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## The Approach of the Helsinki Declaration to Human Rights

Antonio Cassese

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# THE APPROACH OF THE HELSINKI DECLARATION TO HUMAN RIGHTS

*Antonio Cassese\**

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### I. INTRODUCTION

The purpose of this paper is to outline briefly the basic attitude toward human rights evidenced in the Helsinki Declaration. By way of introduction, I shall describe summarily how perceptions of human rights have evolved in the United Nations since the adoption of the Charter in 1945. It is in this context that the novelty of the Helsinki exercise can be viewed and assessed.

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## II. THE THREE PHASES OF U.N. CONCERN WITH HUMAN RIGHTS

There are many ways of analyzing and appraising United Nations action in the field of human rights over the years.<sup>1</sup> This complex phenomenon can be divided into various stages, according to prevailing political philosophy. Three phases can be identified. The first extends from the adoption of the U.N. Charter until 1960; its peak was in 1948, when the Universal Declaration was adopted.<sup>2</sup> The second phase begins with the entry into the United Nations of a number of Third World countries and continues until 1973; its high point is the approval of the two Covenants by the General Assembly in 1966.<sup>3</sup> The third phase commences in 1974 with the launching of the concept of a new international economic order<sup>4</sup> which has had profound repercussions in every field of international life, including that of human rights. Before turning to the Helsinki Declaration, each phase should be explained in some detail.

In the *first phase* (1945-1960), the United Nations General Assembly made a tremendous effort in imaginative and constructive diplomacy, hammering out a common view of human rights applicable to all members of the international community. As mentioned above, the outcome of this effort was the Universal Declaration of Human Rights. It is common knowledge that this instrument substantially adopted the Western model of relations between State and individual. The Western approach was apparent in the emphasis placed on civil and political rights, including the right to property and in the lack of reference to the rights of peoples. What is particularly striking is that the Declaration turned a blind eye to the numerous countries still under colonial domination. Consequently, many individuals were not able to enjoy the basic rights and freedoms it proclaimed. In fact, the Declaration was so imbued with Western ideals that it actually ignored the factual conditions of hundreds of millions of

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1. For an interpretation hinging upon the type of action taken by the United Nations, see van Boven, *United Nations and Human Rights: A Critical Appraisal*, in *UN LAW-FUNDAMENTAL RIGHTS: TWO TOPICS IN INTERNATIONAL LAW* 121 (A. Cassese ed. 1979).

2. G.A. Res. 217, U.N. Doc. A/810 (1948).

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

4. G.A. Res. 3202, 28 U.N. GAOR Supp. (No. 1) 3, U.N. Doc. A/9556 (1974).

individuals living in appalling misery.<sup>5</sup>

Despite these flaws, the Declaration acted as a powerful catalyst. It propounded ideals that were very far from being realized, and therefore could only induce those contrasting them with harsh reality to struggle for better living conditions and a greater respect for human dignity. In addition, it included one or two points that soundly embodied the best tradition of Western political philosophy. For example, the preamble clearly sanctioned the right of oppressed individuals to rebel as a last resort against tyranny.<sup>6</sup> Most important was the seminal concept that the rights of individuals cannot be separated from the whole context of the international community.<sup>7</sup>

The opening of the *second phase* (1960-1973) is marked by a decline of Western influence in the United Nations. Newly independent Third World countries entered the World Organization *en masse* during this period and efforts previously made by the General Assembly were stepped up. Moral standards proclaimed in the Declaration were changed into legally binding norms. Thus the two human rights Covenants were adopted in 1966.<sup>8</sup> The United Nations next turned to the implementation of those norms. Two procedures were contrived by the Economic and Social Council, one in 1967,<sup>9</sup> the other in 1970,<sup>10</sup> to deal with violations of human rights. Both can be set in motion by communica-

5. Actually, the Declaration paid lip service to the principle of equality. It stated in the preamble that the Declaration should be observed "both among the peoples of member states themselves and among the peoples of territories under their jurisdiction." Furthermore, it provided that "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty" (art. 2, para. 2). No account was taken of the specific conditions of developing countries, however. The principle of equality therefore remained an abstract and theoretical enunciation.

6. See Universal Declaration, *supra* note 2, at preamble, para. 3: "It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

7. See Universal Declaration, *supra* note 2, at art. 28: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

8. Covenants, *supra* note 3, at art. 2, para. 2.

9. E.C.S. Res. 1235, 42 U.N. ESCOR (June 6, 1967).

10. E.C.S. Res. 1503, 48 U.N. ESCOR (May 27, 1970).

tions emanating from either individuals or private organizations.

This phase is characterized by the approach to human rights taken by the United Nations, and the whole strategy devised by the World Organization in this field. In the 1960's, the Socialist and Third World countries became more vocal. They strongly pressed their views on human rights and, without gaining the upper hand, made their presence felt. Consequently, the Western States had to reach a compromise with both groups. Great emphasis was placed on the right of peoples to self-determination, a right which became the linchpin of the United Nations strategy toward human rights. Singular importance was attached to economic and social rights, so much so that a whole Covenant was devoted to them. Allowance was also made for the particularly disadvantaged condition of developing countries; thus in a striking deviation from the much-cherished principle, whereby no distinction or discrimination should be made in the field of human rights, the Covenant on Economic, Social and Cultural Rights stipulated in Article 2, paragraph 3, that developing countries are authorized to differentiate between nationals and foreigners, as far as economic rights are concerned.<sup>11</sup> Furthermore, the right to property was not regarded as worthy of international protection, and was accordingly excluded from both Covenants.

During this phase a major role was played by Socialist countries which embraced and lent support to Third World ideals. Although some developing countries proved vocal, the non-aligned Group of 77 was neither strong, united, nor articulate enough to put forward detailed proposals reflecting its views and feelings. On balance, the main protagonists were still Eastern and Western countries. What is striking is that Western states, while still engaged in their struggle for human rights, tended to be on the defensive, or at least they no longer took any initiatives. Instead, they pressed their own ideas after being faced with fresh moves from Socialist and developing countries. An illustration of this attitude was the stand taken by the West on two issues: the procla-

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11. Art. 2, para. 2 states that "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other status." Para. 3 goes on to state: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals."

mation of the right of self-determination in the two Covenants, and the establishment of the two aforementioned procedures for dealing with gross violations of human rights. In both instances the initiative was taken by Third World or Socialist countries. The West, once it realized that it was unable to thwart these moves, managed to have the proposals altered in such a way that its own views were adequately reflected. Thus, in the case of self-determination, Western countries succeeded in rephrasing the principle so that it should apply not only to colonial countries, but to all sovereign States.<sup>12</sup> In the case of the two procedures for handling violations of human rights, the proponents had originally envisaged them as part of their struggle against southern Africa. Western countries, however, managed to broaden the scope of the procedures in such a way that they eventually became applicable to any State.<sup>13</sup> It should not be forgotten that in this phase the need for compromise between widely differing views resulted in the adoption of loose and ambiguous phrases (on the normative level), and in the establishment of procedures (on the level of implementation), that in practice have proved to be somewhat ineffective because of substantial opposition from Socialist countries, as well as from a number of developing States.

A distinctive feature of the *third phase* (1974 to the present) is the marked predominance of Third World countries. They no longer need other countries to act as their spokesmen and are sufficiently united to put forward an autonomous strategy on human rights. Their political philosophy hinges on three main tenets which make explicit ideas presented in previous years. The first principle is that a State cannot take advantage of civil and political rights if its socio-economic structure is so backward as to prevent individuals from making a decent living. In other words, the proclamation of civil and political rights remains a dead letter as long as economic, social and cultural rights are not fully implemented. Consequently, paramount importance should be attached to the latter category of human rights. The second tenet is merely a corollary of the first. The international community should not consider possible violations of civil and political rights in isola-

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12. See Cassese on Art. 1 of the Covenants, in *A COMMENTARY ON THE U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS* (L. Henkin ed.) (to be published).

13. Gonzales, *UN Procedures for Dealing with Human Rights Violations* (to be published). The author is grateful to Miss Gonzales for having allowed him to read her paper before publication.

tion. Before passing judgement, States should investigate the context of the violations—*i.e.*, the economic and social conditions of the country concerned—in an effort to pinpoint the socio-economic causes of misbehavior. The third tenet stresses the close connection between the national and international context of human rights. If developing countries are drifting towards ever increasing poverty, to a large extent their situation stems from deep inequality and injustice in international relations. In many instances international “structural violence” is at the root of national injustice. Hence the need to change international economic and social conditions. Third World countries claim that such changes will eventually result in an amelioration of national conditions, accompanied by greater respect for the human dignity of individuals.

The above principles were first expounded, in their general economic context, in the 1974 Charter on Economic Rights and Duties of States<sup>14</sup> and then neatly epitomized, with specific reference to human rights, in a resolution proposed by Argentina, Cuba, Iran, the Philippines, and Yugoslavia, and adopted by the General Assembly in 1977.<sup>15</sup> This resolution marked a turning point in the U.N. strategy toward human rights. By passing it, the U.N. fully endorsed and even espoused the Third World outlook. Simultaneously, it jettisoned the bulk of the Western approach, as is proved, for example, by the General Assembly’s rejection of a proposal for the establishment of a High Commissioner on Human Rights. One may well wonder whether the significant achievements of this new U.N. strategy will not be thwarted in the long run by ambiguities and loopholes that seem to have crept

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14. G.A. Res. 3281, 29 U.N. GAOR, U.N. Doc. A/9946 (1947).

15. G.A. Res. 32/130. For the debates preceding the adoption of the resolution, see UN Doc. A/C.3/32/SR. 42-44, 49-52 (1977). The resolution starts with the assumption that human rights issues should be considered *globally*, not as isolated phenomena. It stresses that in UN action, particular emphasis should be placed on: a) *economic, social and cultural* rights and the difficulty of putting them fully into effect; b) *collective* rights (*i.e.*, rights of groups and peoples) as distinguished from individuals’ rights and freedoms; c) the *over-all national* context of violation of human rights, (*i.e.*, the socio-economic settings which often favors, or at any rate renders, these violations possible, or may hinder the full realization of human rights); and d) the *international dimension* of human rights (*e.g.*, the relationship between foreign economic aid and violations of, or respect for, human rights, etc.).

in.<sup>16</sup> Nevertheless, it has already borne some fruit, at least at the "normative" level. It is sufficient to mention the increasing emphasis placed in the U.N. on the so-called "third generation" of human rights, including the right to development as a right of individuals and groups, the right to just and peaceful international relations, and the like.<sup>17</sup> It should also be stressed that in

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16. It has been argued by many Western diplomats and scholars that Resolution 32/130 was designed to divert the attention of UN bodies from gross violations of civil and political rights occurring in many developing and socialist countries. This contention seems to be supported by what has recently happened in the UN. Suffice it to mention here that in 1979, in the General Assembly, the Foreign Minister of Argentina heavily relied on Resolution 32/130 in an attempt to prevent exposure of Argentina's gross violations of human rights. He pointed out that "the promotion of the full dignity of the human person" is "closely linked to the political, economic and social development of each country," and went on to say:

To isolate the individual from this reality, to deny the special circumstances of each community or to pretend to see human rights as an abstraction detached from other rights and duties essential to nations, would be tantamount to dooming in advance to failure the efforts which must be made to make progress in this field.

Permanent Mission of Argentina to the UN, *Press Release* New York, Sept. 26, 1979, at 4.

Resolution 32/130 has also been attacked on the ground that the new human rights strategy it propounds is aimed only at giving moral trappings and a dignified facade to the proponents' actual goal: the sabotage of the Western proposal for the establishment of a High Commissioner for Human Rights.

Whatever the merits of these arguments, two points should not be neglected. First, despite possible state-oriented motivations behind the resolution, the fact remains that its main tenets are extremely *significant* and *forward-looking*. More importantly, it represents a serious effort to break the impasse which had blocked UN action. (While violations of human rights multiply in the world, the UN is increasingly proving incapable of coping with them. Paralyzing factors include dogma of state sovereignty, the very frequent siding of other states with the delinquents, and, primarily, the fact that those violations normally do not result from the whims of dictators but rather are the natural outgrowth of social, economic and political conditions).

The second point to be stressed is that Resolution 32/130 is by now a *fact that cannot be brushed aside*. However strong the misgivings about its philosophy may be, one cannot disregard its tenets—unless of course it is believed that the whole of UN action in the field of human rights has become so inadequate that the UN arena should be abandoned. In my opinion, if states (and non-governmental organizations, for that matter) concerned with human rights intend to exercise leverage on delinquent governments in order to make them more amenable to respecting human rights, they must take the bull by the horns and adjust their strategy to the new UN philosophy.

17. See e.g., the statement before the UN Sub-Commission on Prevention of



1979, the Sixth Conference of Heads of State or Government of the Non-Aligned Countries emphatically endorsed the main principles of the aforementioned Resolution.<sup>18</sup>

### III. THE STAND OF THE HELSINKI DECLARATION ON HUMAN RIGHTS: THE SECOND PHASE OF U.N. ACTION REVISITED

A proper assessment of the Helsinki Declaration can be made against the background of U.N. action. The following questions should be addressed: Does the Declaration reflect one or more of the three above phases of U.N. action? Is it totally disconnected from the U.N. strategy on human rights? If so, what are the salient traits and novelties of the Declaration?

It is my thesis that the Declaration to a large extent mirrors the second stage of U.N. action. However, there is no complete correspondence between what was propounded and achieved in the U.N. between 1960 and 1973, and the Declaration. The contention seems warranted that the Declaration adopted a Western re-interpretation of U.N. principles. In other words, although the thirty-five States gathered at Helsinki adopted the basic principles prevailing in the U.N. at the time, such principles were given a Western twist, that is, particular emphasis was placed on concepts much cherished by the West. Although the final result reflects the second stage of U.N. developments in the matter, it is in many respects reminiscent of some ideas that characterized the first stage where the Western political philosophy still prevailed in the U.N. This should not be surprising. First, very few developing countries participated in the Helsinki negotiations; the chief protagonists were Eastern and Western countries. Consequently, the Third World was not able to make itself heard in the process leading up to the adoption of the Declaration. Secondly, during the lengthy negotiations, human rights constituted the area in which the Eastern countries had to make most of their concessions. In return, the West accepted Soviet proposals on respect for existing borders, on security in Europe, on economic cooperation, and on other matters.

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Discrimination and Protection of Minorities by R. Ferrero (expert from Peru), August 22, 1979, on the occasion of the debate on the New International Economic Order and Human Rights. U.N. PRESS RELEASE HR/778, Aug. 23, 1979.

18. See NAC/CONF. 6/C.1/Doc.1/Rev.2, paras. 260-67.

#### IV. THE MAIN ISSUES

In the next paragraphs an attempt will be made to deal with a few issues that are, to my mind, indicative of the basic attitude towards human rights taken in the Declaration.

##### A. *The Right of Peoples to Self-Determination*

One of the key provisions in the Helsinki "Declaration on Principles Guiding Relations between Participating States," is on Principle VIII on the right to self-determination.<sup>19</sup> As stated above, self-determination represents one of the basic demands of Socialist and Third World countries. It could therefore be argued that its inclusion in the Declaration shows that the balance was tipped in favor of the Eastern countries. To a great extent this is true. Certainly, the first proponent of a provision on self-determination was the Federal Republic of Germany, *i.e.* a Western State interested in regaining its unity with what is at present the GDR.<sup>20</sup>

Nevertheless, the fact remains that the whole notion of self-determination, with its present anti-colonial and anti-racist connotations, is closer to the Socialist outlook than to Western political doctrines. Consequently, it can be safely contended that the inclusion of a provision on self-determination resulted in the acceptance of one of the primary tenets of the Socialist philosophy

19. Principle VIII is worded as follows:

The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

By virtue of the principle of equal rights and self-determination of peoples, all peoples always 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.

The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle.

20. See Cassese, *The Helsinki Declaration and Self-Determination*, in *HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD*, 93-99 (T. Buergenthal ed. 1977).

of human rights. However, it should be added that the Western countries managed to re-phrase the principle of self-determination in such a way that it eventually embodied a few Western demands. Three points illustrate this view. First, Socialist countries claim that the achievement of independent status by peoples living in non-racist, independent States (such as the thirty-five signatory States) entails implementation of the principle of self-determination. Consequently, these peoples no longer have a right to self-determination *per se*; rather, they have a right to non-intervention. By contrast, Principle VIII conveys the idea that the right of self-determination is a continuing right—a right that exists even after a people has chosen a certain form of government or international status. The Helsinki Accord gives a sufficiently clear idea of what it means by internal “self-determination.” The basic concept is borrowed from Western doctrines. By “self-determination” the Declaration means the permanent possibility for a people to choose a new social or political regime and to adapt existing social or political structures to meet new demands.

The second point is a corollary of the first. It is apparent from its wording that Principle VIII applies to *all peoples*, regardless of whether or not they live in an independent State. While the Socialist countries claim that the right to self-determination only applies to peoples subjected to colonial domination, racist regimes, or alien occupation, the Helsinki Accord clearly states that self-determination can be invoked by any people, including those living in a sovereign State.

Finally, it is apparent from the wording of Principle VIII that it reflects the Western view, *i.e.* the right to self-determination cannot be implemented if basic human rights and fundamental freedoms (in particular freedom of expression and association) are not ensured to all members of the people concerned. The philosophy behind this conception is that a people cannot make a real choice as to its political status or economic, social and cultural development when it is under an authoritarian government. Put another way, the Declaration requires, as a precondition for the enjoyment by *a people* of its right of self-determination, full respect for all the rights and freedoms of the *individual members* of that people.<sup>21</sup>

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21. For more details on the Helsinki Declaration and the rights of self-determination, see Cassese, *supra* note 20, at 99-107.

### B. *Emphasis on Civil and Political Rights*

Although the Declaration applies to all human rights, and expressly stipulates in Principle VII that the signatory States "will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms,"<sup>22</sup> there is no gainsaying its stress on civil and political rights. It is indeed striking that the core of this set of rights, *i.e.*, freedom of thought, religion and belief, is singled out and enunciated twice in Principle VII.<sup>23</sup>

### C. *The Role of Individuals in the Implementation of Human Rights*

It is common knowledge that the views of Socialist and Western countries differ widely as regards the place to be allotted individuals in the whole process of human rights implementation. The Socialist nations maintain that once a State has decided to comply with international standards on human rights, it is up to its own authorities to ensure respect for them. If individuals' rights are trampled upon, domestic judicial and administrative remedies should allow them to obtain redress. There cannot be any place in the international community for individuals complaining about alleged violations of their rights. The individual-State relationship should not overstep the confines of the State domestic system.<sup>24</sup> In short, individuals should not be granted the right to petition international authorities for the purpose of internationally challenging the behavior of their own States.

By contrast, in the opinion of most Western countries, international standards of human rights can be effective only if no international machinery is set up for the purpose of ascertaining

22. Principle VII, para. 2.

23. *See id.* at para. 1: "The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion." *See also, id.* at 3, which provides: "Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience."

24. As early as 1949, Soviet Judge Krylov stated in his dissenting opinion to *Reparation for Injuries Suffered in the Service of the United Nations*, "The relations between a State and its nationals are matters which belong essentially to the national competence of the State." [1949] I.C.J. 218.

whether or not States abide by them. In particular, most Western countries believe that the only effective supervisory procedures are those which can be set in motion at the request of the aggrieved persons. Hence the need to grant individuals the right to petition international bodies.

On this crucial issue, the Declaration could not adopt the Western views because it was not intended to establish any machinery for implementation; but neither did it incorporate the Socialist doctrine of the relations between State and individuals. Rather, the Declaration took a middle-of-the-road position. It propounded in a very original way the need for individuals to enjoy and benefit from their rights. Principle VII, in which the participating States "confirm the right of the individual to know and act upon his rights and duties in this field,"<sup>25</sup> proclaims at the international level that each individual has a specific *right to know* his rights and duties. States are duty-bound to make individuals fully cognizant not only of their rights and duties, but also of a *specific right to bring into effect* his rights and fulfill his duties. Correspondingly, States are duty bound to allow individuals to actually enjoy their rights or fulfill their duties.

These two rights are *distinct* from the substantive rights and freedoms contemplated in the Declaration. Of course, they fall far short of a right to petition international bodies. Yet, they are much more than the substantive rights set forth in the Declaration. They entail a general duty for the signatory States to render the protection of rights and freedoms *effective*. States cannot confine themselves to proclaiming rights and liberties; they must also enable individuals actually to *exercise* them. It follows that States must both inform individuals of their rights and provide them with effective remedies in case of violations. The Declaration does not spell out the nature of those remedies; it does not specify whether States should provide for international supervisory procedures in addition to domestic remedies. Given the rift existing between East and West on this issue, no elaboration on the matter was considered possible. Consequently, the issue has been left in abeyance. A sound interpretation could be that States are not obliged to accept international procedures *on condition that they grant individuals effective domestic remedies*.

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25. Principle VII, para. 7.

D. *Protection of Human Rights as a Means of Promoting International Peace*

The relation between two basic values, *i.e.*, respect for human rights and the promotion of peace, has always been tricky and complex. The U.N. Charter made the maintenance of peace its primary goal. Hence, it considered respect for human rights a means of furthering the development of friendly relations among States and of strengthening universal peace. It did not regard protection of human rights as an independent value; rather, it considered it as secondary to the goal of peace. The obvious consequence was that it might, and indeed should, be set aside when its fulfillment would give rise to tension and conflict among States.

In recent years the Soviet Union has promoted this doctrine in the United Nations. It has consistently argued that the international protection of human rights should not prove detrimental to detente. The logical inference is that as soon as international action aimed at promoting respect for human rights in a given State creates or increases tension between that State and one or more other States, it should be discontinued for the sake of preserving friendly relations among States.

What is the stand taken by the Helsinki Declaration on this matter? The Declaration, like the U.N. Charter, stresses that respect for human rights is an essential factor for ensuring peace in that gross violations of human rights may be conducive to international friction and conflicts.<sup>26</sup> It can be argued, however, that the Declaration does not draw from this principle the conclusion that respect for human rights *should yield to peace*. In other words, the contention can be made that the Declaration considers human rights as a basic value not subordinate or inferior to that of peace. Both values should be achieved, and neither of them takes precedence.<sup>27</sup> The philosophy behind this attitude is that in

26. See Principle VII, para. 5, which provides: "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." See also Principle VIII, para. 3, *supra* note 12.

27. This view is supported both by a careful examination of the context of the Declaration and by a comparison with the corresponding provisions of the U.N. Charter. (Art. 1, para. 1 of the Charter states that one of the purposes of the United Nations is "To develop friendly relations among nations based on

some instances, international protection of human rights may give rise to disagreement and friction and can even put serious strains on friendly relations. If, however, international concern for human rights should be halted for the sake of not exacerbating relations between States, this could prove beneficial in the short run only. In the long run, covering up or blinding oneself to gross violations of human rights ends up in self-defeat. The deep-rooted motivations behind violations of human rights would cause tensions and conflict to surface again, with increasingly serious consequences.

It is apparent from the general context of the Declaration that States should endeavor to reconcile both values. The achievement of one will be instrumental in realizing the other. Peace favors respect for human rights, while implementation of human rights helps to defuse tension and disagreement. In light of this fact, whenever conflicts arise between these two goals, an effort should be made not to pursue one of them to the detriment of the other.

#### E. *International Co-operation for the Promotion of Human Rights*

Some of the thirty-five signatories of the Declaration have often claimed that signatory States are barred from alleging that another has violated human rights in its own territory. They contend that such allegations are contrary to Principle I, relating to Respect for the Rights Inherent in Sovereignty, as well as to Principle VI on Non-Intervention in Internal Affairs. This claim should be rejected. If it were well-founded, the two Principles would actually offer an easy means of nullifying the protection of human rights afforded by the Declaration. The contention seems warranted that their wording was carefully weighed by Western countries fully aware that a loose formulation might provide dangerous loopholes. The duty of States to "respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations"<sup>28</sup> does not mean that a signatory State criticizing an-

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respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." Art. 55 goes along the same lines.)

In putting forward the above view, I have slightly modified the opinion I had previously expressed on the matter. See note 20 *supra*, at 103-05.

28. Principle I, para. 1.

other signatory for its alleged non-compliance with the Declaration infringes upon that duty. It is apparent from the whole context of the Declaration, as well as from the explicit formulation of Principle X<sup>29</sup> that the right to choose one's own system and legislation must be exercised in conformity with the basic principles of the Declaration. Each State is at liberty to shape its system as it thinks best, provided it keeps it within the bounds defined by international standards. Consequently, the Principle under consideration does not preclude a signatory State from claiming that the domestic system of another signatory is at variance with some of the Declaration's Principles.

At first sight, such a claim might be considered inconsistent with the Principle on Non-intervention in Internal Affairs.<sup>30</sup> This Principle, however, is clearly designed to forbid *armed* or *coercive* intervention only.<sup>31</sup> Accordingly, whenever a State merely alleges that another State does not abide by the human rights principles proclaimed in the Declaration, such a *démarche* is not within the purview of the prohibitions established by the Principle.

To assess the legality and propriety of actions which challenge the alleged misbehavior of another signatory State as being contrary to the Declaration, one should look to the general principles

29. "In exercising their sovereign rights, including the right to determine their laws and regulations, they will conform with their legal obligations under international law; they will furthermore pay due regard to and implement the provisions in the Final Act of the Conference on Security and Co-operation in Europe." Principle X, para. 2.

30. The 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, regardless of their mutual relations.

They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State.

They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

Accordingly, they will, *inter alia*, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating State.

Principle VI.

31. See Henkin, *Human Rights and Domestic Jurisdiction*, in HUMAN RIGHTS, *supra* note 20, at 35-37.



of international law. It follows from these principles that the matters governed by the Declaration have *ipso facto* ceased to be issues falling under the national jurisdiction of each signatory State. They have become matters of international concern. Each State has become accountable to the other signatories for any non-compliance with the Declaration. The crucial question is: How should States react to co-signatories' misbehavior? Should they only take official steps through diplomatic channels or make bilateral or multilateral *démarches*, or can they also resort to other forms of action such as direct encouragement or support for alleged victims of violations of human rights?<sup>32</sup> The former view seems sounder for it takes into account the need to strike a proper balance between two values equally protected by the Declaration, *i.e.*, respect for human rights and maintenance of peaceful relations among States.<sup>33</sup> Recently, some States have supported that view.<sup>34</sup>

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32. *Id.* at 36-37. Professor Henkin supports the latter view.

33. An excessively strict interpretation is propounded by Hannikainen, *Human Rights and Non-Intervention in the Final Act of the CSCE*, 48 *NORDISK TIDSSKRIFT INT. RET. (Acta Scandinavica Juris Gentium)* 34-35 (1979). He contends that the Helsinki Declaration permits "international intervention only in such cases where the violations of human rights can be considered to be flagrant and systematic." (As instances of such violations, he mentions "torture and other crimes against humanity," suppression of the right of peoples to self-determination, "systematic discrimination or any other systematic denial of justice," *etc.*) He argues, however, that:

the expression of an opinion by a State and its request to another State should not be considered to constitute intervention but to be part of the normal communication between States. It should be clear that such communications should not include demands, pressure or campaigns. A State has a wider power of expressing opinions about the human rights policy of another State only if some treaty specifically so decreed. More general statements about the inadequacies of a specific socio-political system do not constitute intervention as far as they are directed in an accusing form against some specific State.

At 34.

It is submitted that the above author unjustifiably extends the concepts and principles applicable to the U.N. Charter to the Helsinki Declaration. The context is quite different and, in addition, the Declaration's provisions on non-intervention are very explicit. It follows that signatory States, in their bilateral or multilateral relationships, can do much more than is conceded by the above author.

34. In speaking of the Helsinki Declaration, French Foreign Minister de Guiringaud said on February 28, 1977, that France considered it legitimate to take up human rights issues in light of the Declaration, provided this was not

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done in a controversial way (“avec objectivité, sans esprit de polémique”). He then went on to say, “Intervenir auparavant sur des cas particuliers par des voies qui ne sont pas des voies gouvernementales, peut apparaître comme de l’ingérence” (Le Monde, March 2, 1977, p. 3). A similar view was expressed by Belgian Foreign Minister Simonet on September 6, 1979. He pointed out:

In the eyes of contemporary international law, *human rights initiatives no longer constitute interference in the internal affairs of another State*. For this reason, Belgium has no hesitation in associating herself with any efforts within the international community to combat any violations of human rights, wherever they may occur, *through the appropriate bilateral and multilateral channels*.

13 BULL. N. ATL. ASSEMBLY No. 13 at 7 (July 1 - Sept. 30, 1979) (emphasis added). It is therefore submitted that the letter President Carter sent to Mr. Sakharov on February 5, 1977 (*see text in Le Monde*, Feb. 19, 1977 at 4), was not in conformity with the text and the spirit of the Helsinki Accord.

