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A Brief Review of the Provisions in Recent Agreements Concerning Freedom of Movement Issues in the Modern World

by Daniel C. Turack*

International freedom of movement is a concept which has acquired increasing recognition in a large number of recent international agreements. This article proposes to set out in capsule form the origins and modern-day growth of this concept as evidenced by existing international declarations and agreements.

I. FREEDOM OF MOVEMENT AS A UNIVERSAL HUMAN RIGHT

THE PROGENITOR OF present-day human rights conventions was the Universal Declaration of Human Rights,¹ proclaimed by the General Assembly of the United Nations on December 10, 1948.² Although the Declaration did not contain legally binding obligations,³ its reaffirmation over the years by the General Assembly and other international bodies, as well as its incorporation by reference in numerous national constitutions has raised its status to that of a state-

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¹ See Nanda, *The Right to Movement and Travel Abroad: Some Observations on the U.N. Deliberations*, 1 DENVER J. INT'L L. & POLICY 109 (1971); Higgins, *The Right in International Law of the Individual to Enter, Stay In and Leave a Country*, 49 INT'L AFF. 341 (1973).

² Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/8 10, at 71-77 (1948); 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 237 (1965). The preamble of the Universal Declaration speaks of its enumerated rights as a "common standard of achievement for all peoples and all nations."

³ Just prior to the General Assembly vote on the Universal Declaration, Mrs. Eleanor Roosevelt, Chairman of the Commission on Human Rights and a representative of the United States in the General Assembly, stated:

In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms . . . to serve as a common standard of achievement for all peoples of all nations. 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 243 (1965).

ment of customary international law.⁴ Article 13(2) of the Declaration prescribes that "everyone has the right to leave any country, including his own, and to return to his country."⁵

Further authoritative evidence of the universality of this concept as a human right is exemplified by its inclusion in the International Convention on the Elimination of All Forms of Racial Discrimination adopted by the General Assembly of the United Nations on December 21, 1965, and opened for signature on March 7, 1966.⁶ Parties to the Convention undertook by virtue of article 5(d)(ii) to eliminate racial discrimination as defined in article 1(1), and to guarantee everyone the right, without distinction as to race, color, nationality or ethnic origin, to equality before the law in the enjoyment of "the right to leave any country, including his own, and to return to one's country."⁷

On December 16, 1966, the General Assembly of the United Nations adopted an instrument of wider import, the International Covenant on Civil and Political Rights.⁸ The Covenant transforms the declaratory principles into positive, enforceable international obligations for those nations which accept the Covenant, and noncompliance with the obligations constitutes a violation of international law.⁹ International mobility as a principle is enunciated in article 12, paragraphs 2, 3 and 4, which read as follows:

⁴ A. ROBERTSON, HUMAN RIGHTS IN THE WORLD 27-28 (1972).

⁵ On the development of article 13(2), see J. Ingles, *Study of Discrimination in Respect of the Right of Everyone to Leave Any Country, Including His Own, And To Return to His Country* 82-87 (U.N. Doc. E/CN.4/Sub 2/Rev. 1, Annex III (1963)).

⁶ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195. The convention entered into force on January 4, 1969.

⁷ *Id.* art. 5(d)(ii).

⁸ International Covenant on Civil and Political Rights, U.N. GAOR, Supp. (No. 21) 53, U.N. Doc. A/6316 (1966). See also Schwelb, *Entry Into Force of the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights*, 70 AM. J. INT'L L. 512 (1976).

⁹ Article 2 states:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant
2. [E]ach State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes . . . to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

U.N. GAOR Supp. (No. 21) 54, U.N. Doc. A/6316 (1966). See also *Optional Protocol to the International Covenant on Civil and Political Rights*, *supra* note 8, at 59.

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.

Procedures provided in the International Covenant and the Optional Protocol assume even greater protection of this right.¹⁰

II. RECOGNITION OF FREEDOM OF MOVEMENT AS A HUMAN RIGHT IN EUROPE

Regional recognition of the right to travel is established in the work of the Council of Europe. Among the "rights and principles" proclaimed in the European Social Charter, concluded on October 18, 1961, is the right of nationals of the Contracting Parties to engage in any gainful occupation in the territory of the other Parties.¹¹ Under part II of the Charter, each Party undertakes to recognize "the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties."¹²

More explicit recognition appeared in the Council of Europe's Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed on September 16, 1963. Article 2, paragraphs 2 and 3 are pertinent:

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

¹⁰ Measures for implementation of the Covenant on Racial Discrimination and the International Covenant on Civil and Political Rights are not without controversy. See Buergethal, *Implementing the U.N. Racial Convention*, 12 TEX. INT'L L. J. 187 (1977); Humphrey, *The International Bill of Rights: Scope and Implementation*, 17 WM. & MARY L. REV. 527, 536-40 (1976); Schwelb, *International Measures of Implementation of the International Covenant on Civil and Political Rights and the Optional Protocol*, 12 TEX. INT'L L.J. 141 (1977).

¹¹ [1963] EUR. T. S. No. 35; [1961] EUR. Y. B. 247. See generally Kahn-Freud, *The European Social Charter*, in EUROPEAN LAW AND THE INDIVIDUAL 181 (F. Jacobs ed. 1976).

¹² See [1963] EUR. T.S. No. 35, art. 18(4).

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.¹³

To assure access of individuals to the European Commission of Human Rights and the European Court of Human Rights, the two organs of the Council of Europe which determine whether a breach of the travel right has occurred, the European Agreement Relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights was concluded at London on May 6, 1969.¹⁴ Article 4 of this Agreement uses the following language to establish the right of access:

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.¹⁵

Although freedom of movement is not specifically characterized as a human right in the European Economic Community (EEC), any assessment of the principle's implementation in Western Europe cannot ignore the great contribution of the European Community. Articles 48 to 51 of the Treaty¹⁶ establishing the EEC provide for the free movement of workers¹⁷ while articles 52 to 58 assure freedom of establishment, and articles 59 to 66 provide for those who are self-employed.¹⁸

¹³ [1963] Y.B. EUR. CONV. ON HUMAN RIGHTS 14. The Fourth Protocol entered into force on May 2, 1968.

¹⁴ 788 U.N.T.S. 243. The Agreement entered into force on Apr. 17, 1971. For a discussion on the substantive provisions of the Agreement, see A. ROBERTSON, *HUMAN RIGHTS IN EUROPE* 154 (2d ed. 1977).

¹⁵ *Id.* para. 1(b).

¹⁶ Treaty Establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 587, *reprinted in* 51 AM. J. INT'L L. 865 (1957).

¹⁷ A detailed discussion on the free movement of workers is found in Turack, *Freedom of Movement and Travel Documents in Community Law*, 17 BUFFALO L. REV. 435 (1968); Jacobs, *The Free Movement of Persons Within the EEC*, 30 CURRENT LEGAL PROBLEMS 123 (1977); Comment, *The Free Movement of Labor in the EEC*, 8 TEX. INT'L L. J. 375 (1973).

¹⁸ See 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); Leleux, *Recent Decisions of the*

Recently, the European Economic Communities Commission completed a report on the protection of fundamental rights in the European Community.¹⁹ It found that,

the present standard of protection of fundamental rights, as this can be taken from the more recent decisions of the Court of Justice, is satisfactory.

Furthermore, it considers that the protective machinery at present available within the institutional structure of the Communities is sufficient to prevent and counter infringements of fundamental rights through Community acts and, following the implementation of these acts, at the national level. . . .

The Commission considers that it has a constant duty . . . to safeguard and extend the freedom of the individual citizen. It will accordingly pursue its efforts in this area.²⁰

However, recent cases before the European Court of Justice have shown that although article 48 of the Treaty is self-executing, that is, it gives direct rights to individuals, it does not prevent the Member States from refusing entry under certain circumstances.²¹

III. PRE-1975 HELSINKI FREEDOM OF MOVEMENT GAINS IN EAST EUROPE AND BETWEEN EAST AND WEST

During the late 1960's and early 1970's a number of positive steps were achieved in promoting freedom of movement.²² With a view toward increasing further contacts between the peoples of the Communist bloc, a number of treaties were concluded to promote and facilitate tourism. Bulgaria and Poland signed an agreement at Sofia on January 10, 1969, concerning cooperation in the field of tourism.²³

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).

¹⁹ [1976] BULL. EUR. COMM., Supp. 5.

²⁰ *Id.* at 10-11. See also Hilf, *The Protection of Fundamental Rights in the Community*, in EUROPEAN LAW AND THE INDIVIDUAL 145 (F. Jacobs ed. 1976).

²¹ See Van Duyn v. Home Office, [1974] E.C.R. 1337; 15 COMM. MKT. L. REV. 1 (1974). See also Allot, *Exclusion of Aliens and E.E.C. Law*, 35 CAMBRIDGE L.J. 3 (1976); Dunbar, *A Historic Event in the Common Law: The Case of Yvonne Van Duyn v. Home Office*, 5 U. TASMANIA L. REV. 33 (1975); Note, *Free Movement of Workers in the European Economic Community: The Public Policy Exception*, 29 STAN. L. REV. 1283 (1977).

²² See also Toman, *The Right To Leave And To Return in Eastern Europe*, 5 ISRAEL Y.B. ON HUMAN RIGHTS 276 (1975).

²³ Agreement Concerning Co-operation in the field of Tourism, Jan. 10, 1969, Bulgaria-Poland, 759 U.N.T.S. 211.

Similar agreements were signed at Sofia between Bulgaria and Hungary on January 22, 1969;²⁴ at Bucharest between Romania and Yugoslavia on July 21, 1969;²⁵ at Berlin between the Soviet Union and the German Democratic Republic on October 6, 1970;²⁶ at Berlin between Bulgaria and the German Democratic Republic on June 27, 1970;²⁷ at Berlin between Poland and the German Democratic Republic on February 23, 1972;²⁸ and at Prague between Czechoslovakia and Bulgaria on February 2, 1972.²⁹

With the same objectives in mind, *i.e.*, increased tourism and the simplification of frontier formalities, Bulgaria signed agreements with France at Sofia on May 14, 1971,³⁰ and with Belgium at Brussels on October 28, 1971.³¹ Representative of the cooperation envisaged, Article 2 of the latter agreement provides that "each Contracting Party shall give full attention to the simplification of formalities and frontier inspections for tourists of the other Contracting Party."³²

Bilateral agreements to abolish visa requirements for travel between Eastern European countries which began in the mid-1960's³³

²⁴ Agreement Concerning Co-operation in the Field of Tourism, Jan. 22, 1969, Bulgaria-Hungary, 755 U.N.T.S. 283.

²⁵ Agreement Concerning Co-operation in the Field of Tourism, July 21, 1969, Romania-Yugoslavia, 782 U.N.T.S. 3.

²⁶ Agreement Concerning Co-operation in the Field of Tourism, Oct. 6, 1970, Union of Soviet Socialist Republics-German Democratic Republic, 788 U.N.T.S. 3.

²⁷ Agreement Concerning Co-operation in the Field of Tourism, June 27, 1970, Bulgaria-German Democratic Republic, 807 U.N.T.S. 191.

²⁸ Agreement Concerning Co-operation in the Field of Tourism, Feb. 23, 1972, Poland-German Democratic Republic, 842 U.N.T.S. 191. The Agreement entered into force on July 27, 1972. The two countries had earlier signed a Treaty at Warsaw on November 25, 1971, concerning traffic across the frontier of nationals of the two states. The new "open border" policy allowed Poles and East Germans to cross the border simply by showing an identity card, stamped by the local police authorities. N.Y. Times, Mar. 5, 1972, at 19, col. 1.

²⁹ Agreement Concerning Co-operation in the Field of Tourism, Feb. 2, 1972, Czechoslovakia-Bulgaria, 850 U.N.T.S. 109. The Agreement entered into force on June 28, 1972.

³⁰ Agreement Concerning Co-operation in the Field of Tourism, May 14, 1971, France-Bulgaria, 798 U.N.T.S. 263. The Agreement entered into force on May 14, 1971.

³¹ Agreement Concerning Co-operation in the Field of Tourism, Oct. 28, 1971, Belgium-Bulgaria, 850 U.N.T.S. 157. The Agreement entered into force on July 5, 1972.

³² *Id.* art. 2.

³³ See, *e.g.*, Agreement Abolishing the Visa Requirement, Nov. 23, 1965, Hungary-Yugoslavia, 577 U.N.T.S. 89, and Convention Concerning the Abolition of Entry and

were continued and expanded to include other European States.³⁴ For example, in Annex I to the Convention between Romania and Poland signed at Bucharest on June 28, 1971, concerning the abolition of visas for official and private travel, there is a list of the various travel documents which each of the parties is to consider acceptable without a visa for the admission of the other's nationals.³⁵

In furtherance of the same interest, the United States and the Soviet Union signed a Protocol calling for widening tourism between both countries in September 1974.³⁶

It should be understood, however, that while most States welcome an influx of foreign visitors, and governments employ affirmative means to attract them,³⁷ there is no "human right" to visit any particular country. On the admission of foreign tourists³⁸ or aliens, it is authoritatively said that,

[a]part from special treaties of commerce, friendship, and the like, no State can claim the right for its subjects to enter into, and reside on, the territory of a foreign State. The reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy competent to exclude aliens from the whole, or any part, of its territory.³⁹

Exit Visas for Official Travelers and Private Travelers Visiting Relatives and Friends, As well as of Transit Visas, March 4, 1966, Romania-Union of Soviet Socialist Republics, 591 U.N.T.S. 327.

³⁴ See, e.g., Agreement for Facilitation of the Granting of Visas, Aug. 10, 1970, Bulgaria-Cyprus, 807 U.N.T.S. 209. The Agreement entered into force on Nov. 5, 1970.

³⁵ Convention Concerning the Abolition of Visas for Official and Private Travel, June 28, 1971, Romania-Poland, 820 U.N.T.S. 209. The Convention entered into force on December 26, 1971. The Convention replaced two earlier agreements, namely, the Romanian-Polish Agreement concerning exemption from the visa requirement for nationals of one Contracting Party traveling on official business to the territory of the other Party on the basis of diplomatic services or ordinary passports, concluded on Feb. 4, 1956, and the Romanian-Polish Protocol concerning abolition of the entry-exit and transit visa requirement for nationals of the two countries traveling on private business, concluded at Bucharest on Oct. 29, 1963.

³⁶ *Globe and Mail*, Sept. 25, 1974, at 10.

³⁷ Lickorish, *International Tourism and Government Action*, 2 J. WORLD TRADE LAW 210 (1968).

³⁸ See Bogdan, *Admission of Foreign Tourists and the Law of Nations*, 37 ZEITSCHRIFT FÜR AUSLÄNDISCHES OFFENTLICHES RECHT UND VÖLKERRECHT 87 (1977).

³⁹ I L. OPPENHEIM, *INTERNATIONAL LAW* 675-676 (8th ed. H. Lauterpacht ed. 1967).

Apart from tourism, another important dimension of the freedom of movement question exemplified in Eastern Europe is that of persons who find themselves separated by new territorial lines. The unusual situation involving Bulgarian nationals of Turkish origin led Bulgaria and Turkey to conclude an agreement at Ankara on March 22, 1968, concerning emigration from Bulgaria to Turkey of Bulgarian nationals of Turkish origin whose close relatives emigrated to Turkey before 1952.⁴⁰

Yet another dimension of freedom of movement is the freedom of migrant workers. One agreement in this area is the agreement at Belgrade on March 9, 1970, between the Netherlands and Yugoslavia, concerning the regulation of the employment of Yugoslav workers in the Netherlands.⁴¹ This agreement obligated the Yugoslav authorities to assist their citizens by issuing "to the worker a travel document passport, valid for at least twelve months."⁴² On July 23, 1970, Yugoslavia signed a similar agreement with Belgium at Belgrade concerning the employment and residence in Belgium of Yugoslav workers.⁴³ Czechoslovakia, the German Democratic Republic and Poland also announced agreements on January 1, 1972, whereby their nationals would be able to travel to the other two countries carrying only normal identity papers without passports, visas or special permits.⁴⁴

There are three other significant series of events during the 1970's which also must be recalled for their impact on freedom of movement. The first began on September 3, 1971, with the signing in West Berlin of the Quadripartite Agreement⁴⁵ at Berlin by France, the United

⁴⁰ Agreement Concerning Emigration from the People's Republic of Bulgaria to the Republic of Turkey of Bulgarian Nationals of Turkish Origin Whose Close Relatives Emigrated to Turkey Before 1952, March 22, 1968, Bulgaria-Turkey, 759 U.N.T.S. 223. The Agreement entered into force on Aug. 19, 1969.

⁴¹ Agreement Concerning the Regulation of the Employment of Yugoslav Workers in the Netherlands, March 9, 1970, Yugoslavia-The Netherlands, 753 U.N.T.S. 75. The Agreement entered into force on June 11, 1970.

⁴² *Id.* art. 8(3).

⁴³ Agreement Concerning the Employment and Residence in Belgium of Yugoslav Workers, July 23, 1970, Belgium-Yugoslavia, 784 U.N.T.S. 223. The Agreement entered into force on Jan. 19, 1970. Article 7 of the Agreement states that "the Yugoslav authorities shall issue such documents as are necessary to enable the worker to leave the territory, including the passport. . . ."

⁴⁴ N.Y. Times, Jan. 2, 1972, at 18, col. 3; Globe and Mail, Jan. 15, 1972, at 2.

⁴⁵ 10 INT'L LEGAL MATERIALS 895 (1971). The Agreement entered into force on June 3, 1972. The events leading up to the Agreement and the unusual structure of

Kingdom, the United States and the Soviet Union, and the subsequent Supplementary Arrangements⁴⁶ signed at Bonn between the two German States on December 17 and 20, 1971. The goal of these agreements was unimpeded traffic of persons and goods between West Berlin and the Federal Republic in the most expeditious fashion, whether by road, rail or waterway. An inter-German treaty on questions relating to traffic was concluded on May 26, 1972, thereby facilitating West German access into the German Democratic Republic.⁴⁷ A general settlement between the two German States was signed in East Berlin on December 21, 1972, which later became the treaty settling the basis of inter-German relations.⁴⁸ As part of these agreements which sought to regulate practical and humanitarian questions through the process of normalization, the parties undertook to reunite families and facilitate border-crossing travel and visitor traffic, including tourism.

The second series of events involved the United States—Soviet Union Trade Agreement of October 18, 1972,⁴⁹ and its subsequent demise due to the Soviet refusal⁵⁰ in January 1975, to accept Title IV

the Agreement are discussed in Doeker, Melsheimer & Schroeder, *Berlin and the Quadripartite Agreement*, 67 AM. J. INT'L L. 44 (1973). An appraisal of the Agreement is found in Rush, *The Berlin Agreement—An Assessment*, 65 DEPT STATE BULL. 489 (1971).

⁴⁶ Agreement between the Government of the German Democratic Republic and the Government of the Federal Republic of Germany on the Transit Traffic of Civilian Persons and Goods between the Federal Republic of Germany and Berlin (West), *reprinted in* 11 INT'L LEGAL MATERIALS 5-11 (1972); and Arrangement between the Government of the German Democratic Republic and the Senate on the Facilitating and Improving the Traffic of Travellers and Visitors, *reprinted in* 11 INT'L LEGAL MATERIALS 11-12 (1972). The Agreement and the Arrangement entered into force on June 3, 1972.

⁴⁷ Treaty between the German Democratic Republic and the Federal Republic of Germany on Questions Relating to Traffic, *reprinted in* 11 INT'L LEGAL MATERIALS 726 (1972). The Treaty entered into force on May 26, 1972.

⁴⁸ Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic, Dec. 21, 1973, *reprinted in* 12 INT'L LEGAL MATERIALS 16 (1973). The Treaty was ratified on June 20, 1973. *See generally* Geck, *Germany and Contemporary International Law*, 9 TEX. INT'L L.J. 263 (1974); Frowein, *Legal Problems of the German Ostpolitik*, 23 INT'L & COMP. L.Q. 105 (1974).

⁴⁹ For the text of this Agreement, see 67 DEP'T STATE BULL. 581 (1972).

⁵⁰ The cancellation was announced on January 14, 1975. A great deal of publicity was given to Soviet "assurances" of increased emigration, but the Soviet Union regarded the United States posture on emigration as interference in Soviet internal affairs. *See* N. Y. Times, Jan. 15, 1975 at 1, col. 1. *See also* 72 DEP'T STATE BULL. 139 (1975).

in the Trade Act of 1974⁵¹ regarding free emigration. Title IV, section 2432(a) 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) denies 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 whatever; 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.⁵²

The third series of events involved the history of the first United States bilateral Agreement on Trade Relations concluded under article IV of the Trade Act of 1974, concluded between Romania and the United States on April 2, 1975.⁵³ Title IV contains an important waiver provision permitting the President to waive by executive order the freedom-of-emigration requirements with respect to any country, if the President reports to Congress that he has determined that such waiver will substantially promote the objectives of free emigration, and that he has received assurances that the emigration practices of that country will eventually lead to free emigration.⁵⁴ In the Romanian case there was some evidence⁵⁵ of a tight Romanian government policy on emigration in the first months of 1975, but President Ford submitted an executive order⁵⁶ waiving the provisions requiring freedom of emigration and presented the trade agreement to Congress for the required approval of both Houses. The agreement was subsequently approved.⁵⁷

⁵¹ Trade Act of 1974, 19 U.S.C. § 2101 *et seq.* (1976).

⁵² *Id.* § 2432(a).

⁵³ 26 U.S.T. 2305, T.I.A.S. 8159. The Agreement entered into force on August 3, 1975. On the application and history of Title IV of the Trade Act of 1974, and its application to the Agreement with Romania, see Note, *An Interim Analysis of the Effects of the Jackson-Vanik Amendment on Trade and Human Rights: The Romanian Example*, 8 LAW AND POLY INT'L BUS. 193 (1976).

⁵⁴ 19 U.S.C. § 2432(c)(2).

⁵⁵ N. Y. Times, Apr. 29, 1975, at 4, col. 4. See also H.R. REP. NO. 359, 94th Cong., 1st Sess. 3, 4 (1975).

⁵⁶ Exec. Order No. 11854, 3 C.F.R. 987 (1975).

⁵⁷ The Resolution read that "the Congress approves the extension of non-discriminatory treatment with respect to the products of the Socialist Republic of

A review of these documents reveals a wide variety of agreements on the issue of freedom of movement in the years prior to the Helsinki Conference. Although none of these agreements purported to facilitate freedom of movement beyond a limited sphere, there was nonetheless a definite trend toward greater recognition of the rights of nationals to move beyond the territorial limits of their state of citizenship.

IV. THE FINAL ACT AT HELSINKI ON AUGUST 1, 1975

The Chiefs of State and other high representatives of thirty-three European countries,⁵⁸ the United States and Canada signed the Final Act of the Conference on Security and Cooperation in Europe (CSCE) at Helsinki on August 1, 1975.⁵⁹ This Conference and its Final Act marks a significant step in the gradual process of attempting to improve East-West relations in Europe, particularly in freedom of movement. Although the Final Act is not a treaty, it embodies a commitment to certain principles of behavior and to the implementation of practical measures of collaboration.

A United States Department of State official, in reference to the Final Act, reflected that "confusion over a document as carefully drawn, as vague and full of interrelationships and loopholes as is the Final Act is natural, and the results of the Conference should provide many a scholar a rich harvest of material for study for years to come."⁶⁰ Whatever characterization of status one wishes to bestow upon the Final Act, it does provide a framework against which the citizens of all the signatory States can assess their governments' willingness to abide by its international pledges.

Inclusion of Principle VII into the Final Act, whereby signatory States agree to respect, promote and encourage human rights and fun-

Romania transmitted by the President to the Congress on April 24, 1975." H.R. Res. 252, 94th Cong., 1st Sess., 121 CONG. REC. 25215 (1975); S. Res. 35, 94th Cong., 1st Sess., 121 CONG. REC. 24948 (1975).

⁵⁸ The European participants were: Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxemburg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, and Yugoslavia.

⁵⁹ The complete text of the CSCE Final Act is reproduced in 73 DEPT STATE BULL. 323 (1975), 14 INT'L LEGAL MATERIALS 1293 (1975). See also Comment, 10 CASE W. RES. J. INT'L L. 511 (1978).

⁶⁰ Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?*, 70 AM. J. INT'L L. 242, 243 (1976).

damental freedoms also provides a *locus standi* under which issues of human rights can be raised in relation to the Final Act. Furthermore, participating states,

[c]onfirm 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 Declaration 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.⁶¹

The Final Act is divided into sections which have become known as the three "baskets." The third basket deals with cooperation in humanitarian and other fields. With respect to human contacts, the participating States,

[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. The participating states expressed their intention now to proceed to the implementation of the following:

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

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

⁶¹ 14 INT'L LEGAL MATERIALS 1295 (1975).

contacts on the basis of family ties will not modify the rights and obligations of the applicant or of members of his family.

(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 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.

(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 their 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.

(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 will 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 services, including legal and consular assistance.⁶²

With respect to freer flow of information and improvement of working conditions for journalists:

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 favorable 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 op-

⁶² *Id.* at 1313-14.

portunities 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 requests;
 —increase the opportunities for journalists of the participating States to communicate personally with their sources, including organizations and official institutions. . . .⁶³

It is not the intent of this brief article to analyze the many implications of this document for freedom of movement, but merely to illustrate the great potential which this document exhibits for the establishment of an accepted doctrine of freedom of movement particularly in the area of family relations and journalism.

V. PROGRESS FOLLOWING HELSINKI 1975

Discussions between West German Chancellor Schmidt and Polish Party Leader Gierek during the Helsinki meeting subsequently led to three agreements including a Resettlement Protocol, signed at Warsaw on October 9, 1975.⁶⁴ Article 4 of the Protocol obligated Poland to permit emigration opportunities for 120,000 to 125,000 ethnic Germans residing in Poland to be repatriated to Germany over the next four years.⁶⁵ Moreover, a declaration by the Polish Foreign Minister further indicated that emigration of qualified German nationals would remain possible after the four-year term in the Protocol had expired.⁶⁶ This last declaration is in consonance with, and preserves the "Information" by the Polish Government, of December 7, 1970, in its Treaty with the Federal Republic of that date,⁶⁷ that criteria for granting exit permits continues to be ethnically German background and/or the unification of families.

On the basis of the West German-Polish Treaty of December 7, 1970, 60,000 persons were able to emigrate to West Germany between 1970 and 1975.⁶⁸ On the basis of the later agreement West German

⁶³ *Id.* at 1317.

⁶⁴ VII RELAY FROM BONN No. 23, Appendix 1 (1976); The German Tribune (No. 727) 1, 2 (1976).

⁶⁵ *Id.*

⁶⁶ VII RELAY FROM BONN No. 34, Appendix 1 (1976).

⁶⁷ *Id.*

⁶⁸ Included in a chapter on foreign policy in a report on the activities of the German Federal Government in 1975, published by the Press and Information Office of the Federal Government in Bonn, dated December 29, 1975.

Chancellor Schmidt announced that in 1975, 7,040 and in 1976, 29,366 ethnic Germans returned to the Federal Republic from Poland under the family reunification program. Upon the same occasion, Schmidt further stated that in 1975, 5,985 and in 1976, 9,704 persons came from the Soviet Union under the family reunification program.⁶⁹

Less encouraging developments have occurred in the German Democratic Republic. During 1976, periodic reports emerged of East German repression against their citizens who sought to emigrate.⁷⁰ On January 11, 1977, East German police began to bar persons access to the West German mission in East Berlin in an attempt to curtail East Germans from seeking advice on emigration. Strong protests from the West German Government that the act of blocking passage to visitors went "to the core of normalization" ended the harrassment the following day.⁷¹

On January 1, 1977, the German Democratic Republic introduced a visa requirement for all foreigners and stateless persons visiting East Berlin on a day-visit; it was aimed basically at the foreign workers in West Berlin.⁷² This challenge to the Western position that all Berlin is still under joint sovereignty of the Allies of World War II, *i.e.*, the United States, Britain, France and the Soviet Union, met with a protest from the three Western powers.⁷³ East Germany further impeded the spirit of the Helsinki Final Act by introducing a toll on February 25, 1977 on each car entering East Berlin from West Berlin.⁷⁴

Despite the 1972 Treaty between the two Germanies recognizing each other as sovereign States, Bonn has maintained a posture that an all-German nationality still exists, and accordingly makes available West German identity papers to East Germans who seek such documents. Using this issue that the Federal Republic refused to recognize a separate East German nationality, the German Democratic Republic announced on February 22, 1977, that "as long as the Federal Republic of Germany does not recognize the citizenship of the

⁶⁹ PRESS AND INFORMATION OFF., FED. REPUBLIC OF GERMANY, 25 THE BULL., Nos. 8, 57 & 58 (1977).

⁷⁰ See, *e.g.*, N. Y. Times, Apr. 5, 1976 at 3, col. 1; *id.*, Nov. 19, 1976, at 1, col. 4; *id.*, Dec. 23, 1976, at 4, col. 3; *id.*, Jan. 12, 1977, at A4, col. 1.

⁷¹ See N. Y. Times, Jan. 12, 1977, at A3, col. 1; *id.*, Jan. 13, 1977, at 4, col. 3.

⁷² The German Tribune (No. 770) 4; see also N. Y. Times, Jan. 6, 1977, at 7, col. 1.

⁷³ N. Y. Times, Jan. 20, 1977, at C13, col. 1.

⁷⁴ N. Y. Times, Feb. 26, 1977, at 24.

German Democratic Republic there can be no question of granting general freedom of travel to Western countries."⁷⁵

Soviet action following the Helsinki Conference has been more positive than that of East Germany. One of the first instances of Soviet implementation of the Helsinki Final Act's humanitarian provisions came with respect to journalists. It had been the Soviet practice to issue accredited journalists an exit and re-entry visa allowing the user to leave the country and return once. Such visas had to be obtained each time a correspondent desired to leave the Soviet Union.

On September 29, 1975, it was announced that through an exchange of notes between the United States and the Soviet Union, the Soviet Government would issue resident American journalists multiple exit-entry visas to enable them to travel promptly on assignment without bureaucratic delay. Reciprocal treatment is accorded to Soviet journalists in the United States with regard to entry visas. (No permission is needed to leave the United States.)⁷⁶

On March 1, 1976, the Soviet Union relaxed travel restrictions on all foreign journalists, allowing them to travel on short notice to cities open to tourists, and in addition, the foreign journalists based in Moscow were no longer bound to travel only within a 25-mile radius of central Moscow.⁷⁷

Another positive step to implement the provisions of the Final Act of Helsinki was taken at Sofia on November 9, 1977. On that date, through an exchange of notes, the United States and Bulgaria reciprocally lifted travel restrictions on the movement of each other's accredited diplomats and staffs within their respective countries.⁷⁸ In 1967, the United States government had placed travel restraints on accredited Bulgarian diplomats to the United States, and Bulgaria had responded likewise in 1968 with respect to accredited United States diplomats.

By virtue of this exchange of notes, the only travel restrictions now applicable to United States diplomats in Bulgaria are those which apply to all diplomats including those of Communist nations. Henceforth, diplomats from all Eastern European countries with which the United States has diplomatic relations could travel freely throughout the

⁷⁵ N. Y. Times, Feb. 23, 1977, at A4, col. 3.

⁷⁶ See N. Y. Times, Sept. 30, 1975, at 11, col. 1. A specimen of the Soviet exit visa appears in *id.*, Sept. 16, 1972; *id.*, Mar. 25, 1973, § 4, at 5, col. 1.

⁷⁷ N. Y. Times, Mar. 2, 1976, at 3, col. 5.

⁷⁸ 80 DEPT STATE BULL., 32 (Jan. 1978).

United States except for visits to installations involving national security.⁷⁹ However, reciprocal travel restrictions on the movement of Soviet diplomats in the United States and United States diplomats in the Soviet Union remain in effect.⁸⁰

As already noted, the free movement of persons in the territory of the European Communities is reserved for nationals of Member States in their own country and in crossing to the territory of another Member State for purposes of employment. To effect an expansion of this policy, the Commission of the European Communities undertook to study the feasibility of establishing a passport union. Consideration would be given to the introduction of a uniform passport to be issued by each Member State to its nationals, the harmonization of legislation affecting aliens, abolition of passport control at internal frontiers within the Community, and the equality of treatment of nationals of Member States by third countries.

Although the project of a Community passport union was new, there were some excellent prototypes⁸¹ to study, involving both Community Members and outside states, and the concept of a European passport was borrowed from the Council of Europe.⁸² The Commission report was presented to the European Council on July 3, 1975.⁸³ At its meeting of December 1 and 2, 1975, the executives of the Community members, the foreign ministers, and the Community officials made a decision to establish the passport union.⁸⁴ However, neither the passport union nor the European passport is a reality to date.

Following Helsinki, persons in both the East and West began to monitor the human rights provisions of the Final Act. In Eastern Europe these human rights activists are regarded as dissidents and have come to endure a wide range of repressive acts including govern-

⁷⁹ Similar reciprocal removals of travel restrictions for diplomatic personnel in the host States were agreed upon between the United States and Czechoslovakia at Prague on November 3, 1976. See *N. Y. Times*, Nov. 4, 1976, at 5, col. 1.

⁸⁰ See *N. Y. Times*, Feb. 3, 1977, at 2, col. 5. Two maps in the article indicate restricted areas in the United States and the Soviet Union.

⁸¹ Three prototypes can be examined; those of 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).

⁸² *Id.* at 67.

⁸³ [1975] *BULL. EUR. COMM.*, Supp. 7.

⁸⁴ [1976] *EUROPEAN COMMUNITY* No. 192, 16. See also Bogdan, *Free Movement of Tourists Within the EEC?*, 11 *J. WORLD TRADE LAW* 468 (1977).

mental pressure to leave their country permanently.⁸⁵ Their zeal continues. In the early part of 1977, for example, Yugoslav proponents of civil rights petitioned their government to end the practice of arbitrarily denying passports to citizens in contravention of their constitutional guarantee to the right to travel abroad.⁸⁶

On the other hand encouraging reports from West Germany indicate that in 1976, approximately 400,000 West Germans visited Poland, and 200,000 Poles visited the Federal Republic.⁸⁷ During the Summer of 1977, Austria and Hungary agreed in principle to abolish the visa requirement for their citizens to visit as tourists in the other's territory.⁸⁸

Recently, the head of West Berlin's Interior Department drew attention to an influx of Pakistanis and nationals from Middle East countries seeking asylum after entering from East Berlin. They were able to cross the border from East Berlin without Western passport or customs controls due to the insistence of the United States, the United Kingdom and France that access must be free on the western side of the border wall.⁸⁹ Marriages of convenience also occur on a regular basis in West Berlin as a means of gaining permanent residence and a work permit in the Federal Republic of Germany.⁹⁰

Finally, as a prelude to the Belgrade Conference for review of progress on the Helsinki Final Act, East Germany rid itself of regime critics by forcing them to emigrate under an arrangement whereby the Bonn Government paid about \$20,000 for each person freed.⁹¹

⁸⁵ For a brief review of the situation in the Soviet bloc, country by country, see N. Y. Times, Jan. 31, 1977, at 1, col. 1. As concerns Romanian pressures, see *id.*, Feb. 15, 1977, at 1, col. 2; Feb. 18, 1977, at A1, col. 2; *id.*, Feb. 19, 1977, at C8, col. 1. Concerning Czechoslovakia, see *id.*, Jan. 28, 1977, at A1, col. 1. See also *id.*, Jan. 27, 1977, at A1, col. 6. The Czechoslovakian signers of the Charter 77 human rights manifesto were "invited" to leave their country but they refused. See *id.*, Jan. 29, 1977, at 3, col. 3. The text of Charter 77 appears in *id.*, Jan. 27, 1977, at 16, col. 3. See also *id.*, Jan. 29, 1977, at 3, col. 1; *id.*, Feb. 7, 1977, at 4, col. 3; Oct. 11, 1977, at 14, col. 5. As concerns the Soviet Union, see *id.*, Oct. 11, 1977, at 14, col. 3; *id.*, Feb. 5, 1977, at 4, col. 1.

⁸⁶ N. Y. Times, Feb. 3, 1977, at 4, col. 1.

⁸⁷ The German Tribune (No. 791) 5 (1977).

⁸⁸ N. Y. Times, Aug. 15, 1977, at 9, col. 1.

⁸⁹ N. Y. Times, Dec. 4, 1977, at 14, col. 3.

⁹⁰ The German Tribune (No. 806) 14 (1977).

⁹¹ N. Y. Times, Sept. 24, 1977, at 1, col. 1.

VI. BELGRADE: THE FIRST FULL-SCALE REVIEW OF THE HELSINKI FINAL ACT

A thirty-five nation conference convened in Belgrade between October 4, 1977 and March 9, 1978, to review progress on European security, economic cooperation and human rights. The impact of the Conference was built slowly behind closed doors. Hundreds of speeches were delivered, criticizing human rights violations and calling for reaffirmation of the right of private persons and journalists to travel, the freer right of emigration and the guarantee of visas.⁹² Representatives of nations who were the principal targets of criticism reiterated their condemnation of efforts to raise human rights issues as "interference in our internal affairs."⁹³ This argument has been rejected, however, by those who feel that the human rights issue reaches beyond domestic jurisdiction. Human rights have been matters of legitimate international concern, reaching at least as far back as the Universal Declaration of Human Rights. Principle VII of the Final Act makes it even less reasonable to assert that human rights are purely internal affairs as it incorporates the International Covenant on Civil and Political Rights into general international obligations.⁹⁴

A United States report found generally that "Basket Three stands especially in need of improved implementation" and that the "general implementation of Basket Three provisions by the Warsaw Pact states remained well below the commitments agreed upon in the Final Act."⁹⁵

No general consensus was found at Belgrade. Before the meeting adjourned, it adopted a summary document that did not mention human rights, but did agree to meet again in Madrid in November 1980, to continue the international review of compliance of the Helsinki Final Act.⁹⁶

VII. CONCLUSION

This examination of the modern agreements on free movement of

⁹² N. Y. Times, Nov. 25, 1977, at A5, col. 1.

⁹³ See N. Y. Times, Mar. 9, 1978, at 7, col. 1; *id.*, Oct. 7, 1977, at A2, col. 5. As a temporary gesture during the Conference, Soviet authorities did increase the issue of emigration visas, see *id.*, Oct. 15, 1977, at 8, col. 2.

⁹⁴ VII RELAY FROM BONN NO. 34, Appendix 1 (1976).

⁹⁵ U. S. DEP'T OF STATE, THIRD SEMIANNUAL REPORT TO THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, SPECIAL REPORT NO. 39, at 13 (1977).

⁹⁶ N. Y. Times, Mar. 9, 1978, at A7, col. 1.

persons reflects positive changes. Much has been accomplished in the past decade to create more individual mobility across national frontiers. Critics of the human mobility question can allude to continuing shortcomings in that certain barriers do exist. It is easy, for example, to point to the Eastern European countries and find that they restrict emigration and even tourism when their nationals wish to travel abroad individually rather than in groups. On the other hand, affirmative changes have occurred and further progress will be forthcoming. The next formal review session of the Helsinki Final Act is one year away. During the interim, this author asserts, that efforts will be made to promote further implementation of the Final Act. Ultimately, the international standards of behavior in the area of freedom of movement may comply with the commitments found in the international instruments as outlined.

