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Charter 77 in Czechoslovakia and the International Protection of Human Rights

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CHARTER 77 IN CZECHOSLOVAKIA AND THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS*

*Roger Errera***

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I. INTRODUCTION

Charter 77 was published in Prague in early January, 1977. At that time the document contained 240 signatures, a number which increased by 1977 to over 600. This Charter marked the beginning of a new period in the political history of Czechoslovakia, a period of public affirmation of fundamental liberties. It is useful to recall briefly reactions to the publication of this document in the East and the West, and to analyze its profound significance. It is also important to examine the major events that have taken place since 1977 and the inspiration which Charter 77 derived from the United Nations Covenants on Human Rights

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and from the Final Act of the Helsinki Conference on Security and Cooperation in Europe.

II. The Events of 1977 and Their Background

After a series of arrests, searches, and interrogations, Czechoslovakian authorities arrested a number of persons including author Vaclav Havel, one of the three spokesmen for the Charter, O. Ornest, former director of the Prague municipal theaters, F. Pavlicek, former director of the Vinohrady Theater, and Jiri Lederer, former journalist previously convicted in 1972.[1] The official press and radio unleashed a storm of criticism against the principal signers of the Charter. Havel was called a millionaire's son and a virulent anti-socialist; another was called a faithful lackey of imperialism; a third was called an international adventurer, a man without a country who had never been integrated into the Czech community. The Czech Communist Party considered deporting some of the signatories with or without consent[2] but gave up the idea. The affected people did not wish to leave, and they let this be publicly known. Even the Party does not deport everyone it would like to.

Later, repressive measures took other forms, less spectacular but no less serious. These measures included discharge of the signatories from their jobs, repeated police interrogations, confiscation of drivers' licenses, and other harassment of all kinds. For example, author P. Kohout was deprived of his driver's license, the inspection certificate for his car, and his social security insurance because he signed the Charter.[3] As a result he was forced to live outside Prague.

In Russia, the Soviet press attacked the signatories as "a group of people who have come from the prostrated ranks of the Czech bourgeoisie, organizers of the counter-revolution of 1968 . . . and

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1. The individuals were charged with defamation against an allied state, namely, Poland. As Warsaw correspondent for Literarni Listy in 1968, Lederer had described rampant police brutality and state anti-semitism. He had collaborated in *Reporter*, a weekly publication of the Association of Journalists, founded in 1966 and banned in 1971. *See* Ecrits à Prague sous la censure: août 1968—juin 1969 (P. Broue ed. 1973).

2. J. Hajek, F. Kriegel, V. Havel, L. Vaculik, J. Lederer, P. Kohout, M. Hubl, and Z. Mlynar.

3. *See* the report of the two French journalists recently expelled from Prague, L. Clerc and B. Lacombe, *in* Elle, Mar. 28, 1977.

counter-revolutionary rabble."[4] At the beginning of February 1977, a large delegation from the Soviet Communist Party arrived in Prague for "an exchange of experiences on organizational and political work."[5] In many other Eastern countries, however, groups of intellectuals publicly declared their solidarity with the signers of Charter 77. Most notable in its support was the Committee for the Defense of Workers in Poland (K.O.R.), the Romanian writer P. Goma,[6] and certain intellectuals and artists in Hungary.

Note should be taken of the Communist Party protests in England, Italy, and France.[7] Many governments, including the United States, England, and the Netherlands, officially protested repressive measures by the Czech government. At the time of his official visit to Prague on February 28, 1977, the Netherlands Minister of Foreign Affairs M. Van der Stoel addressed questions of alleged human rights violations to his Czech counterparts and later met with Jan Patocka, one of the three spokesmen for Charter 77. The Netherlands Council of Churches also registered protest with the Czechoslovakian government.[8] Throughout the world, the repressive measures taken in Prague evoked public statements and protests. The publicity in turn led to embarrassment for Czech authorities, causing them to limit the severity of their counteroffensive.

A. *What Does Charter 77 Say?*

The only French daily newspaper which deemed it important to publish the text of Charter 77 was *Libération.*[9] In contrast, the document was widely disseminated in the United States e.g., the *New York Times,*[10] and in Germany, e.g., the *Frankfurter Al-*

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4. Izvestia, Jan. 13, 1977.

5. Le Monde, Feb. 10, 1977.

6. *See* Die Zeit, Feb. 25, 1977, for full text of Goma's letter of protest, and Le Monde, Feb. 11, 1977, for excerpts.

7. For CPF reaction *see* L'Humanité, Feb. 25, 1977. *See also* a March 7, 1977 statement by François Mitterrand, First Secretary of the French Socialist Party, in Le Monde, Mar. 9, 1977.

8. *See* Council letter to G. Husak *in* LA DOCUMENTATION CATHOLIQUE No. 1715 (Mar. 6, 1977).

9. Feb. 7, 1977.

10. Jan. 27, 1977. *See also* Int'l Herald Tribune, Feb. 1, 1977 and New Leader, Jan. 31, 1977.

legmeine Zeitung.[11] Given this situation, it is appropriate to analyze the document in detail.

1. The Rule of Law

Relying on the rule of law, the signatories of Charter 77 assert that their fundamental liberties are daily and systematically violated by the government. They examine the causes and explain the motives that led to the publication of the Charter.

Charter 77's point of departure was Czechoslovakia's ratification of the two United Nations Human Rights Covenants on March 23, 1976—the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights.[12] These agreements were published in the official Czechoslovakian compilation of laws on October 13, 1976. Both are international instruments that legally bind the signatory states. The Final Act of the Helsinki Conference on Security and Cooperation in Europe, signed on August 1, 1975, incorporates them by reference.[13] Charter 77 declares with regard to these Covenants: "These pacts went into effect in our country on March 23, 1976; since that date our citizens have had the right, and the State has had the duty, to abide by them."[14]

2. Systematic Violations of Fundamental Liberties

It is sufficient to compare the language of the Covenants to reality in Czechoslovakia in order to prove that the fundamental liberties they proclaim are systematically violated by the government. The essential elements of this proof are provided in Charter 77:

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11. Jan. 7, 1977.

12. G.A. Res. 2000A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/316 (1966). The text of the Covenants may also be found *in La protection internationale des droits de l'homme,* PROBLÈMES POLITIQUES ET SOCIAUX No. 203-04 (Nov. 30, 1973), *La documentation française.*

13. *Conference on Security and Cooperation in Europe, Final Act, reprinted in* 14 INT'L LEGAL MAT. 1293 (1975) and Appendix A *[hereinafter* cited as *Final Act].*

14. Charter 77, para. 1. The English text of Charter 77 used throughout this article is cited with permission of the New York Times, *supra* note 10. For the French text used in the original article, *see* 22 ISTINA 175 (1977) *[hereinafter* cited as ISTINA I].

a. *Freedom of Expression*

Their [the Covenants'] publication . . . is . . . an urgent reminder of the many fundamental human rights that, regrettably, exist in our country only on paper. The right of free expression guaranteed by Article 19 of the first pact, for example, is quite illusory. Tens of thousands of citizens have been prevented from working in their professions for the sole reason that their views differ from the official ones. They have been the frequent targets of various forms of discrimination and chicanery on the part of the authorities or social organization; they have been denied any opportunity to defend themselves and are practically denied the "freedom from fear" cited in the Preamble to the first pact; they live in constant peril of losing their jobs or other benefits if they express their opinions.[15]

. . . . .

Freedom of speech is suppressed by the government's management of all mass media, including the publishing and cultural institutions. No political, philosophical, scientific, or artistic work that deviates in the slightest from the narrow framework of official ideology or esthetics is permitted to be produced. Public criticism of social conditions is prohibited. Public defense against false and defamatory charges by official propaganda organs is impossible, despite the legal protection against attacks on one's reputation and honor unequivocally afforded by Article 17 of the first pact.[16]

b. *The Right to Education*

Contrary to Article 13 of the second pact, guaranteeing the right to education, many young people are prevented from pursuing higher education because of their views or even their parents' views. Countless citizens worry that if they declare their convictions, they themselves or their children will be deprived of an education.[17]

c. *Religious Freedom*

Religious freedom, emphatically guaranteed by Article 18 of the first pact, is systematically curbed with a despotic arbitrariness: Limits are imposed on the activities of priests, who are constantly threatened with the revocation of government permission to perform their function; persons who manifest their religious faith ei-

15. *Id.* para. 3.
16. *Id.* para. 6.
17. *Id.* para. 4.

ther by word or action lose their jobs or are made to suffer other repressions; religious instruction in schools is suppressed, etc.[18]

d. *Protection of Privacy*

Other civil rights, including the virtual banning of "willful interference with private life, the family, home, and correspondence" in Article 17 of the first pact, are gravely circumscribed by the fact that the Interior Ministry employs various practices to control the daily existence of citizens—such as telephone tapping and the surveillance of private homes, watching mail, shadowing individuals, searching apartments, and recruiting a network of informers from the ranks of the population (often by illegal intimidation or, sometimes, promises), *etc.*[19]

3. The Causes of Violations

Why do these violations occur? The explanation is simple. One party, the Communist Party, has a monopoly of power and ideology. In its name, a limited number of men direct society. They are not accountable to anyone. Charter 77 explains:

A whole range of civil rights is severely restricted or completely suppressed by the effective method of subordinating all institutions and organizations in the State to the political directives of the ruling Party's apparatuses and the pronouncements of highly influential individuals. Neither the Constitution of the CSSR nor any of the country's other legal procedures regulate the contents, form or application of such pronouncements, which are frequently issued orally, unbeknown to and beyond the control of the average citizen. Their authors are responsible only to themselves and their own hierarchy. . . .[20]

4. The Primary Motive for Publication of the Charter

The fundamental principle of co-responsibility inspired the Charter 77 signatories. They emphasized that,

The responsibility for the preservation of civil rights naturally rests with the State power. But not on it alone. Every individual bears a share of responsibility for the general conditions in the

18. *Id.* para 7. *See* COMMISSION NATIONALE SUISSE JUSTICE ET PAIX, SITUATION DE L'EGLISE CATHOLIQUE EN TCHÈCOSLOVAQUIE (Berne 1977). Persecution against Protestant churches is particularly active.

19. *Id.* para. 11.

20. *Id.* para. 8.

country, and therefore also for compliance with the enacted pacts, which are as binding for the people as for the government.

The feeling of this coresponsibility, the belief in the value of civic engagement and the readiness to be engaged, together with the need to seek a new and more effective expression, gave us the idea of creating Charter 77, whose existence we publicly announce.[21]

B. *The Significance of Charter 77*

What then is Charter 77? The document itself explains in terms that leave no room for ambiguity. The reader can discover tones similar to the declarations which illustrate struggles for freedom in Western history. In the words of the signatories,

> Charter 77 is a free and informal and open association of people of various convictions, religions and professions, linked by the desire to work individually and collectively for respect for human and civil rights in Czechoslovakia and the world—the rights provided for in the enacted international pacts, in the Final Act of the Helsinki Conference, and in numerous other international documents against wars, violence and social and mental oppression. It represents a general declaration of human rights.[22]

It names three spokesmen, philosopher Jan Patocka, writer Vaclav Havel, and Dr. Jiri Hajek, a former Minister of Foreign Affairs: "These spokesmen are authorized to represent Charter 77 before the State and other organizations, as well as before the public at home and throughout the world. . . ."[23] This appointment, not without peril, was freely assumed.

No equivocation was possible. The Charter was and is nothing less than a call for recognition and respect for human rights, proclaimed in the name of liberal values. Even though more than one definition of freedom may exist, there is only one meaning of the deprivation of freedom. The signatories of Charter 77 know this better than anyone else since they denounce all suppression of liberties.

Among the approximately 600 signers of the Charter in 1977, a small number of individuals had been Communist Party leaders in 1968.[24] This fact signifies that they voluntarily came to adopt

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21. *Id.* para. 16, 17.
22. *Id.* para 18. *See also* paras. 12-15.
23. *Id.* para. 23.
24. *E.g.*, J. Hajek, M. Hubl, F. Kriegel, Z. Mylnar.

the values of freedom expressed in the document.

Charter 77 should not be misunderstood. It is not a new version of "Springtime in Prague," the ultimate embodiment of East European "revisionism." Springtime in Prague was an attempt in 1968 to liberalize the Party and the regime. This idea originated within the Czechoslovak Communist Party itself and especially in the Union of Writers in 1967.[25] The effects of this attempt spread throughout Czechoslovak society until the moment the Soviet invasion put an end to it. Charter 77 cannot be compared to the attempts at "revisionism" in Czechoslovakia in 1968, or in 1956 in Poland or in Hungary. Such attempts are dead forever.[26] In Prague, faced by a group in power supported by the political police, by the Russian occupation army, by the profiteers common to all dictatorships, and by those who have a vested interest in the status quo, only the signatories of Charter 77 ask for freedom. They are appropriately titled "liberals."

Charter 77 must be placed in the context of Czechoslovakia's post-1969 evolution. Its appearance at the beginning of 1977 was neither sudden nor unexpected. Its origin and profound significance can be summarized as a documentation of the uninterrupted policy of repression and the stifling of liberties carried out since 1969 by Husak and his associates, and as a demonstration of the ravages suffered by the country as a consequence of this policy. The Charter bases its call for liberty upon Western traditions which have particularly deep roots in Czechoslovakia. It combines a rational approach to human rights with moral conscience.[27]

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25. *See* Liehm, *Le chemin difficile de la litterature tchécoslovaque,* CRITIQUE (Oct. 1972).

26. *See* Michnik, *Une stratégie pour l'opposition polonaise,* ESPRIT, Jan. 1977, and *L'Eglise et la gauche,* LE DIALOGUE POLONAIS (1979).

27. Three documents illustrate this point:

(1) A ten point Manifesto by a group of Czechs, addressed to the federal Parliament, the National Council, the Czech government and the Czechoslovakian Communist Party Central Committee. Its complete text appeared in Le Monde, Sept. 2, 1969 *[hereinafter* cited as Manifesto].

(2) An open letter by Vaclav Havel to Gustav Husak, dated Apr. 1975. This document, of exceptional depth and quality, was published in POLITIQUE AUJOURD'HUI at 121-44 (Sept.-Oct. 1975) under the title *De l'entropie en politique: Lettre ouverte à Gustav Husak [hereinafter* cited as Havel].

(3) An essay by the philosopher Jan Patocka, one of the three spokesmen for Charter 77 who died in Prague in March of 1977 after an exhaustive police interrogation. The essay was summarized in *Les Etats doivent*

C. *Against Repression and the Stifling of Liberties*

The first step in fighting against repression and the stifling of liberties is to denounce the regime of official lies and fright. The chain of coercion has been described by Charter spokesman Havel as follows:

> For fear of losing his job, the teacher instructs his students in things he does not believe; for fear of their futures, the students repeat them after him; for fear of not being able to continue their studies, young people join the Youth Union and do what they have to do there; for fear that their children may not score well on the university admission tests, the father accepts [any] type of assignment and "voluntarily" does what is required. For fear of possible repercussions, people participate in elections, vote for the candidates nominated by the Communist Party, and pretend that they regard this ritual as real elections . . . they go to meetings, vote as they are asked or remain completely silent . . . they go through demeaning self-criticisms and falsely fill out stacks of humiliating questionnaires . . . [and] do not express their true opinions in public, or even in private. For fear of possible adverse effects on their life styles, and in the hope of improving their situations and creating a good impression on those in authority, workers generally participate in demonstrations to encourage productivity . . . the same motives compel them to join socialist work brigades, because they know well in advance that their initiatives will be immediately reported to the authorities. For fear of being prevented from doing their work, a number of scholars and artists profess ideas that they do not really believe in, write things that they do not think or that they know are false, join official organizations, participate in activities they hold in low esteem, or even abridge or distort their own works. For their personal safety, some people go so far as to inform on others for activities that they have engaged in together.[28]

What are the consequences of this chain of repression? First,

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se placer sous la souveraineté du sentiment moral, Le Monde, Feb. 10, 1977 *[hereinafter* cited as Patocka]. Born in Prague in 1907, later a philosopher and disciple of Husserl, Jan Patocka was driven out of Charles University (Prague) in 1948 after the Communist takeover. Reinstated in 1968, he was once more expelled in 1970. He is author of numerous scholarly works, including LE MONDE NATUREL COMME PROBLÈME PHILOSOPHIQUE *(republished in* French, Martinus Nijhoff, The Hague, 1976) and LA PHILOSOPHIE DE L'HISTOIRE (*published by* the underground publisher Petlice, Prague, 1975).

28. Havel, *id.* at 122-23.

Havel concludes, society is governed by the rule of mediocrity:

> It seems that during recent times, the social system has provided unprecedented opportunities for people who are prepared to do anything, at any time so long as it is profitable, to people without principles and without backbone, prepared for anything by their taste for power and money to exploit [society]. It is not by accident that, in such circumstances, numerous public and political offices are occupied today by all types of ambitious people, opportunists, charlatans and questionable characters . . . . It is not by accident that, in such circumstances, public personalities of all types are corrupted more frequently than at any time in the past ten years . . . .[29]

Another consequence of repression is general indifference, apathy, conformity, and withdrawal into one's private life:

> Most people do not like to live in a permanent state of conflict with the social regime, especially when such conflict can end by the defeat of the isolated individual. Why then should the person in question not do what he is asked? It costs him nothing and, in the long run, he will no longer think anything of it. It is not worth the trouble. Despair leads to apathy, apathy to conformity, conformity to routine practices that characterize the political activity of masses . . . . To the extent that the hope of a general improvement of the situation fades away and that the individual's grasp of universal values and objectives diminishes, to the extent that his reactions to outside stimuli decrease, the individual constantly devotes more of his energy where it meets the least resistance, that is, internally. Everyone thinks increasingly of himself, his family, his house . . . . In short [he] attach[es] material parameters to [his] private [life] . . . . The authorities want and encourage this transfer of energy toward the private domain.[30]

The result is the complete corruption of social life, the demoralization of society:

> Not much imagination is needed to understand that such a situation can lead only to the progressive erosion of all values, all moral standards, to the disappearance of all notions of decency and to the reduction of confidence in such values as truth, principle, sincerity, impartiality, dignity and honor . . . . Can the disintegration of the individual's identity be avoided by a system that demands so relentlessly that the individual not be himself?

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29. *Id.* at 125.
30. *Id.* at 127-28.

> Order has been reestablished . . . but at the price of a spiritual and moral crisis of society.[31]

After the denunciation of the reign of official lies and fear, the second step must be rejection of the stifling of culture, the "social watchdog" of society. Author Vaclav Havel observed that "the present government has succeeded for the first time since the national revival of the 19th century in making totally impossible [the development of culture]—so precise is bureaucratic supervision of culture, so impeccable the surveillance of all cracks through which an important work could reach the light of day, [and] so great the fear of art in the hearts of the ruling group that keeps in its pockets the keys of all doors."[32] He decried the mortal blows to the spiritual and moral integrity of Czechoslovak society dealt by the rulers who wish to create a society without memory, without conscience, and without history: "I dread the long term consequences, harsh and absurd, that the stifling of culture will have for the people. I fear the price that we will have to pay for this obstruction of history. . . ."[33] Signatories of the 10-point Manifesto of 1969 also recognized the danger: "We despise censorship, the introduction of which has classified us among the pathetic peoples who do not have the right to speak for themselves or to address the rest of the world."[34]

D. *Reason, Moral Conscience, and Freedom*

The Western liberal tradition has particularly deep roots in Czechoslovakia. Those in Prague who today claim respect for human rights began by vindicating the rights of reason:

> We proclaim outright that the right not to agree with the rules and the government is a timeless natural human right . . . . We reserve the right not to agree and we will manifest it by opposing, through legal means, all that is contrary to human reason of socialist democracy and humanism, and to the sound traditions of this country.[35]

Their confidence in the long-term future of Czechoslovakia is based, ultimately, on their faith. The tone of the 1969 Manifesto

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31. *Id.* at 130.
32. *Id.* at 133.
33. *Id.* at 142-43.
34. Manifesto, Point 3, *in* Le Monde, Sept. 2, 1969. *Supra* note 27.
35. *Id.* at Point 9.

is illustrated by the following passage:

> Even in the worst of situations, life must go forward. We believe that no oppression can completely reduce thought to silence or anesthetize all work . . . . Even without political freedom, an advanced people can defend itself by imposing its style of living, its personal philosophy, and its character through practical activities of an apolitical nature. There are times when one must simply survive and persevere on the basis of experience. That is what we will strive to do, persuaded as we are that evolution cannot be stopped.[36]

The contrast in tone and content between this statement and that of Havel in 1975 illustrates the deterioration of the situation since 1969.

Czech philosopher Jan Patocka reaffirmed the proposition that the rights of reason are closely tied to those of moral conscience:

> A society, however well-endowed technically, can function only with a moral basis, with a conviction that does not derive from opportunism, circumstances or expected advantages. Morality, however, does not exist in order to make society function, but simply to let man be man. Man does not define morality according to the arbitrary dictates of his wishes, tendencies and desires. To the contrary, morality defines man.[37]

The International Covenants on Human Rights, which Charter 77 used as its point of departure, are nothing more than concrete illustrations at the level of international law of this principle:

> [S]tates and the entire human society subject themselves to the sovereignty of ethical consciousness. They recognize that something unconditional dominates and transcends them. For them, this something is fundamentally sacred and untouchable . . . . They show this recognition by deciding to place at the service of this superior legislation the forces at their disposal which give actual effect to the juridical norms that they have created.[38]

Commenting on the Charter 77 motivations, Jan Patocka then clarified the connection between the rights of reason and moral conscience by explaining; "The signatories remember that 180 years ago it was shown by a precise conceptual analysis that all moral duty rests upon what may be called the moral duty of man

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36. *Id.* at Point 10.
37. Patocka, Le Monde, *supra* note 27.
38. *Id.*

towards himself."[39]

In an admirable article dedicated to Jan Patocka, "the resistant philosopher,"[40] Paul Ricoeur effectively emphasized the implications of Patocka's attitude,

> [T]he resisters say three things: To the men in power, "The liberties that you allege to exist—freedom of expression, right to education without political discrimination, right to information, right of association, right to the exercise of religion, inviolability of private life, home and communications—these liberties do not exist among us;" To their fellow citizens, "Your moral duty is to insist that the state submit itself to the principles to which it has given its solemn undertaking;" Finally, they say to the outside world, "Take note that we, the resisters of Prague and elsewhere, have effectively broken the system of fear. Therefore, when you intervene in our behalf, do not think that we are afraid. For from now on we will yield no more."[41]

III. Developments since 1977 and Their Significance

The persistent activities of the Chartists and the government's continued general policy of repression since 1977 should be examined. Analysis of these two series of facts will reveal the significance of the Charter 77 Movement.

A. *The Chartists' Unabated Activity*

Though it is obviously impossible to describe all activity in detail, a number of accomplishments should be noted. First, increasing numbers of people, approximately 1,200 to date, have signed the Charter. Signing the Charter leads automatically to the loss of employment and to various forms of persecution by police and judicial officials. For example, obstacles may be placed in the way of signatories' children pursuing education at all levels. For this reason as well as others, the number of signatures does not reflect the exact amount of support for Charter 77.

Second, publication of communiques and documents has increased. This is the most important type of activity under the Charter because it best expresses the Movement's fundamental nature. Several types of documents should be distinguished:

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39. *Id.*
40. Le Monde, Mar. 19, 1977.
41. *Id.*

(1) Some analyze specific problems, for example, discrimination in education,[42] freedom of expression,[43] the fate of gypsies in Czechoslovakia,[44] or the supply of consumer products in the country.[45]

(2) Others highlight the Charter 77 Movement and update its situation at a given time. Special reference may be made to Documents 10 and 11,[46] Document 15,[47] Document 18[48] (published on the 10th anniversary of the Soviet military intervention), and Document 21.[49] The Declaration of October 27, 1978, published on the 60th anniversary of the establishment of the Czechoslovakian Republic,[50] is also of considerable value and interest.

(3) Other documents detail Charter 77 opinions about legal actions being taken by the authorities against dissidents and about other repressive measures.[51]

Third, the periodic replacement of the Charter spokesmen is noteworthy. The purpose is to replace those who are imprisoned or have become unavailable for other reasons. The relief mechanism bears witness to the vitality of the Movement and provides indispensable continuity.[52]

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42. Charter 77 Doc. No. 4. *See Religious Liberty: In Honor of Jan Patocka,* ISTINA I, *supra* note 14, at 188-92.

43. Charter 77 Doc. No. 9. *See Religious Liberty: Second Year of Charter 77, in* 24 ISTINA 161 (1979) [*hereinafter* cited as ISTINA II]. Volumes 22 and 24 of ISTINA contain articles and texts which are essential for any study of Charter 77. Such a compilation is, as far as the author is aware at this time, the only available source in the West.

44. Charter 77 Doc. No. 11. *See* LISTY No. 2 at 29 (French ed. 1979).

45. *See* LISTY No. 13 at 25 (French ed. 1979).

46. ISTINA II, *supra* note 43, at 162-166.

47. *Id.* at 182.

48. *Id.* at 217.

49. *Id.* at 226.

50. *Id.* at 288.

51. *See* Jan. 18, 1978 declaration on the decision of the Prague Court of Appeal regarding Ornest, Pavlicek, Lederer, and Havel, ISTINA II, *supra* note 43, at 179; letter dated Apr. 5, 1978, addressed to G. Husak, ISTINA II, *supra* note 43, at 206; and letter addressed on Feb. 8, 1978, to the Czech Parliament and Government, ISTINA II, *supra* note 14, at 188.

52. Spokesmen for Charter 77 served the following terms from January 1977 to January 1980:

Jan.-Mar. 1977	Patocka	Havel	Hajek
Mar.-May 1977		Havel	Hajek
May-Sept. 1977			Hajek
Sept. 1977-Apr. 1978	Hejdanek	Kubisova	Hajek
Apr.-Oct. 1978	Hejdanek	Kubisova	Sabata

A final sign of the Chartists' unabated activity is the creation of *V.O.N.S.*, Czech initials for the Committee for the Defense of People Who Are Unjustly Persecuted. Created in April 1978, fifteen months after publication of Charter 77, and conceived by the signatories of the Charter, this Committee exists for the purpose of drawing Czech authorities' attention to the cases of people prosecuted or arrested because of their opinions or under other arbitrary circumstances. More than 120 communications addressed to the Ministries of the Interior and Justice, the courts, and examining magistrates have been published. Each petition describes in detail the identity of the people involved, the grounds and circumstances of their arrest and prosecution, and the applicable law.[53]

B. *The Policy of Repression Continues*

The policy of repression is directed not only against the signers and promoters of Charter 77 but also against any person suspected of having shown, even in the most general fashion, similar feelings of dissent. In addition to purely "administrative" measures such as termination of employment, prohibition against foreign travel, censorship of mail, etc., several other types of measures are notable. Arrests followed by trials and sentences of imprisonment are the most obvious forms of repression. Again, an exhaustive list would exceed the limits of this article. The following prosecutions may be cited among others, however.

(1) *Vladimir Lastuvcka, engineer, and Ales Machacek, agronomist.* Detained since January 1977, for distributing copies of Charter 77, both were sentenced in September 1977, to three and a half years in prison.[54]

(2) *Vaclav Havel, playright, O. Ornest, former Director of the Prague Municipal Theaters, F. Pavlicek, former Director of Vinohrady Theater in Prague and Jiri Lederer, former journalist.*

Nov. 1978-Feb. 1979	Hejandek	Havel	
Feb.-June 1979	Benda	Tominova	Dienstbier
June-Dec. 1979	Hejdanek	Tominova	Hejek
Jan. 1980	Rejchrt	Battek	Hromadkova

53. The mimeographed texts of the first 74 communiques may be found in the BULLETIN DU CENTRE INTERNATIONAL DES SYNDICALISTES LIBRES EN EXIL (Paris: International Center of Free Trade Unionists).

54. The Times, Sept. 29, 1977. *See also* ISTINA II, *supra* note 43, at 170, a letter addressed by Charter 77 to Amnesty International.

Ornest was sentenced to three and a half years in prison, Lederer to three years of special regime, Pavlicek to seventeen months with suspended sentence of three years, and Havel to fourteen months with suspended sentence of three years. All prisoners were denied relief on appeal in January 1978, except for Pavlicek, whose sentence was reduced to two and a half years "by reason of his physical condition and age."

(3) *Jaroslaw Sabata, Charter spokesman.* Arrested near the frontier between Poland and Czechoslovakia while he was going to a meeting with representatives of the Polish K.O.R., Sabata was sentenced in February 1979, to nine months in prison at hard labor for "insults to a public officer."[55]

(4) *The founders of V.O.N.S.* On May 29, 1979, the police conducted a number of searches and arrests of leading members of the Committee. The arrests, the charges,[56] and the sentences of these persons evoked a great number of protests in the Western world. The sentences were as follows: Peter Uhl, five years in prison; Vaclav Havel, four years and revocation of a prior suspended sentence; Vaclav Benda, four years; Otla Bednarova and Jiri Dienstbier, three years; and Dana Nemcova, two years with five years suspended sentence.[57] Proceedings continued against Jarmila Belikova, Albert Cerny, Ladislav Lis, Vaclav Maly, and Jiri Nemec who were released from police custody on December 22, 1979.

(5) *Maître Danisz, lawyer for M. Sabata and one of the founders of V.O.N.S.* J. Danisz' case is worthy of detailed description, for it is the case of a lawyer subjected to penal sanctions and prohibited from practicing his profession solely because he did exactly what he was required to do in defending his clients. In May 1979, he was sentenced to three months suspended prison sentence for "insulting a magistrate."[58] In Jaunary 1979, the Prague Bar Association brought disbarment proceedings against him. The proceedings were conducted in June 1979. In January 1980, Maître Danisz was sentenced to ten months in prison and two

55. Le Monde, Jan. 13, 1979, and Feb. 18-19, 1979.

56. The defendants were charged with "subversive activities against the socialist system" under article 98 of the Czechoslovakian Penal Code.

57. The defendants were sentenced in October and December 1979. *See* PROCÈS Á PRAGUE: LE V.O.N.S. COMITÉ DE DÉFENSE DES PERSONNES INJUSTEMENT POURSUIVIES (1980).

58. Le Monde, May 13-14, 1979.

years suspension of his license to practice law for "insults to public officers."[59] This sentence was affirmed on appeal in March 1980. The Czech government denied a number of French lawyers who wish to go to Czechoslovakia to defend their colleague the opportunity to participate in Danisz' defense. In June 1979, the French bar protested his disbarment.[60]

Another form of repression consists of various types of police harassment ranging from arrest followed by interrogation,[61] to attack on the streets by "unknowns," who are in fact plainclothes policemen. For example, on June 5, 1978, Madame Zdena Tominova, wife of the philosopher Julius Tomin and spokeswoman for Charter 77, was brutally attacked by an "unknown" on her way home.[62] She had just released a communique protesting the May 29th arrest of the founders of V.O.N.S.

Involuntary confinement in state psychiatric hospitals has also taken place.[63] In addition, religious persecution must be noted as another form of repression. Individuals at all levels of society are subject to harassment for their religious beliefs, and of course, repressive measures are directed against all churches.[64]

C. *Charter 77, the United Nations Human Rights Covenants, and the Helsinki Final Act*

One of the consistent aspects of Charter 77 has been the emphasis placed on the international juridical instruments for the protection of human rights. The Charter has never ceased to be faithful to its initial inspiration, the two United Nations Cove-

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59. Le Monde, Jan. 25, 1980.

60. Le Monde, June 15, 28, 1979.

61. Charter 77 sent an open letter to G. Husak on Jan. 10, 1978, concerning this subject, ISTINA II, *supra* note 43, at 185.

62. *See* Le Monde, June 8, 10, 11, 1979.

63. *See* ISTINA II, *supra* note 43, at 160, concerning the case of Miroslav Urgan. The philosopher Tomin was also confined for some time in a psychiatric hospital.

64. *See, inter alia, The Condition of the Catholic Church in Czechoslovakia, supra* note 42, at 210-72; *The Present Condition of the Evangelical Church of the Czech Brothers, supra* note 43, at 252-95; *The Condition of the Catholic Church in Czechoslovakia, supra* note 43, at 296-323; COMMISSION FRANÇAISE JUSTICE ET PAIX, *La Situation de L'Eglise en Tchécoslovaquie*, LA DOCUMENTATION CATHOLIQUE No. 1760 at 283-86 (Mar. 18, 1979); COMMISSION NATIONALE SUISSE JUSTICE ET PAIX, SITUATION DE L'EGLISE CATHOLIQUE EN TCHÉCOSLOVAQUIE (Berne 1976). *See also* the full text of the May 7, 1977 petition by a group of 31 Czech protestors to the Czech Parliament, *in* 17 CHRÉTIENS DE L'EST 8-21 (1978).

nants on Human Rights, signed and ratified by Czechoslovakia and regarded as part of Czechoslovak positive law. They create obligations for the public authorities and rights for citizens. As stated earlier, the Final Act of the Helsinki Conference also invokes them.[65]

The great philosopher Jan Patocka forcefully emphasized the fundamental basis of the Charter[66] and his followers have maintained this guiding principle.[67] Almost all documents from the Charter Movement refer to the United Nations Covenants and the Helsinki Final Act, including Document 4 on "Discrimination in Education,"[68] Document 9 on "Freedom of Expression,"[69] and Documents 10 and 11 on "Purposes of the Charter."[70] Document 15 is devoted entirely to "The Covenants and the Helsinki Final Act."[71] These international instruments are emphasized in letters sent by Charter signatories to G. Husak in protest against the mistreatment of L. Hejdanek,[72] to the Czech Parliament and the executive branch on February 8, 1978,[73] and to United Nations Secretary General Waldheim and the heads of the CSCE participating States on November 10, 1978.[74]

The emphasis placed on the Helsinki Final Act should be particularly underscored as the date for the Madrid review meeting, a sequel to the 1977 Belgrade review meeting, draws near.[75] The

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65. *Final Act, supra* note 13.

66. *See* Patocka, *What Charter 77 Is and What It Is Not,* ISTINA I, *supra* note 14, at 197-201.

67. *See* Ricoeur, *The Philosopher of Resistance;* Jakobson, *The Curriculum Vitae of a Czech Philosopher;* Dupuy, *Life and Death of a Philosopher;* Borne, *The Assassinated Philosopher, in* ISTINA I *supra* note 14. *See* Manifesto *supra* note 27, Point 3.

68. ISTINA I, *supra* note 14.

69. ISTINA II, *supra* note 43.

70. *Id.* at 162. *See* text accompanying note 46.

71. *Id.* at 182. *See* text accompanying note 47.

72. *Id.* at 185. *See* text accompanying note 61.

73. *Id.* at 188. *See* text accompanying note 51.

74. *Id.* at 234.

75. On the Final Act and its scope, *see* HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD (T. Buergenthal ed. 1977); Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?* 70 AM. J. INT'L L. 242 (1976). *See also* Martin, *Appels de l'Est à la Conférence pour la sécurité en Europe,* ETUDES 703 (1975); Peronne, *Helsinki—Belgrade—Madrid: La longue marche de l'Europe vers la paix?* ETUDES 293 (Oct. 1978); Laqueur, *The Issue of Human Rights,* COMMENTARY 29 (May 1977); *The Helsinki Accord,* REVIEW OF INTERNATIONAL COMMISSION OF JURISTS 15 (June 1977); Mourgeon, *La Conférence de Belgrade*

Final Act, published in each of the signatory countries,[76] includes within the "Declaration of Principles Guiding Relations among Participating States," Principle VII on "Respect for human rights and fundamental freedoms including freedom of thought, conscience, religion and belief."[77] A number of points clearly emerge from this provision:

> (1) Principle VII specifically refers to international instruments for the protection of human rights, that is, the Universal Declaration of Human Rights and the United Nations Covenants;
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> (2) The Final Act clearly states that fundamental liberties and rights "derive from the inherent dignity of the human person and are essential for his free and full development." As noted by United States attorney Harold Russell, this provision "expresses the Western notion that human rights are inherent in the human condition and are not reduced to favors granted by a particular government when they correspond to its policy and suit its convenience;"[78]
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> (3) The text of Principle VII reaffirms "the right of the individual to *know* and *act* upon his rights and duties in this field."[79]

The signatories of Charter 77, like the founders of V.O.N.S., perceived immediately the part that they could play in implementing the Final Act provisions. Western opinion, at least at the time the Conference on Security and Cooperation in Europe was concluded, had a tendency to underestimate the repercussions and significance that the Helsinki Final Act could have in the communist countries.[80] In a remarkable piece of writing, the

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et les droits de l'homme, [1978] ANNUAIRE FRANÇAIS DE DROIT INTENATIONAL 265; Schachter, *The Twilight Existence of Non-Binding International Agreements,* 71 AM. J. INT'L. L. 296 (1976).

76. The Follow-up section provides: "The text of this Final Act will be published in each participating State, which will disseminate it and make it known as widely as possible." *See Final Act, supra* note 13, at FOLLOW-UP (4).

77. *See id.* at Basket I, § 1, Principle VII.

78. Russell, *supra* note 75, at 269.

79. *Emphasis added.*

80. *See* the excellent remarks by J. Brown of Radio Free Europe, *in Basket Three Implementation of the Helsinki Accords: Hearings before the Commission on Security and Cooperation in Europe,* Vol. II, 95th Cong., 1st Sess., 274-92, at 282-83. This volume also contains the text of Charter 77, at 311, and a list of the original signatories, at 314-20.

Czech historian Vilem Precan explained the extent to which Charter 77 owes its inspiration to the Helsinki Accord and to Czechoslovakia's ratification of the United Nations Covenants.[81] He gives special reference to the political situation in Czechoslovakia and the relative discouragement that prevailed among the dissidents at the time Charter 77 was released.

The moral argument, that is, the notion of co-responsibility of all individuals in the defense of human rights, is added to the juridical arguments. A new public forum has been created, a development which few at Helsinki in 1975 could have predicted. History sometimes unfolds in such a fashion.

81. Precan, *An Introduction to Charter 77*, in THE RIGHT TO KNOW, THE RIGHT TO ACT: DOCUMENTS OF HELSINKI DISSENT FROM THE SOVIET UNION AND EASTERN EUROPE 6-11 (Commisson on Security and Cooperation in Europe, May 1978).