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Introduction

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INTRODUCTION

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This issue of the *Vanderbilt Journal of Transnational Law* is a symposium devoted to human rights aspects of the Helsinki Final Act.[1] The Conference on Security and Co-operation in Europe was convened in Helsinki July 3, 1973. After sessions there and in Geneva, all European states, both Western and Eastern (except Albania), took part, as did also the United States and Canada.[2] On August 1, 1975, the Final Act of the Conference was signed at Helsinki by thirty-five nations. Its provisions had been laboriously arrived at by consensus rather than by voting. Early pressures for such a conference had come chiefly from the Soviet bloc, which wished some "legitimation" of post-World War II boundaries in Europe.

The different parts of the Helsinki Final Act are commonly referred to as "Baskets." Thus "Basket I" begins with a "Declaration on Principles Guiding Relations between Participating States," which sets forth ten such principles. Principle VII, entitled "Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief," provides in part:

> The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, re-

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1. The text of the Final Act may be found in 73 DEP'T STATE BULL. 323 (1975), or in 14 INT'L LEGAL MAT. 1292 (Sept. 1975).

2. The three "mini-states" of Liechtenstein, Monaco, and San Marino were among the signatories, as was also the Holy See.

> ligion or belief, for all without distinction as to race, sex, language or religion.
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> They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.
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> . . . . . .
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> In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including *inter alia* the International Covenants on Human Rights, by which they may be bound.

"Basket II" of the Final Act sets out a series of measures relating to commercial exchanges and cooperation in dealing with industry, science and technology, and the environment. "Basket III" covers "Co-operation in Humanitarian and Other Fields," including family reunification, travel, sports activities, and "freer and wider dissemination of information." It is this Principle VII, and "Basket III," with which the present symposium is chiefly concerned.

It is important to realize that the Helsinki Final Act is *not* a treaty; it is not legally binding.[3] Nonetheless, in some respects it has been talked about and treated almost as if it were a legal commitment by the states which are parties.

The Helsinki Final Act, in Principle VII referred to above, also says that, "They [the participating States] confirm the right of the individual to know and act upon his rights and duties in this field." With this as a basis, both official and informal groups have been formed in various countries to monitor comformity with the Final Act. Some of the articles in this symposium deal with the efforts of these groups, and the highly unfortunate plight of some of them in certain Eastern European countries.

The Helsinki Final Act further provided for meetings of the parties from time to time to review implementation of the Final

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3. This is discussed in several of the articles in the symposium. *See also* Schachter, *The Twilight Existence of Nonbinding International Agreements*, 71 AM. J. INT'L L. 296 (1977). At the time of its adoption by the General Assembly in 1948, the Universal Declaration of Human Rights was not regarded as a legal document; but in the course of time it has often been treated almost as if it were a legal obligation.

Act. The first such gathering was the Belgrade Conference of 1977-78, at which Ambassador Arthur Goldberg (former Supreme Court Justice) was the chief United States representative. A second conference is scheduled for Madrid later in 1980. These conferences are also discussed in the symposium.

Brief mention should be made of the amazing development in international law, during the last thirty-five years, with respect to international legal protection of human rights.[4] Almost unheard of before World War II, the idea that individuals have rights under international law, even against the countries of which they are nationals, has found expression since 1945 in the United Nations Charter, the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, the two United Nations Covenants on Human Rights signed in 1966 and in force since 1976, the well-known European Convention on Human Rights with its Commission and Court, and the more recent Inter-American Convention on Human Rights. It may be important to remember that the United States has not yet ratified the Covenants nor the Inter-American Convention; this may in part account for the use by the United States of the Helsinki Final Act, to which it is a party, in complaining of human rights violations by other governments which are also parties.

Before World War II, there would have been quite general agreement that as a matter of international law, the treatment by a state of persons who were its own nationals was "its own business," or a "domestic question." Some contributing factors to the post-1945 growth of international legal concern with human rights may be found in: (1) national declarations of human rights, from the time of the first ten Amendments to the United States Constitution and the French Revolution; (2) the rights specifically conferred on aliens by treaties and recognized in international controversies and adjudications over state responsibility for injuries to aliens; (3) the notion and practice of "humanitarian intervention" by European powers in the 19th and early 20th century cases where the Ottoman Empire mistreated persons who were legally its nationals; (4) the Minorities Treaties entered into after World War I for protection in some countries of minorities against their state of nationality; and (5) above all, the universal abhorrence of the Nazi persecutions of persons who were German

4. Of the vast literature on this subject, a convenient source is L. B. Sohn and T. Buergenthal, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973).

nationals as well as aliens.

As a result of these developments concerning human rights, it has become much more difficult for any nation to claim that how it treats its own nationals is a matter of solely domestic concern. As Professor Henkin commented as much as fifteen years ago,

> [T]he existence of the United Nations, the language of the Charter and its dissemination among all peoples, the adoption and invocation of the Declaration, and mountains of documents and years of discussions have made human rights a subject of international concern and indelibly established human rights in the aspirations of peoples, even in the consciences of governments. Governments may continue to claim that how they treat their own inhabitants is of concern to them alone; increasingly it is a losing claim with little hope that it can prevail in politics if not in law.[5]

The international protection of human rights has, in the last few decades, become an important and rapidly developing part of present-day international law. It is in this context and against this background that the present symposium makes its contributions.[6]

5. Henkin, *The United Nations and Human Rights*, 19 INT'L ORGANIZATION 504, 506 (1965).

6. In addition to this symposium, one might also cite HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD (T. Buergenthal, ed. 1977); and A. H. Robertson, *The Helsinki Agreement and Human Rights*, 53 NOTRE DAME LAWYER 34 (1977).