

January 1971

The Right to Movement and Travel Abroad: Some Observations on the U.N. Deliberations

Ved P. Nanda

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

Ved P. Nanda, The Right to Movement and Travel Abroad: Some Observations on the U.N. Deliberations, 1 Denv. J. Int'l L. & Pol'y 109 (1971).

This Article is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, digitalcommons@du.edu.

The Right to Movement and Travel Abroad: Some Observations on the U.N. Deliberations

Keywords

Freedom of Movement, Asylum, United Nations

THE RIGHT TO MOVEMENT AND TRAVEL ABROAD: SOME OBSERVATIONS ON THE U.N. DELIBERATIONS*

VED P. NANDA**

The U.N. Commission on Human Rights has again postponed, until its 28th Session in 1972, the consideration of the item pertaining to "discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country."¹ It should, however, be noted that for several years now such postponement has become a routine practice with the Commission,² for almost eight years have lapsed since the major U.N. study on the subject was completed.³ This study had offered specific proposals for national and international action to ensure freedom and nondiscrimination to an individual in the enjoyment of his right to movement and travel abroad.⁴ In addition, the study had proposed a draft declaration of principles "which could exercise persuasive force and moral authority by virtue of their adoption by a competent organ of the United Nations."⁵

Since no U.N. action has yet been taken to study and implement these proposals, this lack of enthusiasm demonstrates that the right to travel abroad is not a top priority item. Nonetheless, it is one of those basic human rights, the universal recognition of which is likely to be a major accomplishment in accepting the importance of the individual as a subject of international law. Moreover, its importance is not confined merely to theoretical formulation and studies, for in various real life settings, the extent to which the right is recognized, as well as the nature of state limitations upon it, might have a pro-

*This is an adapted version of a paper presented at the World Peace Through Law Conference in Belgrade, Yugoslavia, July, 1971.

**Professor, College of Law, University of Denver. Director, International Legal Studies Program. The author gratefully acknowledges the research assistance of Britt Anderson, a second year student at the University of Denver College of Law.

¹ The decision was taken at the 1136th meeting of the Commission, held on March 25, 1971. See UNECOSOC, Fiftieth Session, Agenda item 5(a), Summary Report of the Commission on Human Rights on its twenty-seventh session, U.N. Doc. E/4949/ Summary, 14 April 1971, at 13.

² See e.g., UNECOSOC, Commission on Human Rights, 27th Session, Note by the Secretary-General: Study of Discrimination in Respect of the Right to Everyone to Leave any Country, Including His Own, and to Return to His Country, U.N. Doc. E/CN.4/1042, 6 November 1970 [hereinafter cited as 1970 Note by the Secretary-General], at 2-3.

³ Jose D. Ingles, *Study of Discrimination in Respect of the Right of Everyone to Leave Any Country, Including His Own, and to Return to His Country*, U.N. Doc. E/CN.4.Sub.2/220/Rev.1 (1963) [hereinafter cited as Ingles report].

⁴ *Id.*, at 67-70.

⁵ *Id.*, at 64-67.

found impact upon individuals and groups. For instance, recent alleged Soviet restrictions on the Jews wishing to emigrate from the U.S.S.R., and the subsequent demonstrations and mass meetings in several countries with claims and counter-claims on the existence and the recognition of said right,⁶ point to the seriousness of the situation.

Thus despite previous inaction the subject is of such significance so as not to be dismissed or even slighted. As such, this paper will briefly examine (1) the nature of the right as enunciated in the U.N. instruments; (2) the scope and implications of this right; (3) major problems likely to be encountered in the implementation of the right; and (4) state practices in recognizing and limiting the right. The paper will conclude with a section on appraisal and recommendations.

I. THE NATURE OF THE RIGHT AS RECOGNIZED IN THE U.N. INSTRUMENTS

The Universal Declaration of Human Rights, promulgated on December 10, 1948, enunciates the right in article 13(2): "the right of everyone to leave any country, including his own, and to return to his country."⁷ This right, in fact, can be read as an extension of the right enunciated earlier: "Everyone has the right to freedom of movement and residence within the borders of each state."⁸ Several other articles of the Declaration have an important bearing on this right.⁹ For instance, article 9 provides that "no one shall be subjected to arbitrary arrest, detention or exile."¹⁰ Article 14(1) provides that everyone has the right "to seek and to enjoy in other countries asylum from persecution."¹¹ Article 15(1) provides that everyone has the right to a nationality¹² and article 15(2) provides: "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."¹³

One could, of course, argue that the principles set forth in the Universal Declaration reflect merely the "oughtness"

⁶ See, e.g., *New York Times*, March 6, 1971, at 14, col. 3; *id.*, March 11, 1971, at 9, col. 1; *id.*, March 30, 1971, at 14, col. 5; *id.*, March 31, 1971, at 10, col. 1; *id.*, April 5, 1971, at 16, col. 1; *id.*, June 1, 1971, at 34, col. 7; *id.*, June 22, 1971, at 3, col. 2; *id.*, June 24, 1971, at 2, col. 3; *id.*, June 26, 1971, at 3, col. 5; *id.*, July 14, 1971, at 3, col. 1; *TIME*, May 31, 1971, at 39.

⁷ See U.N. Office of Public Information, the Universal Declaration of Human Rights: A Standard of Achievement, U.N. Publ. No. 62.I.9 [hereinafter cited as Universal Declaration], at 35.

⁸ *Id.*, Article 13(1).

⁹ See Ingles report, at 9-12.

¹⁰ Universal Declaration, *supra* note 7, at 35.

¹¹ *Id.*

¹² *Id.*, at 36.

¹³ *Id.*

and are not enforceable.¹⁴ But with the adoption by the General Assembly on December 16, 1966, of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the Covenant on Civil and Political Rights, these principles have been transformed into enforceable international obligations. Article 12, paragraphs 2 and 4 of the Covenant on Civil and Political Rights affirm the right to travel: "...2. Everyone shall be free to leave any country, including his own. ... 4. No one shall be arbitrarily deprived of the right to enter his own country."¹⁵

As early as 1952, however, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the U.N. Commission on Human Rights initiated a study on the right set forth in article 13(2) of the Universal Declaration.¹⁶ Subsequently approved by the U.N. Commission on Human Rights and the Economic and Social Council, the Sub-Commission conducted a global study "with respect to all the grounds of discrimination [in respect of the right of everyone as provided in article 13(2) of the Universal Declaration] condemned by the Universal Declaration of Human Rights. . . ."¹⁷ The study, which was carried out by Jose Ingles as the Special Rapporteur of the Sub-Commission, took three years to complete (1960 to 1963), and contains valuable information on pertinent state practices. It also contains specific recommendations to ensure the "full enjoyment" of this right. As mentioned earlier, the Commission has not had occasion thus far to study the proposals and recommendations contained in the Ingles report.

However, in 1963, a U.N. Conference on International Travel and Tourism, which met in Rome (from August 21, 1963 to September 5, 1963) and was attended by 87 states and several inter-governmental and non-governmental international organizations, considered the question pertaining to freedom of movement in the light of the Ingles report. While the Conference noted the suggestion that "freedom of travel from country to country should be the inalienable right of all,"¹⁸

¹⁴ *But see id.*, at 12-32.

¹⁵ See Resolutions adopted by the General Assembly during its 21st session, 20 September-20 December, 1966, U.N. General Assembly Official Records, 21st Sess., Supp. No. 16 (A/6316) [hereinafter cited as 1966 Gen. Ass. resolutions], at 49, 54.

¹⁶ Ingles' report, at 74.

¹⁷ *Id.*, at 75.

¹⁸ See U.N. Conference on International Travel and Tourism (Rome, 21 August-5 September, 1963), Recommendations on International Travel and Tourism, U.N. Doc. E/CONF. 47/18 (1964), at 29.

and recognized "however, that such a rule could not apply universally at the present stage," it nevertheless added that "its implementation should be the aim of all countries, and the Conference recommends that governments should, wherever possible, avoid any kind of activity hostile to tourism and based on arguments of a religious, racial or political nature. The Conference asked that its opinion on that point be communicated to the United Nations Commission on Human Rights."¹⁹

The general resolution by the Conference affirmed the ideal, expressed in the Universal Declaration of Human Rights, that everyone has the right to freedom of movement, including freedom of transit, and takes note of the report by the Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, on the right of everyone to leave any country, including his own, and to return to his country.²⁰

It recommended that governments should "prevent, in the field of tourism, any campaign of denigration or discrimination based on religious, racial or political grounds."²¹ The Conference further recommended that "travel for educational, scientific, cultural or official purposes should be specifically encouraged and facilitated."²²

A notable recognition of the right is contained in article 5 of the 1967 International Convention on the Elimination of All Forms of Racial Discrimination which obligates states parties to guarantee the right of everyone, without distinction as to race, color or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to leave any country, including one's own, and to return to one's country.

In addition, several international instruments have recognized these rights.²³ The most noteworthy in this context are: (1) the 1951 Convention Relating to the Status of Refugees; (2) the 1954 Convention Relating to the Status of Stateless Persons; and (3) the 1961 U.N. Convention on the Elimination or Reduction of Future Statelessness. The following provisions of these conventions have a direct bearing on the right under consideration: article 28 of the 1951 Convention on Refugees obligates contracting parties to issue travel documents to refugees within their territory, especially to the ones who are unable to secure such documents from the state of their lawful residence; article 28 of the 1954 Convention on Stateless Persons

¹⁹ *Id.*

²⁰ *Id.*, at 20.

²¹ *Id.*

²² *Id.*

²³ See generally Ingles report, at 5-7.

similarly obligates the contracting parties to issue travel documents to stateless persons lawfully within their territory, while paragraph 13 of the Schedule to the Convention entitles a stateless person who is the recipient of a travel document under article 28 to re-enter the territory of the issuing state at any time during the period of the validity of the document; the 1961 Convention contains several provisions to ensure that departing nationals do not lose their nationality on racial, ethnic, religious or political grounds, unless they have in the meantime acquired another nationality.

It should be also mentioned that both the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations contain special provisions allowing persons enjoying diplomatic and consular privileges and immunities respectively and members of their families to leave the territory of the receiving state, even when armed conflict is in progress.

Finally, various regional and bilateral arrangements aimed at easing border requirements and facilitating international travel are also in existence. Of special note are articles 2-4 of the Protocol No. 4 to the European Convention on Human Rights which embody, *inter alia*, the principles that everyone is free to leave any country, including his own, and that no one is to be deprived of the right to return to his country.

II. SCOPE AND IMPLICATIONS

The right to movement and travel abroad as expressed in article 13(2) of the Universal Declaration of Human Rights is fairly comprehensive. It encompasses such diverse groups as tourists, refugees, immigrants and emigrants and stateless persons as well as those citizens within a state who are forced to remain there due to discriminatory practices. But while the right is broad, its scope in the light of past and present applications appears to be severely restricted.

Limitations are inherent, due to the stated exceptions (national security, public health and morals, safety, legal and military obligations and the public order)²⁴ and the reaction of nation states to what they might perceive to be an infringement upon matters within their domestic jurisdiction. Notwithstanding some serious challenges to the sovereignty of the nation state, a state's right and power to control its internal affairs is

²⁴ 1966 Gen. Ass. Resolutions, at 49-54.

still widely accepted.²⁵ Thus while the individual claims the right to international movement, the state claims the right to impose certain restrictions.

Accepted state restrictions include such activities as limiting travel to members of subversive organizations,²⁶ immigration policies seeking "skilled" employees,²⁷ and the imposition of medical and health qualifications.²⁸ However, if the right were to be interpreted literally, cause might exist for increased concern over its possible application to population shifts.

This concern is already being expressed with regard to social tension that urban areas have experienced in connection with immigration policies.²⁹ Thus in deciding future application of 13(2) it is important that a balance be achieved in immigration policies between the social costs incurred and the profits received in both developing and developed nations. Beyond this economic balance are also problems of national identity. A homogeneous population is desired by many states as a means of achieving identity and reducing cultural tensions. But, while the ideal of homogeneity is appealing, its feasibility is not great, especially in the developing countries of Asia and Africa. The legal and technical problems beyond the moral, sociological and cultural problems of shifting borders and populations to achieve a homogeneous population place the ideal far beyond practicality.

Still, given the above considerations, it can be argued that a state cannot impose restrictions aimed specifically at a group, race, nationality, etc., with a view to denying them the right to move freely among countries on a discriminatory basis.

It must be noted here that the problems being dealt with are not unique to 13(2). They affect all human rights. Discrimination is an illusive concept. First, it is difficult to define since it must depend in large part upon the situation in which it occurs. Second, once it is defined such discrimination is often difficult to "prove." Perceptions of situations differ greatly. And since discrimination is a social, cultural, or as some say an innate pattern of behavior, a listing of basic human rights can only deal with the manifestations of discrimination. Actual discrimination cannot be dealt with by international covenants. But these covenants can lessen the areas in which the mani-

²⁵ See generally, W.M. KULSKI, *INTERNATIONAL POLITICS IN A REVOLUTIONARY AGE* 1-2 (1968); A.F.K. ORGANSKI, *WORLD POLITICS* 21 (2d ed. 1968); J. STOESSINGER, *THE MIGHT OF NATIONS* 8-10 (1965).

²⁶ *New York Times*, July 14, 1970, at 3, col. 4.

²⁷ *Id.*, Sept. 5, 1970, at 3, col. 1.

²⁸ *Id.*, Oct. 15, 1970, at 11, col. 1.

²⁹ *Id.*, Aug. 2, 1970, at 1, col. 7.

festations of discrimination are acceptable. The problems of determining discriminatory behavior are then alike for all human rights.

A state's denial to its citizens of access to other countries and its refusal to accept citizens of other states within its borders, may not in and of itself be discriminatory. Imposing restrictions such as visas, health controls, monetary payments, etc., can be appropriate in one situation and perhaps discriminatory in another. Promotion of trade and travel and the ensuing economic benefits are a part of this picture as are travel regulations for refugees, migratory laborers and stateless persons. What are appropriate formalities and requirements? Are there time limitations? What are the grounds for rejection? Once issued, can a state refuse to honor such documents? Can a state, after permitting travel, deny re-entry? Do the same rules apply to citizens and foreigners or resident aliens? Should treatment accorded individuals be different from that accorded groups? If so, in what way? How should one view this freedom in terms of population growth? What is the relation to economic viability?

These factors and considerations, social, economic, political, must be part of the input into a discussion on the implementation of the right of movement and travel abroad. Each situation puts forth a myriad of complex and sometimes contradictory aspects. But implementation, to be successful, must be viewed in the broadest of contexts. The scope here is all encompassing within the perspective of restrictive measures whose purpose is to effectuate discriminatory policies.

III. DIFFICULTIES IN THE IMPLEMENTATION OF THE RIGHT

It is this broad and rather illusive perspective, and its variety of credible and varying interpretations which tend to make this right appear ambiguous and, therefore, difficult if not impossible to implement. This, together with the differing criteria a state may apply to determine the nature and extent of these rights — that of a national to leave his country and that of a foreigner to leave the country of his sojourn — and that it might treat both these rights differently from the right of its national to return to his country reinforce the difficulties of implementation. Another equally important problem is the existence of direct and indirect state limitations on the enjoyment of this right, limitations which are hard to substantiate because administrative procedures granting, denying or restricting this right might be so discretionary as to allow little or no recourse

to further appeal or judicial review. Thus a de jure existence of the right would certainly not imply that it does exist de facto as well. Furthermore, a state might couch its discriminatory practices in legalistic framework. Therefore, although the state practice would amount in fact to "discrimination" in the enjoyment of the right as provided in articles 2 and 29(2) of the Universal Declaration, it would be hard to prove, due to indirect restrictions administered under regulations and procedures which provide for nondiscriminatory application but are in reality administered in a discriminatory fashion.

It is appropriate at this point to note that article 2 of the Declaration provides in its relevant part: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."³⁰ Article 29(2) provides:

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.³¹

While article 2(1) of the International Covenant on Civil and Political Rights is identical in content to article 2 of the Declaration, article 12(3) of the Covenant provides:

The above-mentioned rights shall not be subject to any restrictions except those which are provided 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.³²

Of note are the additions of national security, *ordre public* and public health in article 12(3) of the Covenant to the limitations already mentioned in article 29(2) of the Declaration, and the deletion therefrom of the concept of "general welfare." The civil law concept of *ordre public* is generally considered broader in scope and more flexible than its counterpart in common law, public order; while the former is closer to public policy, the latter means absence of disorder.

Thus, while the right encompassed in article 12 of the Covenant is to be enjoyed without any distinction based on "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," there is ample

³⁰ Universal Declaration, *supra* note 7, at 34.

³¹ *Id.*, at 38.

³² See *supra* note 24.

reason to believe that any one or more of the bases of distinction enumerated here could be used by a state to prevent a national from leaving his own country, to prevent a foreigner from leaving the country of his sojourn, or to prevent a national from returning to his own country.³³ For instance, passport facilities could be denied to persons belonging to an ethnic group or to a political party as has been the case in South Africa. Similarly, restrictions could be imposed on persons for various reasons, such as some special status — that of a married woman or a divorcee — or on linguistic, religious or political grounds — for example, alleged restrictions on Jews in the Soviet Union — or for reasons of national or social origin — for instance, restrictions on American citizens of Japanese descent during World War II — or on considerations based on property, birth, or other status.

The Covenant allows a state to impose limitations on the right of everyone to leave any country, including his own, and to return to his country, if such limitations are “provided by law” and are necessary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedom of others. In his study Ingles discusses passport and visa restrictions based on state interest, especially public emergency; legal incapacity; nonperformance of legal obligations and professional skill.³⁴ Among indirect limitations, Ingles discusses economic measures such as forbidding or restricting the exportation of currency as well as the high cost of obtaining travel documents.³⁵ Also, in some states, the procedures and conditions for obtaining a passport might be so complex as to render the exercise of the right to leave the country extremely difficult.³⁶ In addition, the exercise of the right to travel would be affected by (1) administrative and legislative remedies available to an aggrieved national who claims that his rights have been unduly restricted,³⁷ and (2) the imposition of penal or other sanctions upon the persons who might be found to have violated the state requirements on international travel.³⁸ As noted previously in Section II problems of implementing sanctions on discriminatory actions are not unique here. Implementation can at best be directed toward outward manifestations of discrimination.

³³ See generally Ingles report, at 20-35.

³⁴ See *id.*, at 41-46.

³⁵ *Id.*, at 47-49.

³⁶ *Id.*, at 49-51.

³⁷ *Id.*, at 51-53.

³⁸ *Id.*, at 53-55.

IV. TRENDS AS REFLECTED BY STATES' PRACTICES IN RECOGNIZING AND LIMITING THE RIGHT

The 1963 Ingles study was prepared on the basis of an extensive survey resulting in responses from 90 countries as well as information on 22 additional countries. Thus the study takes into account as many as 112 states. In addition information was solicited from selected non-governmental organizations in consultative status and specialized agencies.³⁹ The responses show that about one-third of the countries explicitly recognize the right in question. It is appropriate to cite the report:

(a) *The right of a national to leave his country.* In twenty-four countries the right is formally recognized in constitutional texts or laws and in twelve countries by judicial interpretation. Fifty countries do not expressly recognize the right in their legislation.

(b) *The right of a national to return to his country.* In twenty-four countries the right is formally recognized in constitutional texts or laws and in twelve countries by judicial interpretation. Forty-nine countries do not expressly recognize the right in their legislation.

(c) *The right of a non-national to leave the country of his sojourn.* In twenty countries the right is formally recognized in constitutional texts or laws and in four countries by judicial interpretation. Fifty-six countries do not expressly recognize the right in their legislation.⁴⁰

Of course, the conclusion is not warranted that the absence of legal recognition negates the existence of the right, or conversely that formal recognition ensures its enjoyment. For while a number of countries

which do not have any constitutional or legislative provision or judicial precedent governing this question have stated that they recognize it "in principle," "as a rule of law," "in general practice," "according to regulations," "as an enforceable right," "always," or that "there is no authority for denial." This is particularly true as regards the right of a national to return to his

³⁹ The Secretary-General had in April 1960 sent a circular letter to all governments of states members of the U.N. and members of specialized agencies seeking their assistance in the preparation of the study, and adding that the Special Rapporteur would appreciate "having any relevant material, including the texts of laws, administrative arrangements, judicial decisions and statistical data," (Ingles report, at 77-78) as well as information on specific points sought by the Special Rapporteur. Two more circular letters, one in 1961 and the second in 1962, were sent by the Secretary-General to all governments which had not responded to the inquiry. The Director of the Division of Human Rights had in April 1960 made a similar request for assistance to 117 selected non-governmental organizations (Ingles report, at 76); this was followed by another letter in March 1962 to those organizations which had not responded to the first.

⁴⁰ Ingles report, at 4. In 4 countries on point a, in 5 countries on point b, and in 10 countries on point c no information available.

country, which has thus been informally recognized by sixteen additional countries.⁴¹

Since the report had not been considered by the Commission in several years, in June 1970, the Secretary-General, pursuant to a request by the Sub-Commission, sent a *note verbale* to governments of member states "requesting them to furnish information on new developments in fields covered by the study of discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country."⁴²

Of the replies received from 27 states until February 1971,⁴³ 12 (Cyprus,⁴⁴ France,⁴⁵ Guatemala,⁴⁶ Jamaica,⁴⁷ Lebanon,⁴⁸ Nicaragua,⁴⁹ Nigeria,⁵⁰ Poland,⁵¹ Sierra Leone,⁵² Singapore,⁵³ Syria,⁵⁴ and Turkey⁵⁵) indicated that no new developments had occurred since their earlier communications. Among others, Austria⁵⁶ and Luxembourg⁵⁷ referred to their ratification of Protocol 4 to the European Convention on Human Rights; Argentina⁵⁸ to its ratification of the 1967 International Convention on the Elimination of All Forms of Racial Discrimination; and Madagascar⁵⁹ to its accession to the 1966 Covenant on Civil and Political Rights. Obviously, all these countries were stressing the fact that since they were parties to the aforementioned conventions, they had therefore obligated themselves to the granting of the right.

Several countries referred to their constitutional provisions

⁴¹ *Id.*, at 5.

⁴² 1970 Note by the Secretary-General, *supra* note 2, at 6.

⁴³ See 1970 Note by the Secretary-General, Annex [hereinafter cited as Annex]; Note by the Secretary-General, Addendum, U.N. Doc. E/CN.4/1042/Add. 1, 25 Jan. 1971 [hereinafter cited as Add. 1]; and Note by the Secretary-General, Addendum, U.N. Doc. E/CN.4/Add. 2, 15 February, 1971 [hereinafter cited as Add. 2].

⁴⁴ Annex, at 2.

⁴⁵ Add. 1, at 7.

⁴⁶ Annex, at 3.

⁴⁷ Add. 1, at 7.

⁴⁸ Annex, at 5.

⁴⁹ *Id.*, at 6.

⁵⁰ *Id.*, at 7.

⁵¹ Add. 1, at 8.

⁵² Annex, at 7.

⁵³ *Id.*

⁵⁴ Add. 1, at 8.

⁵⁵ *Id.*

⁵⁶ Add. 2, at 2.

⁵⁷ Annex, at 5.

⁵⁸ *Id.*, at 1.

⁵⁹ Add. 1, at 7-8.

guaranteeing the right. They include Barbados,⁶⁰ Iraq,⁶¹ Kenya,⁶² Malta,⁶³ and Mauritius.⁶⁴ Afghanistan⁶⁵ and Swaziland⁶⁶ referred to their laws providing this right. Denmark⁶⁷ is the only country that reported some added restrictions on travel in the case of national servicemen who could be liable to be called up in case of mobilization, while Austria,⁶⁸ Italy⁶⁹ and Sweden⁷⁰ reported special provisions for granting passports to aliens without travel documents and to stateless persons.

Iraq⁷¹ and Italy⁷² mentioned "exceptional grounds" and "exceptional circumstances" respectively among the limitations on the right to travel abroad; in the former case, the limitation is on leaving the country, while in the latter, the limitation is on the right to be issued a passport. In Afghanistan,⁷³ the qualifications to a foreigner's right to enter Afghanistan, travel in the country and leave it are stated thus: "[e]xceptions apply only to undesirable persons in accordance with the law. The principle of reciprocity, in accordance with international law, is recognized." In Sierra Leone,⁷⁴ the right to leave the country is not included in the constitutional right guaranteeing freedom of movement, although it was reported that "there has been no judicial declaration on such a right" based on the constitutional provision granting freedom of movement.⁷⁵

V. APPRAISAL AND RECOMMENDATIONS

State practice is varied in respect to granting the right, ensuring its enjoyment, imposing limitations on it and providing remedies.⁷⁶ It would certainly be desirable if some uniformity were achieved in setting standards and providing remedies. Of

⁶⁰ *Id.*, at 3-5.

⁶¹ Annex, at 3-4.

⁶² *Id.*, at 4.

⁶³ *Id.*, at 5.

⁶⁴ *Id.*, at 6.

⁶⁵ Add. 1, at 2.

⁶⁶ Annex, at 8.

⁶⁷ Add. 1, at 6.

⁶⁸ *Id.*, at 2-3.

⁶⁹ Add. 2, at 3-5.

⁷⁰ Annex, at 8.

⁷¹ Article 6 of the Passport Law. See Annex, at 4.

⁷² Add. 2, at 3.

⁷³ Add. 1, at 2.

⁷⁴ Annex, at 7.

⁷⁵ *Id.*

⁷⁶ On state practices, two incisive articles are: Gould, *The Right to Travel and National Security*, 1961 WASH. U. L.Q., 334 (1961); Redish, *British Immigration and International Protection of Human Rights*, 10 HARV. INT'L L.J. 150 (1969).

course, the objective would be to move toward recognition of the right by every state as well as adoption by states of means for an effective implementation of the right.

It is realized that if the International Covenant on Civil and Political Rights were to come into force and were ratified by a vast majority of states,⁷⁷ the right would ipso facto be recognized by the states ratifying the Covenant. However, not only are the states slow in their ratification,⁷⁸ but even were the Covenant to be ratified universally and the right to movement and travel be internationally recognized, the mere recognition of the right might remain meaningless rhetoric, unless it were to be accompanied by specific standards, criteria and remedies for implementation.

The following international measures are proposed as necessary first steps in implementation. (1) The Human Rights Commission should find time at its next session in 1972 to consider the Ingles report and the more recent developments since the publication of the report in 1963. (2) A declaration of principles should be recommended by the Commission to be adopted later by the Economic and Social Council and finally by the General Assembly. Such a declaration would offer a comparative set of standards to every state and would provide an impetus to bring a state's practice in line with the internationally agreed principles.

Such standards could be compiled through the gathering of relevant statistics and an examination of at least formal governmental practices indicating customs procedures, costs of exit and entry documents, length of time required to obtain such papers, and information sought in such forms. A compilation of requirements representing the lowest common denominator should be offered as a model for initial state compliance. (3) Dissemination of information on the nature of the right by the utilization of all the U.N. resources and machinery, especially through its advisory services and regional seminars, would be

⁷⁷ Pursuant to article 27 of the Covenant on Economic, Social and Cultural Rights and article 49 of the Covenant on Civil and Political Rights respectively, each of the two covenants will come into force three months after the thirty-fifth instrument of ratification or accession has been deposited. As of December 1971, Bulgaria, Columbia, Costa Rica, Cyprus, Ecuador, Libya, Syria, Tunisia and Uruguay were the 9 states that had either ratified or acceded to both these covenants. See *Multilateral Treaties in Respect of which the Secretary-General Performs Depository Functions: List of Signatures, Ratifications, Accessions, etc.* as at 31 December 1970, U.N. Doc. ST/LEG/SER.D/4 (1971), at 78-82. On January 25, 1971, Iraq ratified the Covenants, becoming the 10th country to be a party to the two covenants. See 7 *UN Monthly Chronicle*, No. 2, Feb. 1971, at 23.

⁷⁸ *Id.*

useful in encouraging the exercise of the right. Similarly, periodic state reporting to the Human Rights Commission pertaining to the enjoyment of the right would be desirable. Use of this information should be made in the compilation of data on population patterns and growth of tourism, enumerating purposes and lengths of international travel and movement and problems encountered as a result.

(4) Finally, a draft convention on the subject should be drawn up by the Commission, which could later be adopted by the General Assembly. Similarly, regional and bilateral conventions facilitating international travel and movement should be encouraged.

Though tacitly no country acknowledges discriminatory practices of this nature the persistent denial by South Africa of passports to blacks wishing to leave for study and travel should not be ignored, nor can Soviet actions with regard to her Jewish citizens. But both states have reacted to world pressures and protests. This reaction indicates that pressure and opinion can have significant effects and should be exploited for the purposes of implementation.

At this point, no international machinery is envisaged to compel a state to grant this right to the individual. The encouragement of voluntary compliance by a state with the established standards should be the primary focus. The importance of the right to movement and travel abroad should be given urgent and immediate consideration at the United Nations as well as at regional and national levels.