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The Place of Helsinki on the Long Road to Human Rights

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THE PLACE OF HELSINKI ON THE LONG ROAD TO HUMAN RIGHTS

Vojin Dimitrijević*

TABLE OF CONTENTS

I. INTRODUCTION	253
II. THE POLITICAL GENESIS OF THE HELSINKI CONFERENCE	255
III. THE "IDEOLOGIZATION" OF HUMAN RIGHTS	257
IV. THE ROLE OF THE NONALIGNED PARTICIPATING STATES	261
V. IMPLEMENTATION OF UNIVERSAL HUMAN RIGHTS	263
VI. CONCLUSION	271

I. INTRODUCTION

The Final Act of the Conference on Security and Co-operation in Europe, signed on August 1, 1975, by the highest representatives of 33 European states, the United States and Canada,¹ contains two sets of provisions pertaining to human rights. The first set, more abstract in nature than the second, is expressed in Principles VII and VIII of the *Declaration on Principles Guiding Relations between Participating States*, an essential part of this complex, elaborate, and unusually organized document. Principle VII deals with respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion and belief, while Principle VIII refers to the equal rights and self-determination of peoples. The latter Principle is sometimes treated by commentators as though it belongs outside the realm of

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1. Reprinted in 14 INT'L LEGAL MATERIALS 1292 (1975) and Appendix A [hereinafter *Final Act*].

human rights; however, the very fact that both International Covenants on Human Rights² feature the right of self-determination very prominently in their respective Articles 1 suffices to refute this position.

The other set of human rights provisions of the Helsinki Accord is known by the popular name "Basket III" given to the sections of the Final Act under the heading "Co-operation in Humanitarian and Other Fields." There the signatory States expressed their intent to take concrete steps to promote human contacts between citizens and other residents of their respective nations, to enhance international exchange of information, and to develop co-operation and exchange in the fields of culture and education.

An important distinction between the human rights Principles and the provisions in "Basket III" deserves to be mentioned. Not only are the Principles more general than the Basket III provisions, they also refer prominently to the position of human beings in their own community, that is, the state of the territory in which they live. The Basket III provisions on humanitarian and other contacts deal with the human element of the relations among states. They can be construed as derivations of the human rights Principles as well as efforts to create a climate for better interstate exchanges based on more open societies and greater mutual acquaintance of the populations of the states of Europe, the United States and Canada. Even if some provisions relating to human contacts, information, and cultural and educational co-operation and exchange imply the duty of signatory States to guarantee some rights for their own citizens (such as the right to marry foreigners,³ join their families,⁴ have access to information from foreign sources,⁵ etc.), those rights as a rule have an "alien" element. They are obviously deemed to be in the interest not only of domestic individuals and groups, but of other signatory States as well. Such linkage cannot be denied to other manifestations of fundamental human rights and freedoms.

In the case of Basket III, the linkage between state and individual interests seems to be more direct. These provisions were yet

2. G.A. Res. 2200 A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966).

3. *Final Act*, Basket III, § 1(c).

4. *Id.* at § 1(b).

5. *Id.* at § 2.

another response to the situation of a continent which had practically been obliterated as a region. The dividing line between two politico-military blocs had cut the all-European region into two increasingly unrelated, segregated and divergent sub-regions, with very few remaining actors free to play a mediating and integrative role.⁶ The resulting damage has been not only political, but human and cultural as well.

In the preceding paragraphs a brief description and qualification of the human rights elements of the Helsinki Final Act was attempted, without regard to the individual and group motives of the participants in the Conference on Security and Co-operation in Europe. It is believed that only this approach, based on the text of the Final Act and the general and shared concerns of all parties, can serve as a solid basis for legal interpretation of the document. It would be naive and unrealistic, however, to disregard the rather unfortunate political function of the human rights issues in the negotiations which led to the adoption of the Helsinki Accord. This political function has affected and will continue to affect interpretation and implementation of the Final Act and to trouble the follow-up meetings of the Conference.

II. THE POLITICAL GENESIS OF THE HELSINKI CONFERENCE

While the initiatives leading to the convocation of the Conference and the course of the Conference are well-known and need not be reviewed here,⁷ several general characterizations warrant consideration. In addition to the common interest in overcoming the Cold War and its unfavorable effects on Europe, the two principal political and military groupings had divergent interests and, accordingly, different perceptions of the whole endeavor. The USSR and the members of the Warsaw Pact were perceived by the West as being interested primarily in maintenance and confirmation of the territorial status quo in Europe and in a surrogate peace treaty with Germany. The Soviet Union's efforts in particular were viewed as attempts to secure its sphere of influence. These perceptions led to the belief that the only party that would

6. See DIMITRIJEVIĆ, *International Organizations and the Existence of Regions*, INTERNATIONAL PROBLEMS 81 (Eng. ed. 1973).

7. See generally L. AČIMOVIĆ, *PROBLEMI BEZBEDNOSTI I SARADNJE U EVROPI* (THE PROBLEMS OF SECURITY AND CO-OPERATION IN EUROPE), (Belgrade: Institut za međunarodnu politiku i privredu, 1978). A translation into English is being published by Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands.

benefit from the Conference was the USSR, a belief that at the outset made the responses of the West to Soviet initiatives extremely cold. When the concern for detente prevailed, the major *quid pro quo*, that is, the most important concession to be wrought from the East as the price for its unquestionable gains, was seen to be in the field of human rights. Human rights were promoted not so much because of their importance, but rather because they were considered a weakness in the political and social system predominant in the Warsaw Pact states. This position in turn could only influence the attitude of the East European nations, preventing them in many instances from considering humanitarian matters on their own merits and causing them to adopt instead a posture of suspicion and refusal.⁸

The negative corollary of detente has from the very beginning been the need to interpret its achievements as one's own victory, especially at home. The fact that in spite of the controversy the Final Act contains many important human rights provisions⁹ was blurred by the necessity to counter the Soviet Union's victorious interpretations of the Conference and the bitter feelings of defeat in some segments of the Western public with insistence on the difficulties the Soviet and allied governments were experiencing with dissidents who used the Final Act as a banner for their demands. Representative Dante Fascell, Chairman of the United States Commission on Security and Cooperation in Europe, expressed this feeling in a characteristic sentence: "The first assessment of who won and who lost in Helsinki turned out to be wrong."¹⁰ The Follow-up meeting in Belgrade was held in this atmosphere and it is to be feared that, given the general crisis of detente, it will adversely affect the next CSCE meeting in Madrid. When governments treat human rights as political weapons, the victims are the potential, *albeit* small, improvements in the human condition. To be honest and sincere, no serious person expected that after Helsinki the progress in the field of human rights would be sudden and stunning.

8. Cf. S. ŽIVANOV, SOVJETCKA SHVATANJA EVROPSKE BEZBEDNOSTI I SARADNJE (THE SOVIET UNDERSTANDING OF EUROPEAN SECURITY AND CO-OPERATION) 225-229, (Zagreb: Fakultet političkih nauka, 1980).

9. The Soviet Union incorporated the ten human rights Principles of the Final Act into its new 1977 Constitution. Sovetskoe Konstitutzion art. 29 (Constitution of the Union of Soviet Socialist Republics of 1977).

10. *Did Human Rights Survive Belgrade?*, 31 FOREIGN POL'Y 104 (1978).

III. THE "IDEOLOGIZATION" OF HUMAN RIGHTS

The unfortunate state of affairs during and after the Conference has sometimes been referred to as the "ideologization" of the human rights issue.¹¹ This phrase is an apt characterization to the extent that it reminds us that the tactical perception of humanitarian matters was facilitated by the deeply held conviction that the major international ideologies were irreconcilable in their concepts of the relations between the individual and the collectivity, that is, between man and state.

The matter is further complicated by the simplistic and widespread identification of ideologies and states, or, even worse, alliances of states. The major difference between the Helsinki Conference and similar meetings of representatives of European states in the past was that the former was initially believed to be not a genuine multilateral meeting but rather an encounter of two alliances of states sharply divided along ideological lines. The parallel was seen only in the Congress of Westphalia, where the parties had been divided along religious lines.¹² Depending on the vocabulary chosen, the participants were either "capitalist" and "socialist" or "liberal" and "Communist," nomenclature accompanied by implied value judgments sometimes bluntly expressed in terms of "free" and "democratic" or "enslaved" and "authoritarian" societies. Underlying these preconceptions was the presumption, shared on both sides, that the ideology of the adversary was not genuinely committed to the freedom and equality of all men and women. Each felt the other could not offer a meaningful model for the true enjoyment of human rights and that, in fact, the high-sounding principles enshrined in the respective constitutions, legislative acts, and political proclamations of the "other" side, were but a sham. To ask for the implementation of human rights, for the true liberty of the human being, would be tantamount to a demand for the total upheaval of the opposite social system and the overthrow of its constitutional order. For the Western reader, this conclusion is familiar vis-à-vis the Soviet Union, but he may be surprised to find analogous thinking in the other "camp." To quote but one example readily available in

11. AĆIMOVIĆ, *supra* note 7, at 289.

12. See Bastid, *The Special Significance of the Helsinki Final Act*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 16 (T. Burgerthal ed. 1977).

English:

Bourgeois revolutions nascent with the slogans of freedom, equality and fraternity only substituted one form of exploitation for another. New classes and social groups emerged, hence giving rise to new forms of subjugation and inequality.

The right of private property and relevantly the freedom of buying and selling labour force, or the freedom of exploitation of man by man, lies in the foundation of rights and freedoms proclaimed by the bourgeoisie.

Conditions for genuine provision of the whole complex of rights and freedoms of each individual were created only with the victory of the Great October Socialist Revolution. . . .

The countries of developed socialism ensured for their citizens the highest level of rights and freedoms on the basis of liquidating exploitation of man and the development of socialist democracy.¹³

The symmetry of extremely opposite, Manichean views proves, paradoxically, that the issue of human rights does not, in itself, represent the main dividing line between Marxist and liberal democratic thinking. Both ideologies, as value systems, stem from the same humanitarian tradition and are committed to the ideals of freedom, justice, and the development of the human personality. No intelligent reader of Marx can deny that one of his main preoccupations and motivations was the *alienation* of the human being in the society he criticized, *i.e.*, the inability of man to attain his true self. This theory certainly does not suggest subordination of man to any form of collective will but rather supports the full development of his capacities in free association with other men. If anything, the Marxist critique of the bourgeois record of human rights can be interpreted only as a dialectical negation in the Hegelian sense, *i.e.*, not as a statement that the principles proclaimed, say, in the Bill of Rights of the British Parliament, the American Declaration of Independence, or the French Declaration on the Rights of Man and Citizen of 1789, thereafter incorporated in the respective state constitutions and laws, were all irrelevant and selfish. They were only limited by historical experience and the position in the society of those who

13. Kartashkin, *The United Nations and Human Rights*, in HUMAN RIGHTS AND THE UNITED NATIONS 8 (1978). See Dimitrijević, *Uvažhenie prav cheloveka i osnovnyh svobod, vkljuchaya svobodu mysli, sovesti, religii i ubeždeniy*, VO IMYA MIRA: MEZHDUNARODNO-PRAVOVYE PROBLEMY EVROPEJSKOI BEZOPASNOSTI 113 (Moscow: Nauka, 1977).

advocated them. The mission of the working class, as Marx observed, was to accomplish this work of gradual liberation of the human species, to create conditions for the full enjoyment of pre-determined rights and to define and secure new rights in the constant search for the full meaning of human existence.¹⁴ There is no basis in Marxist theory for any statement that the rights and freedoms proclaimed by the bourgeoisie are luxuries compared to more fundamental rights and freedoms demanded by the working class. The true Marxist position is not that the rights to work and education are more important than or exclusive of free speech and the right to vote, but only that there is no genuine freedom of expression and political participation for the hungry, poor, and illiterate.

It is on this "either-or concept"—the dichotomy of civil and political rights as "capitalist" rights on the one hand and the social, economic, and cultural rights as "socialist" rights on the other—that even the most sophisticated treatments of the subject of human rights and freedoms in the contemporary world are implicitly based.¹⁵ The fact that socialist revolutions have been more successful in the less developed countries and that the socialist alternative appears to be more attractive to the many developing nations looking for the best and quickest ways to overcome their historical lag was used to ameliorate the ills of underdevelopment, poverty, unfriendly environment, and frequent vehement reactions on the part of capitalist colonizers or neighbors, with the chosen direction of socialism. The need to ration scarce commodities and to impose tighter security controls was taken as the hallmark of socialism and was attributed to its preoccupation with equality at the expense of freedom. Poverty under all circumstances, causes the spread of egalitarian feeling among the majority, however.

The advocates of "real" socialism have felt the need to justify everything that occurs in a country after a government which abolishes private property or simply styles itself "socialist" takes power. They have failed to distinguish between the socialist ideal and the record of some socialist countries which, for reasons too complex to be dealt with here, included gross violations of human rights proclaimed in the very constitutions of those states. In

14. See generally A. SCHAFF, *MARKSIZM A JEDNOSTKA LUDZKA* (Warsaw 1965).

15. See, e.g., Falk, *Comparative Protection of Human Rights in Capitalist and Socialist Third World Countries*, 1 *UNIVERSAL HUMAN RIGHTS* 3 (1979).

many instances where the socialist ideology served only as a vehicle for power, *i.e.*, as a justification for the existence and prerogatives of the elite, contempt for the basic rights of the individual and human decency was excused by hypocritical references to ideology. The ideology was gradually transformed into a religion offering redemption in a very distant future. The threat of counter-revolution was occasionally used just as the "Communist menace" has been used by the autocratic regimes of the "free world" to suppress human rights and freedoms and to maintain social justice. In both cases there has been lack of sincere concern for the universal values constituting the respective ideologies. The barren desire to maintain the powerful and privileged, couched in ideological terms so as to gain respectability, legitimacy, and in many instances, support from abroad, prevailed.

The real conflict over the fundamental human rights and freedoms is not between the ideologies of socialism and liberal democracy, even though they do not converge in many respects. In one respect they are united—in opposition to the anti-humanist ideologies which proclaim the irrelevance of the individual human being (ideologies which are, after the Second World War, more widely held than openly proclaimed) and to the pragmatic and cynical practitioners of power, flourishing on the dunghills of superpower rivalry. It is sad to note that a tough stand on human rights recommends a lesser ally more highly to the bloc leader than a broader degree of political freedom which, curiously enough, seems to communicate weakness.¹⁶

If we return to our proper subject, to Europe, we must admit that because of the fact that very few European countries can seriously be considered economically underdeveloped, some of the previous doubts should be cleared away. Furthermore, the demise of Franco, Salazar, and the Greek colonels on the one side and de-Stalinization on the other allow for the tenacious statement that in Europe there is no government unaware of its duty to develop human rights in the broadest sense, to improve the position of the individual as it perceives it. This is not an obligation imposed from the outside. It stems from the respective political philosophies. Without observing this duty, without doing something for the welfare of the population, the government loses its ideological *raison d'être*. This fact should have made matters at the Helsinki

16. For a recent example see LeoGrande, *The Revolution in Nicaragua: Another Cuba?*, 58 FOREIGN AFF. 28 (1979).

Conference much simpler.

IV. THE ROLE OF THE NONALIGNED PARTICIPATING STATES

The pressure to view the human rights issue at the Conference on Security and Cooperation in Europe solely in light of the East-West, capitalist-Communist bias can be reduced if one takes into account the important contribution to the Conference outcome of the nonaligned and neutral participating States. Nonaligned views were represented at Geneva and Helsinki by three States: Cyprus, Malta, and Yugoslavia. Embracing a universal idea based on the combination of coexistence with and toleration of different political and social systems, nonaligned states take a resolute stand for the democratization of international relations, including a positive human rights agenda. The nonaligned nations have influenced the activity of international organizations in this respect and, as one result, have strengthened the authority of the declarations of the United Nations and the conventions concluded under its auspices concerning human rights. These international instruments ceased to be viewed solely as products of European civilization and as compromises of the powers belonging to that civilization. The effects were also retroactive. The fact that many new states espoused the Universal Declaration on Human Rights in their constitutions and their legislation was one of the factors that made the reference to it in the Helsinki Final Act imperative. The Universal Declaration was accepted even by those European States which had not voted for it in 1948.

As a group, the nonaligned and neutral Conference participants endeavored to neutralize the predominant East-West confrontation and to transform the Conference from a two-sided bargaining session into a joint European undertaking. As a socialist and nonaligned state, Yugoslavia was in the position to obstruct the tendency to develop the ideological conflict, especially in the realm of human rights. This country maintained its specific approach to human rights in the international as well as the national sphere. Although Yugoslavia had ratified all human rights instruments concluded under the auspices of the United Nations, except the Convention on the Reduction of Statelessness,¹⁷ her international efforts within the organs of the United Nations and

17. HUMAN RIGHTS INTERNATIONAL INSTRUMENTS, U.N. Doc. ST/HR/4/Rev.2 at 10-11 (1980).

other forums were aimed, as a rule, not at the condemnation of governments or the reformation of political systems, but rather at understanding the internal and international causes of human suffering, deprivation, and frustration. This policy was a reflection of an interesting internal development in Yugoslavia, where philosophical thinking, constitutional theory, and political and legislative practice have, since the early fifties, been concerned primarily with removal of the separation between the governing and the governed and the opposition of the state and the citizen, and with replacement of the political system by a "social" system. Extraordinary attention has been given to the participatory basis of human rights as a result of this development. The "social" system is construed not as the rights of some, corresponding to the obligations of others (the "others" being the elite, who by implication have the power to grant or withhold rights), but rather as a fusion of the rights and obligations within each active citizen, enabling him to control the most important aspects of his life. Self-management and a system of delegated government have been used to dismantle some of the most important aspects of state domination.¹⁸

This article was not written to praise the political system of Yugoslavia, nor to offer it as a model to other societies. It is not necessary to argue that this approach has been successful in order to conclude that by their very efforts to grasp the complexities of the *problematique* of human rights, the Yugoslavs were least inclined to believe that there were universal recipes for the promotion of human rights. They also doubted that sufficient bases existed to judge whether a political system was *ab initio* conducive to the development of human rights.

As a result, the Yugoslav delegation to the Conference was an active proponent of the inclusion of provisions concerning respect for human rights and freedoms, as a principle of international importance, in the final documents. Compared to other complete drafts of the Final Act (those of the USSR and France), the Yugoslav draft appears as the most ambitious regarding this principle.¹⁹ In the matters of human, cultural, and other contacts,

18. See generally the special issue 65 ARCHIV ZA PRAVNE I DRUŠTVENE NAUKE No. 3 (1979).

19. Doc. CSCE/II/A/5. [See Granier, *Bibliography, infra*, at *Stage II Documents*—Ed.] The protection of national minorities was included in Principle VII at the insistence of Yugoslavia.

where the confrontation of the political blocs was even more pronounced, the Yugoslav delegation suggested that improvements of communication and the opening of societies would serve the goals of confidence-building and peace. These goals could be effective only if they were products of natural development. On record as an open country which guarantees the right of every citizen to possess a passport, requires no exit visas, has valid agreements abolishing entry visas with the majority of foreign countries, welcomes a large flow of foreign visitors and hundreds of thousands of citizens visiting or temporarily residing abroad, promotes free access to foreign news and periodicals, etc., Yugoslavia did not need to defend its position. Its delegation was concerned with the true success of the European "thaw." For that reason, Yugoslav delegates at Geneva, Helsinki, and later Belgrade were reluctant to join the impatient ones and to jeopardize the embryonic and desperately needed all-European forum by indulging in emotionally understandable but practically vain exercises of verbally condemning governments. It looks as though the Yugoslavs were right, given the record of the Belgrade meeting where the debate often degenerated into self-righteous duels. Each side blamed the other for not attaining the goals it had itself achieved before the Conference began. These polemics sometimes gave the impression that the interests of the true beneficiaries of detente and the Final Act, *i.e.*, the populations of the signatory States, were not at stake.²⁰

V. IMPLEMENTATION OF UNIVERSAL HUMAN RIGHTS

Logically, one may argue that it is futile to insist that the Final Act contain human rights principles and elaborate provisions in Basket III and to spend months in an effort to reach acceptable formulations, only immediately thereafter to resign oneself to the fact that they will not be implemented internally and that governments deemed to be in violation will not be called to account before their co-signatories. To explain this apparent contradiction, deliberately stated in very simple, rough, and thus misleading terms, the following remarks are believed to be appropriate.

We need, in fact, to look again for answers to the fundamental, if unsophisticated, questions which have been posed regarding the

20. See Aćimović, *Des Belgrader KSZE-Folgetreffen: Eine Betrachtung aus jugoslawischer Sicht*, 33 *EUROPA-ARCHIV* 271 (1978).

international movements and activities for universal human rights.

A. *Why has the need been felt, since the beginning of the Second World War, to define human rights internationally, to elevate their status to a principle of international relations, and to invest international organizations with the competence to promote observance of human rights and freedoms in member states?*

While it is correct that "international human rights reflect no single, comprehensive theory of the relations of individuals to the society," as Professor Louis Henkin aptly puts it, it appears too facile to say that the founding members of the United Nations came to that important topic only by eclectically trying to find elements that could appeal to diverse political systems and at the same time "were appropriate for international concern."²¹ First of all, the impact of World War II should not be underestimated. It was preceded and accompanied by unparalleled assaults on basic human values, not only in armed combat and against the civilian population of the conquered territories, but also vis-à-vis large groups and categories of non-alien. This realization profoundly shocked world public opinion and led to acquisition by the anti-Axis alliance of certain decidedly ideological traits. The Allied declarations show that the war was waged not only to win and to defend the sum of endangered national interests, but also to reform the international society along broadly conceived humanitarian lines. Out of this shock and this conviction, the idea of "crimes against humanity" was born. The clamor for justice demanded removal of the classical obstacles of sovereignty and the act of state, which threatened to protect the most heinous criminals brought to justice in the immediate post-war period.

The concern for all human beings, including their protection from their own governments, clashed with the principle of the international legal order, originating in the Treaties of Westphalia, that ethical judgments of the relations between a government and its subjects are solely the concern of the territorial state and outside the purview of international law. Until then, human rights movements, proclamations, declarations, and legislative acts had been of a purely municipal nature. Internationally speaking, they were as valid as authoritarian solutions in other

21. Henkin, *Constitutional Rights and Human Rights*, 13 HARV. CIV. RIGHTS L. REV. 599 (1978).

countries, and they enjoyed the same protection. Their only influence abroad was by way of example.

In order to break this barrier, the lesson of the events leading to the Second World War was interpreted to mean that gross internal violations of human rights cause aggressive behavior in international relations and thus endanger *other* nations. Since the essential tenet of classical sovereignty was that a state's power is unlimited *as long as it does not harm other states*, the claim of interest in the fate of the population of a foreign sovereign appeared to have been sufficiently established. Such indirect reasoning helped to overcome the objections of domestic jurisdiction and played an important role, for example, in the imposition of sanctions against South Africa for its policy of apartheid. In the Helsinki Final Act, it is reflected in the following statement:

The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.²²

The only weakness of this position is that so far it has not been proved, to the knowledge of the present writer, that repressive governments violating fundamental human rights and freedoms are more prone to aggression against other states than those with better domestic human rights reputations. This observation suggests that prevention of war was not the ultimate source of concern for human rights but rather it was a way to present those concerns in the hostile environment of classical international law. To be sure, gross violations of human rights cause serious disturbances of the peace, but these intermediate acts of domestic aggression are not prerequisites to international aggression.

The other basis for the universal validity and importance of human rights is found in all variations of the doctrine of natural law. According to this line of reasoning, the individual human being derives his rights and freedoms from an order superior to the state, explicable in both religious and secular terms. The state cannot, under any circumstances, deprive him of these rights without his free consent. In the Helsinki Accord, this attitude was expressed in the statement that human rights and freedoms "derive from the inherent dignity of the human person and are essen-

22. *Final Act, Basket I, Declaration on Principles, Principle VII, para. 5.*

tial for his free and full development."²³ The statement was agreeable to all participating States because, as already demonstrated, the theoretical foundations of the presently competing ideologies were essentially humanistic and because authoritarian, anti-democratic, nationalistic, corporativistic, and other similar philosophies had, with the Second World War, fallen into public disrepute. The somewhat distressing result has been that even the most undemocratic regimes now profess to be democratic. To paraphrase a familiar adage, the victory of an idea is signaled by hypocrites subscribing to it.²⁴

The problem, however, is that "the inherent dignity of the human person" is a fully sound argument only when used against encroachments by the state and not when positive action is demanded from it. To use more current, though not exact terms, this argument serves better to explain civil and political rights and freedoms than the cluster of rights denominated economic, social, and cultural. Despite this problem, many countries whose constitutions are based on the idea of inherent rights, for example the United States, have for a long time been involved in positive action for human rights and not merely in abstention from interference.

It is submitted here that the world conscience has reached a level that points to a simpler and more straightforward explanation. Recent historical experience, the growing level of interdependence, the "shrinking of the world," the improvement of communications, etc., have changed the reactions of average persons. They are truly concerned with the fate of distant fellow human beings. It is an empirically verifiable moral reaction, witnessing to a kind of "territorial" expansion of the ethical sphere of the contemporary man and woman.²⁵ Gross and continuous violations of human rights cause a wide moral disturbance to which governments must react.

Why is it so? Since the advent of the nuclear era, a somewhat unnoticed development has taken place. The awareness has been growing that there are universal, not simply shared, values of mankind, such as independence and territorial integrity, which

23. *Id.* at para. 2.

24. It should be recalled that as late as the 1930's, it was still chic to be disdainful of democracy.

25. See Berger, *Are Human Rights Universal?*, 64 COMMENTARY No. 3 at 61 (1977).

pertain to all states. Values are usually best perceived, comprehended, and defined when they are threatened. The arms of mass destruction decisively established the survival of humanity as a universal value. New support came through the admonitions that life on the earth may be ended by environmental neglect and pollution. A dimension was added to war which had heretofore been unknown. Conversely, peace became a condition of well-being and not just absence of war. If violence and its catastrophic results are to be avoided, life must be made worth living, everywhere. The criterion of decent human life is very close to what is usually proclaimed within the human rights complex. As a consequence, human rights and freedoms figure prominently among the universal values and have become the *immediate* concern of everyone.²⁶ It must be admitted that this is still a vague feeling of empathy, but in turn it can be broken down into a cluster of values held indispensable for human beings and human groups. Some of these values seem obvious and can be expressed in fairly simple terms, for example, life, physical integrity, or health; others can be expressed only through their negation (hunger, pain, etc.), while still others defy succinct description. Values represent latent, potential, static, as well as dynamic states and situations. It is sometimes difficult to formulate them as "rights," given the fact that this term—as already mentioned—implies corresponding duties and that the term "freedom" suggests only modal (instrumental) values.

The idea that human rights are in opposition to the unlimited power of the state has left its mark on the terminology. It implies that rights are demands, addressed to the state, for action, protection, or passivity. The need to express fundamental human values in terms of rights, combined with an old tradition, has led to an unnatural situation in which, at the international level, foreign states have been designated guarantors of the rights and freedoms of individuals and groups against their own violations.

The basic human values (rights), the political system (the state), and the culture of the society are organically interrelated and interdependent. This truism poses immense problems in the search for a universally applicable definition of human rights.

26. Thus, some authors insist on "new" human rights, such as "security rights" and "the right to survive." See Falk, *supra* note 15 at 24; and Ajami, *Human Rights and World Order Politics*, WORLD ORDER MODELS PROJECT Working Paper No. 4, at 25 (1978).

One can turn to the internationally accepted legal documents such as the Universal Declaration and the Covenants, as did the Helsinki Accord signatories, but this is a formal solution which does not give the whole answer. Some states are not bound by them. Some enumerated rights are not enforceable; still others depend on the cultural setting or are framed as recommendations, plans of action, goals to be attained in the future. Furthermore, there are exceptions, *i.e.*, circumstances under which the exercise of defined rights can be limited.²⁷

There is also the feeling that international documents incorporated elements of national legislation, a practice which resulted in an eclectic and even contradictory mixture.²⁸ This observation, and the realization that the whole gamut of human rights cannot be easily or simultaneously secured, that the standards in many countries are far below presupposed levels, that there are differences of opinion which do not originate in bad faith, and many other considerations, have caused some rethinking. Resulting attempts to determine priorities most often boil down to a *minimum* of rights and freedoms to be respected now and everywhere.

The range of rights and orders or priority, suggested by some writers and nongovernmental groups, depends on various criteria which cannot be elaborated here.²⁹ Admittedly, authors in most cases had in mind the situation in the developing countries. The task would be easier if confined to the thirty-five signatories of the Helsinki Accord. Suffice it to say at present that the CSCE participating States undertook "to promote universal and effective respect" for human rights and fundamental freedoms.³⁰

B. *The cultural and political diversity is more significant in relation to the second fundamental question, that is, how can "effective" respect for human rights and freedoms be secured?*

27. At the Conference on Security and Cooperation in Europe, the phrasing of the reference to the Covenants was influenced by fear of implicit recognition of their escape clauses.

28. Cf. Falk, *supra* note 15, at 5.

29. For a summary of views, see Falk, *supra* note 15, and Bay, *Positive Peace and Rational Human Rights Priorities*, 10 BULL. PEACE PROPOSALS 160 (1979). For a legal construction based on rules and practices relating to refugees, see Dimitrijević, *An Attempt to Define the Minimum Internationally Protected Rights of the Individual: The Concept of Persecution*, INTERNATIONAL PROBLEMS 87 (Eng. ed., Belgrade, 1968).

30. *Final Act*, Basket I, Principle VII, para. 6.

Because of the complex interrelationships involved, advance in this field has always implied change in nations' political systems and social fabric, changes which have regularly been the product of power confrontations. Rights have never been granted from above in response to exhortations and pleas. The state as power holder and supreme decision maker is the product of society, or so we must assume based on the principle of effect, having no guidance save our own preferences. Naturally, an exception must be made for non-autochthonous systems, imposed and supported from abroad: this is why the right of self-determination appears so important. Self-determination is a human right, a precondition for individual rights whose existence, content, and realization are imaginable only if peoples "have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development."³¹ In the absence of self-determination, the state is not a reflection of the society, rather it actually controls the society on behalf of another community, another state.³²

One purpose established in the United Nations Charter—to promote and encourage respect for human rights and fundamental freedoms for all³³—has by now become a well-established principle of international law. An important aspect of the Helsinki Accord is that it clearly indicated acceptance of this principle which had not been mentioned in the 1970 United Nations Declaration on Friendly Relations and Cooperation of States. Because it derived as suggested previously, not so much from the need of states to protect their common interests in international relations, but rather from the growth of public conscience, the principle has gradually imposed itself on the community of states through the constant pressure of public opinion and the incessant activity of diverse non-state actors. The states, taken as a whole, have not shown such steadfastness. Their activity has been uneven, depending on the strength of internal pressure groups and on the perceptions of decision makers concerning the compatibility of advocacy of humanitarian principles with the national

31. *Id.* at Principle VIII, para. 2.

32. See Cassese, *The Helsinki Declaration and Self-Determination*, in HUMAN RIGHTS, *supra* note 12, at 83.

33. U.N. CHARTER, arts. 1, 3.

interest.³⁴

The general climate makes it impossible for the component elements of national public opinion to pretend that human rights in a foreign country are of no concern. Spokesmen at international forums, *i.e.*, government representatives, are under pressure to act accordingly. They may dislike it, they may feel uneasy (not the least because the records of their own governments are not clean), but they must conform. In legal terms, reference to the human rights situations in foreign countries has become normal and admissible. It can no longer be treated as an unfriendly act of intervention.

How can this (sometimes grudgingly) accepted practice be reconciled with the principle of non-intervention in internal affairs, reiterated in Principle VI of the Helsinki Final Act? Voicing concern is not an act of intervention, for it does not constitute participation in another state's internal political process. It is an attitude of approval or disapproval from an international, universal viewpoint. The main difficulty, however, is that the matter of human rights is intimately related to the social and political system which is undoubtedly an internal affair. As a consequence, any appeal for the promotion and respect of human rights in a given country may be meant, interpreted, or perceived as an attempt to undermine the political and social structure.

Defending themselves against the imposition or formulation of this or that freedom or right, governments in most cases do not resent the values as such, or their citizens enjoying them; rather, they react to introduction of these rights in a manner alien to their legal, political, and social setup. It is not always hypocrisy, but sometimes sincere belief, when their representatives maintain that those rights already exist and that no change is needed in their municipal laws. In the case of the United States, the jealous protection of the constitutional system has produced inflexibility. The result is that leaders of a country which has been an important champion of international human rights have so far not ratified any important international instruments for their protection. Their belated ratification of the Human Rights Covenants will likely be burdened by ludicrous reservations, such as the insistence on the right of U.S. authorities to execute pregnant women

34. See Vogelgesang, *Diplomacy of Human Rights*, 23 INT'L STUD. Q. 225 (1979).

and minors.³⁵ The United States is not alone in the belief that international standards should accommodate its internal system, even if minor changes are involved.

The sovereignty of states, including concomitant exclusive domestic jurisdiction, does not preclude a binding consensus as to the preservation of human values or a legitimate claim by the international community, represented by international organizations, individual states and non-state actors, that they should be informed about respect for and protection of these rights and able to protest against violations. However, the process for the promotion and protection of human rights demands systemic adaptations which cannot be prescribed by institutions outside the state. There are numerous ways to reach similar or even identical results, none of which can claim priority on the basis of a universally accepted criterion.³⁶ The intricacies of the delicate relationship between human rights and the political and social system are known only to the internal actors. They alone can provide the necessary political drive. They (including the government) can be assisted in many ways, not the least being provision of a clear definition of universally accepted or tolerated ultimate or minimum goals, as was attempted in the Helsinki Final Act. To enforce direct international responsibility, however, to impose international sanctions against states, to take sides with elements of a population against their state, has in most cases proved to be counterproductive.

VI. CONCLUSION

The ten principles enumerated in the Helsinki Final Act mark the beginning of a process that could improve relations among the signatory States. Such rapprochement would create a more favorable climate for fuller realization of human rights or values by every person living in their territories. In the other direction, Principles VI and VIII try to define the societal preconditions for amelioration of interstate relations. The term "progress" implies gradual development to be assessed at certain intervals. The as-

35. Cf. Ferguson, *Global Human Rights: Challenges and Prospects*, 8 DENVER J. INT'L L. & POL'Y 375 (1978). For a detailed critique see Weissbrodt, *United States Ratification of the Human Rights Covenants*, 63 MINN. L. REV. 35 (1978).

36. Cf. E. HAAS, *GLOBAL EVANGELISM RIDES AGAIN: HOW TO PROTECT HUMAN RIGHTS WITHOUT REALLY TRYING*, 15 (1978).

assessment can hardly be unanimous; thus, the fact that government representatives in Belgrade parted without substantive agreement was not in itself a disaster. The process goes on through an exchange of views, sometimes acrimonious in nature.

The Principles themselves were not questioned in Belgrade. The short Concluding Document that resulted from this follow-up gathering,³⁷ in fact, confirmed the Final Act in all respects.³⁸ Better results can be expected from the next meeting in Madrid if human rights are considered too serious a matter to be used as trumps in an international political game. Together with Mme. Bastid, one should hope that tolerance among states will breed tolerance within states.³⁹

The provisions aimed at co-operation in humanitarian and related fields among European and other signatory States of the Helsinki Accord are of more immediate concern. They were intended to improve interstate relations as well as the atmosphere within states. They differ from the Principles to the extent that the signatory States agreed upon both a description of desired situations *and* preferred methods for attaining these goals, the latter being nonessential to the functioning of the political systems. Since human conditions, which are immediately affected by interstate relations, are really at stake, the adopted measures are unilateral, bilateral, and multilateral. The actions envisaged are both negative and positive, one-step and gradual; they also spread into diverse fields.⁴⁰ When a unilateral act is involved, the obligation of the signatory state is complete and unambiguous. It can be legally binding, however, only if it derives this character from another norm of international law. The Final Act, as a nonbinding agreement, cannot lend its provisions more than political and moral significance.⁴¹

It is to be expected that the signatory States would not risk political and moral responsibility (which for states as well as individuals can sometimes be more painful than legal sanctions) by not complying with the agreed obligations. This responsibility is not only experienced in the form of criticism at meetings of gov-

37. See Appendix B *infra* for text of the Concluding Document.

38. See Gazzo, *Belgrad 1978—ein leerer Korb*, 32 EUROPA-ARCHIV 194 (1978).

39. Bastid, *supra* note 12, at 16-18.

40. See AĆIMOVIĆ, *supra* note 7, at 312.

41. See Schachter, *The Twilight Existence of Nonbinding International Agreements*, 71 AM. J. INT'L L. 296 (1977).

ernment representatives. Constant reminders by the public abroad and at home threaten a nation's prestige, which is in itself an element of power to be neglected only at one's own peril.

Views differ greatly as to the effects of those humanitarian provisions during the period of five years since adoption of the Helsinki Accord. A completely positive impression has been frustrated by some blatant cases of persecution. A totally negative evaluation must be tempered by consideration of positive trends, affecting large numbers of people, which have also taken place. At least some improvement cannot be denied. One should, however, bear in mind that the true humanitarian gist of the Helsinki Final Act is in its Principles. Basket III deals with the symptoms of an unhealthy system. The symptoms can be alleviated, but the cure must come from within.

