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HUMAN RIGHTS AND THE INTERNATIONAL LEGAL ORDER

*H. G. Schermers**

HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD. Edited by *Thomas Buergenthal*. Montclair, N.J.: Published for the American Society of International Law by Allenheld, Osmun & Co. 1977. Pp. viii, 203. \$17.

The Final Act of the Conference on Security and Cooperation in Europe, which was signed in Helsinki on August 1, 1975, by the United States, Canada, and thirty-three European nations, may be of great significance for future relations between East and West. The Helsinki Conference's main purpose, embodied in the Final Act, was to ease relations between the two blocs. After a general preamble, the Final Act contains detailed provisions which are grouped into three so-called "Baskets," one on security and disarmament, another dealing with economic and technical issues, and a third concerning human rights. The Final Act provides that the participating states will continue to cooperate and will hold further meetings.

Partly to evaluate the Helsinki Conference and partly to prepare for further meetings, the American Society of International Law invited six experts to write reports on important topics concerning human rights. The Society then convened a working group of nongovernmental experts to discuss these reports. The discussion was held in Strasbourg, France, in June 1977. Professor Buergenthal has assembled the six reports in the present book and added a seventh summarizing the conclusions of the working group. The seven reports together offer rich information on the human rights problems raised at the Helsinki conference.

Buergenthal places his summary of the conclusions of the working group in the first chapter. Conclusions are usually found at the end of a book, but in this case there was good reason to put them at the beginning, as they survey the major issues and therefore are a useful introduction to the subjects. Those who want to know more should turn to the next chapters which contain the facts, figures, and details that make the book such a valuable resource.

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The first chapter reflects Western thinking on the legal significance, scope, character, and implementation of the Helsinki Final Act. The working group concluded that the Final Act, though not legally binding, establishes a valid basis for monitoring compliance with the Accord and, where necessary, demanding it. The Accord, concluded the working group, takes human rights out of a nation's exclusively domestic jurisdiction; one country's peaceful reaction to violations of human rights in another country is no longer an intervention in or unlawful interference with the internal affairs of the violating state.

In the next chapter, Suzanne Bastid discusses the special significance of the Helsinki Final Act. The Act is not a treaty, but a unique document which, though legally not binding, may have great practical significance. It is tempting to compare the Act to the treaty of Osnabrück, which in 1648 created a "détente" between Catholics and Protestants among the German States.

In his report on "Human Rights and Domestic Jurisdiction," Louis Henkin examines the scope of a nation's domestic jurisdiction. He describes the Soviet view, which admits no interference in the policies of other states, and he reviews the countervailing argument. He then surveys the existing international human rights obligations. Matters covered by these obligations are, of course, not within the domestic jurisdiction of the states party to them, but rather are of international concern. The Final Act provides that the participating states will refrain from any intervention in affairs falling within the domestic jurisdiction of another participating state. Henkin, however, argues that this provision does not apply to human rights concerns, not only because human rights are no longer within the domestic jurisdiction of participating states, but because scrutiny, criticism, and even encouragement or support of victims of human rights violations are not intervention, since no force or threat of force is involved.

In Chapter Four, Gérard Cohen Jonathan and Jean-Paul Jacqué analyze the obligations assumed by the Helsinki signatories in the field of individual human rights. They describe the positive results of the Helsinki agreement, such as the agreement between Poland and the Federal Republic of Germany, signed the day after the Helsinki agreement, on the emigration from Poland of persons of German origin, and such as a number of important Soviet measures to ease emigration restrictions. The practical effects, nevertheless, are limited. The Eastern countries have eliminated many formalities applicable to foreign travel, but they have not recognized such travel as a *right*. For foreign correspon-

dents, some technical questions have been resolved, but foreign correspondents are by no means fully free to practice their profession. On the issue of disseminating information, complaints exist on both sides. The West criticizes the East because the importation of Western periodicals and books is strictly limited, in particular in the USSR and East Germany. The East blames the West because of minimal Western purchases of Eastern European journals, books, and films, and because the Western press pays inordinate attention to dissident activities. The authors conclude that because of ideological differences, progress can be achieved only with regard to clearly defined and limited issues; obligations drafted in general terms, they contend, will be interpreted in contradictory ways and therefore will accomplish little.

Jochen Frowein investigates the interrelationship between the Helsinki Final Act, the International Covenants on Human Rights, and the European Convention on Human Rights. The Final Act is hardly relevant to the European Convention, since the European Convention reflects a more advanced common understanding by the parties of the human rights covered by the instrument. On the other hand, the Final Act's impact on the Covenants may be considerable because it may help in interpreting the Covenants' many vague provisions. The Final Act clearly weakens, for example, the argument that the right to marry does not include the right to marry foreigners. It also diminishes the opportunities to restrict the right to travel or to exclude foreign newspapers; such restrictions are permitted by articles 12 and 19, respectively, of the Covenant on Civil and Political Rights. Frowein rightly concludes that the nonbinding nature of the Final Act is not decisive, since declarations that were themselves not legally binding have frequently influenced international law. Furthermore, the recognition by the signatories to the Final Act that human rights are a matter of international concern will strengthen the organs charged with implementing the Covenants.

In Chapter Six, Antonio Cassese studies the relationship between the Helsinki Declaration and self-determination. He first describes the development of the concept of self-determination and its differing interpretations in Eastern and Western Europe. The former understands self-determination essentially as the liberation of non-self-governing peoples from colonial domination. Influenced by Arab and African countries' concerns over internal stability, the Eastern Europeans deny that self-determination can legitimize secession from a state. In the Eastern European view, furthermore, the principle of self-determination is tanta-

mount to the principle of nonintervention and means that foreign states may not interfere in the life of a national community against the will of its government. The Western definition of self-determination is much broader. It is not confined to the liberation of non-self-governing peoples; it emphasizes respect for fundamental freedoms and the basic rights of individuals. In the United Nations, the Eastern European view ultimately prevailed, although the Declaration on Friendly Relations adopted by the United Nations General Assembly in 1970 exhibited a somewhat more universal flavor, to the satisfaction of the Western countries. More importantly, at the Helsinki Conference the West scored a relative victory—the Accord incorporated the universal self-determination approach advocated by the West. Cassese also provides some background on the various proposals that were considered in developing the final text.

The last report, by Virginia Leary, discusses the implementation of the Human Rights provision of the Helsinki Final Act between 1975 and 1977. The report offers additional information and views on certain points in previous chapters, such as the nonbinding nature of the Final Act and nonintervention. Leary also discusses several violations by Western states, including the U.S. refusal to grant visas to three Soviet trade unionists in April 1977, the U.S. expulsion of a Tass correspondent in February 1977, and the U.S. refusal to grant entry visas to Alexander Chakovsky, editor of the *Literary Gazette*, and to Sergio Serge, an Italian Communist Party official who had been invited to speak before the Council on Foreign Relations. Leary also cites Soviet press criticism of attempts to deter Communists from serving in positions in the West German government, the United Kingdom's torture of prisoners in Northern Ireland, and French police assistance in blacklisting trade union activists. The most important Eastern European violations discussed are the treatment of Jews—in particular the hindrance of their emigration—and restraints on religious freedom. Positive achievements include the facilitation of family reunification and permission for large numbers of Soviet citizens of German descent to emigrate to West Germany. Leary agrees with Jonathan and Jacqué that good-faith efforts have been made by both the East and the West to implement the Agreement, at least where the provisions of the Agreement are sufficiently precise. Buergenthal's book concludes with the text of the Final Act of the Helsinki Conference. The American Society of International Law should be congratulated for its initiative and for its valuable contribution.