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# Human Rights in the Wake of the Helsinki Accords

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In August 1975, thirty-five nations of Eastern and Western Europe, in addition to the United States and Canada, met in Helsinki and signed the Final Act of the Conference on Security and Cooperation in Europe (CSCE). The ultimate goal of the Conference was to further the loosely defined goals of détente.<sup>1</sup> Among the most important elements of the Final Act were the human rights provisions of Principle Seven, the so-called Basket I provisions, which dealt with security and disarmament in Europe, and Basket III, which focused on human rights and provided for freer movement of people, ideas, and information in all of the signatory nations.<sup>2</sup> The Principles enumerated in Articles 1-7 and in the Basket III provisos were difficult to negotiate. They sprang from the Western conviction that genuine security and cooperation in Europe would be impossible if human rights were not honored and if rigid barriers in the East to travel, culture, business, science, religion, general information and family reunification were not lowered.<sup>3</sup>

The earliest opportunity to assess progress in implementing the Final Act was the initial CSCE conference in Belgrade, Yugoslavia, in

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1. COMMISSION ON SECURITY AND COOPERATION IN EUROPE, COMM. ON INTERNATIONAL RELATIONS, H.R. REP. 95th Cong., 1st Sess., IMPLEMENTATION OF THE FINAL ACT OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE: FINDINGS AND RECOMMENDATIONS TWO YEARS AFTER HELSINKI (Comm. Print 1977).

2. *Basket III: Implementation of the Helsinki Accords: Hearings on Implementation of the Helsinki Accords Before the Commission on Security and Cooperation in Europe*, 95th Cong., 1st Sess. 5, Vol. 1 (1977) (statement of Leonard Garment).

3. 77 Dep't State Bull. 829 (1969). Basket II provisions of the Final Act dealt with East-West cooperation in the commercial and scientific fields. The West was also quite interested in strengthening the various confidence-building measures of Basket I, such as prior notification of major military movements and maneuvers.

October 1977. President Carter appointed the senior author of this article Ambassador-at-Large and head of the United States Delegation.

An immediate controversy developed at Belgrade. The Soviet bloc countries were singularly unenthusiastic about breathing life into Principle VII and the Basket III human rights provisions of the Final Act. The East was also quite timid with regard to Basket I confidence-building measures. The Soviets, as they had for many years, argued vociferously that Principle VI, a nonintervention provision of the Final Act, precludes CSCE signatories from inquiring into human rights activities within any other signatory's boundaries.<sup>4</sup> But how valid is this Soviet claim that human rights are a strictly internal matter? Is the Soviet Union's position consistent with the letter and spirit of the Final Act and with the evolving doctrine of human rights in international law and politics?

To support their claim that human rights within a country's borders are not a matter of international concern, Eastern Bloc nations appeal to a traditional tenet of international law: that civil and human rights issues are strictly within the domestic jurisdiction of nations, except where the rights of other nations are affected.<sup>5</sup> The flaws of this position, however, have been demonstrated all too clearly in the twentieth century. Governments have been the main abusers of the human rights of their own citizens, and the tenet leaves no realistic remedy for a citizen whose own government has restricted those rights. Fortunately, a more enlightened transnational perspective in human rights has emerged in recent decades.<sup>6</sup>

Aside from the logic of this broad transnational perspective, a strong case for invalidating the narrow Soviet interpretation of the Final Act can be made based on textual analysis. Principle VI (Non-Intervention in Internal Affairs) of the Final Act specifies that "participating states will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating state."<sup>7</sup> Subsequent paragraphs of Principle VI, however, qualify and define "intervention," making it clear that the prohibited "intervention" is limited to "armed intervention or threat of such intervention" and "terrorist" or "subver-

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4. A. H. ROBERTSON, HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW 303-04 (1968).

5. R. C. HINGORANI, MODERN INTERNATIONAL LAW 237 (1979).

6. *Id.* at 238.

7. *The Conference on Security and Cooperation in Europe: Final Act, August 1, 1975*, 14 INT'L LEGAL MATERIALS 1292-1325 (1975).

sive" or "other activities directed towards the violent overthrow of the regime of another participating state."<sup>8</sup> Nowhere in the text of Principle VI is there a direct or indirect prohibition of inquiry by participating states into human rights violations which occur in other signatory nations. In fact, every time the Soviets at Belgrade criticized human rights problems in the West, they implicitly acknowledged the validity of the Western position that any CSCE signatory can concern itself with the rights violations within other signatories' borders. Furthermore, any fair reading of the preamble and the text of Principle VII (respect for human rights and fundamental freedoms), and of Basket III of the Final Act makes it clear that participating states *must* concern themselves with the protection of human rights in all signatory nations if the goals of Principle VII and Basket III are to be fulfilled. It would be wholly inconsistent for signatory nations to pledge to cooperate in humanitarian areas, to increase cultural and educational exchanges, to facilitate freer movement and contacts among persons and organizations, and to expand the dissemination of information across national boundaries if, at the same time, these signatories were prohibited from either collecting information about Basket III violations outside their own countries or utilizing Final Act mechanisms to curb such violations. To proclaim, as do the Soviets, that Final Act signatories have no right to inquire into Basket I and Basket III violations which occur in other signatories' territory is to assert that, for all practical purposes, Basket I and Basket III are null and void. Surely such a perverse construction of the document will not stand, particularly in light of the provision of Principle VII which states that "the participating states recognize the *universal significance* of human rights and fundamental freedoms" (emphasis added) and that these states "will endeavor jointly and separately, including in cooperation with the United Nations, to promote universal and effective respect for them."<sup>9</sup> If, as Principle VII asserts, measures to remedy human rights violations are not left exclusively to each signatory, measures such as the review of violations by other signatories and demands for rectification of the violations surely cannot be challenged.

The Western case for continuing public concern with human rights violations, however, does not lie exclusively in a textual analysis of the Final Act but rests also on the specific commitments to human rights articulated in other international documents signed by Soviet bloc na-

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8. *Id.* at 1294.

9. *Id.* Principle VII. Principle VII refers to the Universal Declaration on Human Rights and thereby incorporates the Universal Declaration into the Final Act by reference.

tions. For example, Eastern bloc states have signed the United Nations Charter, wherein concern for human rights is noted in no less than five places,<sup>10</sup> and the International Convention on Civil and Political Rights.<sup>11</sup> The large number of signatories attests to a worldwide concern with human rights, a concern embodied in the very fabric of the major international organizations. It transcends national boundaries and looks to law and to the conscience of humanity for resolution of rights violations.<sup>12</sup> The distinguished Russian physicist and human rights activist Andrei Sakharov emphasizes this concern in his assertion that "since the protection of human rights has been proclaimed in the United Nations Declaration of Human Rights, there can be no reason to call this issue a matter of purely domestic concern."<sup>13</sup>

The Western position on human rights, while building upon basic United Nations documents, has also found growing support in the activities of Helsinki Accord monitoring groups in the East and the West, in international law, and in the actions of newly-emerging transnational organizations<sup>14</sup> such as the International Commission of Jurists, the Lawyers' Committee on Human Rights, the International League for Human Rights, the Ligue Belge des Droits de l'Homme, and Amnesty International.<sup>15</sup> The Council of Europe has adopted a Convention on Human Rights for democratic member states in Western Europe, which grants limited enforcement powers to the European Commission on Human Rights and the European Court of Human Rights.<sup>16</sup> The Organization of American States, as of 1978, has implemented a human rights treaty under the general authority of an inter-American Human Rights Court.<sup>17</sup> Finally, the International Court of Justice, although it does not yet possess formal jurisdiction over civil and human rights, has heard at least six cases in which human rights

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10. E. DEUTSCH, AN INTERNATIONAL RULE OF LAW 232 (1977), and U.N. CHARTER PREAMBLE; art. 1, para. 3; art. 13, para. 1(b); art. 55, para. C; and art. 76, para. C.

11. G.A. Res. 2200, 21 U.N. GAOR, Supp. (no. 16) 21 U.N. Doc. A/0038 (1966); *Multilateral Treaties in Respect of Which the Secretary General Performs Depositary Function, List of Signatures, Ratifications, Accessions, etc. as at 31 Decembre 1978*; ST/LEG/SER.D/12 (1979).

12. See J. CAREY, U.N. PROTECTION OF CIVIL AND POLITICAL RIGHTS, Ch. 2 (1970).

13. A. SAKHAROV, ALARM AND HOPE 17 (1978).

14. J. KUNZ, THE CHANGING LAW OF NATIONS 138 (1968); R.C. HINGORANI, *supra* note 5, at 238.

15. A.H. ROBERTSON, *supra* note 4, at 292.

16. See F. JACOBS, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1975); F. CASTBERG, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1974); COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS (8th ed. 1972).

17. *Inter-American Commission on Human Rights, Organization of American States, Handbook of Existing Rules Pertaining to Human Rights*, L/V/11.23 doc. 21 rev. 5 (1977).

were a major issue.<sup>18</sup>

In addition to the legal community, the intellectual community has been stirred to a higher level of awareness of human rights. The harsh revelations of Solzhenitsyn's *Gulag Archipelago*, have with their literary and moral force, effectively focused the attention of the political left in Europe and in the United States on the systematic suppression of basic freedoms in the Soviet Union. This attention has fostered a surprising degree of unity of opinion in the West concerning the preservation and enhancement of human rights; this unity will be further strengthened by the October 1979 convictions of six Czech citizens who were members of the *Charter 77* human rights organization, a group formed to monitor Czechoslovakian government compliance with the Final Act. The Czech government tried the human rights activists under conditions of tight security, and banned all Western reporters. The conviction was widely and justifiably criticized in the West, drawing fire even from the French and Italian Communist parties.<sup>19</sup>

A common thread running through the progress toward the recognition of human rights as a central issue in international relations is the understanding that nations can bind themselves together and increase international cooperation not only by emphasizing their common technical, economic and materialistic interests, but also by recognizing intellectual, spiritual and humanitarian values. If long term international

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18. Asylum Case, Columbian-Peruvian [1950] I.C.J.R. 266. Haya de la Torre Case (Columbian-Peruvian) [1951] I.C.J.R. 71. The human rights issue in these two related cases on political asylum was based on an interpretation by the International Court of three Latin American Extradition and asylum conventions. Cases Concerning the Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden) [1958] I.C.J.R. 55. The human rights issue in this case was based on the 1902 Hague Convention governing the Guardianship of Infants. Interpretation of Peace Treaties with Bulgaria, Hungary and Romania [1950] I.C.J.R. 221. The human rights issue in this case was based on United Nations Resolution 272 III April 30, 1949, which accused Hungary, Bulgaria and Romania of suppressing human rights in violation of Article 55 of the United Nations charter and in violation of World War II peace treaties with the United States and the United Kingdom. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide [1951] I.C.J.R. 15. The human rights issue in this case was raised when the General Assembly of the United Nations asked the International Court of Justice for an advisory opinion on the legitimacy of certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. The sixth and most recent case is Case Concerning United States Diplomatic and Consular Staff in Teheran (United States of America v. Iran) [1979] I.C.J.R. —.

The action of the International Court in these six cases indicates that human rights issues are so intermeshed in existing international law that, even without specific jurisdiction, the Court will inevitably continue to decide cases with important human rights components.

19. New York Times, Oct. 24, 1979, at 1, 10; Oct. 25, 1979, at 3; and Oct. 28, 1979, at 9.

stability is to be achieved, these values must be respected by all nations. As Andrei Sakharov noted in his Nobel Prize Address, "I am convinced that international trust, mutual understanding, disarmament and international security are inconceivable without an open society with freedom of information, freedom of conscience, the right to publish, and the right to travel and choose the country in which one wishes to live."<sup>20</sup>

To summarize, the Western case for assertiveness on human rights issues is strongly rooted in international agreements, including the Helsinki Final Act, which reach out with great specificity to cover a wide range of civil, cultural and social rights. It also has a solid basis in international law, in regional attention to human rights,<sup>21</sup> and in an evolving transnational awareness that human rights are central to a civilized, creative society. But beyond dismissing the Soviet legal and political arguments to ignore human rights violations occurring outside a country's boundaries, what can the Western nations do?

The United States' agenda for human rights issues as we prepare for the next CSCE Conference at Madrid in 1980 should not be primarily to amend or improve the Final Act but to insist upon better implementation by the East of the workable ideals embodied in that document.<sup>22</sup> The United States should also insist on a full accounting by all signatory states of their implementation record. The basic need at this juncture is not to expand obligations under the Final Act but to observe them. Through both quiet and demonstrative diplomacy we should encourage our Western allies, non-aligned nations, religious and business leaders, and friends of civil rights to speak more assertively on such matters and to press for more thorough implementation by the East. The United States should likewise seek to foster freedom of the press so that citizens, wherever they live, will become aware of the fundamental freedoms that their governments have pledged to up-

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20. SAKHAROV, *supra* note 13, at 5.

21. See THE EUROPEAN CONVENTION ON HUMAN RIGHTS, *supra* note 16, which is enforced by the European Commission on Human Rights, and the European Court of Human Rights and Jacob, *supra* note 1, at 3-9. MAX SORENSEN, *MANUAL OF PUBLIC INTERNATIONAL LAW* 503-07 (1978). See THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *supra* note 17, at Appendix VIII and 74. The Inter-American Human Rights Court serves a similar function in enforcing the Inter-American Human Rights Treaty which went into effect in July 1978.

22. The existing language of the Final Act is sound. If amendments are needed, they can come gradually after we have more years of experience with the Act. The United States Constitution, after all, has only been amended substantively three times since 1791, with the three so-called post-Civil War Amendments.

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Media coverage of the Madrid Conference would increase this awareness. In retrospect, the West erred at Helsinki to agree to the proposal by the East to exclude the media from all but the ceremonial functions of the Belgrade Conference. The result of this exclusion was that there was much misinformation about what actually occurred at the first CSCE follow-up meeting. Many in the media ignored two genuine accomplishments at Belgrade: (1) that delegates from thirty-five nations convened to review and did review implementation of the Final Act and by their presence reaffirmed it, and (2) that the signatories of the Final Act agreed to continue their work at Madrid in 1980. Coverage of the Madrid Conference should be based on facts, not on leaks. If the United Nations can function successfully with free media coverage, CSCE Conferences should do the same.

When the CSCE delegates convene in Madrid, the West must not be timorous in identifying, in specific terms, both the violations of the rights of individuals and groups and the governments which commit these violations. As the United States representative to the Belgrade Conference, the senior author attempted to set an example by acknowledging the human rights problems in his own country as well as criticizing the much greater violations in the East.<sup>24</sup> There is no reason why Soviet and Eastern European delegates should not be called upon to exercise similar candor concerning parallel problems within their own borders. Realistically this will not happen, but the demand itself is of great importance.

In addition to the items on the official agenda at Madrid, the West should encourage the development of impartial domestic and international bodies, such as the CSCE Commission and the Helsinki Watch Committee in the United States and elsewhere which would investigate and publicize rights violations. Support for these tribunals, and their use of such devices as international writs of habeas corpus,<sup>25</sup> would be a step toward greater protection of human rights.

Our concern with human rights need not be directly linked to other issues under negotiation between East and West, such as trade and arms control. Human rights is an issue of sufficient importance to stand on its own and to demand the attention of the international, le-

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23. See CAREY, *supra* note 12, at Ch. 13; A.H. Robertson, *supra* note 4, at 389-92.

24. The Belgrade CSCE meeting, Review of Implementation and Amendments of New Proposals: Preliminary Report, U.S. Delegation Statement, Oct. 6 to Dec. 22, 1977 (unpublished United States State Department brochure) at 18.

25. See CAREY, *supra* note 12, at Chs. 5, 7.



gal, religious, political and media elites, and the public at large. People of good will in the East and the West recognize that detente and improvement in individual rights must go hand in hand.

To conclude, if there is to be genuine détente, it must have a human face. No era and no region of the world is immune from the risk of plunging into a dark age of totalitarianism and cruelty. We can preserve and expand our hard won civil liberties only by taking them seriously, by recognizing their foundation in recent history and law, and by working vigorously and creatively to share these liberties with people everywhere.