1977

The Final Act of the Helsinki Conference: An Artists' Liberation Movement or a Voyage to Laputa

James A. R. Nafziger

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The Final Act of the Conference on Security and Co-Operation in Europe,[1] often referred to as the "Helsinki Accords," has important implications for art and artists. Although the document has no legally binding effect, it is nevertheless a morally compelling, comprehensive expression of norms which are intended to guide, if not govern, sovereign behavior in Europe.[2] It serves, too, as a leading symbol of East-West detente. Signatories of the Final Act, which include the United States, Canada, and all European countries except Albania,[3] pledge themselves to cooperate in further efforts to establish a method for the peaceful settlement of disputes, including a Draft Convention on a European System for the Peaceful Settlement of Disputes.[4]

The Final Act contains three "Baskets." The first of these concerns "Questions relating to Security in Europe" establishing a "Declaration on [Ten] Principles Guiding Relations Between Participating States"; the second treats "Co-operation in the Field of Economics, of Science and Technology and of the Environment"; and Basket III, with which this Article is primarily concerned, is entitled "Co-operation in Humanitarian and Other Fields."[5] A

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[1] Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 1975, *reprinted in* 73 Dep't State Bull. 323 (1975), 14 Int'l Legal Mat. 1292 (1975) [hereinafter cited as Final Act].

[2] *See* Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?* 70 Am. J. Int'l L. 242, 246-49 (1976) [hereinafter cited as Russell]. On the subject of human rights and the Helsinki Accords, *see generally* Human Rights, International Law and the Helsinki Accord (T. Buergenthal ed. 1978). Although the document contains language of legal obligation, its status is clarified by the provision that: "The 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. . . ." *Follow-up to the Conference*, Final Act, *supra* note 1 at 349, 14 Int'l Legal Mat. at 1325. Under Article 102 of the United Nations Charter, a registration facility is provided for treaties and other international agreements, but not for international arrangements lacking binding legal force. *See also* Schachter, *The Twilight Existence of Nonbinding International Agreements*, 71 Am. J. Int'l L. 296, 304 (1977).

[3] The European signatories were: Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, 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. Canada and the United States also signed the Accords.

[4] *Questions Relating to Security in Europe*, Final Act, *supra* note 1, at 327, 14 Int'l Legal Mat. at 1297.

[5] *See Basket III: Implementation of the Helsinki Accords: Hearings on the Implementation of*

concluding procedural section, "Follow-up to the Conference," is sometimes regarded as a fourth basket.

The Final Act articulates principles not only of intergovernmental relations and cooperation, but also of individual human rights and fundamental freedoms. Akin to an international agreement, the concluding section, "Follow-up to the Conference," requires the signatories to "pay due regard to and implement the provisions"[6] of the accords unilaterally, bilaterally, and multilaterally. The same section establishes a continuing multilateral review process centering on a thorough exchange of views and periodic high level meetings.[7]

Much public attention has been devoted to several significant features of the Final Act: a recognition of the inviolability of national frontiers; a commitment to disarmament and the peaceful settlement of disputes; a resolution favoring the reunification of families; and the commitment to individual human rights and fundamental freedoms. Less attention has been given until recently to a number of provisions of Baskets II and III, including those in Basket III calling for "Cooperation and Exchanges in the Field of Culture," which together with the explicitly enunciated human rights and follow-up provisions, are of special concern to the art community.

I. THE SIGNIFICANCE OF THE FINAL ACT FOR ART AND ARTISTS

The Final Act applies to three broad categories of art law issues: cultural cooperation and exchange of cultural material; the rights of individual artists;

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the Helsinki Accords Before the Commission on Security and Cooperation in Europe, 95th Cong. 1st Sess. (1977) [hereinafter cited as *Hearings*]. The significance of Basket III is summarized as follows in Russell, *supra* note 2, at 243:

> It is Basket III, and in particular the human contacts and information texts, dealing with meetings between family members on the basis of family ties and reunification of divided families; marriage between citizens of different states; travel for personal or professional reasons; improvement of the circulation of, access to, and exchange of oral, printed, filmed, and broadcast information; and improved conditions for journalists, that were of greatest interest to the West and may have the most influence on future events.

[6] Final Act, *supra* note 1, at 348, 14 INT'L LEGAL MAT. at 1324.

[7] Specifically, the Final Act, *Follow-up to the Conference*, expresses in section two the resolve of the signatories to continue the 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, on the deepening of their mutual relations, the improvement of security and the development of co-operation in Europe, and the development of the process of detente in the future;
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> (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. . . .
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> 3. The first of the meetings indicated above will be held at Belgrade in 1977. . . .

Id. at 348-49, 14 INT'L LEGAL MAT. at 1325. The first follow-up meeting was held as scheduled. *See*, Christian Science Monitor, Oct. 7, 1977, at 6, col. 1; Belgrade Meeting Following Conference on Security and Co-operation in Europe: Selection of Documents Illustrating the Negotiations of the Belgrade Meeting. 17 INT'L LEGAL MAT. 1206 (1978). For excerpts from the opening remarks of the United States delegation to this meeting, *see* 72 Am. J. of Int'l. L. 120 (1978). The second review meeting is scheduled to take place in Madrid in 1980. 17 INT'L LEGAL MAT. 1206 (1978).

and other international cooperation. This study will examine each of these categories in the context of a current or recent problem, consider pertinent provisions of the Final Act, and conclude with a brief recommendation and forecast.

A. *Cultural Cooperation and Exchange of Cultural Material*

The free flow of cultural material serves two major functions: the enrichment of human experience, both for the artist and others; and the facilitation of international understanding. These functions are inhibited by two factors: authoritarian cultural and ideological sensitivities, such as the well-known Soviet restrictions on artistic expression and international trade in art; and state-centrist inhibitions on the flow of material, such as export-import prohibitions, restrictions, regulations, and fees. The Final Act addresses both of these factors. In doing so, it builds upon a long history of attempts to define an international regime to protect and regulate the transnational media in all its forms.[8] A prominent element in this effort is paragraph 8 of the "Essentials of Peace" Resolution of the United Nations General Assembly: "*to remove* the barriers which deny to peoples the free flow of information and ideas essential to international understanding and peace."[9]

The Final Act, which explicitly recognizes the role of cultural exchanges and cooperation in promoting "a lasting understanding among states,"[10] expresses the "intention" to implement five objectives:

(a) to develop the mutual exchange of information with a view to a better knowledge of respective cultural achievements,
(b) to improve the facilities for the exchange and for the dissemination of cultural property,
(c) to promote access by all to respective cultural achievements,
(d) to develop contacts and co-operation among persons active in the field of culture,
(e) to seek new fields and forms of cultural co-operation.[11]

The Final Act catalogues a variety of means to facilitate these objectives: bilateral and multilateral loan and exchange agreements; meetings of artists and cultural experts; book fairs; exchanges of information; joint efforts to conserve, restore and show art; transnational educational exchanges; and recognition in national policy of the cultural needs and interests of other states. The Final Act recognizes the cultural contributions of migrant workers, national minorities, and regional cultures, and provides that these groups should be included in cooperative programs.[12]

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[8] *See* M. Whiteman, 13 DIG. INT'L L. 903 (1968).

[9] G.A. Res. 290 (IV), U.N. Doc. A/1251, at 13 (1949).

[10] *Co-operation in Humanitarian and Other Fields*, Final Act, *supra* note 1 at 343, 14 INT'L LEGAL MAT. at 1317.

[11] *Id.* at 343, 14 INT'L LEGAL MAT. at 1318. These objectives are based upon the 1966 UNESCO Declaration of the Principles of International Cultural Cooperation. *See* Dass, *European Co-operation and UNESCO*, 22 UNESCO CHRON. 278 (1976).

[12] Final Act, *supra* note 1 at 343, 14 INT'L LEGAL MAT. at 1318.

An important characteristic of Basket III of the Final Act is its emphasis on removing financial, regulatory, and other restrictions on the international flow of cultural property. There is a tension between the interests of collectors, museums, and transcultural education which favor an increase in this flow, and the countervailing desire to preserve the integrity of national patrimonies.[13] One congenial means of reducing this tension would be to provide for extended loans and exchanges of redundant materials. Inter-museum and inter-governmental agreements can be used to formalize such transnational cooperation. Within the East-West context, a well-known example is the loaning to United States museums of both traditional and Impressionist art from the Soviet Union.[14]

Of more than passing importance to lawyers in this regard are three provisions under the Basket III sub-heading, "Exchanges and Dissemination." This portion of the Final Act commits the signatories:

> To contribute to the improvement of facilities for exchanges and the dissemination of cultural property, by appropriate means, in particular by:
> — studying the possibilities for harmonizing and reducing the charges relating to international commercial exchanges of books and other cultural materials, and also for new means of insuring works of art in foreign exhibitions and for reducing the risks of damage or loss to which these works are exposed by their movement;
> —facilitating the formalities of customs clearance, in good time for programmes of artistic events, of the works of art, materials and accessories appearing on lists agreed upon by the organizers of these events;
> . . . .
> —endeavouring to ensure the full and effective application of the international agreements and conventions on copyrights and on circulation of cultural property to which they are party or to which they may decide in the future to become party.[15]

The first two of these provisions address serious inhibitions on the flow of loaned or exchanged material. The third is a rather pointed response to the problems of non-recognition of copyrights and ideological restrictions on the flow of foreign cultural property by socialist states.

The Final Act goes beyond the garden-variety problems encountered in encouraging the transnational movement of cultural property, for it commits

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[13] For an example of the international dimensions of this problem, *see* Nafziger, *Controlling the Northward Flow of Mexican Antiquities*, 7 LAW. AM. 68 (1975) which discusses questions of law and policy in connection with the international art trade.
DuBoff ed. 1975), which discusses questions of law and policy in connection with the internatioal art trade.

[14] For a brief commentary on private agreements between or among museums, concerning especially the United States and Mexico, *see* Nafziger, *Regulation by the International Council of Museums: An Example of the Role of Non-Governmental Organizations in the Transnational Legal Process*, 2 DEN. J. INT'L L. & POL'Y 231, 239-40 (1972).

[15] *Co-operation In Humanitarian and Other Fields*, Final Act, *supra* note 1 at 344, 14 INT'L LEGAL MAT. at 1318-19.

states to facilitate the flow of even that cultural property which may be ideologically or culturally dissonant to them. This intent is manifest, for example, in the confirmation of "active participation of the broadest possible social groups in an increasingly diversified cultural life,"[16] the declared disposition of participating states "to increase substantially their cultural exchanges,"[17] the conviction that the development of mutual relations among them will contribute to the reinforcement "of a consciousness of common values,"[18] and the expressed intention "to promote fuller mutual access by all to the achievements . . . in the various fields of culture of their countries, and to that end to make the best possible efforts."[19]

A test case of these provisions relates to the efforts of the Soviet Union to force the cancellation of the 1977 Biennale in Venice, on the theme of dissident art and culture in Eastern Europe. The Soviet Union threatened an Eastern European boycott of the 1977 and future Biennale festivals, using its diplomatic leverage against the Italian government, which subsidizes the festival. Carlo Ripa de Meana, the festival director, responded as follows to both the Soviet government's threat and the apparent willingness of the Italian government to yield to that threat:

> This year's festival theme is not a political sensation but a profound documentation and analysis of one of the most important phenomena of contemporary culture. The spirit of Helsinki [the Helsinki declaration of 1975 on East-West detente] cannot mean silence for an institution like the Biennale. It would risk its credibility to pretend that nothing had happened and reject the culture of dissent.[20]

The earlier identified provisions of the Final Act explicitly support this interpretation of the document's "spirit." The strong resistance to Soviet pressures by the Director of the Biennale succeeded. The political controversy became diffused and less intense; the 1977 theme — "Dissent in the Countries of Eastern Europe" — was retained; and the Biennale took place, as a "protest against the insanity of politics and the suppression of art" by means of a "crude exportation of Soviet censorship."[21] The Soviet actions, in clear violation of the Final Act's commitment to more open cultural exchanges, thus failed to daunt the integrity of the art community.

B. The Rights of Individual Artists

The restrictions imposed on artistic freedom by a number of signatory

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[16] *Id.* at 343, 14 INT'L LEGAL MAT. at 1317.

[17] *Id.*

[18] *Id.* at 343, 14 INT'L LEGAL MAT. at 1318.

[19] *Id.* at 344, 14 INT'L LEGAL MAT. at 1319.

[20] Christian Science Monitor, Mar. 9, 1977, at 9, col. 3; N.Y. Times, Mar. 5, 1977, at 3, col. 1.

[21] *See* Hughes, *Art Versus Politics At The Venice Biennale*, N.Y. Times, Dec. 4, 1977 at II, 29, col. 3 ("Venice is sinking no more, at least in spirit"); letter from Mirella Alterocca Hemp, Consolato Generale d'Italia (San Francisco) to the author (June 9, 1977); letter from Alfred Friendly, Jr., Deputy Staff Director, Commission on Security and Cooperation in Europe, to the author (August 23, 1977); *Via al rilancio della Biennale*, II Popolo, June 3, 1977. On the Soviet response to the Venice Biennale, *see*, Excelsior [Mexico], Nov. 18, 1977, at E1, col. 1.

states are notorious,[22] and the grievances of dissident artists residing in those countries have been well publicized. Although these claims of repression might be regarded as purely domestic matters, the Final Act correlates individual human rights and fundamental freedoms with the aims of international harmony and security which animate the document. Individual freedom, defined by international standards, is to be an important element in implementing the Helsinki spirit.

Aside from those protections of artists which are implicit in the Basket III provisions for international cultural cooperation and exchange, the human rights provisions contained in Basket I of the Final Act are also important for artists. Specifically, the participating states agreed to promote and encourage the effective exercise of fundamental individual rights and freedoms, "all of which derive from the inherent dignity of the human person and are essential for his free and full development."[23] Further, participating states "confirm the right of the individual to know and act upon his rights and duties in this field."[24] The signatories also agree to act in conformity with the "purposes and principles" of the United Nations Charter, the Universal Declaration of Human Rights, and, if they are parties to them, the International Covenants on Human Rights.[25] In addition, parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1952,[26] that is, most of the Western European countries, are bound by its provisions and prescribed institutional framework.

Article 56 of the United Nations Charter requires all members to "pledge themselves to take joint and separate action in cooperation with the [United Nations] for the achievement of the purposes set forth in Article 55."[27] Article 55 of the Charter, building upon Article 1(3), requires the United Nations, *inter alia,* to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[28] These rights and freedoms are further defined in the Universal Declaration of Human Rights,[29] which many view as the best evidence of the

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[22] For recent examples of artistic repression, *see* N.Y. Times, Dec. 31, 1976, § C, at 18, col.1; N.Y. Times, Jan. 18, 1977, at 6, col. 1; Starr, *Soviet Painter Poses a Question*, 8 SMITHSONIAN, Dec. 1977, at 101 (on Soviet censorship of Ilia Glazunov's "The Mystery of the Twentieth Century," a mural which is itself somewhat of a mystery). Andrei D. Sakharov delivered a message to the 1977 Venice Biennale which spoke of "the complete tragedy of creative life in the East." N.Y. Times, Dec. 4, 1977, at II, 29, col. 3. *See also* Leary, *The Implementing of the Human Rights Provisions of the Helsinki Act, A Preliminary Assessment: 1975-1977*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD (T. Buergenthal ed. 1978) at 148-50.

[23] *Questions Relating to Security in Europe*, Final Act, *supra* note 1 at 325, 14 INT'L LEGAL MAT. at 1295.

[24] *Id.*

[25] *Id.* There will remain some uncertainty as to how broadly the phrase "purposes and principles" is to be construed. Russell, *supra* note 2 at 262. The Eastern European countries, unlike the Western European and North American countries, seem inclined to employ the phrase to restrict the applicable United Nations Charter provisions to Articles 1 and 2. Even so, Article 1(3) of the Charter establishes humanitarian and human rights aims of the United Nations which, to be given any effect, must be respected and implemented by Member States.

[26] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1952, 213 U.N.T.S. 221 (1955).

[27] U.N. CHARTER art. 56.

[28] U.N. CHARTER art. 55.

[29] G.A. Res. 217 (III), U.N. Doc. A/810, at 71 (1948).

customary international law of human rights and as an interpretation of the more general human rights provisions contained in the United Nations Charter.[30] Article 19 of the Universal Declaration guarantees everyone "the right to *freedom of opinion and expression;* this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas *through any media* and regardless of frontiers."[31] Although the freedom protected is susceptible to a narrow construction, excluding artistic opinion or expression, the phrase "through any media" suggests a meaning that includes the arts.

The International Covenant on Civil and Political Rights,[32] to which the Social Union and a number of other European States are parties, is also applicable. That agreement represents the culmination of a long effort to translate the aspirations and norms of the Charter and the Universal Declaration into more precise, binding law. The Covenant is very specific about the right of artistic expression. Article 19(2) states that: "Everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, *in the form of art,* or through any other media of his choice."[33]

Despite its specific reference to art, this Covenant may be considerably more difficult to apply for the benefit of the art world than the more general language of the Universal Declaration of Human Rights. This paradox results from an escape-clause in the Covenant not present in the Universal Declaration. Accordingly, exercise of the right protected by Article 19 "carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be only as are provided by law and are necessary, (1) for the national security, (2) for respect of the rights and reputations of others or of public order ("ordre public"), or of public health or morals."[34] These qualifications seem to provide ample support for restrictive practices imposed in the name of public order, national security, or health and morals. If the rights of individual, often politically dissident artists are to be protected, a strong emphasis must be placed on pouring specific content into the substantive right of free expression. True progress can be made only if further agreement is reached on minimum standards of artistic freedom, exempt from the domestic police power.

C. *Other International Cooperation*

The Final Act not only provides that participating states must conform

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[30] *See* V. VAN DYKE, HUMAN RIGHTS, THE UNITED STATES, AND WORLD COMMUNITY 120-25 (1970) and J. CAREY, U.N. PROTECTION OF CIVL AND POLITICAL RIGHTS 9-15 (1970), which summarize various viewpoints regarding the legal significance of the Universal Declaration of Human Rights, as well as its binding nature upon the signatories.

[31] G.A. Res. 217 (III), art. 19, *supra* note 29 (emphasis added).

[32] Adopted and opened for Signature Dec. 19, 1966, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966), *updated in* [1976] MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY GENERAL PERFORMS DEPOSITARY FUNCTIONS, LIST OF SIGNATURES, RATIFICATIONS, ACCESSIONS, ETC. as at 31 December 1976, at 101, U.N. Doc. ST/LEG/SER.D/10.

[33] *Id.*, art. 19 (emphasis added).

[34] *Id.*

their behavior to international law and standards, but also that they must operate within a specified international organizational framework. This requirement has important implications for the United States and for the vitality of Basket III.

Although the first principle of Basket I of the Final Act establishes that participating states "have the right to belong or not to belong to international organizations,"[35] the signatories nevertheless pledge in the "follow-up" section of the document to implement its provisions unilaterally, bilaterally, and multilaterally. Their specific commitment to operate "multilaterally . . . within the framework of existing international organizations, such as the United Nations Economic Commission for Europe and UNESCO"[36] bears examination. Specific mention of only two international organizations indicates the importance which the Final Act attaches to participation in them by the Helsinki signatories. If this intent of the Final Act is to be respected, the United States must reassume full participation in UNECO and assume new obligations under the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("UNESCO Convention").[37]

The withdrawal of United States support for UNESCO, related to the effective muffling of an Israeli voice in the organization, has been examined elsewhere.[38] So has the failure of the United States Congress to adopt legislation to implement the UNESCO Convention,[39] even though in 1972 the Senate gave its advice and consent to ratification of the Convention by a vote of 79 to 0.[40] Congressional failure to implement the legislation is an expression both of its hostility toward UNESCO,[41] and its more general paralysis in the face of pluralistic pressure and competing legislative demands.[42] The Final Act makes a substantial contribution by imposing a moral obligation upon the United States to recommit itself to the advancement of cultural cooperation within the framework of UNESCO and its international agreements. The United States should welcome the opportunity to work from within this framework, however hostile it may sometimes be.

II. The Durability of the Final Act

It is still too early to judge what lasting effects the Final Act will have, much less how Basket III may be affected by developments related to Baskets I and II. Inasmuch as the Final Act does not legally bind its signatories, its impact will be determined by their unilateral, good faith commitment and by public

[35] *Questions Relating to Security in Europe*, Final Act, *supra* note 1, at 324, 14 Int'l Legal Mat. at 1294.

[36] *Follow-up to the Conference*, Final Act, *supra* note 1 at 348, 14 Int'l Legal Mat. at 1324.

[37] *Done* Nov. 14, 1970, *reprinted in* 10 Int'l Legal Mat. 289 (1971).

[38] Nafziger, *UNESCO-Centered Management of International Conflict Over Cultural Property*, 27 Hastings L.J. 1051 (1976) [hereinafter cited as Nafziger].

[39] DuBoff, Nafziger, Emmerich, Feldman, McAlee, & Bator, *Proceedings of the Panel on the U.S. Enabling Legislation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 4 Syracuse J. Int'l L. & Comm. 97 (1976) [hereinafter cited as Panel Proceedings].

[40] *See id.* at 102.

[41] *See* Nafziger, *supra* note 38, at 1054 n. 15.

[42] *See* Panel Proceedings, *supra* note 39 *passim*.

opinion. It has been stated that "Basket III remains the main source of contention and the main measure of progress, since it requires positive action from the signatories."[43] The scoreboard thus far reflects both implementation and relation.[44] Whatever the "score," it appears that, on the whole, the Final Act is being taken seriously by its signatories and has provided a useful set of standards for both international and domestic application.

The Final Act is being taken seriously by the signatories primarily because they have an important stake in its success. Both spheres of influence in Europe obtained what they wanted. The Soviet sphere got the Conference, the Act itself, and the ten principles of interstate relations contained in Basket I. The Western bloc got the express agreement of the Warsaw Pact countries to balanced force reductions in Europe, the inclusion of the United States and Canada in the Conference, a number of other diplomatic concessions outside the scope of the Conference and Basket III.[45]

The Soviet Union vigorously resisted the inclusion of Basket III provisions in the Final Act.[46] The Western passion for these provisions arose out of guilt concerning generous post-war settlements, the prospect of liberalizing Eastern Europe, and a genuine perception of linkage between Basket III and security, the *raison d'être* of the Conference. When the Soviet Union became convinced that its opposition to Basket III was a losing battle, it began a rearguard action to weaken that Basket by embodying two propositions in the Final Act: first, that the free flow of information objective of Basket III was to be subordinate to the overriding aim of the Conference of friendly and good-neighbourly relations; and second, that Basket III more generally was to be subordinate to the Basket I provisions regarding sovereignty and nonintervention.

The nonintervention provision of Basket I,[47] however, does not appear to apply to human rights and Basket III concerns. Although this provision extends beyond "armed intervention" and "terrorist activities" to condemn "political, economic or other coercion,"[48] few would seriously argue

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[43] Davy, *Helsinki Scoreboard*, 32 THE WORLD TODAY 280 (1976).

[44] *Id.* at 281; *see Hearings, supra* note 5.

[45] Davy, *The CSCE Summit*, 31 THE WORLD TODAY 349 (1975).

[46] *Id.* at 351.

[47] Final Act, *Questions Relating to Security in Europe*, § 1(a) provides in part:

VI. *Non-intervention in internal affairs*

The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations.

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

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

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

Final Act, *supra* note 1 at 325, 14 INT'L LEGAL MAT. at 1294-95.

[48] *See* note 47 *supra*.

that diplomatic pressures to enhance human rights involve acts of coercion. It is established, moreover, that the pursuit and protection of human rights, particularly under Articles 55 and 56 of the United Nations Charter, do not constitute intervention into the "domestic jurisdiction" of states.[49]

The sovereignty provision of Basket I, formally captioned "Sovereign equality, respect for the rights inherent in sovereignty," requires each signatory to respect "each other's . . . right to determine its laws and regulations." [50] This apparently innocuous language is the result of a compromise between the Soviet and Western positions on the significance of Basket III.[51] On one hand, the provision enables the Soviet Union to argue that its municipal law prevails in cases of conflict with Basket III. On the other hand, a second provision in Basket I, designed to counter the Soviet argument establishes that the signatories,

> in exercising their sovereign rights, including the right to determine their laws and regulations . . . will conform with their legal obligations under international law; they will furthermore pay due regard to and implement the provisions in the Final Act of the Conference on Security and Co-operation in Europe.[52]

Soviet proposals, designed to subordinate Basket III to Basket I principles of nonintervention and sovereignty, were couched in caveats of respect for the "laws and regulations" or the "cultural systems" of other states[53] and in a narrow definition of protected information flow.[54] A stipulation was also inserted in the preamble to Basket III stating that "cooperation should take place in full respect for the principles guiding relations among participating states."[55] Basket I, however, also provides that "[a]ll of the principles" within the Declaration "are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into account the others."[56] Thus, "full respect" for the principles in Basket I includes respect for its provisions regarding human rights and fundamental freedoms, which in turn serve to strengthen Basket III provisions for "freer movement and contacts"[57] among persons. Moreover, other language within

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[49] U.N. CHARTER, art. 2, para. 7 provides in part that: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state. . . ." This is generally interpreted, principally by United Nations practice in response to issues of discrimination and apartheid, to allow international review of human rights questions. *See* Fawcett, *Human Rights and Domestic Jurisdiction*, in THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 286 (E. Luard ed. 1967).

[50] *Questions Relating to Security in Europe*, Final Act, *supra* note 1 at 324, 14 INT'L LEGAL MAT. at 1293.

[51] Russell, *supra* note 2, at 263.

[52] *Questions Relating to Security in Europe*, Final Act, *supra* note 1 at 326, 14 INT'L LEGAL MAT. at 1296.

[53] *Id.* at 324, 14 INT'L LEGAL MAT. at 1293.

[54] *Id.* at 326, 14 INT'L LEGAL MAT. at 1295.

[55] *Co-operation in Humanitarian and Other Fields*, Preamble, Final Act, *supra* note 1 at 339, 14 INT'L LEGAL MAT. at 1313.

[56] *Questions Relating to Security in Europe*, Final Act, *supra* note 1 at 326, 14 INT'L LEGAL MAT. at 1296.

[57] *Co-operation in Humanitarian and Other Fields*, Final Act, *supra* note 1 at 339, 14 INT'L LEGAL MAT. at 1313.

the Basket I declaration of principles can be read to strengthen Basket III.[58] Thus, it is unlikely that the Soviet Union or any other signatory of the Final Act will be able to limit Basket III provisions by recourse to the "full respect for the principles" clause.

III. A Recommendation and a Forecast

The Final Act was designed to be an agreement among all the signatory states, and not to establish relationships among political spheres of influence. Nevertheless, basic disagreements as to how the instrument should be construed find Eastern European states on one side, and the North Atlantic states on the other.[59] The Eastern European states, most notably the Soviet Union, seek to subordinate what they view as the "soft" provisions of Basket III to the "hard" provisions of Basket I. At the same time, however, the Final Act embodies provisions and principles of great importance to the Soviet Union. The Helsinki Conference "was a coveted Soviet project for some 20 years."[60] The Soviet Union regards the Final Act as a great diplomatic victory, and it would be a diplomatic defeat for it if the Act were to fall into desuetude or disrepute. Hence the Soviet dilemma is to find a means of avoiding the distasteful provisions of Basket III, without thereby undermining the entire document.[61]

In view of the high stakes, the Final Act possesses the force of *lex ferenda* in the sense, for example, of the Universal Declaration of Human Rights prior to the adoption of the two United Nations covenants on human rights. Even

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[58] For example, the principle of "Co-operation Among States" requires "accordance with the purposes and principles of the Charter of the United Nations" and confirms that "governments, institutions *and persons* have a relevant and positive role to play in contributing toward the achievement of these aims of cooperation." *Questions Relating to Security in Europe*, Final Act, *supra* note 1 at 326, 14 Int'l Legal Mat. at 1295-96 (emphasis added).

[59] For a commentary on the Soviet position, *see* Osnos, *Carter-Kremlin Showdown at Belgrade on Human Rights*, Guardian Weekly, June 19, 1977, at 15, col. 1; Lvov, *In the Second Post Helsinki Year*, New Times, January, 1977, at 6; Yaroslavtsev, *Basis of European Security*, Int'l Affairs [Moscow] (no. 5) 13 (1976); Lvov, *The European Conference: Experience and Significance*, Int'l Affairs [Moscow] (no. 4) 41 (1976); Chernenko, *The Conference in Helsinki and International Security*, Int'l Affairs [Moscow] (no. 11) 3 (1975). *See also* almost any issue after 1974 of The World Marxist Review. On the somewhat variant positions of the non-Soviet countries of Eastern Europe, *see Six Months After: The East European Response to Helsinki*, 14 Atlantic Community Q., Spring 1976, at 59, 60; Grela, *The Conference on Security and Cooperation in Europe*, 15 Polish W. Aff. 237 (1974). For the Western European viewpoint, *see* Henze, *Neue Aufgaben der Entspannungspolitik; Freizügigkeit und verbesserte Informationsmöglichkeit als Ziele der KSZE*, 30 Europa Archiv 567 (1975); Galtung, *European Security and Co-operation*, 12 J. Peace Research 165 (1975). The United States' position and interpretation of the Final Act as expressed by President Ford may be found in *Helsinki Conference on Security and Cooperation in Europe, The President's Remarks to the Conference in Finlandia Hall*, 11 Weekly Comp. of Pres. Doc. 809 (Aug. 1, 1975).

[60] Russell, *supra* note 2, at 244. The author concludes that

> The Basket III texts, not discussed in this article, incorporate into the agenda of detente human rights and concepts of freedom of movement and information which clearly favor the Western view of interstate relations. Although replete with loopholes, the Basket III texts will remain a diplomatic problem for the Eastern bloc for many years to come. Having acknowledged the desirability of these concepts in one of their favorite international documents, these governments will continue to be embarrased if they have not taken steps toward their realization.

Id. at 272.

[61] *See* New Republic, Aug. 2, 1975, at 6.

so, given the Soviet position on the relationship between Baskets I and III, continuing efforts to strengthen linkage among the Baskets is necessary. It is recommended that specific efforts be directed toward establishing authoritatively that no Basket is to be considered more definitive of the underlying "spirit of Helsinki" than another. Otherwise, the art world will not obtain the full benefits of Basket III.

The Final Act of the Helsinki Conference may not swiftly ignite an artists' liberation movement throughout Europe. It is clear, nevertheless, that its Baskets contain more than cucumbers for extracting sunbeams to warm the occasionally chilly air of détente. Keeping the Baskets together will assist the transnational movement of art and artists, and thereby may prove the Final Act to be more than a voyage to Laputa.[62]

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[62] Harold S. Russell's reference to Swift inspired this metaphor. Russell, *supra* note 2, at 272.