

1978

## Freedom of Transnational Movement: The Helsinki Accord and Beyond

Daniel C. Turack

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### Recommended Citation

Daniel C. Turack, Freedom of Transnational Movement: The Helsinki Accord and Beyond, 11 *Vanderbilt Law Review* 585 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol11/iss4/1>

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# Vanderbilt Journal of Transnational Law

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VOLUME 11

FALL 1978

NUMBER 4

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## FREEDOM OF TRANSNATIONAL MOVEMENT: THE HELSINKI ACCORD AND BEYOND

*Daniel C. Turack\**

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### I. INTRODUCTION

Initial formal evaluation of the implementation of the Final Act of the Conference on Security and Co-operation in Europe signed at Helsinki on August 1, 1975,<sup>1</sup> [hereinafter Helsinki Accord] took place at a 35-nation conference<sup>2</sup> in Belgrade during the period from

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1. Conference on Security and Cooperation in Europe, Final Act, August 1, 1975, *Reprinted in* 73 DEP'T ST. BULL. 323 (1975); 14 INT'L LEGAL MAT. 1293 (1975) [hereinafter cited as Helsinki Accord]. An appraisal of the Final Act and its ramifications are examined in the collection of essays, HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD (T. Buergenthal ed. 1977). See generally Coughlin, *Monitoring of the Helsinki Accords: Belgrade 1977*, 10 CASE W. RES. J. INT'L L. 511 (1977); Schacter, *The Human Rights Provisions of the Helsinki Final Act—A Report on a Conference Convened by the Committee on International Human Rights*, 33 REC. ASS'N BAR CITY N.Y. 105 (1978).

2. Participants at the Conference included representatives of Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Federal Republic of Germany, Finland, France, German Democratic Republic, Greece, Holy See,

October 4, 1977, to March 9, 1978. The Helsinki Accord, though not a treaty,<sup>3</sup> sets forth various principles of governmental conduct concerning freedom of transnational movement. The Accord morally commits<sup>4</sup> participating states to implement certain measures either domestically or with other states, to respect, promote, and encourage human rights and fundamental freedoms.<sup>5</sup>

The Helsinki Accord is divided into three principal parts which are referred to as "baskets." Basket III, "Cooperation in Humanitarian and Other Fields," obligates signatories to facilitate freer movement<sup>6</sup> on the basis of family ties, family reunification, proposed marriages, and personal or professional travel. Opportunities to visit family members located in foreign countries on a temporary or regular basis must be provided without distinction as to national origin or destination.<sup>7</sup> Cases of urgency, such as serious

Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Rumania, San Marino, Spain, Sweden, Switzerland, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States of America, and Yugoslavia.

3. The concluding section of the Helsinki Accord entitled "Follow Up to the Conference" states that "[t]he Government of the Republic of Finland is requested to transmit to the Secretary-General of the United Nations the text of this Final Act, which is not eligible for registration under article 102 of the Charter of the United Nations . . . ." 73 DEP'T ST. BULL. at 349; 14 INT'L LEGAL MAT. at 1325. For an interesting viewpoint on this type of agreement, see Schacter, *The Twilight Existence of Non-Binding International Agreements*, 71 AM. J. INT'L L. 296 (1971).

4. The United States position at the Helsinki Conference stressed the legally nonbinding nature of the Final Act. See Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?*, 70 AM. J. INT'L L. 242, 246-48 (1976).

5. In Principle VII the Parties:

confirm the right of the individual to know and act upon his rights and duties in this field.

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declarations of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound. 73 DEP'T ST. BULL. at 325; 14 INT'L LEGAL MAT. at 1295.

6. The participating States must "[m]ake it their aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, . . . [and] [d]eclare their readiness to these ends to take measures which they consider appropriate and to conclude agreements or arrangements among themselves, as may be needed . . . ." 73 DEP'T ST. BULL. at 339; 14 INT'L LEGAL MAT. at 1313.

7. The Accord provides:

(a) Contacts and Regular Meetings on the Basis of Family Ties

illness or death, receive priority status.<sup>8</sup> Requests to relocate in order to reunite families are to be dealt with in a "positive and humanitarian" spirit.<sup>9</sup> Persons who are sick or elderly are to receive

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In order to promote further development of contacts on the basis of family ties the participating States will favorably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.

Applications for temporary visits to meet members of their families will be dealt with without distinction as to the country of origin or destination: existing requirements for travel documents and visas will be applied in this spirit. The preparation and issue of such documents and visas will be effected within reasonable time limits; cases of urgent necessity—such as serious illness or death—will be given priority treatment. They will take such steps as may be necessary to ensure that the fees for official travel documents and visas are acceptable.

They confirm that the presentation of an application concerning contacts on the basis of family ties will not modify the rights and obligations of the applicant or of members of his family.

73 DEP'T ST. BULL. at 340; 14 INT'L LEGAL MAT. at 1313-14.

8. *Id.*

9. The Accord provides:

(b) Reunification of Families

The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character—such as requests submitted by persons who are ill or old.

They will deal with applications in this field as expeditiously as possible.

They will lower where necessary the fees charged in connection with these applications to ensure that they are at a moderate level.

Applications for the purpose of family reunification which are not granted may be renewed at the appropriate level and will be reconsidered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned; under such circumstances fees will be charged only when applications are granted.

Persons whose applications for family reunification are granted may bring with them or ship their household and personal effects; to this end the participating States will use all possibilities provided by existing regulations.

Until members of the same family are reunited meetings and contacts between them may take place in accordance with the modalities for contacts on the basis of family ties.

The participating States will support the efforts of Red Cross and Red Crescent Societies concerned with the problems of family reunification.

They confirm that the presentation of an application concerning family reunification will not modify the rights and obligations of the applicant or of members of his family.

The receiving participating State will take appropriate care with regard

special attention. Receiving states agree to see that relocated individuals are afforded opportunities for education, medical assistance, and social security equal to those of citizens.<sup>10</sup> Citizens of different signatories wishing to marry are to be allowed appropriate entry and exit documents.<sup>11</sup> Married couples and their minor children may transfer their permanent residence to a state in which one spouse was normally domiciled.<sup>12</sup> The participating states have also agreed to simplify procedures for exit and entry and to ease other security restrictions to promote travel for personal or professional reasons.<sup>13</sup>

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to employment for persons from other participating States who take up permanent residence in that State in connection with family reunification with its citizens and see that they are afforded opportunities equal to those enjoyed by its own citizens for education, medical assistance and social security.

73 DEP'T ST. BULL. at 340; 14 INT'L LEGAL MAT. at 1314.

10. *Id.*

11. The Accord provides:

(c) Marriage between Citizens of Different States

The participating States will examine favourably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State.

The processing and issuing of the documents required for the above purposes and for the marriage will be in accordance with the provisions accepted for family reunification.

In dealing with requests from couples from different participating States, once married, to enable them and the minor children of their marriage to transfer the permanent residence to a State in which either one is normally a resident, the participating States will also apply the provisions accepted for family reunification.

12. *Id.*

13. The Accord provides:

(d) Travel for Personal or Professional Reasons

The participating States intend to facilitate wider travel by their citizens for personal or professional reasons and to this end they intend in particular:

—gradually to simplify and to administer flexibly the procedures for exit and entry;

—to ease regulations concerning movement of citizens from the other participating States in their territory, with due regard to security requirements.

They will endeavour gradually to lower, where necessary, the fees for visas and official travel documents.

They intend to consider, as necessary, means—including, in so far as appropriate, the conclusion of multilateral or bilateral consular conventions or other relevant agreements or understandings—for the improvement of arrangements to provide consular assistance.

*Id.*

Transnational movement for journalists should become much easier. The signatories to the Helsinki Accord agree to examine visa requests expeditiously, to allow multiple entries and exits for specified periods, to permit temporary residences, to provide reciprocal procedures for travel arrangements between countries, and to increase opportunities for journalists to communicate personally with their sources.<sup>14</sup>

Sovereign rights of the signatory states are not prejudiced under the agreement. The Helsinki Accord did not create new legal obligations; it confirmed existing moral and political obligations. Basket III, however, must be read in conjunction with Basket I, which deals with questions relating to security in Europe espoused in the Declaration on Principles Guiding Relations Between Participating States.<sup>15</sup> Hence, the Helsinki Accord, while encompassing the free mobility of persons, also takes into account respect for the sovereign right of each state to determine its own laws and regulations (Principle I), nonintervention in internal affairs (Principle VI), and the duty to cooperate (Principle IX).<sup>16</sup>

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14. The Accord provides:

The participating States, desiring to improve the conditions under which journalists from one participating State exercise their profession in another participating State, intend in particular to:

—examine in a favourable spirit and within a suitable and reasonable time scale requests from journalists for visas;

—grant to permanently accredited journalists of the participating States, on the basis of arrangements, multiple entry and exit visas for specified periods;

—facilitate the issue to accredited journalists of the participating States of permits for stay in their country of temporary residence and, if and when these are necessary, of other official papers which it is appropriate for them to have;

—ease, on a basis of reciprocity, procedures for arranging travel by journalists of the participating States in the country where they are exercising their profession, and to provide progressively greater opportunities for such travel, subject to the observance of regulations relating to the existence of areas closed for security reasons;

—ensure that requests by such journalists for such travel receive, in so far as possible, an expeditious response, taking into account the time scale of the request;

—increase the opportunities for journalists of the participating States to communicate personally with their sources, including organizations and official institutions.

73 DEP'T ST. BULL. at 342; 14 INT'L LEGAL MAT. at 1317.

15. 73 DEP'T ST. BULL. at 324-26; 14 INT'L LEGAL MAT. at 1293-97.

16. 73 DEP'T ST. BULL. at 324-26; 14 INT'L LEGAL MAT. at 1293-96.

## II. THE HELSINKI REVIEW CONFERENCE AT BELGRADE

The Helsinki Accord provides for a continuing review<sup>17</sup> to determine whether the commitments undertaken have been implemented. The first formal review was held at Belgrade in 1977. Assessment of tangible achievements or shortcomings at Belgrade must reflect the actions taken by the signatories to the Accords since August 1, 1975.<sup>18</sup> In the Polish-West German Resettlement Protocol, concluded at Warsaw on October 9, 1975,<sup>19</sup> Poland undertook to allow repatriation of 120,000 to 125,000 ethnic Germans to the Federal Republic of Germany from 1976 to 1979, in return for a lump-sum settlement of pension claims against the Third Reich and a long-term, low-interest trade credit.<sup>20</sup> In addition, the Polish Foreign Minister stated on March 9, 1976, that no deadline would be placed on applications for exit visas. This statement preserved the criteria set out in the Polish government's "Information," announced at the time of its 1970 treaty with the Federal Republic of Germany, that exit permits would be available to ethnic Germans and for the purpose of reuniting families.<sup>21</sup> Chancellor

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17. In that part of the Helsinki Accord entitled "Follow-up to the Conference" the participating states resolved to implement the final Act unilaterally, bilaterally, and multilaterally, and:

2. Declare furthermore their resolve to continue the multilateral process initiated by the Conference:

(a) by proceeding to a thorough exchange of views both on the implementation of the provisions of the Final Act and of the tasks defined by the Conference, as well as, in the context of the questions dealt with by the latter, . . .

(b) by organizing to these ends meetings among their representatives, beginning with a meeting at the level of representatives appointed by the Ministers of Foreign Affairs. This meeting will define the appropriate modalities for the holding of other meetings which could include further similar meetings and the possibility of a new Conference;

3. The first of the meetings indicated above will be held at Belgrade in 1977

. . . . .  
73 DEP'T ST. BULL. at 348-49; 14 INT'L LEGAL MAT. at 1324-25.

18. See also Turack, *Freedom of Movement Issues in the Modern World*, 11 CASE W. RES. J. INT'L. (1978).

19. 1976 Bundesgesetzblatt (Teil II) 393 *et seq.* For relevant provisions of the Agreement, see German Tribune, Mar. 21, 1976, at 1-2; 7 Relay from Bonn (No. 23), Feb. 19, 1976, App. at 1 (published by the German Information Center, New York, New York).

20. German Tribune, Mar. 21, 1976, at 1-2; N.Y. Times, Mar. 13, 1976, at 8, col 1.; 7 Relay from Bonn (No. 23), Feb. 19, 1976, App. at 1. See also N.Y. Times, April 2, 1976, at 3, col. 1.

21. Relay from Bonn, Mar. 9, 1976, App. at 1.

Schmidt subsequently announced that pursuant to the Protocol, in 1975 and 1976, respectively, 7,040 and 29,366 ethnic Germans returned to the Federal Republic of Germany from Poland.<sup>22</sup> Travel restrictions were also eased between the countries, and during 1976, 200,000 Poles visited the Federal Republic and 400,000 West Germans traveled to Poland.<sup>23</sup>

Travel restrictions on nationals of the Eastern European countries continue between Eastern and Western Europe, but marginal gains have been made since 1975. Various official and unofficial monitoring groups have brought attention to restrictive state practices. Instances of governmental pressure upon and official harassment of many individuals belonging to some of these monitoring groups are well-known. In Czechoslovakia, Charter 77,<sup>24</sup> a human-rights manifesto, was issued on January 1, 1977. Signatories to the document, described therein as an informal, open association, alleged various violations of human rights including infringement of the right to travel, despite Czechoslovakia's acceptance of the International Covenant on Civil and Political Rights.<sup>25</sup> Charter 77 also protested arbitrariness in issuing entry visas "to foreign nationals, many of whom are prevented from visiting Czechoslovakia because they had some official or friendly contact with persons who had been discriminated against in our country."<sup>26</sup> The United States subsequently charged Czechoslovakia with violating the provisions of the Helsinki Accord.<sup>27</sup> Czechoslovakian government

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22. The statement and figures were contained in a chapter on foreign policy in a report on the activities of the West German Government in 1975, published by the Press and Information Office of the Federal Government in Bonn, dated December 29, 1975. See 25 Bulletin (No. 8), April 13, 1977, at 58 (excerpt from address by Chancellor Helmut Schmidt to Bundestag in connection with the debate on implementation of the Accord).

23. German Tribune (No. 791), June 12, 1977, at 5.

24. English translations of Charter 77 appear in N.Y. Times, Jan. 27, 1977, at 16, col. 1; The Times (London), Feb. 11, 1977, at 7.

25. G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16), U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976). The principle of international mobility is enunciated in article 12, paragraphs 2, 3 and 4, as follows:

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

26. N.Y. Times, Jan. 27, 1977, at 16, col. 3.

27. Globe and Mail, Jan. 27, 1977, at 55.



officials soon thereafter asked Austria to grant political asylum to dissidents.<sup>28</sup> Although Austria was willing to accept such activists, the dissidents did not wish to leave Czechoslovakia because they would be unable to return.<sup>29</sup> Despite a mounting campaign of governmental intimidation, dismissals, and arrests, the number of signatories to Charter 77 continues to increase in Czechoslovakia.<sup>30</sup>

In Rumania during February 1977, a group of fifteen dissidents made an open appeal to the 35 signatory states to the 1975 Helsinki Accord, in which they asked the states to persuade the Rumanian government to honor its constitutional guarantees. President Ceausescu ordered repressive measures against the fifteen signers, denouncing them, together with other prospective emigrants, as traitors to Rumania. Passports and exit visas were quickly made available to encourage the dissidents to leave the country permanently.<sup>31</sup> Rumanian citizens continued to be ordered to leave the country and to stay abroad.<sup>32</sup>

The Helsinki Accord has increased the number of visas issued to ethnic Germans in the Soviet Union<sup>33</sup> seeking to be reunited with their families.<sup>34</sup> However, periodic clashes in Moscow involving this minority have been reported.<sup>35</sup> Although no mention of repatriation appears in the West German-Czechoslovakian Nor-

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28. N.Y. Times, Jan. 28, 1977, § 1 at 1, col. 1.

29. *Id.*, Jan. 29, 1977, at 3; The Times (London), Aug. 18, 1978, at 4, col. 5; *id.*, Aug. 19, 1978, at 5, col. 3.

30. See generally COMMISSION ON SECURITY AND COOPERATION IN EUROPE, THE RIGHT TO KNOW, THE RIGHT TO ACT: DOCUMENTS OF HELSINKI DISSENT FROM THE SOVIET UNION AND EASTERN EUROPE 6-29 (1978) (citing additional sources concerning the Charter 77 movement, a compilation of a range of Helsinki violations and official repression in Czechoslovakia); N.Y. Times, Dec. 19, 1977, at 2, col. 1; [hereinafter referred to as DOCUMENTS OF HELSINKI DISSENT].

31. See Globe and Mail, Feb. 15, 1977, at 2; N.Y. Times, Feb. 19, 1977, at 8, col. 1; *id.*, Feb. 18, 1977, at 1, col. 2; *id.*, Feb. 15, 1977, at 1, col. 2.

32. See N.Y. Times, Jan. 14, 1977, § 1 at 3, col. 1. See also DOCUMENTS OF HELSINKI DISSENT, *supra* note 23, at 50-69. The Times (London), Feb. 19, 1977, at 6.

33. A brief account of how the ethnic Germans became residents in the Soviet Union is recounted by Reddaway, *Germans Trapped Inside Russia*, The Times (London), June 12, 1976, at 14, col.3.

34. During 1976, almost 10,000 emigrant persons were united. See 25 Bulletin (No. 13), June 22, 1977, at 92-93; *id.* (No. 8), April 13, 1977, at 58; 8 Relay from Bonn (No. 47), Supp., at 2.

35. See CDU/CSU COALITION, WHITE PAPER ON THE HUMAN RIGHTS SITUATION IN GERMANY AND OF GERMANS IN EASTERN EUROPE 66, Bundestag (Oct., 1977) [hereinafter cited as CDU/CSU WHITE PAPER].

malization Treaty of December 11, 1973,<sup>36</sup> Czechoslovakia agreed to issue ethnic Germans exit visas<sup>37</sup> at that time in a separate exchange of diplomatic notes between the Foreign Ministers. The good faith of the Prague authorities in this regard, however, remains suspect.<sup>38</sup>

### III. GERMAN REACTION TO THE ACCORD

Commitments to freedom of movement between the two Germanies had already been undertaken by East and West Germany prior to the Accord. Moreover, the unique situation involving post-war Berlin must also be taken into account. Several agreements, including the Quadripartite Agreement on Berlin<sup>39</sup> signed by France, the Soviet Union, the United Kingdom and the United States, the Supplementary Arrangements<sup>40</sup> signed by the two German states on December 17 and 20, 1971, the inter-German Treaty signed in Berlin on May 26, 1972,<sup>41</sup> relating to traffic, and the Treaty on inter-German relations,<sup>42</sup> signed by the two German

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36. [1974] Bundesgesetzblatt (Teil II) 1127.

37. German Tribune, Oct. 3, 1976, at 2.

38. CDU/CSU WHITE PAPER, *supra* note 32, at 80.

39. Sept. 3, 1971, 24 U.S.T. 283, T.I.A.S. NO. 7551 (entered into force June 3, 1972; see 66 AM. J. INT'L L. 242 (1972); 10 INT'L LEGAL MAT. 895 (1971). For background and analysis of the Agreement, see Doeker, Melsheimer & Schroder, *Berlin and the Quadripartite Agreement*, 67 AM J. INT'L L. 44 (1973). For an appraisal of the Agreement, see Rush, *The Berlin Agreement—An Assessment*, 65 DEP'T ST. BULL. 489 (1971).

40. This reference concerns a) the Agreement between the German Democratic Republic and the Federal Republic of Germany on the Transit Traffic of Civilian Persons and Goods between the Federal Republic of Germany and Berlin (West), and b) the Arrangement between the Government of the German Democratic Republic and the Senate on Facilitating and Improving the Traffic of Travellers and Visitors. English translations of the texts are found in THE BERLIN SETTLEMENT 39, 61 (Press & Information Office, Federal Republic of Germany, 1972) (respectively); 11 INT'L LEGAL MAT. 5, 11 (1972) (respectively). Both the Agreement and the Arrangement entered into force on June 3, 1972.

41. Treaty on Questions Related to Traffic, May 26, 1972, German Democratic Republic-Federal Republic of Germany, *reprinted in* 11 INT'L LEGAL MAT. 726 (1972).

42. Treaty on the Basis of Intra-German Relations, June 20, 1973, German Democratic Republic-Federal Republic of Germany, *reprinted in* 12 INT'L LEGAL MAT. 16 (1973). See generally Frowein, *Legal Problems of the German Ostpolitik*, 23 INT'L & COMP. L.Q. 105 (1974); Geck, *Germany and Contemporary International Law*, 9 TEX. INT'L L.J. 263 (1974). At the time of signing the Treaty, the Parties exchanged correspondence undertaking to reunite families, facilitate across-border travel, tourism and visitor traffic.

states on December 21, 1972, each created operative obligations upon the parties concerning freedom of movement. The impact of the Helsinki Accord must be gauged against this background of authority, together with a review of the actual results of the enumerated agreements.

Although some difficulties did arise, numerous humanitarian improvements were realized as a result of the agreements between the two Germanies. Federal Chancellor Schmidt in his state of the nation address to the German Bundestag on January 29, 1976, announced that in 1975, approximately three million travelers from the Federal Republic went to the German Democratic Republic, and more than three million West Berliners visited East Germany and East Berlin. Furthermore, 1.3 million East German old-age pensioners visited the Federal Republic<sup>43</sup> and 5,400 persons were able to leave East Germany for the Federal Republic through family reunification.<sup>44</sup> Meanwhile, occasional incidents along the border primarily involving East German overreaction to approaching persons, have resulted in great hardship, physical harm, and even death to innocent travelers.<sup>45</sup> More than 6,000 persons fled to the Federal Republic illegally<sup>46</sup> from East Germany, and another 673 persons escaped from East Germany by challenging the Berlin wall and minefields along the 865-mile border in 1975.

Although one source has indicated that procedural improvements have been introduced for West Germans wishing to visit East Germany,<sup>47</sup> numerous reports have described procedural obstacles which continue to confront East German citizens seeking to emigrate.<sup>48</sup> Nevertheless, some eight million West Berliners and West Germans visited the German Democratic Republic and East Berlin, and 1.4 million East Germans visited the Federal Republic

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43. 3 BULLETIN ARCHIVE SUPP. (No. 2) 6 (1976); Relay From Bonn (Special Edition), Jan. 29, 1976, Supp., at 7.

44. 24 BULLETIN (No. 23) 168-69 (1976); Relay from Bonn, June 15, 1976, Document Section.

45. 24 BULLETIN (No. 3) 11 (1976).

46. See 24 BULLETIN (No. 27) 195 (1976); The Times (London), May 15, 1976, at 6.

47. Relay from Bonn, Sept. 10, 1976, at 2.

48. See, e.g., Lentz, *East Germany in New Crackdown Against Dissidents and Emigration*, N.Y. Times, Nov. 19, 1976, at A1, col. 4; Whitney, *East Germans Grow Frustrated Under Restrictions*, N.Y. Times, April 5, 1976, at 3, col. 1. For the story involving East German refusal of access to the transit routes to Berlin of 11 buses of West German youths going to a rally to protest the existence of the Berlin Wall on its fifteenth anniversary, see 24 BULLETIN (No. 28) 200 (1976); N.Y. Times, Sept. 5, 1976, at 11, col. 1.

by the end of 1976. According to the "Association of 13 August," a group founded to protest the existence of the Berlin Wall, approximately 5,200 East Germans escaped to the West,<sup>49</sup> while 9,900 legally emigrated to the Federal Republic during 1976.<sup>50</sup>

The outlook was less encouraging in early 1977. On New Year's Day, the East German government introduced visa requirements for all visitors to East Berlin from countries outside the Communist bloc on a day visit.<sup>51</sup> The measure was primarily intended to impede foreign workers residing in West Berlin.<sup>52</sup> Foreign workers were required to pay \$2.20 for the visa, and \$2.85 which had to be changed into East German currency to visit East Berlin under the measure. The measure was an attempt by the German Democratic Republic to treat Berlin as if no difference existed between it and the rest of the country. The effect of the measure was to obfuscate the legal status of Berlin, as the city was under joint administration by the quadripartite Allies of World War II, France, the Soviet Union, the United Kingdom, and the United States.<sup>53</sup>

The situation was further intensified on January 11, 1977, when East Germans seeking to enter the West German mission in East

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49. The Times (London), Dec. 30, 1976, at 4.

50. *Id.*

51. German Tribune, Jan. 16, 1977, at 4.

52. *See id.*

53. N.Y. Times, Jan. 20, 1977, at C13. On January 1, the East German border guards withdrew from stations on the roads leading out of East Berlin into East Germany. The Western allies, in a statement of protest on January 6, reminded the Soviet Union of its obligations, and that the G.D.R. policies further restricting freedom of movement within Greater Berlin and removing control points between the Eastern sector of Berlin and the G.D.R. were intended "to give the impression that the German Democratic Republic could by unilateral action change the status of Greater Berlin, in violation of the Quadripartite Agreement of September 3, 1971, which applies to the whole of Berlin. Neither actions nor statements by a third state can affect the rights and responsibilities of the four powers or the status of Greater Berlin, which remains unchanged." 25 BULLETIN (No. 2), 9-10 (1977). Western allied officials continued their practice of submitting passports to guards of the Soviet Union when entering East Berlin. They did not purchase visas. *See* N.Y. Times, Jan. 6, 1977, at 7, col. 2.

The East German officials also issued a statement on January 14, 1977, that they would no longer publish a separate legal gazette to list relevant laws and regulations operative in East Berlin. Henceforth, in treating the capital as an integral part of the state, all laws and regulations applying to the State were also applicable to the capital, and therefore, issued in one publication. The Times (London), Jan. 15, 1977, at 3.

A further irritant was added on February 25, when East Germany introduced a toll of \$4.00 on each automobile entering East Berlin from West Berlin. N.Y. Times, Feb. 26, 1977, at 10, col. 1.

Berlin for the purpose of applying to emigrate were barred by police. The West German government protested vehemently that such acts disturbed the "core of normalization," and the harassment was brought to an end on the next day.<sup>54</sup> In addition, during January 1977, West Berliners, West Germans, and East Berliners who had legally emigrated from the G.D.R. were refused reentry into the eastern sector of Berlin and East Germany without reason.<sup>55</sup>

On the basis of the series of treaties between the two German states previously discussed, West Germany had adopted the policy of recognition of an all-German nationality and nonrecognition of an East German nationality. German Democratic Republic leader Honecker responded on February 22, 1977, stating that as long as the West German policy continued, no hope could exist for granting East Germans the right of free travel to the West.<sup>56</sup> The German Democratic Republic contended that the Quadripartite Agreement of Berlin<sup>57</sup> applied only to the Western sector of Berlin. The attempts by the G.D.R. to treat East Berlin as an integral part of East Germany were the subject of a Declaration on Berlin<sup>58</sup>

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54. Lentz, *East Germans End Ban at Embassy*, N.Y. Times, Jan. 13, 1977, at A4, col. 3; Lentz, *Police Bar East Germans From West German Mission*, N.Y. Times, Jan. 12, 1977, at A3, col. 1; The Times (London), Jan. 12, 1977, at 6, col. 3. See also Whitney, *East German Curbs Assailed by Schmidt*, N.Y. Times, Jan. 20, 1977, at C13, col. 1.

55. The Times (London), Feb. 8, 1977, at 7, col. 3.

56. 25 BULLETIN (No. 6) 44 (1977); N.Y. Times, Feb. 23, 1977, at A4, col. 3. It is the Federal Republic's policy to issue West German identity papers to East Germans who seek such documents. Moreover, in his statement on the state of the nation made to the German Bundestag on March 9, 1978, Federal Chancellor Schmidt, after reminding the Bundestag that the 1972 Treaty on the Basis of Relations had been signed by the Federal Republic with the reservation that, "[q]uestions of nationality have not been regulated by the Treaty," stated:

Our position has not changed since then. It is in accord with international law pursuant to which nationality is determined by the law of the State concerned. We are accordingly entitled to hold on to German nationality as defined in the Basic Law and our laws.

That means for example: All Germans, wherever they may come from, whether from the Soviet Union, from Romania, from South America or the G.D.R., are entitled to live in the Federal Republic of Germany.

I am well aware that some years ago the G.D.R. passed a citizenship law of its own . . . German nationality as defined in our Basic Law and in our legislation remains unaffected by this act of the G.D.R.

5 BULLETIN ARCHIVE SUPP. (No. 3), 6-7 (1978).

57. Quadripartite Agreement of Berlin, *supra* note 39.

58. See 25 BULLETIN (No. 11) 78 (1977); German Tribune, May 22, 1977, at 1; Relay from Bonn, May 16, 1977, Documents Section; The Times (London), May

signed in London on May 9, 1977, by France, the United Kingdom, and the United States, to the effect that the special status of Berlin could not be modified unilaterally.

During 1977, eight million West Germans and West Berliners traveled to the German Democratic Republic or East Berlin. German Democratic Republic citizens who traveled to the Federal Republic in 1977 numbered 1.3 million (primarily old-age pensioners), while another 40,000 were allowed to travel to the Federal Republic on the basis of urgent family necessities. In addition, more than a thousand Germans emigrated to the G.D.R. in 1977.<sup>59</sup> At the same time, thousands of Indians, Pakistanis, and nationals of Middle East countries were allowed to enter West Berlin from the eastern sector and ask for political asylum. Due to assertions by France, the United Kingdom, and the United States that western sector access should be free of passport and customs controls, those persons entered West Berlin without consideration of their purpose.<sup>60</sup> Marriages of convenience to enable such foreigners to become permanent residents and gain work permits also increased.<sup>61</sup>

In order to stifle criticism within East Germany during the Helsinki Review Conference at Belgrade, the German Democratic Republic silenced many of its critics by forcing their emigration.<sup>62</sup> Despite this policy, the East German penal code provides that those seeking official permission to emigrate could be charged with the offense of "incitement hostile to the state."<sup>63</sup> Amnesty Interna-

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10, 1977, at 6, col. 4. For the Soviet Union's reaction to the London Declaration, see *The Times* (London), May 16, 1977, at 3, col. 7. A good evaluation on the success of the Quadripartite Agreement before the 1977 events outlined is seen in Catudal, *The Berlin Agreement of 1971: Has It Worked?*, 25 INT'L & COMP. L.Q. 766 (1976). For an evaluation by the governing mayor of West Berlin, Dietrich Stobbe, see 4 BULLETIN ARCHIVE SUPP. (No. 2) 1 (1977); *The German Tribune: Political Affairs Review* (No. 30), Sept. 1977, at 1 (a supplement selected from German Periodicals).

59. 5 BULLETIN ARCHIVE SUPP. (No. 3) 3 (1978).

60. N.Y. Times, Dec. 4, 1977, at 14, col. 3; *The Times* (London), Aug. 31, 1978, at 4, col. 2; *id.*, Aug. 2, 1978, at 5, col. 4.

61. *German Tribune*, Sept. 25, 1977, at 14; *The Times* (London), Sept. 17, 1977, at 4, col. 6.

62. N.Y. Times, Sept. 24, 1977, at 1, col. 1. It has been a practice since 1961, for the West German government to ransom political prisoners from East German jails by paying up to \$15,000 per person. The price varied according to the individual's occupation. Neither of the German governments admits this practice in "human trade." See *German Tribune*, Apr. 16, 1978, at 3; *Globe and Mail*, Oct. 7, 1975, at 10; N.Y. Times, May 27, 1978, at 2, col. 6.

63. N.Y. Times, Oct. 11, 1977, at 14, col. 4. Authorities pressed many of these

tional reported in October 1977 that the G.D.R. was holding thousands of dissidents as political prisoners who tried to leave the country without permission.

#### IV. SOVIET REACTION TO THE ACCORD

Initial Soviet reaction to the humanitarian provisions in the Helsinki Accord was immediate. Before the Helsinki Meeting, it was Soviet practice to issue accredited journalists an exit and reentry visa allowing the bearer to leave the country and return one time. This procedure was required for each occasion when a journalist desired to leave the Soviet Union. On August 5, 1975, the Soviet government declined for the first time to issue multiple-use exit and entry visas to resident American correspondents.<sup>64</sup> On September 29, 1975, the United States and the Soviet Union reached an agreement whereby resident American journalists would be issued multiple exit-entry visas by Soviet authorities to permit them to travel on assignment without bureaucratic delay.<sup>65</sup> Reciprocal treatment was accorded Soviet journalists who wished to enter the United States. Restrictions on the movement of foreign journalists in the Soviet Union were further relaxed on March 1, 1976. Foreign journalists could thereafter travel to all Soviet cities open to foreign diplomats upon 24- or 48-hour notice. Moreover, foreign journalists based in Moscow could thereafter travel beyond the former 25-mile radius limit from central Moscow.<sup>66</sup>

The Soviet attitude toward the free mobility of its citizens both internally and externally is restrictive. Internally, a passport system was first introduced by decree on December 27, 1932. On December 25, 1974, a revised internal passport system was an-

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dissidents to recant or to emigrate, and if the latter course was chosen, to deprive the individual of G.D.R. citizenship. See Lentz, *Dissident Actor in East Germany Follows His Star to West Berlin*, *id.*, June 27, 1977, at 12, col. 4.

64. N.Y. Times, Aug. 6, 1975, at 10, col. 4.

65. See Wren, *Soviet to Extend Newsmen's Visas*, N.Y. Times, Sept. 30, 1975, at 11, col. 1; Globe and Mail, Sept. 30, 1975, at 1. A facsimile of the Soviet exit visa appears in the N.Y. Times, Sept. 16, 1972, at 29, col. 3, and March 25, 1973, at E5, col. 2. It is interesting to note that a similar agreement could not be worked out between the United States and the German Democratic Republic because of the policy of the latter government to refuse to accredit United States correspondents residents in Bonn or West Berlin for multiple entry visas, while such correspondents resident in other cities would receive accreditation and multiply entry visas. See E. McDOWELL, *DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW* 1976 at 178-79 (1977).

66. N.Y. Times, March 2, 1976, at 3; *id.*, Jan. 1, 1976, at 2, col. 2.

nounced,<sup>67</sup> requiring all citizens over the age of sixteen to possess a passport for travel within the Soviet Union. Internal passports are renewed at ages 25 and 45.<sup>68</sup> After the Helsinki Conference, however, the Soviet Union significantly overhauled its complex emigration procedure to make external travel easier. Exit fees were reduced from 400 to 300 rubles, the bureaucratic process was simplified, and a one time passport fee was introduced although more than one application to emigrate is often necessary.<sup>69</sup> The emigration of Soviet Jews to Israel is somewhat more difficult. Since the U.S.S.R. and Israel have no diplomatic relations, emigrants applying to go to Israel must renounce Soviet citizenship, which costs an additional 500 rubles.<sup>70</sup> In 1975 and 1976, respectively, 13,189 and 14,138 persons officially emigrated from the Soviet Union.<sup>71</sup>

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67. *Globe and Mail*, Dec. 27, 1974, at 8; *N.Y. Times*, Dec. 26, 1974, at 8, col. 3.

68. *The Times* (London), July 24, 1975, at 5, col. 4. The presence of the internal passport system enables "administrative surveillance" of persons released from prison or labor camps as well as persons away from their permanent residence. See Comment, *On Adoption of the Statute on the Passport System in the U.S.S.R.*, 14 *SOVIET L. & GOV'T* 67 (No. 3, 1975). On the topic of internal movement, see Boim, *The Passport System in the U.S.S.R. and Its Effect upon the Status of Jews*, 5 *ISRAEL Y.B. HUMAN RIGHTS* 141 (1975). For a brief report on the problems to be encountered by a person not having an internal passport, see Shipler, *Uzbek Jew, Deprived of Passport, Gets 3 Years for Not Having One*, *N.Y. Times*, Jan. 14, 1977, at A2, col. 5.

69. For a Soviet official's view on emigration, see Shumilin, *The Soviet View of Emigration*, *N.Y. Times*, Feb. 3, 1976, at 31, col. 2.

70. *N.Y. Times*, Jan. 21, 1976, at 8, col. 4; *The Times* (London), Jan. 23, 1976, at 9, col. 1. The Israeli immigration visa is obtained from the Netherlands embassy in Moscow which handles Israeli interests in the U.S.S.R. Jewish emigres are channeled through Vienna under long-standing accords involving the U.S.S.R., Austrian and Israeli governments and various international and United States relief agencies. *N.Y. Times*, Oct. 14, 1977, at A3, col. 4.

71. These figures are based on visas issued. *N.Y. Times*, Jan. 22, 1978, at 13, col. 1. A spokesman for the Intergovernmental Committee for European Migration indicated that for 1975 the Soviet authorities gave 13,238 persons permission to emigrate, about 8,400 of them to Israel. *Globe and Mail*, May 14, 1976, at 11; see Wren, *Soviet Appears to Tighten Restriction on Emigration*, *N.Y. Times*, Jan. 3, 1976, at 1, col. 1. The United States Department of State reported that during 1975, 13,000 exit visas were granted to Soviet citizens wishing to emigrate to Israel; and 1,162 visas for emigrants to the United States were processed at the United States Embassy in Moscow. *N.Y. Times*, Aug. 14, 1977, at 2. In 1976, the Embassy processed 2,574 persons who received permission to emigrate to the United States. U.S. DEP'T OF STATE, SPECIAL REPORT NO. 39, THIRD SEMI-ANNUAL REPORT TO THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, JUNE 1-DECEMBER 1, 1977, at 14 (Dec. 1977) [hereinafter cited as SPECIAL REPORT NO. 39]. The Intergovernmental Committee for European Migration reported in December



In the months immediately preceding the Belgrade Conference there was no noticeable change in Soviet policy on Basket III provisions.<sup>72</sup> The Soviet pace of resolving "divided families" cases remained "exceptionally slow and frustrating . . . some [were] pending for as long as two decades."<sup>73</sup> Moreover, periodic complaints were made by East Europeans who received travel documents to emigrate, but who were not granted entry by a Western European country or the United States.<sup>74</sup> Other obstacles to Soviet emigration included receipt of an official invitation from family relations abroad, discrimination while awaiting permission to leave, and harassment at the border before actual departure.<sup>75</sup> The ability of Soviet citizens to travel abroad for purely private or professional purposes remains greatly restricted. For example, Nobel Prize winner, Andrei D. Sakharov,<sup>76</sup> was not allowed to travel to Oslo to receive the honor in December 1975, and novelist Vladimir Voinovich<sup>77</sup> would not accept foreign invitations to travel because of the fear of losing his Soviet citizenship while abroad. A

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1976 that 13,750 Jews had been allowed to emigrate thus far in 1976 and they expected the figures to go above 14,000 people for the year. N.Y. Times, Dec. 19, 1976, at 17.

72. In 1977, the United States Embassy in Moscow processed 2,047 persons. 13,250 exit visas for Israel were issued through October, based on arrivals of Soviet Jewish emigrants in Vienna. 16,700 persons had emigrated to Israel by year's end. U.S. DEP'T. OF STATE, SPECIAL REPORT No. 45, *Fourth Semiannual Report by the President to the Comm'n on Security and Cooperation in Europe, Dec. 1, 1977-June 1, 1978*, at 18 (June 1978).

73. SPECIAL REPORT No. 39, *supra* note 66, at 14. Newspaper accounts of cases involving divided families' attempts to be reunited reveal the long process, disappointment, and hardship. See, e.g., N.Y. Times, Apr. 29, 1978, at 6, col. 3; *id.*, Apr. 21, 1978, at A3, col. 1 (the case of a Moscow school teacher who married an American professor in 1974); The Times (London), Apr. 21, 1978, at 7, col. 2; *id.*, Apr. 11, 1978, at 7, col. 5.

74. Browne, *Many Refugees Find West's Barriers High*, N.Y. Times, Feb. 17, 1977, at 14, col. 1.

75. See U.S. COMMISSION ON SECURITY AND COOPERATION IN EUROPE, ON LEAVING THE SOVIET UNION: TWO SURVEYS COMPARED 2-4 (1978). The hardships are also outlined in a report prepared for the World Conference on Soviet Jewry released October 3, 1977. See The Times (London), Oct. 4, 1977, at 7, col. 4. See also N.Y. Times, Jan. 19, 1977, at A9, col. 1.

76. N.Y. Times, Nov. 13, 1975, at 1, col. 3. Dr. Sakharov wanted a guarantee that he would not be stripped of his citizenship or right of residence if he journeyed abroad. Recent Soviet harassment and intimidation of the human rights advocate is referred to in N.Y. Times, Jan. 28, 1977, § 1, at 1, col. 3.

77. The Times (London), Mar. 22, 1978, at 9, col. 5. See also N.Y. Times, Nov. 18, 1977, § 1, at 8, col. 3 (the case of the prominent nuclear physicist S.M. Polikanov).

number of bilateral international agreements concerning tourism and abolition of visas have been drawn between countries of the Communist bloc,<sup>78</sup> as well as between some Communist bloc countries and Western European states. In addition, passport requirements were abolished on January 1, 1977, for tourists from Czechoslovakia, Poland, and East Germany who travelled to either of the other two countries.<sup>79</sup> In Rumania, however, ethnic Hungarians who were Rumanian citizens have been denied the right to travel to Hungary.<sup>80</sup> Yugoslavia, a Communist country with a liberal policy<sup>81</sup> on travel, has also been subjected to domestic criticism for occasional diviation from that policy. On February 2, 1977, a group of sixty Yugoslavian civil rights proponents<sup>82</sup> petitioned the Federal Constitutional Court, questioning the constitutionality of a law giving the police power to deny passports without explanation to the applicants. The 1974 Yugoslavian Constitution guaranteed citizens the right to travel.<sup>83</sup>

Diplomatic movement in Communist bloc countries had more positive achievements. The United States and Hungary reached agreement on diplomatic and official visa facilitation in an exchange of notes at Budapest on March 29 and April 7, 1976.<sup>84</sup> Both nations agreed to issue non-immigrant visas to bearers of diplomatic or official passports within a seven-day period of applica-

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78. *E.g.*, Agreement Concerning Cooperation and Tourism, Feb. 23, 1972, Poland-German Democratic Republic, (entered into force July 22, 1972, 842 U.N.T.S. 109; Agreement Concerning Cooperation on Tourism, Feb. 2, 1972, Bulgaria-Czechoslovakia (entered into force June 28, 1972), 850 U.N.T.S. 179. See Turack, *supra* note 18.

79. The Times (London), Jan. 13, 1977, at 14, col. 5 (Letter to the Editor dated Jan. 12, 1977, from the Polish Interpress Agency correspondent in London); *id.*, Jan. 12, 1977, at 6, col. 3.

80. See D. Andelman, *Ethnic Hungarians in Romania Charge Regime Seeks Assimilation*, N.Y. Times, May 9, 1978, at 10, col. 3.

81. Many Yugoslavian citizens are employed abroad and subsequently return home. At its peak in 1973, 1.1 million Yugoslavs were employed in northern European countries. As unemployment mounted, they returned home. By the end of 1975, 950,000 Yugoslavs were abroad. See German Tribune, Nov. 7, 1976, at 5; Browne, *Boom Turns to Bust for Europe's Migrants*, Globe and Mail, Feb. 25, 1976, at 3.

82. The sixty individuals were not refused a passport. Their petition to the Court came only after the government failed to respond to their direct submission. See Browne, *Sixty Yugoslavs Ask for Lifting of Curbs on Travel Abroad*, N.Y. Times, Feb. 3, 1977, at 4, col. 1.

83. Yugoslavia Const. art. 163.

84. T.I.A.S. No. 8513 (entered into force on April 7, 1976).

tion. The United States concluded an agreement with Rumania<sup>85</sup> in Bucharest through an exchange of notes on October 10, 1977, providing for reciprocal simplification of procedures for issuance of diplomatic and official visas. The United States and Czechoslovakia also concluded an agreement at Prague on November 3, 1976, on the reciprocal removal of travel restrictions for diplomatic personnel in the host state.<sup>86</sup> The United States and Bulgaria reached an agreement<sup>87</sup> through an exchange of notes at Sofia on November 9, 1977, to eliminate travel restrictions on the movement of their accredited diplomats. Consequently, the United States diplomats in Bulgaria were treated equally with all other foreign diplomats, while Bulgarian diplomats in the United States were treated on the same basis as other East European diplomats, being allowed to travel freely throughout the country except for designated areas involving national security. Despite these relaxations of restrictions between the United States and certain Communist bloc countries, travel restraints on Soviet and United States diplomats remain intact.<sup>88</sup>

The nations of Western Europe have achieved a high degree of freedom of transnational movement for their citizens. The Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms thus remains the most promising prototype of international accord on human rights. The Fourth Protocol<sup>89</sup> to the Convention has guaranteed freedom of movement

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85. The Agreement entered into force on October 10, 1977. On the same day another agreement between the two countries entered into force which was concluded through an exchange of notes at Bucharest relating to reciprocal facilitation of visa issuance for the business traveller and tourist. 77 DEP'T STATE BULL. 874 (Dec. 12, 1977).

86. See N.Y. Times, Nov. 4, 1976, at 5.

87. 78 DEP'T STATE BULL. 32 (Jan. 1978).

88. See Shipler, *Travel Curbs in Soviet and U.S. Not Improved by Detente*, N.Y. Times, Feb. 3, 1977, at 2. Two maps in the article indicate the restricted areas in each country.

89. Reprinted in COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS: COLLECTED TEXTS § 1, Doc. 5 (7th ed. 1971), [1963] Y.B. EUR. CONV. ON HUMAN RIGHTS 14 (Eur. Comm. on Human Rights). The relevant articles of the Fourth Protocol are:

Article 2

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society

since September 16, 1963. Recent evaluation of the application of these rights indicates that they remain intact and are not being eroded.<sup>90</sup> Furthermore, in the states of the European Economic Community, implementation of the provisions of the Treaty of Rome concerning the free movement of workers, the self-employed, and establishment<sup>91</sup> has been very successful.<sup>92</sup> Since mobility of

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in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

Access to the Human Rights Commission and the Human Rights Court, which would determine whether a breach of the travel right occurred, is assured in European Agreement Relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights, May 6, 1969, 788 U.N.T.S. 243 (entered into force Apr. 17, 1971). Article 4(1)(b) of this Agreement expressly provides:

No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

For a discussion on the substantive provisions of this agreement, see A. ROBERTSON, *HUMAN RIGHTS IN EUROPE* 154 (2d ed. 1977).

Also significant is the right of nationals of the Parties to the European Social Charter to engage in any gainful occupation in the territory of the other Parties. Under part II of the Charter, each Party undertakes to recognize "the right of their nationals to leave the country and to engage in the gainful occupation in the territories of the other Contracting Parties." European Social Charter, art. 18(4), Oct. 18, 1961, reprinted in [1961] EUR. Y.B. 247 (Council of Europe). See generally Kahn-Freund, *The European Social Charter*, in *EUROPEAN LAW AND THE INDIVIDUAL* 181 (F. Jacobs ed. 1976).

90. Partsch, *The Right to Leave and to Return in the Countries of the Council of Europe*, 5 ISRAEL Y.B. HUMAN RIGHTS 215 (1975). A country-by-country evaluation of implementation of these rights is updated in Partsch, *Western Europe and Other Non-Communist European States*, in *THE RIGHT TO LEAVE AND TO RETURN* 43 (K. Vasak & S. Liskofsky eds. 1976).

91. Treaty Establishing the European Economic Community, entered into force Jan. 1, 1958, arts. 48-58, 298 U.N.T.S. 4, 36-40.

92. For assessments of the free movement of workers, see Jacobs, *The Free Movement of Persons Within the EEC*, 30 CURRENT LEGAL PROB. 123 (1977); Seche, *Free Movement of Workers Under Community Law*, 14 COMM. MKT. L.

labor has been established, the EEC signatories have studied the feasibility of a passport union. To establish such a union, national legislation affecting aliens would have to be harmonized, a uniform passport introduced, passport control at national borders abolished within Community territory, and equal treatment of nationals of Member States by third countries would have to be insured. The Commission of the European Economic Community studied existing passport unions<sup>93</sup> and issued a report<sup>94</sup> which received the necessary Community and membership approval<sup>95</sup> to move forward toward establishing a union for the EEC. The decision has not yet been implemented, however.<sup>96</sup> Two recent decisions<sup>97</sup> of the European Court of Justice have reaffirmed that the power to derogate the fundamental principle of freedom of movement on the grounds of *ordre public*,<sup>98</sup> public security, or public health is an exceptional one which will be interpreted restrictively.

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REV. 385 (1977); Turack, *Freedom of Movement and Travel Documents in Community Law*, 17 BUFFALO L. REV. 435 (1968); 8 TEX. INT'L L.J. 375 (1973). See also Leleux, *Recent Decisions of the Court of Justice in the Field of Free Movement of Persons and Free Supply of Services*, in EUROPEAN LAW AND THE INDIVIDUAL 79 (F. Jacobs ed. 1976); Maestriperi, *Freedom of Establishment and Freedom to Supply Services*, 10 COMM. MKT. L. REV. 150 (1973); Scarman, *Law of Establishment in the European Economic Community*, 24 N. IR. L.Q. 61 (1973).

93. The operating passport unions which serve as useful prototypes are those involving the Benelux countries, the Nordic countries, and the "understanding between the United Kingdom and Ireland." A description of each is found in D. TURACK, *THE PASSPORT IN INTERNATIONAL LAW* 94, 81, 118 (1972). The concept of a European passport originated in the Council of Europe. *Id.* at 67.

94. COMMISSION OF THE EUROPEAN COMMUNITIES, *TOWARDS EUROPEAN CITIZENSHIP*, BULLETIN OF THE EUROPEAN COMMUNITIES (Supp. 7, 1975).

95. EUROPEAN COMMUNITY 16 (Jan.-Feb. 1976); see Bogdan, *Free Movement of Tourists Within the EEC?*, 11 J. WORLD TRADE L. 468 (1977).

96. One account indicates that the only point agreed upon concerning the European passport is the color. See German Tribune (No. 802), Aug. 28, 1977, at 2; The Times (London), May 24, 1977, at 2, col. 6.

97. *Van Duyn v. Home Office*, [1975] 3 All E.R. 190, [1975] 1 COMM. MKT. L. REV. 1, [1974] E.C.R. 1337. For pertinent comments, see Dunbar, *A Historic Event in the Common Law: The Case of Yvonne Van Duyn v. Home Office*, 5 U. TASMANIA L. REV. 33 (1975); Leleux, *supra* note 85; Note, *Free Movement of Workers in the European Economic Community: The Public Policy Exception*, 29 STAN. L. REV. 1283 (1977); Case and Comment, *Exclusion of Aliens and E.E.C. Law*, 35 CAMBRIDGE L.J. 3 (1976).

R. v. Boucherau, [1978] 2 W.L.R. 250, [1977] 2 COMM. MKT. L. REV. 800, [1977] E.C.R. 1999. For comments on the case, see Note, *Ordre Public Considered and Developed*, 94 LAW Q. REV. 354 (1978); Note, *Deportation of E.E.C. Nationals*, 41 MOD. L. REV. 342 (1978).

98. See generally Wooldridge, *Free Movement of E.E.C. Nationals: The Limitation Based on Public Policy and Public Security*, 2 EUROPEAN L. REV. 190 (1977).

## V. GENERAL ASSESSMENT OF THE FIRST REVIEW CONFERENCE<sup>99</sup>

Analysis of the accomplishments of the Belgrade Conference demonstrates that human rights and humanitarian issues were an integral aspect of the Conference as well as detente. Individual states are accountable for their implementation record in all aspects of the Helsinki Accord, and any failure to implement the Accord will be publicized. Moreover, a state's invocation of the principle of nonintervention in its internal affairs will not justify a failure to implement the Accord.<sup>100</sup> The concluding document of the Conference affirms the resolve of all states "to implement fully, unilaterally, bilaterally, and multilaterally, all the provisions of the [Helsinki] Final Act,"<sup>101</sup> and recognizes that the implementation of the Helsinki Accord is essential to the development of detente. The Accord approves the propriety of the review of implementation conducted by the West and has assured the continuation of review by scheduling a meeting in Madrid for November 11, 1980.<sup>102</sup>

During the Conference, representatives of countries which were the objects of criticism for their human rights policies, reiterated their condemnation of efforts to raise human rights issues as "interference in our internal affairs," relying on the sixth principle in the Declaration of the Helsinki Accord entitled "Non-Intervention in Internal Affairs."<sup>103</sup> As one scholar succinctly noted, "[d]omestic jurisdiction and its counterpart 'nonintervention' have confused and bedeviled international human rights activities since their inception."<sup>104</sup> The Universal Declaration of Human Rights, however, affirms the legitimacy of

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99. See generally U.S. DEP'T OF STATE, SPECIAL REPORT NO. 43, *The Belgrade Followup Meeting to the Conference on Security and Cooperation in Europe, October 4, 1977-March 9, 1978* (June 1978) [hereinafter cited as SPECIAL REPORT No. 43].

100. *Id.* at 3.

101. *Id.* at 35 (Appendix to Special Report).

102. *Id.* at 4.

103. See *id.* at 13, 24-25; *Document That Omits Rights Is Adopted at Belgrade*, N.Y. Times, Mar. 9, 1978, at A7, col. 1; *U.S. and Soviet Avoid Direct Clash in Opening Statements in Belgrade*, N.Y. Times, Oct. 7, 1977, at A2, col. 5. Some days after the Conference the head of the Soviet delegation reiterated that "[t]he Americans had concentrated solely on this issue [human rights] with the aim of legalizing interference in the internal affairs of communist countries." The Times (London), Mar. 18, 1978, at 5, col. 3.

104. Henkin, *Human Rights and "Domestic Jurisdiction,"* in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 21 (T. Buergenthal ed. 1977).

human rights as a matter of international concern.<sup>105</sup> Moreover, because Principle VII in the Helsinki Accord incorporates into the Accord the International Covenants on Human Rights and related international obligations,<sup>106</sup> it is even less reasonable to assert that human rights are purely internal affairs.

## VI. POST-BELGRADE PRACTICES

During the Belgrade meeting, the Soviet Union indicated that the fee for a Soviet exit visa would be further reduced from 300 to 200 rubles.<sup>107</sup> For the most part, however, family reunification through emigration or visits from Warsaw Pact countries remains difficult.<sup>108</sup> The 1978 Soviet trials<sup>109</sup> of citizens belonging to groups monitoring the Soviet Union's compliance with the Helsinki Accord are retrograde. Western nations expressed their disapproval<sup>110</sup> to this direct contravention of the spirit and intention of the Accord. Meanwhile, the increase in Soviet exit visas for Jews preced-

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105. The legal effect of the Universal Declaration of Human Rights is no longer unclear. Official and unofficial international conferences have declared that the Declaration is an authoritative, binding instrument in its own right, representing an international consensus. See Sohn, *The Human Rights Law of the Charter*, 12 *TEX. INT'L L.J.* 129, 133 & notes (1977).

106. SPECIAL REPORT No. 43, *supra* note 92 at 3, 8. See also Goldberg, *Human Rights and the Belgrade Meeting*, 30 *HASTINGS L.J.* 249 (1978). The author states, "We heard the contention that human rights are purely internal affairs, that to discuss their observance in another nation is to violate that nation's sovereignty, to interfere in matters that are no outsider's concern. The Final Act refutes that reasoning. The Belgrade meeting has made it untenable." *Id.* at 250.

107. The exit visa fee had been reduced to 300 rubles after the Helsinki Conference. See text accompanying note 64 *supra*. U.S. DEP'T OF STATE, SPECIAL REPORT No. 45, *FOURTH SEMI-ANNUAL REPORT BY THE PRESIDENT TO THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, DECEMBER 1, 1977-JUNE 1, 1978*, at 19 (June 1978). The decreased visa fee has gone into operation.

108. See *id.* at 17-21.

109. *Id.* at 9.

110. See, e.g., BRITISH INFORMATION SERVICES, 8 *SURVEY CURRENT AFF.* 289 (Aug. 1978) (British reaction). The British also refused to move forward with a bilateral sporting agreement with the U.S.S.R. *Id.* For the United States reaction, see *N.Y. Times*, July 13, 1978, at A1, col. 6. On July 18, it was announced that President Carter had placed oil technology on the Commerce Department's commodity-control list to prevent its export to the Soviet Union, and also had cancelled the sale of a Sperry Univac computer to the Soviet Union. *N.Y. Times*, July 19, 1978, at A1, col. 2. On September 15, President Carter lifted the ban to allow the sales to proceed. *Wash. Post*, Sept. 17, 1978, at A16. On May 24, the nine governments of the European Community issued a statement showing their dissatisfaction. 26 *BULLETIN* (No. 16) 98 (1978). The Vatican's reaction is found in the *N.Y. Times*, July 17, 1978, at A4, col. 2.

ing and during the Belgrade Conference remained constant.<sup>111</sup> On the other hand, the Soviet practice of depriving human-rights activists traveling abroad of their citizenship and their right to return home has shown no sign of abatement.<sup>112</sup>

More recently, the Soviet Union unexpectedly granted the nuclear physicist, S.M. Polikanov, exit visas for himself and his family to journey to Denmark on Soviet passports. This gesture is unique, since Polikanov, unlike other dissidents who have left the Soviet Union without passports, retained his statehood.<sup>113</sup> During Senator Edward Kennedy's recent trip to the Soviet Union and his discussions with President Brezhnev, it was announced that the Soviet government would reconsider its position on emigration of eighteen families.<sup>114</sup> The Senator's visit also marked a change in the United States policy prohibiting high-level travel. That policy had commenced in July 1978 as a result of United States displeasure with the Soviet harassment of United States citizens in the Soviet Union.<sup>115</sup>

In Czechoslovakia the Chartists have distributed a comprehensive analysis of human rights violations in spite of repression against Czechoslovakian citizen-dissidents.<sup>116</sup> Chartists continue to be threatened with further prosecution and imprisonment unless they leave Czechoslovakia.<sup>117</sup> In addition, Hungary became the fourth Eastern European state to agree reciprocally to abolish the use of visas for travel to Austria.<sup>118</sup> Moreover, Hungary's bilateral

111. See N.Y. Times, July 23, 1978, at 8, col. 2; *id.*, June 11, 1978, § 1, at 1, col. 4; *id.*, Oct. 15, 1977, at 8, col. 2.

112. See BRITISH INFORMATION SERVICES, *supra* note 102, at 289.

113. Wash. Post, Sept. 14, 1978, at A30, col. 3.

114. *Id.*, Sept. 16, 1978, at A1, col. 3; *id.*, Sept. 12, 1978, at A1, col. 1.

115. The June 13 arrest of Mr. F. Jay Crawford, service representative of International Harvester, on currency violation charges is reported in N.Y. Times, June 15, 1978, at A1, col. 4. The charges and subsequent trial of the New York Times journalist, Craig Whitney, and his Baltimore Sun counterpart, Harold Piper, for "slander against the Soviet State Committee for Television and Radio" because they reported in their respective newspapers that relatives of a Georgian dissident had said his television confession was faked is reported *id.*, July 19, 1978, at A1, col. 1; *id.*, June 30, 1978, at A1, col. 2; *id.*, June 29, 1978, at A1, col. 1.

The ban on high-level travel was later lifted. See Columbus Dispatch (Ohio), Sept. 29, 1978, at A3.

116. The Times (London), May 30, 1978, at 1, col. 3.

117. *Id.*, Aug. 19, 1978, at 5, col. 3. Those that remain continue to feel the weight of official retaliation. *Id.*, Aug. 18, 1978, at 4, col. 5.

118. *Id.*, July 6, 1978, at 8, col. 3. The agreement went into effect on January 1, 1979. The other Communist countries which have abolished visas for travel on



relations with the United States and her efforts to comply with the Helsinki Accord has been so encouraging that a trade agreement was concluded and transmitted by President Carter to Congress in August 1978.<sup>119</sup>

## VII. CONCLUSION

Although this examination of the transnational movement of persons reflects certain serious regressions from the terms of the Accord, the process begun at Helsinki and assessed at Belgrade continues to be fruitful. Negative incidents will continue to mar fulfillment of the Helsinki Accord, but those states which fail to comply have now been placed on notice that their actions will be measured critically by their co-signatories. No nation can remain insensitive to established international standards of behavior. Ultimately, the welfare of a nation's people is inextricably linked to the way in which that nation is able to function within the world community. The concept of individual dignity pervades the Helsinki Accord. Although no general consensus was reached in Belgrade, the meeting was indeed a successful one. As set forth in the final plenary meeting, "the views exchanged during the course of the meeting, and the precedents and issues which derive from them, are thus the most important legacy of the meeting itself."<sup>120</sup>

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the basis of reciprocity are Bulgaria, Poland, and Romania.

119. 78 DEP'T ST. BULL. 26 (Aug. 1978). Congress will examine the text of the proposed trade agreement and the Hungarian emigration record pursuant to the Trade Act of 1974, Title IV, 19 U.S.C. §§ 2431-41 (1976). Section 2432(a)(1)-(3) of the Act, provides that no nonmarket country is eligible to receive most-favored-nation treatment, receive United States credits, credit guarantees, investment guarantees, or conclude a United States commercial agreement if the President determines that such country:

1. [D]enies its citizens the right or opportunity to emigrate;
2. imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever;
- or
3. imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice . . . .

19 U.S.C. § 2432(a)(1)-(3) (1976).

120. SPECIAL REPORT No. 43, *supra* note 92, at 34. See 78 DEP'T ST. BULL. 40 (Apr. 1978) (statement at final plenary meeting of the CSCE in Belgrade on March 8, 1978).