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COMMISSION ON HUMAN RIGHTS

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of Minorities  
Fortieth session  
Agenda item 15 (e)

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS  
AT NATIONAL, REGIONAL AND INTERNATIONAL LEVEL

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN,  
AND TO RETURN TO HIS COUNTRY

Written statement submitted by the International Bar Association, a  
non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is  
circulated in accordance with the Economic and Social Council  
resolution 1296 (XLIV).

[17 August 1988]

International Bar Association  
Moscow Seminar  
Peace and Human Rights Session, 7 June 1988

1. In January 1987 the International Bar Association, the largest lawyers' association in the world representing 127 countries, agreed with the Association of Soviet Lawyers to convene a joint seminar in Moscow on 6 and 7 June 1988, topics being International Trade, Inheritance Law, International Arbitration and Peace and Human Rights.
2. The Peace and Human Rights session dealt with, (1) Freedom of Expression and World Peace, (2) The Right to Leave One's Country and to Return, (3) The Right to Work and (4) The Relation of Peace and Human Rights. The panel comprised Fali S. Nariman, Senior Advocate, Supreme Court of India; Professor Boris Nazarov, Moscow Legal Correspondence Institute; Professor Igor P. Blischenko, Lumumba University, Moscow; Rudolph Kuznetsov, Director of Visas, USSR Ministry of Internal Affairs; Professor Yoram Dinstein, Tel Aviv University, Israel; Professor William E. Butler, University College, London; Professor Semen E. Ivanov, Institute of State and Law, USSR Academy of Sciences; Professor Oscar Schachter, Columbia Law School, New York City, and Professor Grigory I. Tunkin, Moscow State University.
3. IBA President Kumar Shankardass, India, welcomed 300 IBA delegates from 30 countries and the many Soviet participants. Alexander Sukharev, Soviet Lawyers President and USSR Procurator General delivered an opening address, saying "We would like to co-operate with you, to exchange experiences and share knowledge. We are embarked on a new image of a socialist State with political and personal freedoms, independence for lawyers and a democratic independent judicial system - a new concept of social democracy. Step by step, multilateral co-operation is making its way ahead. We must not be slaves of the past, and to build a bridge of trust we must tackle human rights. We seek humanitarian co-operation. Narrow national interpretation of human rights must give way to universal human rights."
4. Leslie Wolfson, Scotland, chaired the session.
5. The first paper was by Mr. Nariman, India, on Freedom of Expression and World Peace. He referred to problems deriving from national sovereignty claiming that national security was a political illusion standing in the way of freedom of expression and world peace. It should be law, he said, that no State can sustain the security it desires without becoming a menace to its neighbours. The illusion of absolute national security was one of the principal causes of the Second World War. Peace, he said, was the only defence against the atom bomb.
6. Professor Nazarov (first Soviet human rights professor) in commenting quoted Lenin "... you cannot live in a society and be free of it at the same time...". He thought Mr. Nariman "got carried away a little bit". He suggested there never had been difficulty in communication despite sovereignty which he thought should not be given up.
7. Professor Blischenko, USSR, addressed the topic, The Right to Leave One's Country and to Return. He spoke of fundamental freedoms and the rights of human persons. Any right must serve all of us. A violation of human rights

in one country affected everyone. "Esteemed colleagues", he said, "an invasion of your rights is an invasion of my rights". The Universal Declaration of Human Rights established the principle of the right to leave, he declared. The document was a great success for the international community and forms the basis of our discussion today. The Right to Leave he said was contained in article 13 of the Universal Declaration and article 12 of the International Covenant on Civil and Political Rights. The Universal Declaration spawned further covenants in the sphere of human rights. Every society, he said, goes along its own road proceeding from the will and wish of the people. However, we should do our utmost to obtain common standards in human rights matters. International treaties and agreements were essential to enable international communities proceeding from different conditions and with different approaches to find common ground. In countries where there was no free emigration, exit visas could involve difficult questions as a person living in a society could not be free from the surrounding social and national conditions. Emigration had a corresponding obligation of immigration and the State could not be indifferent as to how a person was to live in his new country.

8. In commenting, Professor Dinstein, Israel, expressed appreciation to the IBA and the Soviet Lawyers for the opportunity to debate with Professor Blischenko and Mr. Kuznetsov.

9. The subject of freedom to emigrate from one's country in the world today, he said, was most prominently the problem of the Jewish community in the USSR. There had been major changes for the better under Mr. Gorbachev's leadership. All known Jewish prisoners of conscience had been released and Jews who had received permission to emigrate to Israel had increased eight-fold comparing 1987 to 1986. However, the problem was far from over. He still had issues with his Soviet colleagues. Freedom of emigration, he said, is one of the most important human rights and fundamental freedoms. All human rights were indivisible - in a sense, every human right being as important as the other. Nevertheless, he said, freedom of emigration is different in the sense that it creates a safety valve. This is particularly true of the Jewish minority in the USSR since it does not fully enjoy its collective human rights as an ethnic, religious and linguistic group. "Let's face it," he said, "no country in the world has a perfect record in human rights so it is important to guarantee that when an individual cannot fully enjoy his fundamental freedoms within the confines and bounds of a certain society, at the very least, he ought to have an option and that is to up and leave, to go elsewhere and to live if he so believes more happily, more freely, elsewhere."

10. Professor Blischenko, he said, mentioned all documents where the right was enshrined - the difference between them being in interpretation and construction. Professor Blischenko suggested that a country was entitled to adopt its own legislative policy, as it were, with regard to freedom of emigration, but the Soviet Union's amendment to the Universal Declaration in that respect had been rejected. The Soviet Union, he declared, today fully supports the Universal Declaration of Human Rights but the Universal Declaration has to be implemented as adopted and the USSR is not free to deviate from the text through internal legislation or otherwise. As for the national security clause appearing in the International Covenant on Civil and Political Rights, Professor Dinstein maintained that it can be used to delay emigration but not to prevent it altogether. After a period of time, he said,

national security lapsed. (Note: A subsequent Soviet speaker indicated the possibility of a five-year time-limit being introduced into Soviet Law).

11. Professor Dinstein also stressed that freedom of emigration under the Universal Declaration and the Covenant was not limited to reunification of families and applied even to persons who have no relatives abroad. Referring to the brain-drain, he said, this only affected developing countries and not the USSR - a super Power.

12. Mr. Kuznetsov, USSR, in reviewing the Soviet position in regard to the right to leave explained that without the processes of democratisation and glasnost currently pursued in the USSR he would have been an unlikely speaker. He said in his country now the right to speak about these matters had become an outstanding principle and there were more opportunities for citizens to meet and talk in this way. He explained that the processes relating to emigration from the USSR could be complicated. He touched upon the problems of State secrets, the economy, defence capacity and refusal of entry to another country. Questions arising were the extent of social security available in the new country and the moral and psychological position of children. His department when considering applications did not predetermine numbers to receive visas. Numbers were increasing lately.

13. Professor Dinstein in commenting, re-emphasized that a country could not super-impose its own internal provisions on such a fundamental freedom. Reliance on State secrets as justification for refusal of permission required strict control.

14. In the afternoon Professor Butler, England, spoke on The Right to Work, with special reference to article 6 (Part III) of the International Covenant on Economic, Social and Cultural Rights (1966) which makes provision for "... the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...". While Professor Butler noted that the international community had reasonably succeeded in fixing minimum standards for fair remuneration, hours, equal pay, holidays, safety conditions, and the like, with principal credit to the ILO, simply because these were easier matters to measure, a great deal remained to be done under article 6. He urged the international community to progress towards common standards evaluated against human rights and labour law, but cautioned against asserting international standards without an adequate appreciation of the extent to which national laws and practices diverge and the reasons for the divergence. Human rights are a matter of both international and domestic concern. Nashe delo, or "our affair", must embrace "us" the international community, and especially those States who have full legal standing as parties to the international human rights covenants.

15. Professor Ivanov, USSR, commented saying human rights were becoming common cause for socialist and capitalist countries. He said we needed common standards so far as job security was concerned. He did not think it possible to guarantee employment for everyone.

16. Finally Professor Schachter, USA, addressed "The Relation of Peace and Human Rights". Peace, he said, was the ultimate human right; human rights violations were a cause of war; and non-interference in internal affairs was

a condition of peace. A State however would breach the Charter of the United Nations if it resolved to unilateral use of force to compel another State to observe human rights. Breaches of human rights, he said, have been responsible for serious tensions and outright hostilities between States, such as conflicts over self-determination and minority rights involving violent action with the support of sympathizers in foreign States, creating a problem for the international community as well as the people directly involved. We would be burying our head in the sand, said Professor Schachter, if we were to assume that serious human rights violations can be ignored as immaterial to the normal relationship between States. A régime that does not honour its commitments cannot be wholly relied upon, he said. It is in the enlightened self-interest of Governments to develop mechanisms to reduce the anger and hostilities engendered by human rights violations. The courts and lawyers were the agencies mainly responsible for making international and constitutional commitments a reality.

17. In absence of Professor Tunkin, Professor Blischenko, commenting, declared that the international community required to guarantee the right to life and development in a condition of freedom and peace. We see International Law in a new way, he said. Human rights were no longer the internal affair of States.

18. There was a completely open question and answer session with lively debate conducted according to rules determined by the panel and resulting in an "equitable geographic distribution".

19. Mr. Wolfson thanked contributors and panel members, particularly Soviet panel members "who spoke so openly and so frankly and so warmly on difficult subjects". "I think this noble contribution", he said, "augurs well for the future of society."

20. In summing up Kumar Shankardass, echoing Professor Butler, said it had not been a day when debating points had been scored but one in which excellent mutual co-operation had been set in motion.

21. Mr. Sukharev in a final address said, "the two days were a great event in the life of Soviet lawyers being our first experience of direct contact with a large international lawyers' association. Our expectations were exceeded and we understand each other better. We were impressed by the scholars and lawyers who spoke and hope that our progressive reforms and aspirations are understood more widely in the West, the East and the developing world."