not had the privilege of knowing you before. All the same, many of my friends who had visited Ceylon told me about you and we are all greatly impressed by the noble qualities of your head and heart. If you will permit me, Sir, to make my humble personal remarks, I have found you to be always very witty, candid and learned, and it is our good fortune to have you participating in the deliberations of this Conference.

Mr. MacBride is the very embodiment of dignity and courage. Had I a good command over the English language, I could say many more good things about our Secretary-General Mr. MacBride. We are really grateful to you, Sir.

Mr. Trikamdas I have found to be a man of strong convictions who would not bow to anyone on a matter of principle. He has been extremely helpful to us.

The subject which we have chosen for this Conference is of world-wide importance. The deliberations have been of the highest order and distinguished Jurists from many parts of the world have taken part in it. To the participants I wish to express my gratitude, not only on my own behalf but also on behalf of the Mysore State Commission of

Jurists, for all the interest that they have taken and for the help they have given us to bring the Conference to a successful end. These five days we have lived together like members of one family. None of us felt any barriers of territory or colour. The foreign participants were so friendly, so good and so generous. My words fail to express adequately my gratitude and thanks to them.

Now, I must express my gratitude to the ICJ staff led by two dynamic personalities, Dr. Kabes and Mr. Weeramantry, and to their very able assistants. They have been of great assistance and have always been very helpful. I express our gratitude to the members and the staff of the International Commission of Jurists, to the Governor of Mysore, to the Government of Mysore, to His Lordship the Chief Justice and Hon'ble Judges of the High Court of Mysore and to the Vice-Chancellors of the Bangalore University and the Mysore University, all of whom have co-operated with us and helped us in various ways.

Then, I have to thank my own elder colleagues, Mr. V. Krishnamurthi and Mr. Puttasiddaiah, who shared my sorrows and joys and who were my guiding lights, and the two Secretaries, Mr. Chandrakanta Raj Urs and Mr. Jayaram, who stood by me and gave me great assistance. I must also express my thanks to Mr. Venkataramaiah, the Conference Secretary. If you will pardon me, I may mention that many a time at five o'clock in the morning my telephone would ring and I would tell my wife that it could be from none other than Mr. Venkataramaiah. I will be failing in my duty if I do not mention how every one of the members of the Mysore State Commission of Jurists has helped me and I am most grateful to them.

The members of the Bar have been very nice, very kind and very good to us.

I should not forget the Press. The Press has been very helpful and they have taken an active interest in the Conference. They have reported the deliberations of the

proceedings and I am really thankful to them including the photographer Mr. Nagaraj who has been covering the entire Conference.

Then, I am grateful to the Principal and the students of the Maharani's College for having organised the cultural entertainment one evening. It was really marvellous, as one of the participants said. Finally, I must thank the All-India Radio, Air India and also the Films Division of the Government of India.

Well, Sirs, I do not want to take much of your time except to repeat that we have enjoyed your stay for the last five days and nights; we have wine and dined together; we have lived together and now you are leaving us and going away. My only hope is that we will certainly meet again."

Mr. Geoffrey Garrett of the United Kingdom, speaking on behalf of the English participants, then thanked members of the Mysore State Commission of Jurists for their hospitality.

Mr. Jean Morice of Cambodia, speaking in French, then expressed the hope that the jurists of the world would have the path which will lead to friendship between peoples and their leaders and that they would thus be instrumental in establishing peace among men.

Mr. Setalvad then called upon Mr. V. Dayal, representing the United Nations High Commissioner for Refugees, to say a few words. Mr. Dayal joined the previous speakers in expressing his gratitude to the Mysore State, Indian and International Commission of Jurists for the fine experience of living and working together in a beautiful city and of participating in the deliberations of a most rewarding Conference. He continued:

"On behalf of Prince Sadhruddin Aga Khan, the High Commissioner for Refugees whom I represent, I wish to express my gratitude for the invitation extended to our office. I think we all very greatly appreciate the choice of the subject for this year at this distinguished Conference, which conducted its deliberations in such a scholarly manner. In the discussion of the right to Freedom of Movement, of course, the refugee is one of the many

persons involved. I for one am extremely happy that the Conference has also directed its attention to those who are not in the main stream of activity, the refugee and the stateless person. The question of travel documents, the question of settlement and the question of voluntary repatriation, etc., are all too important to refugees, and I am extremely grateful that this Conference has been able to spend some time on these questions.

To conclude, I should like to say that this has been an extremely auspicious beginning to the Human Rights Year. Freedom of Movement was an extremely important subject and I am glad that it has gained importance under the auspices of this Organisation. There is very little for me to add. I should simply like to express once again my sincere gratitude on behalf of the Observers and particularly on behalf of the office I represent to have had this opportunity of coming and participating in this extremely valuable Conference."

The Secretary-General of the International Commission of Jurists, Mr. Sean MacBride, was the next speaker. He began by thanking previous speakers for their appreciation of the work done by him. He said:

"I could do no work which would be effective without the co-operation and help of our staff who moved from place to place all the time organising and carrying the Conference work even late into the night in order to make this meeting a success.

This is not merely a meeting of professional people, of lawyers meeting for the purpose of furthering their own professional interests. This is a meeting of lawyers inspired by dedication and idealism. If it were not for that dedication and idealism, these meetings would be pretty well worthless. I think, as has often been said, a man without an ideal is like a man without a soul, and certainly a lawyer without an ideal and who cannot achieve something for his fellowmen is a lawyer without a real purpose in life. What makes our meetings worthwhile is that dedication, that mutual respect for one another's opinions. This Conference was, to a certain extent,

the result of an idea that was launched in Ceylon a couple of years ago at a meeting in which participated Mr. Harry Jayawardene, Mr. Purushotam Trikamdas, Mr. Naidu, Mr. Lucian Weeramantry and a number of others. At the time we did not expect that it would be as successful as it has turned out to be. All those hopes we then placed in our colleagues from Mysore State have been more than fulfilled.

Conferences of this kind are very important and useful. The exchanges and cross views are extremely valuable. One face I see in the hall is that of Mr. Norman Marsh who says little in any proceedings and very often looks a bit bored. But in the end he is the man who translates our decisions into able and meaningful language, and this he usually does sometime between midnight and three or four o'clock in the morning. I find in the final analysis that it is not the words that flow but the work of marshalling the decisions that matters. What last are the written Conclusions that emanate from a Conference. In that connection I would like to emphasise the real importance of the Conclusions of this Conference. These Conclusions will now form part of the standard text on the Right to Freedom of Movement. Gradually, they will become accepted as guiding principles by lawyers and judges in the same way as the Conclusions of Delhi have played an important role in the development of the Rule of Law. Just in the same way, the Conclusions of the Nordic Conference will set down standards to be followed in the field of the Right to Privacy. The Conclusions of Bangalore will, I hope, have a real influence on the development of the Right to Freedom of Movement. I shall, as requested in the Resolution, transmit these Conclusions to the Inter-Governmental United Nations Conference which will be held at Teheran in a couple of months. That Conference may or may not adopt, or may or may not specifically refer to them, but they will certainly be read and will have an influence on the thinking of that Conference.

As I was listening to the discussions of Committee II the other day, I was reminded of the discussion at the

Council of Europe before the adoption of the Convention on Human Rights. Through an accidental set of circumstances, I happened then to find myself sitting in power in the Foreign Office of my own country. I was unable to push the idea forward. People merely laughed at us when we talked of having a Convention on Human Rights. I had considerable trouble to get the concept of the right of individual petition accepted. I had considerable battles to fight. The conservative governments at that time did not want to accept the recommendations relating to the Convention and wanted the right to suspend human rights in times of war and public emergency. I felt that this would give governments the freedom to set aside the rights guaranteed under the Convention under different pretexts, and, after a considerable battle, I was able to get the definition of emergency enlarged and limited to public emergency threatening the life of the nation. That has been accepted since at ICJ Congresses. It is now included and accepted unanimously by the United Nations in the Covenant of Civil and Political Rights. When I was fighting the battle, people thought I was a bit extreme. Therefore, when pushing this proposal for a Council of Asia, I feel we are pushing something which is going to become a reality. This Conference is a historic one in the sense that it is the first International Conference held in the Human Rights Year as part of the Human Rights Programme. It is historic also because on the opening day of the Conference—the 10th of this month—the Government of India, the greatest democracy in the world, terminated the operation of the State of Emergency. I think this is a most welcome sign for the Human Rights Year. The Government of this vast country should make its contribution by putting an end to limitations on the full application of laws for the protection of human rights. I should like to pay a tribute to the Government of India for what it has done.

We pin a lot of hope not so much on the forthcoming Conference at Teheran, but on public opinion in the world which will be created and developed in 1968. As a matter of fact, public opinion on the international

plane will be developed in a greater degree. Today, mass media of communication and higher educational standards promote world public opinion. They have created a situation in which even the governments of totalitarian States can no longer ignore the demands of public opinion in the world. Therefore, this Conference has been very important in providing a great opportunity for creating a world demand from the people of the world on their governments to afford more effective protection to human rights at national, regional and international levels. Since 1948, since the Universal Declaration was accepted, progress has been agonisingly slow and we, in our headquarters in Geneva where we have to deal with so many problems at all times, cannot help feeling that human rights, instead of progressing, have been retrogressing in different parts of the world as never before. These problems are not limited to Asia. In Europe, Italy, Portugal, Spain and in East European countries, human rights and Rule of Law are under constant attack or threat. Europe prides itself on being the mother of democracy and of the Rule of Law. It is in Africa that probably the greatest problems face mankind. South Africa, Rhodesia, Mozambique, Angola and Portuguese Guinea present a colossal problem.

There is one other thing which is causing us the greatest anxiety. I should appeal to you to do something in your own country to arrest the growing tendency towards brutalisation of the world and the acceptance of brutality as if it were inevitable. We hardly experience a shock when we read of half a million people being massacred, be it in Asia or in Africa, when we hear the right of freedom of association and freedom of expression being suppressed. Today we also have almost relegated this brutalisation to the "lost-property" compartment of our conscience. We are doing nothing about it. What is horrible is that brutality is a disease, a contagious disease in the world and that it debases the moral standards of humanity. That is really a grave problem and I would appeal to you to try and ensure that responsible opinion in your country—lawyers, social workers, political workers—

should face this problem and lead humanity away from this growing tendency towards brutalisation of human beings.

I know our President is going to thank on our behalf all the people of Bangalore who have contributed to making this Conference a success. Therefore, I am not going to take on this task beyond saying this, that we have much to learn at Conferences of this kind, each one of us in his own way can here learn kindness, humility, thoughtfulness and efficiency which all our colleagues of Mysore State exemplified.

I should also before concluding ask you for your approval to convey to the International Commission, and in particular to the Chairman of our Executive Committee, your greetings and your appreciation of the work which they are doing and permitting us to do. I take it, I can convey this on your behalf to the Chairman who was unfortunately not able to come here on this occasion because he is Chairman of a newly appointed Commission of Human Rights in his country to revise the laws on human rights. He had some meetings of that Commission taking place and was therefore prevented from coming here.

Mr. Chairman, I want to thank everybody who participated in this Conference, for the invaluable help and co-operation we received."

Justice Fernando of Ceylon, President of the International Commission of Jurists, spoke next and thanked the participants on behalf of the International Commission of Jurists.

He said:

"We conclude our labours on the day of the festival known to many South Indians as *Thai Pongal*, or the harvest festival. But our harvest is the agreed Conclusions and our Resolution on the Council for Asia and the Pacific.

We are really vain enough, but proudly vain, to think that this has indeed been a momentous week here in this beautiful and historic State of Mysore and in this expanding capital city of Bangalore. Those who are keen on spreading the new faith in Human Rights have had their bodies

warmed by the Indian Sun that has shone on us without a break all week and their hearts warmed by the wonderful spirit of comradeship and co-operation that has been the chief feature of all our proceedings.

At this moment, may I, on behalf of us all, thank once again His Excellency Governor Pathak, not only for gracing formal and social occasions this week, but for his keen and professional interest in our discussions. He inaugurated this Conference with the stamp of class, and the undoubted success that has crowned our efforts will no doubt please His Excellency as much as it will please his Government.

To the Government of Mysore for its blessings to the Conference, both formal and material, we are truly grateful. The name of Bangalore and of Mysore are writ large in our minds and in our breasts, and Bangalore has built for itself a solid and lasting brick in the edifice which when completed will come to be known as the Rock of Human Rights.

On behalf of all three Commissions, may I, Mr. Chairman, convey our combined tribute for the effortless ease with which you controlled our proceedings. Without your skill and experience, so much could not possibly have been achieved in so short a time.

We are beholden also to the Chairmen and Vice-Chairmen of Committees, to the Rapporteurs and Secretaries who worked unceasingly to ensure that our work will be completed in time.

Then, we must not overlook those who laboured in advance to produce the excellent working papers that formed the basis of our discussions this week and Messrs. Jayaram, Somasekharan and Vijayashanker who produced for us the first part of the working paper, and Mr. Urs who produced the second part and one of our most senior and staunch supporters, Mr. Trikamdas who produced the third on the Council of Asia, will kindly accept our thanks offered in this way."

It is fitting that in this connection I pay tribute on behalf of us all, to our own Mr. Weeramantry, who has charge of our Asia desk, for co-ordinating all the technical work of this Conference. We are often apt to overlook our own officers at these moments, but I am personally aware of the long weeks and months spent by Mr. Weeramantry to ensure that we were all well prepared for this Conference.

May I also take this occasion to thank the Chief Justice and other Judges of the High Court of Mysore State for their vivid interest in our work and for their participation in our deliberations. Their views were highly valued by us all.

Then, will you permit me, Sir, on this occasion to thank the Vice-Chancellors of the Universities of Bangalore and of Mysore for their gestures of courtesy to all the participants and for their hospitality.

Our thanks must go to all the hosts at Bangalore at innumerable social occasions, big and small.

The bulk of the credit for the success of this Conference must, of course, go to the Mysore State Commission of Jurists. They have all worked as one wonderful team, thus proving that when put to a task, busy lawyers can do any kind of work as any other skilled worker. It is impossible in the short time available to mention the names of all whose names occur to me as deserving of mention publicly. If I, therefore, do indulge in special mention, I do so because of the representative capacities they enjoy.

Mr. Gundappa, the President, made himself omnipresent and did not spare himself any trouble, big or small. His gracious lady, Mrs. Gundappa, with much foresight arranged hospitality in her own home to our ladies, and we are very grateful for that gesture, as indeed for all gestures of a like kind.

Then, what can I say of Mr. Krishnamurthi, your witty Vice-President, a man of few words, who cast his pearls on appreciative audiences. We will remember him with fondness and appreciation.

Mr. Puttasiddiah was present, silently attentive to our exacting demands.

No words are sufficient to show our appreciation of the herculian efforts of Mr. Jayaram and the other of the two Joint Secretaries, Mr. Chandrakanta Raj Urs. To the latter we owe signal admiration for the single-minded devotion to the difficult work of co-ordination. That he did not fail in his task despite cruel physical incapacity shows what a wonderful soldier he is. And, ever smiling, always attentive was his charming wife, Mrs. Urs, a typical example of fine Indian womanhood. Attentive to all the guests, but nevertheless not forgetful of her duties to her temporarily disabled husband.

What shall I say of Mr. Venkataramaiah, Special Government Pleader, here and the Commission's staunch supporter for his gifts of hospitality and organisation?

Lest I forget, our sincere thanks to all the staff, both from Mysore and our own for the efficient work done swiftly, seen and more often unseen, that helped us to finish so much work in the course of four days.

The Mysore Commission must accept our deep thanks for the perfect arrangements made here for this Conference and for the lavish, sometimes much too lavish, hospitality showered on us.

Will Messrs. Nanjundaswamy, Ananth and Balagopalan accept our thanks on behalf of all the men and women who attended to the work of typewriting and mimeographing?

Similarly, will Messrs. Sunder Kumar, Laxman and Raman and Misses Bharati and Vinoo Ahuja accept our warmest thanks for attending to much preparatory work and for volunteering their services to enable this Conference to get along.

And last, but not least, I must pay my tribute to the Pressmen in this city for their wonderful publication of our work. The International Commission of Jurists has consistently been a supporter and defender of the Freedom of the Press and it is a great encouragement to all of us

connected with the advancement of the Rule of Law that the Indian Press shows every sign of vigorous growth. Certainly, it has been very kind to us and shown true appreciation of the kind of work we are doing all over the democratic world.

If, Mr. Chairman, this Conference is the first of its kind for this International Year of Human Rights, those of us who have been fortunate enough to participate in this week's work will be amply rewarded if we are considered to have ushered in this auspicious year with meaningful discussion and the production of document which will be of benefit to the cause of furthering Human Rights.

Freedom of Movement is but one facet of these Rights. As one of our former Presidents, Judge Vivian Bose, often reminds us human rights cannot have full meaning unless the social and economic conditions of the people of lands like India and those of her neighbours are bettered. Human rights can give little satisfaction to the poor soul who is bereft of food and of shelter. While that short-coming is very marked in the lands of this region, nevertheless our limited task is being fairly satisfactorily performed. The cause of Human Rights, for its full realisation, will take long years, we fear; but each Conference successfully accomplished means the adding of one more milestone in a long, and, I hope, a victorious march for the betterment of humanity.

This vast and great land of India is facing problems of a magnitude which would frighten many a lesser nation. I have been fortunate in seeing and sizing some of the innumerable problems, and have had glimpses of the really great efforts this country has launched. We pray that her efforts will be crowned with eventual success.

India's success or failure has lessons for all of us in this region or indeed for the entire world. We must learn from those successes or even failures. She is one of the elders in this continent and we have not stopped learning from elders.

And, in concluding my remarks, *au revoir* to you all and hoping that the good work begun here will be

continued in our respective lands, with our own national sections or our particular Governments. I can do no better than quote the words of one of the sons of India, Gauthama the Buddha, so often acclaimed by your late Prime Minister, Jawaharlal Nehru, as the greatest son of India ever,—“May all living beings be happy.”

That indeed is the ultimate goal of the International Commission of Jurists.”

Mr. Setalvad of India, the President of the Conference, then made the concluding speech of the Conference. Speaking of the ancient culture and tradition of India, he said:

“Only the other day one of the senior lawyers here pointed out to me a portion from Ramayana about five thousand years old which is a chapter on the Rule of Law. It states that one of the most important evils would be the absence of freedom of movement, the absence of trade, the absence of educational, recreational and other activities and so forth.

It is a matter of deep gratification that this Conference should have been the first international gathering in the Human Rights Year asserting one of the most important Human Rights. Taking the whole charter of Human Rights, the Right to Freedom of Movement at first sight appears to be a small fragment of it. But when one considers its scope and ramifications, perhaps it is interlinked and intertwined with most other Human Rights, viz., the freedom of movement within the country, freedom to leave the country and to return to it. Not unnaturally it has been described as a fundamental right which goes to the root of many other Human Rights and it is therefore appropriate that in the Human Rights Year we should have first dealt with this very fundamental Human Right. The battle for Human Rights is being waged on various fronts. The Secretary-General has told us how the battle has raged, how sometimes it goes forward and how sometimes these rights are attacked and we fall back. There is therefore no room for complacency. Every lover of human freedom and human rights has to do his utmost to further them because, notwithstanding the

growth of what may be called the democratic countries, there are even in these countries insidious attempts to undermine these Human Rights. Even in countries which have a constitution, their constitutions are sought to be used or misused with a view to derogate from these Human Rights. It is therefore in my view up to us the lawyers and jurists, both academic, practising and generally interested in law, to put forward our best efforts to further these rights because the framing of a democratic constitution does not really end the matter. We have to carry the battle into the executive field because, however your constitution may be framed and whatever may be your laws, the executive will try its utmost to seek to weaken these rights. That is why the greatest effort is required from men of law to sustain these rights.

I may say a word now, though it may be awkward for the Chairman himself to claim, that the Conference over which he has presided has done very good work. All of us and especially the Mysore State Commission of Jurists have worked hard to make it a success and their efforts would not have borne fruit but for the very able guidance and assistance which we all and they have received from the distinguished foreign participants who helped us in our deliberations.

The backbone of our deliberations were the officials and the office-bearers of the International Commission of Jurists who have been all the time guiding our deliberations. It is difficult, and I would not attempt to mention any names. I will content myself by saying that we, in this Conference, and I speak on behalf of everybody, are deeply indebted to all those who participated for their able and meaningful co-operation in making the Conference a success. I am sure our deliberations, over which we spent hours of labour will be one more step forward in sustaining the importance of human rights and the Freedom of Movement. But our labours have gone a little further. We are attempting to create a Council of Asia and the Pacific region. That of course is an idea which would take, I expect, a very long time in bearing

fruit. But the seeds of all good deeds have to be laid and I am glad that this Conference has taken a step forward, though a very small step forward from the Colombo Conference, so that we can slowly but steadily march towards the goal of Council for Asia and the Pacific.

I thank you gentlemen for all co-operation and wish you all godspeed and luck in your journeys homewards.

Thank you”.

The members of the Conference seated on the dais were then garlanded by the members of the Mysore State Commission of Jurists. The Conference concluded with the singing of the Indian National Anthem.