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Freedom of movement, sovereignty, and the Third World in postwar international law (1948-1968)

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Freedom of movement, sovereignty, and the Third World in postwar international law (1948–1968)

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Abstract: This article examines how actors from the decolonised periphery – including delegates from Latin America, India, Lebanon, and the Philippines – helped articulate and defend freedom of movement in international law between 1948 and 1968. Drawing on *travaux préparatoires*, UN debates, and legal commentary, it traces the contested codification of internal movement, exit, and return in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights. While postcolonial advocacy proved decisive in shaping the formulation of these rights, their scope was constrained by limitations, uneven ratification, and interpretive practices that enabled selective enforcement. The article argues that freedom of movement emerged as a qualified achievement: a norm forged through negotiation and entanglement, yet structurally vulnerable to geopolitical instrumentalisation and postcolonial migration control. Adopting a TWAIL-informed lens, it highlights how sovereignty arguments operated as techniques for preserving imperial discretion within a formally universal human rights order.

Keywords: freedom of movement; sovereignty; Third World; international law; TWAIL; Universal Declaration of Human Rights; UDHR; International Covenant on Civil and Political Rights; ICCPR; Latin America; Middle East; South(east) Asia; Cold War; decolonisation; postcolonial advocacy.

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Biographical notes: Sara Cosemans is a historian of refugee politics and global mobility governance, and a Postdoctoral Researcher at KU Leuven. Her current research, funded by the Research Foundation Flanders (FWO) (Grant No. 1291524N), examines the global history of freedom of movement between 1948 and 1977. More broadly, her work traces the political and legal strategies through which states and international organisations have sought to regulate refugee mobility from the early twentieth century to the present. She is completing a book manuscript for Cambridge University Press, provisionally titled *Reinventing Resettlement*, which reframes refugee protection in the 1970s as a tool of sovereignty preservation rather than humanitarian expansion.

1 Introduction

Hannah Arendt (1968) famously described freedom of movement as “the oldest and also the most elementary” of all human liberties. Yet freedom of movement has been unevenly codified, selectively enforced, and, in some contexts, quietly dismantled in practice. While international law formally recognises freedom of movement as a human right, states have consistently treated mobility as a core attribute of sovereignty – subject to discretion, exception, and withdrawal. Tracing the genesis of Article 13 of the Universal Declaration of Human Rights (UDHR) and Article 12 of the International Covenant on Civil and Political Rights (ICCPR) through their respective *travaux préparatoires*, this article shows how freedom of movement came to be articulated through three distinct, but interrelated elements in the postwar international bill of rights:

- 1 liberty of movement within a state’s territory
- 2 the right to leave any country, including one’s own
- 3 the right to return to one’s country.

Taken together, the debates surrounding each of these dimensions reveal the geopolitical tensions that shaped the codification – and containment – of mobility rights in the postwar period.

This article examines how these elements were debated, codified, and curtailed across three successive moments: the drafting of the UDHR (1946–1948), the negotiation of the ICCPR (1952–1959), and early attempts at implementation during the 1960s. Existing histories of freedom of movement – particularly in the context of the UDHR – have tended to emphasise efforts to exclude or limit mobility rights (Goodwin-Gill, 1978; Morsink, 1999; Glendon, 2002; Kochenov, 2015)¹. By contrast, this article shifts the focus to the *advocates* of freedom of movement and the arguments they mobilised in support of its inclusion. While this line of inquiry has been started for the Latin American delegates in the UN (Acosta, 2018), this article includes all actors from the decolonised periphery – including also delegates from India, Lebanon, and the Philippines – who helped articulate and defend freedom of movement in international law between 1948 and 1968.

In doing so, the article shows that the right to freedom of movement was not simply conceded by Western powers, but actively articulated and defended by diplomats from the periphery, outside the transatlantic core. Delegates from Latin America, the Middle East, and South and Southeast Asia played a decisive role in shaping the final form of the mobility provisions, through issue-specific interventions, drawing on regional legal traditions, postcolonial political experiences, and contemporary displacement crises. Taken together, their interventions complicate the dominant legal narrative that traces the origins of mobility rights to a European intellectual lineage from Vitoria and Grotius to Vattel (Goodwin-Gill, 1978; Juss, 2004; McAdam, 2011; Kochenov, 2015).

Instead, this article shows how freedom of movement emerged through processes of legal co-construction and entanglement in which actors positioned outside the postwar Euro-American core of international law and diplomacy were central, not peripheral (see also Paz, 2024). Nevertheless, despite these efforts, freedom of movement remained highly unevenly distributed across geographies, with significantly more mobility from and within the (imperial) core than in and from the (postcolonial) periphery. Recent

observers have noted that this inequality continues to grow (Shachar, 2020; Ghezelbash, 2020).

To show how these inequalities were present from the inception, this article draws on insights from *Third World Approaches to International Law* (TWAIL), which have shown that the postwar international legal order – often presented as universal and egalitarian – was shaped by enduring imperial hierarchies (Onuma, 2000; Anghie and Chimni, 2003; Anghie, 2007). As scholars such as Anghie and Chimni (2023) have argued, international law has long functioned as a technology for managing difference, allocating rights and obligations unevenly across a stratified global order. Becker Lorca (2023) furthermore posits that Third World contributions to international law do not ‘close the gap’ that international law has created between ‘Western and non-Western peoples’ in the first place. This article observes that interventions from the periphery did not reduce inequality, but nonetheless had tangible effects on core (colonial and Cold War) powers, which these actors anticipated and actively sought to mitigate with varying degrees of success.

The term ‘Third World’, however, is a historical anomaly for this period, as the Third World movement did not yet exist in 1948 and only acquired real meaning after the Bandung Conference in 1955. The term is used here as an analytical tool and a heuristic shorthand, capturing a set of actors from the decolonised periphery. Yet, as critical historians of the United Nations and human rights have argued, the ‘multicultural origins’ of the UDHR should not be overstated. Delegates at these forums instead formed part of “a global diplomatic elite, often schooled in Western locales” [Moyn, (2010), pp.66–67], who worked to “shore up a liberal world order that would be compatible with empire and Anglo-American hegemony for decades to come” [Mazower, (2009), pp.68–69]. Nevertheless, while these actors did not initially form a coherent ‘Third World’ project, their positions gradually coalesced into a loose but consequential alignment. Crucially, the participation of formerly colonised states compelled colonial powers – most notably the United Kingdom – to rethink their strategies vis-à-vis human rights.

Existing histories of freedom of movement have tended to foreground the role of the Soviet Union and the Cold War as the primary context shaping debates on mobility rights (Morsink, 1999). As a result, Soviet objections – particularly the insistence that the right to leave be exercised “in accordance with the laws of the State” – have received disproportionate attention [Goodwin-Gill, (1978), p.98; Morsink, (1999), p.74; Glendon, (2002), p.59, p.170; Kochenov, (2015), p.151]. However, as Samnøy (1999) has remarked, alliances against certain principles “followed lines other than the Cold War divide”. Concerns about migration simply superseded the Cold War logic.

Markedly, the role of anti-imperialism and decolonisation has been largely overlooked in these histories². This lack of attention has obscured the equally significant – and arguably more consequential – role of the United Kingdom (and white-settler states in the British Commonwealth). While Soviet delegates sought to formally subordinate mobility rights to domestic law, British representatives advanced a more radical position: questioning whether freedom of movement was a ‘basic’ human right at all and seeking to exclude it from binding international instruments altogether.

Both the UK and the USSR invoked sovereignty to contest mobility provisions, but they did so in different ways. These divergent positions reveal that sovereignty was not a singular or self-evident concept, but a flexible argumentative resource – deployed either to legally internalise mobility rights or to preserve absolute discretionary control over admission and exit. For contemporary readers, such sovereignty-based objections may

appear unremarkable. Much modern legal scholarship takes for granted that migration control constitutes the ‘last bastion of sovereignty’ (Dauvergne, 2008; see also Jagerskiold, 1981; Goodwin-Gill, 1996; De Genova and Peutz, 2010; McAdam, 2011; Perruchoud, 2012). Yet, recent historical work has shown that this association is neither timeless nor inevitable (Shachar, 2024; Chetail, 2024; Mongia, 2024; Paz, 2024). For many diplomats involved in the postwar negotiations, the tightening of migration control was not a natural attribute of statehood, but a relatively recent development. Only in the late nineteenth century did borders and passport regimes emerge, particularly in white-settler states within the British Commonwealth and the USA, where restrictive legislation, including exclusionary policies targeting Asian migration, became a defining feature of modern statehood (McKeown, 2008).

Placing sovereignty claims in this historical context allows us to see what was truly at stake in the freedom of movement debates: not merely abstract principles of state authority, but the preservation of imperial power over racialised and imperialised populations at the moment when this power began to erode. Doing so reveals that mobility rights were not merely a peripheral issue in the postwar human rights project, but a central site where imperial authority, decolonisation, and the meaning of sovereignty itself were renegotiated. This article therefore shifts the analytical focus from Cold War antagonisms to the role of decolonisation in reshaping the relationship between sovereignty and movement.

This article draws attention to the legal techniques through which states navigated, limited, and at times evaded mobility rights. Rather than openly rejecting these norms, governments frequently engaged in practices of legal calibration – exploiting gaps in ratification, interpretive flexibility, and jurisdictional ambiguity to preserve discretionary control over movement. In this sense, the history of freedom of movement reveals how legal complexity itself could function as a mode of governance, enabling states to manage and deflect responsibility. This dynamic resonates with more recent accounts of ‘hyper-legalism’ and ‘obfuscation’ in international law, whereby formal compliance coexists with the strategic avoidance of legal constraint (Ghezelbash, 2020). This article shows that these techniques, far from being recent inventions, have deep roots in imperial and colonial ways of thinking and governing.

Methodologically, the article is based on a close reading of the *travaux préparatoires* of the UDHR and ICCPR, complemented by institutional reports, legal commentary, and diplomatic debates. These published sources include verbatim records of the Commission on Human Rights, the (Third Committee of the) General Assembly, and related drafting bodies, as well as official UN reports. In this article, I re-read these well-known sources through a different analytical lens, inspired by Arnulf Becker Lorca’s recent reflections on TWAIL’s accomplishments (Becker Lorca, 2023). Following these insights, I foreground decolonisation, selective enforcement, and imperial afterlives in the making of mobility rights.

The article proceeds in five sections. Section 2 reconstructs the diplomatic debates surrounding the inclusion of freedom of movement in the UDHR. Section 3 examines how these rights were consolidated and constrained during the ICCPR negotiations. Section 4 analyses the stalled implementation of mobility rights in the early 1960s, focusing on Cold War instrumentalisation. Section 5 explores the Commonwealth Immigrants Act of 1968 as a turning point that exposes the limits of codification. The conclusion reflects on what this history reveals about the fragility of mobility rights in international law.

2 Introducing mobility rights into the UDHR (1946–1948)

In the 1940s, as the drafting of an international bill of rights began, it was far from self-evident that freedom of movement would be included. Early discussions of the UDHR reveal considerable uncertainty about whether a right to leave – or to return – should form part of the emerging human rights framework. Between the outbreak of the Second World War and the San Francisco Conference of 1945, numerous initiatives to draft bills of rights began to circulate. Private proposals – including H.G. Wells's 'Declaration of Rights' (1939) and Hersch Lauterpacht's 'International Bill of the Rights of Man' (1943) – included elements of freedom of movement, especially the right to emigrate. By contrast, public and institutional initiatives, such as Roosevelt's Four Freedoms (1941), the Atlantic Charter (1941), and the ILO's Philadelphia Charter (1944), remained silent on mobility rights (Simpson, 2001). In some cases, attempts to introduce mobility rights were met with outright hostility. In 1944, British Colonial Secretary Oliver Stanley rejected freedom of movement as an unacceptable intrusion on state sovereignty during a House of Lords debate (McAdam, 2011).

In contrast to this strong objection voiced in London, several Latin American states were eager to include mobility rights in human rights instruments. In 1944, the Inter-American Juridical Committee, with backing from Cuba, Chile, and Panama, submitted the 'Draft Declaration of the International Rights and Duties of Man' to the San Francisco Conference (Humphrey, 1979; Morsink, 1999; Simpson, 2001). This so-called 'Latin American Draft' (E/CN.4/2, 1947) included language affirming the right to freedom of movement within a state's territory and the right to leave the state – though not the right to return (Inter-American Juridical Committee, 1945). Its influence was profound. Not only did it provide substantive language later echoed in the UDHR, but it also reflected a regional tradition of liberal mobility norms. Latin American constitutions were among the most explicit in enshrining the liberty of movement and the right to asylum, and these documents formed the basis of many early drafts of the UDHR (Verdoodt, 1970; Samnøy, 1999; Manly, 2004).

As soon as the deliberations on what would become the UDHR started, the Latin American delegations took the lead in matters related to human mobility. Latin America has had a liberal regional mobility regime from the nineteenth century onwards, which was confirmed in several regional international treaties, that focused mainly on a very generous provision of diplomatic and territorial asylum (Acosta, 2018). In 1899, asylum appeared as a legal concept in the Montevideo Treaty of International Penal Law. In subsequent conventions, starting in 1928 in Havana, the concept gained depth (Arboleda, 1991; Harley, 2014; Cantor et al., 2015). This liberal stance was also visible in the constitutions that were used as an inspiration for the Universal Declaration: fourteen Latin American constitutions made explicit mention of the right of liberty of movement (in comparison to twelve non-Latin American countries with similar provisions)³. While the Latin American impact has been thoroughly researched for UDHR article 14 on asylum (Manly, 2004), an extensive analysis of the *travaux préparatoires* shows that the Latin American delegates made similar contributions to Article 13 that entailed the right to leave.

Uruguay's representative José Antonio Mora Otero was the first to raise the issue of movement rights in early 1947. He insisted that freedom of movement – both within a country and across borders – should be among the fundamental liberties guaranteed in the Declaration. In his words,

“freedom of movement ought to be included among the fundamental freedoms of the individuals. Each person should be free to move about within a country and to leave that country, subject to the limitations imposed by the immigration laws of other countries.” (E/CN.4/SR.8, 1947)

Mora’s wording helped shape the early drafts, and he was supported by other regional delegates who ensured that these provisions remained in the final text despite growing pushback.

The inclusion of these rights represented a significant innovation. As Mary Ann Glendon (2002) observed, the articles on movement, asylum, and nationality introduced a transnational dimension to human rights: they required reciprocal action from other states, not just internal guarantees. While similar provisions existed in Latin America’s regional treaties, this was the first attempt to elevate them to the international level. The Latin American delegates aimed precisely at this expansion.

One of the most consequential interventions came at the final stages of the UDHR negotiations. In the autumn of 1948, Lebanese delegate Karim Azkoul proposed adding a right to return to the existing right to leave (A/C.3/SR.120, 1948). This amendment – introduced in the Third Committee as violence escalated in Palestine and regional concerns over displacement mounted (Khalidi, 1992) – gave Article 13 its final form:

- 1 everyone has the right to freedom of movement and residence within the borders of each state
- 2 everyone has the right to leave any country, including his own, and to return to his country.

Scholarly attention has often focused on Soviet discomfort with these provisions, drawing in part on Eleanor Roosevelt’s later suggestion that this concern was among the reasons for the USSR’s abstention from the UDHR vote (Glendon, 2002). The *travaux préparatoires* confirm that freedom of movement was among the most contested provisions of the Declaration. Unlike most other articles, which were either adopted unanimously or with abstentions, the mobility provision attracted six negative votes [A/PV.183, (1948), p.933]. The *travaux* do not provide a definitive breakdown of votes by state, but representatives of the Soviet bloc repeatedly raised objections to the mobility provision, particularly concerning the absence of explicit reference to state sovereignty [A/PV.180, (1948), p.855; A/PV.182, (1948), p.897]. However, as noted by Morsink (1999), these objections formed part of a wider ideological position grounded in a Marxist, state-centred conception of rights, rather than a singular focus on mobility (see also the speech by Soviet delegate Alexei Pavlov: A/C.3/225, 1948)⁴.

Strikingly, South Africa articulated an even more explicit opposition to freedom of movement as such. Its delegation outright rejected the inclusion of the right, arguing that such a principle would “destroy the whole basis of the multi-racial structure” of the Union (A/C.3/SR.90, 1948). This position, articulated during the early debates in the General Assembly and repeated, though in more general terms, in the final discussions [A/PV.182, (1948), pp.910–911], highlights how settler colonial governance depended on the denial of mobility to racialised populations within its territory (see also McFarland, 2017). Taken together, these debates suggest that resistance to freedom of movement was not confined to a single ideological bloc, but emerged across different political formations, each seeking – through distinct arguments – to preserve discretionary control over movement.

That the UDHR passed with only eight abstentions and no opposing votes was due in part to its non-binding nature. Yet the General Assembly simultaneously mandated the drafting of a binding convention – a process that would expose much deeper fault lines. As Haitian delegate Mr. Chauvet put it: “the covenant was to take into account the practices and political considerations peculiar to each country, [whereas] the declaration was a statement of universally applicable moral principles” (A/C.3/SR.120, 1948).

3 Consolidating freedom of movement in the ICCPR amid imperial objections (1952–1959)

The drafting of the ICCPR revealed just how contested freedom of movement remained. As principle turned into binding law, limitations and objections became more explicit. The ICCPR discussions on freedom of movement, which began in 1952, occurred against the backdrop of accelerating decolonisation. Between the introduction of freedom of movement rights as Article 13 in the UDHR in 1948 and the adoption of Article 12 of the ICCPR by the General Assembly in 1959, eight so-called ‘non-self-governing territories’ had gained independence and many more would follow in and after 1960. This shift in the UN’s power balance was no longer hypothetical but structural (Burke, 2010). As a result, the ICCPR negotiations saw renewed resistance from imperial powers confronting the realities of decolonisation – most persistently the United Kingdom – seeking to preserve broad discretionary control over migration.

As soon as the ICCPR discussion on the freedom of movement articles started in 1952, the British delegate Sir Samuel Hoare moved to erase these rights from the Bill of Rights. He questioned whether the right to movement was a ‘basic one’ and warned that including it might lead to unintended legal consequences (E/CN.4/SR.315, 1952). He insisted that states should retain maximum flexibility in restricting exit. In response, Hansa Mehta from India accused Hoare that he “had always opposed the article on the right to the liberty of movement” (Ibid.) For her, “if freedom of speech and the right of association were human rights, then the right to liberty of movement was equally a human right” (Ibid.). The Australian delegate, Fred Whitlam, added a distinct concern (in line with his South African colleagues prior): internal movement restrictions on Indigenous peoples in Australia might conflict with any such right, raising various difficulties to accept the right (Ibid.) This debate between British Commonwealth members with wildly different interests exposed how uncertain the inclusion of these rights in binding international law really was.

Among the original architects of the UDHR, there was, however, strong support to preserve the article. René Cassin and Eleanor Roosevelt echoed the Indian stance that liberty of movement belonged with the other human rights, and both Karim Azkoul (Lebanon) and Hernán Santa Cruz (Chile), supported the article. Then, the Swedish Agda Rössel stressed the importance of the rights’ inclusion by condemning the denial of movement rights in apartheid South Africa and Soviet-controlled Hungary. Even the Soviet representative, Platon Morozov, while objecting to the Swedish criticisms of his country, considered the UK’s proposed eradication of the rights too far-reaching (E/CN.4/SR.316, 1952). During voting, the Soviet amendment to preface the article with the phrase ‘subject to any general law of the State’ – while being voted down during the UDHR negotiations – was unanimously adopted. The UK’s broader proposals to curtail the freedom of movement articles were rejected (Ibid.).

Yet, British efforts to preserve sovereign discretion over mobility eventually also succeeded by strengthening the limitation clause. In the discussion about the exact wording of the limitation clause, Hoare argued that it was necessary to insert the French expression *ordre public* in the English text, on the grounds that ‘public order’ alone did not capture the full scope of permissible restrictions. He explicitly invoked the Convention Relating to the Status of Refugees (1951), where “[a] similar addition of explanatory words in French had been made” (A/C.3/SR.956, 1959). The Drafting Committee accepted this precedent (Ibid.)⁵. While framed as a technical clarification, the insertion of *ordre public* had significant consequences: it expanded the scope of permissible restrictions by importing a broader French legal concept into the English text, thereby functioning as a sovereignty-preserving device. These wider discretionary restrictions would enable states to retain control over admission and movement, even while formally accepting binding human rights obligations.

These dynamics crystallised in the Third Committee’s 1959 amendments, particularly those led by José María Ruda (Argentina) and José D. Inglés of the Philippines in coalition with delegates from Belgium, Iran, and Italy [Cuevas Cancino, 1959; A/C.3/SR.956, (1959), p.954]. The final text, now Article 12 of the ICCPR, allowed for limitations on exit and internal movement, provided they were lawful and justified by concerns such as national security, public order (*ordre public*), or public health. Notably, the right to return to one’s own country was not subject to these limitations and has since been interpreted by some scholars as absolute (Jagerskiold, 1981). The final text of Article 12, as adopted, reads:

- 1 everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence
- 2 everyone shall be free to leave any country, including his own
- 3 the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are 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.
- 4 no one shall be arbitrarily deprived of the right to enter his own country.

In sum, the consolidation of the right to freedom of movement in the ICCPR was shaped less by juridical disagreement over the meaning of rights than by their entanglement with broader political struggles. By the 1950s, freedom of movement had become a proxy for conflicts over decolonisation, migration control, and the reordering of imperial authority. What had appeared during the UDHR negotiations as a largely moral principle now crystallised into a politically charged legal question, especially for colonial powers and settler states confronting the realities of postcolonial mobility. Against this backdrop, India played a central role in exposing the continuity of British opposition to mobility rights and in insisting that codification without binding effect would hollow out the promise of the postwar human rights project.

4 Cold War mobility tensions and the stalled implementation of freedom of movement rights (1959–1963)

Intensification of tensions around mobility unfolded in a distinctly Cold War context. By the end of the 1950s, the international community had formulated the right to internal movement, leave, and return, yet concrete measures of implementation remained absent (A/2929, 1955). By ‘implementation’, this article adopts the term as used in the contemporary UN record: referring not to domestic compliance with codified treaty obligations, but to proposed methods – through recommendations, interpretive guidance, and mechanisms that could be inserted into the Covenant – for giving practical effect to human rights (Brown, 2016). Already in 1948, the General Assembly tasked a working group chaired by the Indian delegate Hansa Mehta with considering such methods of implementation, including in relation to mobility rights (Glendon, 2002). Nevertheless, during the drafting phase of the UDHR and the ICCPR, little progress was made, particularly with regard to mobility rights. As one legal observer later remarked, UN bodies responsible for giving substance to Article 12 “did not show any haste in their reluctant attempts to fill the vacuum with substance” [Kochenov, (2015), p.150]. What followed was not merely institutional inertia, but a period in which freedom of movement became increasingly vulnerable to geopolitical instrumentalisation – operating within a Cold War framework, yet still marked by the unresolved legacies of empire.

The most concrete attempt to implement freedom of movement provisions came in 1953, when the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities commissioned a study on ‘The right of everyone to leave any country, including his own, and to return to his country’. Judge José D. Inglés of the Philippines – one of the architects behind the final wording of Article 12 – was appointed as rapporteur. Over the next decade, he compiled an extensive report, drawing on legal instruments, state submissions, and NGO input. The final text, completed in 1963, offered a series of recommendations that clarified the scope and limits of exit rights under international law (Inglés, 1963). Yet the report languished. Discussion was postponed for ten years, and when it finally reached the Human Rights Commission in 1973, the report was set aside with a non-committal general recommendation to the General Assembly. Legal scholar Guy Goodwin-Gill, writing in 1978, lamented that “[t]his report has been consistently ignored” [Goodwin-Gill, (1978), p.2], and it would take until 1999 for its recommendations to be formally adopted by the UN Human Rights Committee (Kochenov, 2015).

The prolonged neglect of implementation was not accidental but political. While the Soviet Union had ratified both International Covenants and actively supported the 1965 Convention on the Elimination of All Forms of Racial Discrimination, it grew increasingly hostile to debates that touched on religion or emigration – especially those concerning Soviet Jews (Jensen, 2016). From the early 1960s onward, any attempt to advance implementation of mobility rights risked escalating geopolitical conflict (Ro’i, 1991; Salitan, 1992).

The shift from constructive critique to active obstruction by the Soviet bloc was gradual but decisive. Between 1962 and 1967, communist states used procedural tactics to filibuster debates on a proposed convention against religious intolerance, ultimately shelving the effort after the Six-Day War (Jensen, 2016). A similar pattern unfolded in the debates around freedom of movement. The Soviet delegation, once grudgingly

cooperative, now responded with blanket denials, procedural stalling, and accusations of politicisation.

A crucial turning point came during the preparation of the Inglés report itself. In compiling his evidence, Inglés consulted both governments and civil society organisations. Among the latter was the Coordinating Board of Jewish Organizations (CBJO), a coalition of Jewish NGOs that provided input through its newly appointed representative, Dr. William Korey. A civil rights advocate and former Russian history professor, Korey had recently taken up a position with the Anti-Defamation League in Washington, D.C. (Ro'i, 1991; Peretz, 2015). His contributions to the Inglés report were based in large part on information passed to him by emissaries of *Lishkat Hakesher* (code-named Nativ), a semi-secret Israeli agency devoted to securing Jewish emigration from the Eastern Bloc (Levanon, 1999).

Established in 1952, Nativ operated initially as a quiet liaison network behind the Iron Curtain, helping Jews maintain cultural connections and, where possible, escape across borders. In 1955, it launched 'Operation Bar', a campaign to influence policymakers and Jewish intellectuals in Western Europe and Latin America. By 1958, Nativ had established a presence in the USA, though the Eisenhower administration showed little interest in promoting Jewish immigration to Israel (Peretz, 2015). Eisenhower's Middle East policy was primarily concerned with containing Soviet influence and Arab nationalism (Yaqub, 2004), and US policymakers viewed the unresolved Palestinian refugee crisis as the region's most pressing mobility-related problem. Encouraging large-scale Jewish immigration to Israel, Eisenhower feared, would further destabilise the region by upsetting the existing demographic balance (Peretz, 2015). As a result, Jewish emigration from the USSR remained limited, and Western mobilisation around exit rights was muted during the 1950s.

The American attitude towards the Soviet Jewish emigration changed markedly in the early 1960s. As Hahn (2004) has shown, "[d]uring these critical years the USA began to supplant Britain as the dominant Western power in the Middle East". Under the Kennedy administration, US foreign policy became more receptive to Israeli interests, including the initiation of American arms transfers to Israel (Bass, 2004). At this moment, Nativ leveraged its influence within the American Jewish community to elevate Soviet Jewish emigration from a marginal concern into a global human rights issue (Finkelstein, 2003). From that point onwards, emigration of Soviet Jews became a central topic in human rights activism – for governments and NGOs alike – most crucially in the USA (Lazin, 2006; Hägel and Peretz, 2005; Keys, 2014).

Korey's report, finalised in 1960, emphasised family separation and discriminatory emigration practices in the USSR. He later linked these human rights issues directly to the Helsinki Final Act of 1975 (Korey, 1999), but the chronology – the inclusion of his recommendations in the Inglés study in the 1960s – shows that Korey was an important agenda setter. His intervention helped turn what had been a recommendation exercise into a political issue, complicating efforts to give practical effect to freedom of movement rights. While the Inglés report never explicitly targeted the USSR, the implication of Soviet violations was unmistakable. The backlash was swift. When the Sub-Commission discussed the draft in 1961, Soviet delegates flatly denied any discrimination and began obstructing further debate (Morozov, 1999; Peretz, 2015). By 1963, meaningful debate over possible implementation measures to insert into the Covenant had collapsed. From then on, mobility rights became collateral damage in broader East-West antagonisms, with neither side willing to concede interpretive ground.

The very language of human rights – particularly the right to leave – became a lever for moral pressure and international campaigning, even as it paralysed multilateral negotiations. In this way, freedom of movement was recast less as a universal legal entitlement than as a strategically deployable instrument – its enforcement contingent on shifting geopolitical alignments rather than formal legal obligation. The Soviet case did not simply reveal the limits of mobility rights in practice, but exposed the conditions under which they could be activated, ignored, or suspended. Those conditions would soon become equally visible elsewhere. As the next section shows, when a Western state confronted the postcolonial consequences of mobility in 1968, the same right that had animated global condemnation of the USSR proved strikingly absent as a constraint.

5 The 1968 turning point: postcolonial immigration control and the limits of human rights

By 1968, the vulnerabilities built into international mobility rights had become fully visible and could thus be exploited. In February of that year, the British Parliament passed one of its most exclusionary pieces of postwar immigration legislation, the Commonwealth Immigrants Act, which introduced the legal notion of ‘patriality’: a right of abode for Commonwealth citizens with ancestral or residential ties to Britain. The act was designed to restrict the mobility of all Commonwealth citizens without these pre-existing ties – in other words, of most non-white Commonwealth citizens. The effect was to disenfranchise thousands of non-white British passport holders in East Africa, particularly Ugandan and Kenyan Asians who held no other nationality (Hansen, 1999). By refusing entry for its own passport holders, the UK denied the right to *return* to one’s country – even though most East African Asians had never set foot on the British Isles before. Patriality was the British way of reckoning with the postcolonial consequences of this right, which were unforeseen when Lebanon introduced it in 1948.

The 1968 legislation did not emerge in a vacuum. The introduction of immigration controls for Commonwealth citizens had begun with the 1962 Commonwealth Immigrants Act, which required employment vouchers for entry (Dummett and Nicol, 1990). But it was the 1968 Act that marked a decisive shift. It came in direct response to increased migration from Kenya, where President Jomo Kenyatta had introduced a series of discriminatory laws targeting Asians – primarily of Indian descent – who had not taken Kenyan citizenship after independence. These included the 1967 Trade Licensing Act, which restricted non-citizens from engaging in business, and a new Immigration Bill that required permits for continued residence (Aiyar, 2015).

Asians in Kenya, many of whom were technically British citizens, found themselves forced to leave not through formal expulsion, but through bureaucratic suffocation. In 1967 alone, 12,000 migrated to the UK. Another 12,000 arrived in the first two months of 1968, prompting a wave of political anxiety in London. The Labour government of Harold Wilson rushed to pass the 1968 Act, which went through Parliament in less than a month, from first reading on 8 February to royal assent on 1 March (Hansen, 1999). The speed and scope of the legislation drew widespread criticism, including from within the governing Labour Party.

The irony, that the Commonwealth Immigrants Act was passed in 1968, the International Year for Human Rights, was not lost on its critics. In January of that year, the Indian government sponsored by the UN had hosted the opening event of the

International Year for Human Rights: the International Seminar on Human Rights in Bangalore. The conference focused explicitly on implementation and featured prominently the right to free movement. Delegates noted the gap between the codification of exit and return rights and their actual observance by powerful states. While the seminar produced no binding resolutions, it was a moment of reckoning – an acknowledgment that the central challenge was no longer the articulation or expansion of rights, but their implementation and enforcement. What mattered now was accountability (*Report and Conclusion of the Conference of Jurists on Right to Freedom of Movement*, 1968). Only weeks later, the 1968 Act showed how former colonial powers managed to escape precisely that accountability.

In June 1968, the International Commission of Jurists issued a statement declaring the Act ‘a clear breach of faith’ with regard to the right to return (International Commission of Jurists, 1968). These legal scholars drew connections between the new concept of patriality and the erosion of international human rights protections. Inside the UK, a special committee for the plight of the East African Asians – called the Sandhu-Patel Committee after its two most prominent members: the Kenya-based lawyer G.S. Sandhu and the UK-based Ugandan Asian community organiser and anticolonial activist Praful Patel – denounced the Act as “a planned legislation depriving [British citizens] of their fundamental human rights in the year which is named the Human Rights Year”. The disillusionment ran deep. In a particularly telling passage, their report charged that “the architects of the Bill had only one obsession in their mind, i.e., the denial of free entry into the UK of British citizens of Asian origin” (Ennals, 1968)⁶. In the UK, they argued, the language of rights was now being used not to protect, but to exclude. Legal manoeuvring had rendered exit and entry rights conditional, discretionary, and, in practice, racialised.

Despite their force, these criticisms remained remarkably limited. This muted response was enabled by the asymmetries created through selective ratification, which allowed states to invoke human rights principles while insulating themselves from their binding force. Randall Hansen has argued that Home Secretary James Callaghan was ‘indifferent to arguments about international law and obligation’ when he created the 1968 Commonwealth Immigrants Act (Hansen, 1999). The reality was even more cynical. Callaghan fully understood the legal stakes, because he was advised by the European Commission on Human Rights that the 1968 Act violated the freedom of movement clauses in both the UDHR/ICCPR and the Fourth Protocol to the European Convention on Human Rights. But the UK had not yet ratified the ICCPR nor the Fourth Protocol – and Callaghan knowingly exploited this gap. This legal manoeuvre was all the more significant because Britain had taken the opposite course in the field of statelessness, having ratified both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Precisely because outright denationalisation risked breaching obligations Britain had formally accepted, immigration restriction became a way of preserving sovereign discretion without producing statelessness.

As a final act of formal compliance, the British government maintained a quota system of 1,500 employment vouchers annually for Commonwealth immigrants, to which heads of Asian households from East Africa were now relegated (Cosemans, 2022). Rather than openly repudiating international principles, British policy worked through calibrated restriction: preserving a nominal avenue of entry while hollowing out the

practical content of the right to return. International law was not abandoned, but strategically navigated.

The law's global implications were immediate. India, which had long supported international mobility rights and whose representatives had shaped Article 12 of the ICCPR, now found itself confronting Britain as both a former colonial power and a fellow Commonwealth member. Indian officials in the Lok Sabha denounced the 1968 Act as a betrayal of international principles and an affront to the country's diaspora (Cosemans, 2022).

Yet Britain's move also produced a constraining aftershock. Faced with the sudden displacement of tens of thousands of British passport holders of Indian descent in East Africa – and with Britain having closed its own doors – India reacted with a strategic recalibration of its position. Claiming population pressure and economic burden, Indira Gandhi's government actively discouraged East African Asians from relocating to India, despite their shared heritage (Cosemans, 2022). In this same period, India pursued aggressive population control measures, including coerced sterilisations, which further revealed the limits of its human rights commitments (Connelly, 2008).

A British policy document on 'The 'Asian Exodus' from Kenya', dated 4 July 1968, reveals how far both India and the UK were willing to go to shift responsibility. When, after sustained domestic lobbying in India, Indira Gandhi finally agreed to admit some East African Asians, she did so only on the condition that Britain would accept responsibility for them should they be "thrown out of work and out of the country" (cited in Cosemans, 2022). These 'Callaghan assurances' allowed India to admit East African Asians while formally treating them as Britain's responsibility. Callaghan, in turn, calculated that few would attempt onward movement from India to the UK, preserving Britain's humanitarian reputation without reopening its borders (Ibid.).

The bilateral agreements between the British and Indian governments also provided an opportunity to exploit migration as a weapon, to use Greenhill's (2010) phrase. In East Africa, several governments warned that the UK's restrictions might provoke retaliatory policies in East Africa against East African Asian British passport holders (Cosemans, 2022). The passing of the 1968 Commonwealth Immigrants Act indeed created the opportunity for East African leaders, particularly in Kenya and Uganda, to invoke the right to return to justify expulsion. These were not arbitrary removals, they claimed, but lawful repatriations to the state of citizenship.

This logic reached the starkest expression in 1972, when General Idi Amin ordered the mass expulsion of the British Ugandan Asians. When the UK sought a UN resolution to condemn Uganda's human rights abuses (Crowe, 1972), Uganda's foreign minister, Grace Ibingira, rebuffed UK accusations of racial discrimination by insisting that Britain, not Uganda, was violating human rights by denying entry to its own citizens of colour (A/PV.2042, 1972). And he was not wrong: Britain had created the legal fiction of patriality precisely to exclude British Asians. Yet the net result was that the individuals concerned – many of whom had never set foot in the UK – saw their rights used against them: East African leaders used the right to return to expel a group that in practice had no other place to call home than the East African countries in which they resided. The legal architecture meant to protect mobility thus facilitated displacement instead.

This opaque and carefully calibrated legal manoeuvring – scattered across multiple geographical and political sites – also helps explain a striking asymmetry in contemporary reactions. Unlike Soviet restrictions on Jewish emigration – which were vigorously condemned by Western governments, NGOs, and scholars alike – the British

and Indian restrictions on East African Asians elicited far more muted responses, despite serious concerns about their compatibility with international legal principles. This imbalance was mirrored in the academic literature. Contemporary scholarship focused primarily on the racialised dimensions of postcolonial immigration control in Britain and East Africa, largely overlooking the simultaneous erosion of freedom of movement as a legal right (Twaddle, 1975; Tandon and Raphael, 1978; Bhachu, 1985; Mamdani, 2011). As a result, the dismantling of mobility rights through legislation remained analytically underexposed at precisely the moment it became most consequential (for early exceptions, see Plender, 1971; Boney, 1974).

In retrospect, the events of 1968 mark a turning point in the history of freedom of movement rights. What had emerged from the postwar period as a hard-fought right – codified in law, championed by decolonised states, and embedded in the language of universality – was now laid bare as fragile, conditional, and vulnerable to political reversal. Britain's legislative response to Kenyan Asian migration exposed the limits of international human rights instruments when set against national interest and racialised notions of belonging. That exposure was sharpened by selective ratification: although the United Kingdom had signed the ICCPR in 1968, the Covenant was not yet in force and Britain would not ratify until 1976. This gap mattered: it helped make possible a containment strategy that, unlike Soviet restrictions on emigration, provoked little sustained international sanction⁷.

6 Conclusions: codifying and containing movement

This article has traced the emergence and early erosion of the right to freedom of movement in international law between 1948 and 1968. It has shown that this right did not arise by consensus or humanitarian inevitability, but through sustained advocacy by postcolonial and decolonising states – particularly from Latin America, India, Lebanon, and the Philippines – who insisted that internal movement, exit, and return be recognised as fundamental human rights. At the same time, major powers such as the Soviet Union – and, crucially, the United Kingdom – sought to limit these rights. What emerges from these debates is not a confrontation between fixed ideological blocs, but a series of issue-specific interventions, through which competing visions of mobility gradually took shape. At stake was not only the formulation of a legal right, but the extent to which states would retain discretionary control over movement in a rapidly changing imperial context marked by the onset of decolonisation. The interventions from the peripheral delegates were not marginal: they shaped the wording of the UDHR and the ICCPR and resisted repeated attempts by powerful states to dilute, defer or annul these guarantees.

At the same time, the article has demonstrated that codification unfolded alongside containment. From the outset, freedom of movement was hedged by limitations that preserved broad state discretion. While previous literature has emphasised Soviet efforts to curtail freedom of movement in the context of Cold War tensions, this article also highlights the central role of decolonisation and, more importantly, the entanglement of imperial, ideological, and geopolitical conflicts in shaping mobility rights. During the ICCPR negotiations, both the USSR and the UK sought to inscribe flexibility into binding law, even as post- and anticolonial delegates exposed the continuity of imperial resistance to mobility rights. The result was a qualified achievement: freedom of

movement entered international law against considerable resistance, but in a form that remained vulnerable to restrictive interpretation and selective implementation.

These tensions became fully visible in 1968. Britain's passage of the Commonwealth Immigrants Act during the International Year for Human Rights laid bare the limits of legal codification. When confronted with postcolonial migration, the British government exploited its non-ratification of key instruments codifying liberty of movement (including the ICCPR and the Fourth Protocol to the European Convention on Human Rights) to circumvent these principles with impunity. Unlike Soviet emigration restrictions, Britain's legal manoeuvring did not provoke sanctions, boycotts, or diplomatic isolation. The episode revealed how international mobility rights could be hollowed out by liberal democracies through legal manoeuvring, selective ratification, and appeals to sovereignty. Moreover, curtailment proved contagious. India, which had fought so hard in the 1950s to turn mobility rights into binding international law, now followed the UK in restricting Asians' rights to return to India – illustrating how strategies of containment travelled across contexts.

The empirical argument advanced in this article supports a key insight of Third World Approaches to International Law (TWAIL): international law is neither a straightforward instrument of domination nor a simple vehicle of emancipation, but a site of *entanglement* (Becker Lorca, 2023). Rather than fundamentally transforming the structure of international law, interventions from the periphery often forced responses from more powerful states, compelling them to adapt, reinterpret, or contain emerging norms in ways that preserved existing hierarchies. Postcolonial actors were thus co-constructors of the legal order they sought to reform. Their efforts expanded the scope of individual rights, even as they reinforced a system still structured around borders, citizenship, and state control. Freedom of movement emerged from this process as both a gain and a limit – a right fought for, codified, and yet rendered fragile in practice.

Read through this lens, the story is not one of linear progress from declaration to protection. Mobility rights were constrained not only through the Covenant's limitation clause, but also through the mundane legal mechanics that determined whether the right could bite at all: delayed ratification, interpretive manoeuvres, and jurisdictional strategies that insulated powerful states from obligation. The same vocabulary that postcolonial delegates used to expand the normative horizon could, under different conditions, be redeployed to justify expulsion, exclusion, or diplomatic blame-shifting. The interaction between actors from the core and the periphery – though often taking place within what some historians have described as a shared liberal global elite – produced highly asymmetric outcomes. The history of freedom of movement is therefore best understood as a history of codification *and* containment. Understanding that paradox is essential to grasp the historical foundations of today's global mobility regime.

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Notes

- 1 The right to seek and enjoy asylum – Article 14 of the UDHR – has received significantly more scholarly attention but falls outside the scope of this article. Much of this literature focuses on Latin American contributions to the development of asylum provisions (Arboleda, 1991; Harley, 2014; Franco, 2004; Cantor et al., 2015).
- 2 Generally, histories concerned with the emergence of human rights often start to consider the influence of decolonization only from the 1960s onwards (Burke, 2010; Klose, 2013).
- 3 These countries were Argentina, Bolivia, Chile, Costa Rica, Cuba, the Dominican Republic, El Salvador, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Peru. For more information on the content of the constitutions, see E/CN.4/AC.1/3/Add.1 (1947).
- 4 Only the article on freedom of opinion and expression (Article 20 in the draft Declaration, later Article 19 of the UDHR) attracted a comparable number of negative votes. Delegate Andrey Vyshinsky of the Soviet Union had opposed the provision vehemently, arguing that it failed to prevent the spread of fascist propaganda. There, too, representatives from the Soviet sphere of influence – particularly the Byelorussian delegation – called for greater “respect for the sovereign independence of States” [A/PV.182, (1948), p.897].
- 5 Hoare was a member of the Drafting Committee of the Refugee Convention as well, and there, too, in consultation with the Home Office, he insisted on a firm limitation clause to the article on non-refoulement (Article 33). Legal historian Gilad Ben-Nun has argued that this insistence had to do with espionage only, and that Hoare “meant Paragraph 2 to be used strictly as a *Consultum Ultimum*” [2015, p.113 (emphasis in original)]. This interpretation, however, understates the broader legal significance of introducing *ordre public* as an exclusionary ground. In both the Refugee Convention and the ICCPR, the insertion of the French concept – whose scope is considerably wider than its English counterpart – expanded state discretion without openly revising the substance of the right.
- 6 Illustratively, their report was written by Martin Ennals. Strikingly, Martin’s brother David Ennals, then Minister of State under Home Secretary James Callaghan, had played a central role in pushing the Act forward. Later that year, Martin became Secretary General of Amnesty International (1968–1980), an organization whose early human rights campaigning focused primarily on political imprisonment and torture rather than on mobility or border restrictions (Carmody, 2025).
- 7 The Soviet Union, by contrast, signed the ICCPR in 1968 and ratified it in 1973, while the USA postponed ratification until 1992. These differing timelines complicate later narratives that cast Soviet obstruction as uniquely responsible for the weakness of mobility rights.