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[A MONTHLY REVIEW]

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INDIRECT AGGRESSION FROM WITHOUT ANGLO-AMERICAN MILITARY INTERVENTION IN THE MIDDLE EAST

The crisis into which the Middle East exploded last month has a good prospect of being eased at the U. N. and public attention will now have to be focused on the question of principle which the military intervention of the United States in Lebanon and of Britain in Jordan poses, viz., whether such intervention without the authorization of the U. N. amounts to aggression in all circumstances or whether in certain circumstances it becomes not only the right but also the duty of states to intervene in time if they are in a position to do so.

Circumstances

Lebanon had already complained to the U. N. that the rebels in that country whose object was to overthrow by force the legally constituted Government there were being aided by infiltration of personnel and military equipment from across the Syrian border and the U. N. had sent observers to stop such infiltration. The United States, which later sent troops to Lebanon, was content to leave the protection of Lebanon's independence to the U. N. But in its opinion the situation underwent a radical change after the sudden violent outbreak on 14th July in the neighbouring Iraq and the measures taken by the U. N. were not adequate to preserve Lebanon's independence; and when the Lebanese Government asked for immediate help, the U. S. Government sent contingents to Lebanon in order to avert what it regarded as an imminent threat to the integrity of that small country.

Similarly, it was Jordan's complaint that for some months past saboteurs and agents were being smuggled into the country through Syria with supplies of arms and ammunition for the purpose overthrowing the regime and creating internal disorder, and when the Jordanian Government appealed for assistance, the British Government, having satisfied itself that the threat of subversion instigated from outside was real, responded to the appeal by sending troops. Indeed, the British Government claimed that they had precise information of a definite plot against Jordan which was due to go into action on 17th July, confirmation of which was afforded by the Baghdad radio which repeated several times on the previous day that 'struggling Jordan tomorrow will rise

in a great revolution to break its chains, just as they were broken in Iraq."

The British and American Governments justify their action on the following grounds: (1) that what was happening in Jordan and Lebanon was not just a matter of civil war between two different factions in the respective countries, in which case no outsiders would have a right to intervene, but was a matter of indirect aggression from without, in which case the U. N. had enjoined all countries which could do so to help the victims of such aggression at their request to resist outside conspiratorial pressures; (2) that their intervention was temporary, meant to give time to the U. N. to deal with the situation; that their only purpose was the preservation of the territorial integrity and political independence of Jordan and Lebanon; and that the troops sent would be withdrawn as soon as the U. N. would take over what is primarily its responsibility. These Governments further made it clear that their troops would not be permitted to be employed to bolster up any particular regime subservient to them, but that as soon as the impending menace to these countries was removed the troops would be pulled out, leaving to the free choice of the local people the establishment of whatever Governments they would like to have. It was further made clear by U. S. A. and Britain that it was not their intention by this action to try to freeze the existing situation in the Middle East as a whole; the Arab countries would be perfectly free to adopt whatever changes they would like to introduce, provided that the international status quo was changed by orderly and peaceful process and not by indirect aggression.

As was to be expected, Soviet Russia dubbed Anglo-American intervention as aggression motivated by imperialist policies. Such denunciation on its part would in any case be natural, but what created a suspicion even in less suspicious minds that the intervention might be for political aggrandisement was the fear that the troops would be used to "re-conquer" Iraq after the successful coup d'état there. There was also some ground for this

fear, because the King of Jordan had become after the Iraqi revolution also the King of Iraq and if the British troops had gone into Jordan at the King's request they would naturally be employed (it was thought) to fight the revolutionaries in Iraq. But the British Prime Minister announced, even while sending the troops, that the Jordanian Government had assumed an obligation that the troops would not be used in order to release Jordanian forces to attack Iraq. And the United States also exerted pressure to restrain Jordan or Turkey from taking any military step to reverse the Iraqi revolution. Apart from the desire to characterize every move by Britain and the U. S. A. in the international field as imperialist expansionism, the only plausible ground for Russia to make this charge was the possibility of such extension of the Anglo-American intervention to Iraq. Her representative, Mr. Sobolev, in fact expressed himself to this effect in the Security Council. He said: "The decision taken by the U. K. Government (to send troops into Jordan) seems to be a clear attempt to interfere in the domestic affairs of Iraq. There can hardly be any other possible explanation." India also appears at first to have thought so. But Iraq being really out of the picture (and both the U. K. and the U. S. A. subsequently recognized the revolutionary regime in Iraq), the charge that any such ulterior motive lay behind the intervention must be regarded as entirely groundless.

Were Lebanon and Jordan really under a grave menace of attack from outside, or did the U. S. A. and the U. K. invent this excuse only to justify their unilateral intervention undertaken for selfish ends? It may be said that the alleged infiltration of arms, ammunition and money into Lebanon from the United Arab Republic has not been certified to be "massive" by the U. N. observation group. It has in fact in its latest report discounted the smuggling of arms except on "a limited scale." But from the very nature of the case its conclusion cannot be treated as conclusive. The "Statesman," which is critical of this affair, expressed the general feeling in this matter when it said: "Nobody doubts that the Lebanese insurgents have received substantial quantities of weapons, and some volunteers, or that both have come from the United Arab Republic territory." That the U. N. General Secretary made a proposal to make Jordan a "ward" of the United Nations to guarantee its independence also supports the inference that that country's independence was menaced. But even if the allegations of threats of indirect aggression from without, on which the Anglo-American intervention was based, are ultimately found to be either groundless or exaggerated, that would not in any case enable Britain and the United States to continue to occupy Jordan and Lebanon, for their plea to the United Nations after all was that their intervention, which was never intended to be more than provisional, would be terminated as soon as the Security Council had itself taken the measures which might be considered to be necessary; and the U. N.

could always say to these countries: "You have been unnecessarily nervous; the countries did not need protection against subversion by forces outside their borders. If any should be needed, we shall provide it. You had better walk out." But what Soviet Russia did was to veto the American proposal for the establishment of a United Nations military force similar to the one that was found so useful after the Suez Canal affair to guard the Egyptian-Israeli frontier and also the modified Japanese proposal for the expansion of the present unarmed U. N. observer team, thus making it impossible by its own action for the Security Council to determine whether the Soviet assertion that the indirect aggression which the U. S. A. and U. K. claim was being practised against Lebanon and Jordan was only a cloak for the big powers to commit direct aggression against them, and if the assertion is proved correct to put an end immediately to this direct aggression. The only result of the Soviet action is that the matter is now referred to the U. N. General Assembly under its "Uniting for Peace" resolution which, when it was passed, was opposed by Soviet Russia.

The world will not believe, whatever the Soviets may say, that the U. S. A. and the U. K. went into Lebanon and Jordan with any aggressive designs, however misguided their general policies may occasionally be or however unwise their action may be on this occasion. Colonial expansion is not in the tradition of the U. S. A., and although Britain built up a vast empire when the modern concept of aggression did not govern the thinking of rulers of states it is rapidly giving up its acquisitions of former times and giving independence to those who were brought under its rule. It is difficult to believe that either of these nations sent its forces to the Middle East to occupy any part of that territory. The representative of Canada said in the Security Council (and it is well to remember that Canada was foremost in counteracting the Anglo-French military action in the Suez Canal crisis), in supporting the American proposal for the creation of a U. N. force to safeguard Lebanon's security as "complementary" to the U. N.'s observation team:

Our confidence that this can be so is based primarily on our confidence that the U. S. A. is not pursuing selfish ends in the Middle East but is seeking to assist the people of the Middle East towards a more peaceful and prosperous life. It is also based on the specific terms on which the U. S. A. representative has interpreted the intentions of his Government to the Council. Clear proof that the U. S. A. is not seeking ends incompatible with the purposes of our Charter is to be found in Mr. Lodge's firm statement that the U. S. A. is not only willing but anxious to withdraw its forces when its mission can be taken over by the United Nations.

Even more important is the testimony of Mr. Habib Bourguiba, President of Tunisia, who, while thinking that American intervention in Lebanon was unjustifiable, declared that it could not be called immoral and further asserted that if the U. S. A. should abandon the Western world, Soviet forces would invade within twenty-four hours. And it should be remembered that the President is not opposed to communism as such. This country which has newly won its independence will soon recognize Communist China and exchange diplomatic relations with the Soviet Union. Mr. Bourguiba said :

The United States has its weaknesses and its faults. At least, it has a conscience, and its present bad conscience, in the undertaking in Lebanon, is the sign of this conscience.

As far as we are concerned, the United States has never interfered in our affairs to tell us to do one thing, or not to do another thing. In our times this is a behaviour rare enough to be underlined. If the United States makes a just analysis of the causes which have led to its setbacks in the Middle East, it can come out with a great victory for liberty and civilization.

What needs to be said is that if the United States gives up all hope in the Middle East and in Africa and resigns itself to pulling back into its tent with its matériel and its planes, if it gives up its bases over which so many people complain, if it abandons the whole world including Great Britain and France, not twenty-four hours will pass before the Russian armies will have invaded Western Europe, which has fun playing like a spoiled child.

* * * *

International Law

There can be no doubt that if, as Britain and the U. S. A. asserted, there was substantial physical interference in Jordan and Lebanon from the United Arab Republic and that the rebellions were being started, supplied and directed from outside, the Anglo-American military intervention in these countries for the purposes stated, even if the intervention was unilateral and unauthorized by the United Nations, was within the principles of international law and the U. N. Charter. It is the universally accepted principle of international law that no country would be entitled to intervene in a purely civil war in another country even if invited to do so by the faction which constitutes the legitimate government of that country, because the right of self-determination is held to include the right of peoples to change their governments even by revolt if necessary. But the situation changes radically if other countries intervene in the conflict. Professor H. Lauterpacht, perhaps the most widely recognized living expert on international law, has said :

There is, however, one important qualification of the principle of abstention in civil war to which it is

necessary to advert. It is that foreign powers are entitled to intervene at the request of a lawful government if there is evidence that the situation giving rise to the request for assistance is itself inspired or supported by foreign states. This is so whether the internal conflict has reached the dimensions of civil war or not.

The fact that a foreign state is a participant, albeit indirectly, characterizes the reaction of a lawful government as a measure of legitimate self-defence against aggressive conduct affecting the political independence or territorial integrity of the state. In these circumstances, other states are entitled to render assistance to the lawful government in the exercise of their inherent right of individual and collective self-defence.

This is substantially the law embodied in the United Nations Charter. Art. 51 safeguards the right of individual and collective defence pending action by the Security Council. It reads :

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Mr. Gunnar Jarring of Sweden maintained in the Security Council that the Article was applicable only in the case of "an armed attack" and that whatever outside interference there was in Lebanon and Jordan, it did not amount to such an attack. The United States Government apparently interprets the Article as has been interpreted by Professor Lauterpacht in the above quotation, in which he maintains that other states can intervene against aggressive conduct of some other states even if such aggression is indirect.

But the matter is put beyond doubt by two resolutions of the U. N. General Assembly. The one passed in December 1949 — the "Essentials of Peace Declaration" — calls upon all member-states "to refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any state, or at fomenting civil strife and subverting the will of the people in any state." The other resolution called "Peace Through Deeds" — passed on 18th November 1950 — says in part :

The General Assembly, condemning the intervention of a state in the internal affairs of another

state for the purpose of changing its legally established government by the threat or use of force.

Solemnly reaffirms that, whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign power, or otherwise, is the gravest of all crimes against peace and security throughout the world.

It is well to remember that this resolution condemning the fomenting of civil strife in the interest of a foreign power was sponsored by five nations including Lebanon and India and adopted by a vote of 50 to 5, the adverse vote being cast by the Soviet bloc alone. The resolution justifies and indeed requires resistance of outside attack, whether the attack be armed or otherwise, and though collective action in behalf of a nation under attack is always to be preferred, even unilateral action is justifiable in the event of collective action not promptly forthcoming.

We may cite here two instances in which the principle embodied in these General Assembly resolutions, viz., that in the case of intervention of one state in the internal affairs of another state or the fomenting of civil strife in the interest of a foreign power, counter-intervention for the purpose of protecting the state against which indirect aggression is being committed would be justified, was given effect to. Such action was taken in Greece by the United States in 1947. The Greek communists, advised by Moscow and supported by Bulgaria, Albania and Yugoslavia were carrying on a campaign with the intention of undermining the Greek economy and so causing the collapse of the Greek regime. Then the U. S. A., in accordance with the Truman doctrine just then announced, sent an economic mission to Greece to give financial aid for the restoration of the Greek economy, and later sent military help. President Truman did not wait for the United Nations authorization when the crisis developed. Although he refrained from sending combat troops, he poured military equipment into Greece and provided a military mission to train the Government forces in the use of the equipment, even forming a joint Greek-U. S. A. staff, to protect the country from its communist neighbours. At that time Mr. Truman had failed to notify the Security Council of his decision to help the Greek Government in the civil war instigated by foreign powers. But this was cured by the United States calling a meeting of the Council, at which it was announced that the intervention would stop whenever the Security Council was able to take over. The American representative at this meeting said:

Invasion by organized armies is not the only means for delivering an attack against a country's independence. Force is effectively used today through devious methods of infiltration, intimidation and subterfuge. But this does not deceive anyone.

At the time the intervention took place, there was no evidence to prove that such action was required, for

the United Nations Balkan Commission set up by the Security Council had not submitted a report. When it did, the contents amply sustained Mr. Truman's decision. Its findings were that the Greek rebels received war materials from Albania, Bulgaria and Yugoslavia, and this support for the rebels constituted a threat to the political independence and territorial integrity of Greece.

It may be interesting to recall that the Soviet Union on this occasion raised the same cry that is heard to-day, viz., that the Anglo-American intervention, though claimed to have been for resisting an external threat, was in fact direct aggression on the part of the interventionists. When a proposal for endorsing the findings of the Balkan Commission came up for debate in the Political Committee, the Russian representative, Mr. Vyshinsky, roundly denounced the appointment of the Commission as "direct interference in the affairs of sovereign states" and "an obvious example of American imperialism." He described Greece as having been "transformed into a colony of the U. S. A." and ridiculed the idea that there was any threat to Greece's integrity and independence and asserted on the contrary that Greece's neighbours were threatened by a Fascist Government in Athens.

The other instance is that of Korea. When the North Koreans supported by the Soviet Union crossed the 38th parallel towards the end of June 1950, an immediate meeting of the Security Council was convened, which passed a resolution calling for the withdrawal of the northern forces to their own side of the border. And when a few hours later the southern capital, Seoul, fell to the northern invaders, President Truman immediately ordered American naval and air forces to be sent in to give support to the South Korean troops. At that time too Mr. Truman acted without any express authorization from the U. N. for this move. The action was subsequently approved by the Security Council under its authority (spelled out in Art. 42 of Chapter VII of the Charter) to "take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security." But this approval was then forthcoming only because the Soviet delegation, in one of its fits of pique, had boycotted the Council in protest at the continued inclusion of Nationalist China as a member; otherwise a veto would certainly have been applied. It may be stated that the Indian Government soon after announced its approval of the two resolutions adopted by the Security Council, and at the special session of Parliament Mr. Nehru clearly stated that he held the North Koreans to be aggressors. Thus the United Nations has dealt with the question of indirect aggression in the past and will have to do so in the future.

In conclusion, we may be permitted to offer some remarks on the policy pursued by the West in regard to the Middle East. Though this is really not within our

province, what we say in this connection will at least save us from the charge that we are taking a biased pro-West view in discussing the theoretical problem of indirect aggression as we have done above. The West is really living from hand to mouth in this area and has no integrated all-out plan for the stabilization of the Levant. It has so far avoided making the basic decisions that are vitally necessary. In trying to stabilize the separate independent states into which the Middle East was artificially divided after World War I, the West has only succeeded in creating a precarious balance, now shattered by the emergence of a pan-Arabic nationalism symbolized by President Nasser. There is no doubt that the area must be insured against indirect aggression, the danger of which is perhaps even greater than that of direct aggression. And while it is necessary to devise some machinery to prevent internal subversion in this region (and the plan which the U. N. Secretary-General has now put forward in the General Assembly calling for a new declaration by the Arab countries pledging non-interference in each other's affairs is in this direction), a more sympathetic view of the revolutionary Arab nationalism that has made its appearance with the rise of Mr. Nasser. It is too readily assumed that to meet pan-Arabism in this way is to turn the Arab world against the West. On the contrary, after President Nasser's first

visit to Moscow, " it looked, " as Mr. Isaac Deutscher has put it, " as if Nasser was becoming anxious to take his distance from the Soviet bloc " and the fact that thereafter he paid a visit to Marshal Tito precisely at a moment when relations between Russia and Yugoslavia had become tense is very significant. By sheer accident just at that time came Anglo-American intervention. The effect was shrewdly described by Mr. C. L. Sulzberger in the " New York Times " as follows: " Nasser was taking kindergarten lessons on Soviet imperialism from Tito when we landed in Lebanon. Just as he was becoming wary we drove him back to Khrushchev's arms." The Arab feelings of bitter resentment thus created must be assuaged. A genuine federation of all Arab countries will help to stabilize the Middle East and prevent chaos there as nothing else will, and such a federation will be furthered by neutralizing the Arab countries and guaranteeing them from external interference, taking care, however, that in thus scaling them off the interests of Turkey, Iran and Iraq will not be neglected. After such stabilization a well thought-out plan for giving these countries the economic aid of which they in sore need can be developed. A long-term policy like this needs to be evolved, and it is to be hoped that, within the U. N. and without, a constructive effort at reconciliation of all the interests in that region will be made.

BILL TO CURB THE RIGHT TO TRAVEL ABROAD

The United States Government promptly carried out the Supreme Court's ruling of 16th June in favour of three passport applicants, Messrs. Kent, Briehl and Dayton, and granted passports not only to these but to several others whose cases were pending under the so-called Communist section of the passport regulations, Mr. Paul Robeson being one of them. This does not mean however that the Administration does not wish to retain the discretion which it claims it has under the law to deny passports to persons who it believes engage in subversive activities or are in other ways undesirable.

Indeed on 7th July President Eisenhower sent down a message to Congress urging it to pass legislation giving express authority (on the lack of which the Supreme Court's decision was based) to the Secretary of State to refuse to grant passports " where their possession would seriously impair the conduct of the foreign relations of the United States or would be inimical to the security of the United States." And the Secretary immediately transmitted a draft bill to implement the President's suggestion. The bill purports to respect the Court's decision that passports could not be withheld because of applicants' " beliefs and associations." For, in providing that Communist party membership or pro-Communist activity would bar an individual from receiving a passport, emphasis is placed on activities rather than party membership, since membership is assumed to imply only political

belief. Decisive from the State Department's point of view would be activity. It is only those who are "actively and knowingly engaged" in subversive activities to whom the bill will apply.

A passport can be denied only if a person's subversive activities had taken place within ten years. The bill prescribes all forms of due process in the State Department and subsequent judicial review for any citizen from whom a passport is withheld by the Secretary of State. The person to whom a passport had been refused would bear the burden of proof that he was entitled to receive it. According to the State Department, this would not infringe upon the principle that a person is to be deemed innocent until proved guilty, because denial of a passport is not a criminal proceeding. Although the bill prescribes the criterion of "activities" instead of "beliefs and associations," it is difficult to see how and where under this legislation the line will be drawn. And it is feared that the power conferred by the measure will be used to prevent foreign travel not only in those extreme cases of espionage and the like where the national security is seriously imperilled but also in cases of mere suspicion of being associated with what is called the international Communist conspiracy. Hence the proposed legislation has come in for heavy criticism. The " New York Times," for instance, says: "We are convinced that neither the good name nor the security of the United States would thereby be aided. In fact, if this bill passes, quite the reverse will be true."

THE RIGHT TO FREE MOVEMENT WITHIN THE COUNTRY AS PROVIDED IN THE U. S. CONSTITUTION

The right to free movement of citizens is not specifically enumerated in the Constitution of the United States as among the rights entitled to receive protection against infringement by the executive or the legislature. The Indian Constitution guarantees in Art. 19(1)(d) the right "to move freely throughout the territory of India," but it does not guarantee the right to travel abroad. The U. S. Constitution does not in terms grant the right either to move from state to state within the country or to leave the United States for the purpose of visiting a foreign country.

But though there is no express mention of this right as constitutionally protected, the limited right to freedom of movement within the jurisdiction of the United States has always been recognized as one which arises from the federal type of the United States Government or as a right of federal citizenship. It is among the rights "which owe their existence to the federal Government, its national character, its Constitution or its laws." Such rights are called "privileges and immunities of citizens" in Art. IV, sec. 2, and in Amendment XIV. They are, as Justice Washington said in *Corfield v. Coryell*, 4 Wash. (U. S.) 571 (1823), "privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have at all times been enjoyed by the citizens of the several states which compose this Union." Justice Washington in this case gives an illustrative list of such fundamental rights embraced within the privileges of citizens—rights in respect of which the protecting arm of the Constitution is thrown around the citizens of the United States. Among these rights he mentions "the right of a citizen of one state to pass through, or to reside in, any other state."

In the *Passenger Cases*, 7 How. 283, decided in 1848, the right of persons to travel from state to state without interference on the part of the states was upheld. The right was held in these cases to be protected by the commerce clause. "Also," says Willoughby, "in *Crandall v. Nevada*, 6 Wall 35, decided in 1868, the right was held to be one which attaches to federal citizenship and therefore, protected from state interference independently of the commerce clause." In the *Passenger Cases* Chief Justice Taney said:

We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own states.

In the *Crandall* case, in which the Supreme Court held invalid a state tax on passengers leaving the state by common carrier, Justice Miller, speaking for the Court, cited the above remark of Chief Justice Taney and came to the conclusion that the right to move freely throughout the country was a right of national citizenship, though the right was implied and not specifically guaranteed by the Constitution.

Soon after the decision the Fourteenth Amendment was adopted in 1868 (the *Crandall* case too was decided in that year, but the decision came before the passing of the Amendment), the privileges and immunities clause of which was meant to forbid any state to abridge the protection which national citizenship gives to every person born or naturalized in the United States. The Amendment does not confer any new privileges on a citizen but only furnishes an additional guarantee for the protection of such as he has already had. And the right of free movement within the nation being recognized as a privilege of national citizenship, it became, after the adoption of the Amendment, more secure than before against any impairment on the part of the states.

Thus, in *Paul v. Virginia*, 8 Wall. 168 (1869), the Supreme Court said of the privileges and immunities clause of the Fourteenth Amendment:

It was undoubtedly the object of the clause in question to place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from the citizenship in those states are concerned. It relieves them from the disabilities of alienage in other states; it gives them the right of free ingress into other states, and egress from them. . . .

In *Ward v. Maryland*, 12 Wall. 418 (1871), the Supreme Court, holding that a state might not levy a licence tax upon temporary residents, said, with reference to the privileges and immunities within the meaning of the Fourteenth Amendment:

Beyond doubt, those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one state to pass into any other state of the Union, for the purpose of engaging in lawful commerce, trade or business, without molestation, to acquire personal property, to take and hold real estate. . . .

And obviously the right of a citizen of one state to become a citizen of another state includes the right to travel from one state to another. In the *Slaughter House Cases*, 16 Wall. 79 (1873), Justice Miller, who wrote the opinion in the *Crandall* case, recognized that the right to move freely within the territory of the United States was "protected by implied guarantees" of the immunities clause of the Fourteenth Amendment. Quoting from the language of Chief Justice Taney, it was said that "for all the great purposes for which the federal Government was established, we are one people, with one common country, we are all citizens of the United States, and it is, as such citizens, that their rights are supported by this Court in *Crandall v. Nevada*."

In *Williams v. Fears*, 179 U. S. 270 (1900), concerning a law taxing the business of hiring persons to labour outside the state, Justice Fuller said:

Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the Fourteenth Amendment and by other provisions of the Constitution.

In *Twining v. New Jersey*, 211 U. S. 78 (1908), the Supreme Court listed, "among the rights and privileges of national citizenship recognized by this Court," the right to pass freely from state to state (adverting to the *Crandall* case) as a right belonging to United States citizenship and lying within the protection of the Fourteenth Amendment against restrictive state legislation. Finally, we may refer to the more recent case of *Edwards v. California*, 314 U. S. 160 (1941). In this case the Supreme Court invalidated the so-called "anti-Okie law" of California penalizing the bringing into the state of indigent persons. The validity of the statute was made to rest by the majority in this case on the commerce clause, but Justice Jackson with three other Justices maintained that the statute should be held invalid on the more basic ground that it violated the right flowing from national citizenship. He cited the remark of Justice Hughes about an alien in *Truax v. Raich*, 239 U. S. 33 (1915) to the effect that he "was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any state in the Union," and observed that federal citizenship implied rights at least equal to those possessed by aliens. He contended:

It is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof.

The above is about the right of free movement within the country; as regards free movement without, the Supreme Court has not yet ruled that the Constitution protects that right, either expressly or by implication.

Dismissal of Loyalty Suspects

The House of Representatives on 10th July passed by the very large majority of 295 to 46 a private bill sponsored by Representative Walter, a noted reactionary, whose primary aim is to reverse the historic Supreme Court decision in *Cole v. Young*, 351 U. S. 536 (1956) — vide BULLETIN, p. iv: 130 — in which it was held that summary removal of a federal employee in a "non-sensitive" post was contrary to the law on which the impugned action had been taken.

The law in question — the Summary Suspension Act of 1950 — authorizes heads of specified departments summarily to dismiss employees on loyalty grounds when necessary "in the interest of national security." Suspension or firing took place under this law of employees occupying "sensitive" positions. By executive order President Eisenhower extended the scope of the law to include "non-sensitive" posts as well. The Court ruled in the above case that such enlargement of the Act from departments affected with the "national security" to all departments whatsoever was not in conformity with the intention of Congress. It said:

It is difficult to justify summary suspensions and unreviewable dismissals on loyalty grounds of employees who are not in "sensitive" positions and who thus are not situated where they could bring about any discernible adverse effects on the nation's security. In the absence of an immediate threat of harm to the "national security," the normal dismissal procedures seem fully adequate and the justification for summary powers disappears.

Last year about this time the Senate passed a relatively narrow measure which merely provided that nothing in present law should be deemed to require the suspension (which under the 1950 Act was without pay) of any civilian employee of the Government prior to hearing or termination. On this slight modification of security procedure Mr. Walter has super-imposed a far-reaching measure of an alarmingly wide scope. His bill states that all federal employees should be considered to be engaged in an activity involving the national security, and power should be given to remove from Government service anyone who, through past performance or association, might be a security risk, even though occupying a non-sensitive post. The bill thus provides in effect that all federal positions are sensitive.

While broadening the security programme to non-sensitive employees, it provides that an employee of the Government does not have to be a Communist or Communist sympathiser to qualify as a security risk. It also provides some safeguards for Government workers charged with disloyalty, among which are the following: (1) a statement of the charges against the person to be suspended or removed; (2) the right to present a defence against the suspension or dismissal action within thirty days; (3) the privilege of a hearing before an appropriate panel, if the employee should request one; (4) a written statement by the department head detailing the reasons for his final decision as to permanent termination of the worker's employment or a re-instatement; and (5) the right of appeal to the Civil Service Commission, whose decision regarding the validity or truth of the charges made and the procedures followed by the department is to be final. (Under the Summary Suspension Act the discharge of the employee operated to deprive him of the right to appeal to the Civil Service Commission, and the department head's determination of a discharge was final and conclusive.)

The bill will now go to a Senate-House conference for the adjustment of differences.

Pre-emption of the Legislative Field

When both the Federal and State Governments pass legislation on the same subject, the State legislation is liable to be struck down if it is in conflict with federal legislation, and the determination in this respect is made by the courts. When the federal legislature has made it known that its legislation occupies the whole field, no state legislation on that subject can be valid. But where on the face of the federal law it does not become clear that it was intended to exclude the jurisdiction of the state legislature but where the federal courts find, from the circumstances attending the law, that the federal legislature had intended to pre-empt the legislative area, they decide that the state legislation in this area is void.

The most recent instance of such a finding, that it was the intent of Congress to pre-empt, is that of *Pennsylvania v. Nelson*, 350 U. S. 495 (1956) — BULLETIN, p. iv: 132 — in which the Supreme Court nullified Pennsylvania's anti-sedition law on the ground that Congress had intended to let federal laws (for instance, the Smith Act that made sedition and other subversive activities a federal crime) pre-empt state laws on the subject. The Supreme Court ruled that the federal Acts on the subject of sedition "evinced a Congressional plan which makes it reasonable to determine that no room has been left for the states to supplement it;" that

"Congress has occupied the field [of sedition] to the exclusion of parallel state legislation [and] that the dominant interest of the federal Government precludes state intervention."

This decision has provoked a good deal of discontent among certain sections of the people, and they have proposed bills to overcome its effect. But the bill which the House of Representatives passed on 17th July by a large majority is not limited to sedition, as the Government would desire, but tackles the whole broad terrain of legislative pre-emption. It says in effect that, unless Congress has specifically expressed its intent to pre-empt the legislative field occupied by any statute, or unless there is a direct conflict between this statute and a state law, it should be understood that no pre-emption was intended, and the federal courts shall not hold the federal statute as "excluding state laws on the same subject-matter." The bill is extremely far-reaching in its scope; if enacted, it could give precedence to state laws on many subjects which are of dominant interest to the federal Government, such as aliens, aviation, merchant marine, regulation of labour relations, radio and television, mining and many other fields. An amendment was moved to limit its application to subversion and sedition cases, but the amendment was merely added to the original bill, which has such alarmingly vast implications. The bill prescribes that in every case Congressional pre-emption must be explicit and is not to be left to judicial determination.

COMMENTS

Detention of Miss Mridula Sarabhai

The Government of India has enforced the Preventive Detention Act to place Miss Mridula Sarabhai under detention for a year—the maximum period for which detention under the Indian law is possible at a time. Miss Sarabhai was till recently a ranking Congress worker and fell from grace only because she started, after the first detention of Sheikh Abdullah, privately circulating leaflets exposing what she regarded as the misdeeds and repression of the Bakshi regime established in Kashmir after the coup which displaced Sheikh Abdullah. Bakshi Ghulam Mohammed, the new Kashmir Premier, had in his speeches repeatedly complained against Miss Mridula's activities and had given broad hints that these activities must be ended. To these goadings the Government of India has at last succumbed. Mr. Nehru must have found it very hard to yield to the suggestion, not only because of his close association with Miss Mridula, but, even more because of the feeling which we are sure he must have entertained that her pro-Abdullah propaganda, however irksome it might have been to the Kashmir Government, could not possibly have the dire consequences which presumably that Government thought it might lead to. But apparently the Indian Government came to the conclusion that, in the light of the critical state in which the Kashmir problem lies at present, the request from the Kashmir Government could not be resisted. In this instance the Indian Government must assume full responsibility for the detention and cannot shove it off, as it unconvincingly did in the case of the detention of Sheikh Abdullah.

On Miss Mridula Sarabhai's detention, the "Times of India" comments as follows (and it will be observed

that the paper advocates putting even Sheikh Abdullah on his trial instead of being detained without charges):

Three months ago the Prime Minister told the Lok Sabha that he did not know what could be done to counteract the anti-Indian propaganda carried on by Miss Mridula Sarabhai apart from making clear that what she said was "mostly exaggerated and baseless." In view of this it is to be assumed that her arrest under the Preventive Detention Act has been impelled by something more serious than her anti-Indian propaganda over the Kashmir issue. Yet, it is not easy to visualise this rather credulous publicist in a sinister role. Her pathetic campaign on Sheikh Abdullah's behalf has been largely conducted through the despatch of cyclostyled statements to the Press. Some time ago her house in New Delhi was searched by the police and certain documents were seized. These documents were presumably of an incriminating nature. But not everyone in this country will be willing to put the most charitable interpretation on the arrest; and abroad, India's critics will seize on this incident and exploit it fully to discredit New Delhi.

The very powers bestowed on the Government by the Preventive Detention Act make it impossible for the public, and even Parliament, to determine whether the Act is being judiciously used. Whether the reasons for an arrest are sufficient or not can be determined only by a court of law where the burden of proof would rest on the State and where the accused would be given the benefit of the doubt. But under the Act, it is possible for the Government to hold a person without trial for any length of time. It is the Government which asks for the benefit of the doubt at the bar of public opinion, and each fresh arrest makes it less likely that the Government will get it. It is true that not more than 30 or 40 persons are now in prison under the Act. But surely this is all the more reason why an admittedly undemocratic measure should be dispensed with. Sheikh Abdullah, Miss Sarabhai, Mr. U. M. Thevar (who has thoughtfully been granted "leave of absence" from the Lok Sabha during the period of his detention), and others should be sent up for trial on specific charges. The situation in the country is, happily, normal. There is no evidence of a clear and present threat to national security, and the normal law of the land should suffice to meet any threat to communal peace.

See the paragraph **World Habeas Corpus** below in the "Civil Liberty Union News" column

Indians in South Africa

GROUP AREAS ACT IN OPERATION

The Indian community settled in the two major cities, Durban and Pretoria, are under orders to leave their homes and business and settle several miles away in the suburbs. Such expulsion is being effected under the Group Areas Act which till now was primarily enforced against Africans. The number of people affected is about 70,000 and the property they have to leave behind is some Rs. 53 crores. Huge as this loss is, even more ruinous will be what to them now is almost their sole means of livelihood—trading in the "white areas." Indeed, it seems to be the very aim of this action to compel the community, which has made South Africa its home, to submit to the Government's policy of repatria-

tion to India. The indirect effect of such uprooting will be, as the "Statesman" shrewdly remarks, to make even those of the unpolitically-minded Indian settlers in that country who have "hitherto oddly maintained their own racial exclusiveness, think a great deal more about African disabilities and the need for a common front. Such a front is the Nationalists' nightmare; the real reason for the big treason trial is an attempt to scotch it in time." Demonstrations and hartals are being organized in protest; and relief is being sought also in the law courts.

The influential "Cape Times" has condemned the Nationalist Government's policy in these forceful terms:

The Group Areas banishment of Indians from Pretoria and Durban violates every principle devised by the wit of humanity for the good government of men.

There are about 400,000 Indians in this country, most of them born here and most of them as entitled as anyone else in South Africa to live, eat, get educated, have security and be happy.

Because of historical circumstances, an important part of this community is made up of traders and, as most of the Indian community is poverty-stricken, they have established their business by trading with white people.

This community has not a whisper of a voice in the making of the laws which they have to obey nor have they any say in determining the taxes which they pay. Now, by the stroke of the pen of some distant politician, they are being threatened with economic ruin. They are being told to get out of their businesses, to take themselves off to some spot on the veld where, if they wish, they are at perfect liberty to make a living by selling to their fellow traders or to such members of their poverty-stricken community as have the money to buy. Or they can live on their capital, or they can become navvies, or they can starve.

The tiny handful of white South Africans will not be strengthened by the presence among us of able, educated and ruined men, filled with bitter hate of the white man.

There is no attempt in this Group-Areas lunacy to preserve the illusion that these edicts are in a sense comparable with the findings of an impartial court. They are hearings of sorts by the Minister's appointees, who wield these powers over the lives and property of human beings; and then there is the edict with the force of law.

But the Indians are here and are going to stay. The white man has — temporarily — the political power to make them suffer for being Indians and it might give a feeling of self-satisfaction to some white men. But what is the measure of the bitterness and hatred of a family which has raised itself by its bootstraps to some sort of economic security and prosperity, and then sees everything which has been built up crash into sordid ruin?

As diligently as beavers, the Nationalists are creating another community to hate the white man's guts, to make common cause with every enemy, inside and outside South Africa, of our way of life. It is the Nationalists, not the Indians or the United Nations or the Communists, who are cutting the white man's throat in this country.

Mass Treason in S. Africa

JURISTS' OBJECTIONS

The mass treason trial in South Africa commenced in Pretoria on 1st August. Preliminary proceedings were started in 1956 against 156 persons, but only 96 of them were committed at these proceedings, the rest being unconditionally discharged. Those under trial are alleged to have conspired between 1952 and 1956 to prepare the violent overthrow of the State and its replacement by a "Communist or some other State."

The International Commission of Jurists, which is sending its own observers at the trial, is gravely concerned at the way in which the trial is taking on the character of a political trial. Mr. Justice Vivian Bose, Vice-President of the Commission, gave voice recently, after his return from The Hague where he had gone to attend one of its meetings, to this concern felt by the Commission. The Commission, Mr. Justice Bose said, was of the view that the generality of the definition of treason and of offences under the Suppression of Communism Act with which the accused were charged endangered the certainty of the criminal law which was a basic principle of the rule of law recognized by civilized nations.

The Commission was of the view that the simultaneous trial of originally 156 (now 92) persons would make extremely difficult the determination of the individual responsibility of the accused which was a fundamental principle of criminal justice. A law passed on July 16, 1958, retrospectively validating the appointment, by the Minister for Justice, on July 1, of a Special Court of three judges to try the accused, excluded a normal trial by a judge and assessors, for which the accused had opted in the preliminary proceedings and thus, inevitably, gave rise to fears of a political trial reminiscent of the proceedings before Special Courts, as in Hungary, against which the Commission had protested in the past.

At the opening of the trial the defence counsel objected to two of the three judges of the specially-constituted Supreme Court who are to hear the case — one because he had acted as advocate in a case in which some of the accused had appeared before he was appointed as judge and the other because this judge was known to have recommended his appointment as judge for the treason trial.

Soviet Russia as Friend of the Moslems

The crisis in Lebanon and Jordan has afforded Mr. Khrushchev an excellent opportunity of carrying on cold war propaganda and he is using it to seize for the Soviet Union the role not only of a protector of Middle Eastern people's independence and freedom but also as a friend of Moslems. The subjugation of millions of people by Soviet imperialism is well-known to all, but the history of Soviet misrule of some fifteen or twenty million Moslems of the Caucasus and Central Asia, whom the Czars had conquered, is perhaps not so well known. The successors of the Czars are faithfully continuing the former rulers' efforts to destroy the self-government and the Moslem religion, culture and traditions of these peoples. On this aspect of the matter the "New York Times" writes:

Premier Khrushchev pretends to great and righteous indignation these days about American troops in Lebanon and British troops in Jordan. But what are Russian troops doing in Baku, in Tashkent, in Alma

Ata and the other great centres of the Moslem peoples who live under the Soviet yoke? Why are the Kazakh people being buried under the deluge of Slavic settlers from European Russia, settlers who are ploughing up the Kazakhs' pastures and turning what was once a great Moslem nation into a small minority in its own homeland? If self-rule is good for Egyptians and Iraqis, why is it not good for Uzbeks and Azerbaidzhanis?

In this connection reference may be made to the near-extirmination of the Kalmuck people by the Soviet regime less than twelve years ago, of which a leading Italian newspaper, "La Voce Repubblicana," reminds us. When, intolerant of Soviet domination, the Kalmuck Soviet Republic established armed resistance units, the people there at the end of World War II were exterminated with massive executions, over one hundred thousand people—men, women and children—being the victims of the Great Russians' revenge. The paper stresses that this information comes from the Soviet Union itself: "it is included in the famous Khrushchev report on Stalin's crimes, which was published during the short period of de-Stalinization." The paper adds: "The extermination of the Kalmucks is not an isolated example. All the peoples under the Soviet yoke have undergone that violent de-nationalism process." Saying that the Soviet Union has no respect for nationalism, the paper asks a question:

The Communists, who stand as defenders of the rehabilitation of colonial peoples and speak of Western racialism, cannot answer this simple question: How many exponents of racial minorities—of the minorities and not of the Russians who have peopled the various Soviet Republics—occupy responsible posts in the Soviet Union?

CIVIL LIBERTY UNION NEWS

World Habeas Corpus

A.-I. C. L. COUNCIL SPONSORS THE MOVEMENT AS AN AFFILIATE

The All-India Civil Liberties Council has joined as an affiliate the Commission for International Due Process of Law in Chicago, which has started a movement for the establishment, by means of a treaty-statute, of an International Court of Habeas Corpus with the object of assuring protection, all over the world, for the human right of freedom from arbitrary arrest and detention. Among the sponsors of the Commission are many scholars and lawyers of international repute such as Dr. Quincy Wright, Professor Myres S. McDougal and Mr. Truman Arnold. They believe that a United Nations writ of habeas corpus can be devised for guaranteeing the right of personal freedom everywhere without impairment of the sovereignty of the respective states which will be signatories of the treaty-statute creating the International Court of Habeas Corpus.

This belief is founded upon Art. 56 of the U. N. Charter, which pledges member-states of the United Nations to take joint and separate action for the achievement of universal respect and observance of human rights and fundamental freedoms for all. This specific pledge

gives the General Assembly of the U. N. competence in the field of human rights and consequently qualifies the domestic jurisdiction of each signatory state. The concept that "human beings and not states alone are subjects of international law" is gaining wide acceptance. "Thus the question of sovereignty would become subservient to the international status of humans. The writ would be binding on all signatories and could be consistent with the international law that governs relations between the states called sovereign. The writ would make international law capable of binding a state precisely because that state possesses an obligation and authority to be fully and directly responsible for the observance of human rights within its territory."

Professor Quincy Wright says that "one has to take the position legally that everything is within the domestic jurisdiction of a sovereign state *except* matters involving its obligations under customary international law or treaty." "It can, therefore, be asserted that if any question is covered by a Charter provision, it is no longer within the domestic jurisdiction of a state. 'Domestic jurisdiction' [as used in Art. 2 (7)] has acquired a new meaning in that its content is now dependent on the development of international law. Only disputes on situations concerning which a state is under no obligations of international law or treaties are within its domestic jurisdiction."

This is broadly the reasoning on which a U. N. writ of habeas corpus is being fashioned.

NOTES

Freedom of Movement Case Pending

Another case involving the constitutional right of American citizens to travel abroad is pending in the federal district court in Washington. It is in respect of Mr. William Worthy, a foreign correspondent for the "Baltimore Afro-American" and a special correspondent in Communist China for the "New York Post." In 1956 Mr. Worthy went to Communist China in violation of the State Department's ban on travel to that country and to Hungary in violation of a similar ban on travel to Hungary. A year ago, when his passport expired, the department refused to renew it. Mr. Worthy appealed to the department's Board of Passport Appeals and the State Secretary upheld the Board's decision on 24th March on the ground that his activities abroad would be "prejudicial to the orderly conduct of foreign relations of the United States."

The American Civil Liberties Union, supporting Mr. Worthy, filed suit, asserting that the State Department's actions are "arbitrary and capricious" and that the procedures of the Board of Appeals amount to a denial of due process. The suit declared that the statutes give to the Secretary of State "certain ministerial duties in connection with routine issuance of passports and do not give him the power, discretionary or otherwise, to determine which American citizens may receive passports and thus be permitted to travel abroad." It is also stated in the suit that any restrictions imposed on the right of freedom of movement affect, when applied to newspapermen, also the right of freedom of the press.