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THE HELSINKI AGREEMENT AND HUMAN RIGHTS*

A. H. Robertson**

This essay will consider the provisions concerning human rights in the Helsinki Agreement of 1975 and the developments which have arisen from this agreement. In conclusion, the author will propose a few ideas about future action for the international protection of human rights, and whether these actions should result from the Helsinki provisions or through the operation of the United Nations system.

Part I. The Final Act of the Helsinki Conference

The "Conference on Security and Cooperation in Europe" was formally opened at Helsinki on July 3, 1973, continued at Geneva from September 18, 1973 to July 21, 1975, and was concluded at Helsinki on August 1, 1975. The thirty-five participants included all the eastern and western European states, except Albania, regardless of their size, the Soviet Union, the United States, Canada, the Papacy, and the three "mini-states" of Liechtenstein, Monaco, and San Marino. All participated on a basis of equality.¹

The final Helsinki session was attended by the heads of state or of government of nearly all the participating States, including President Valéry Giscard d'Estaing, Chancellor Helmut Schmidt, Premier Leonid Brezhnev, Prime Minister Harold Wilson, and President Gerald Ford. The final agreement, which was signed on August 1, 1975, included four sections relating to: questions involving the security of Europe; cooperation in the fields of economics, science and technology, and the environment; cooperation in humanitarian and other fields; and the "follow-up" to the conference.²

One should note at the outset that the final act of the Conference is not a treaty, but a declaration of intentions. The Helsinki final act does not use the standard formulation for a treaty. Rather, it states: "The High Representatives of the participating States have solemnly adopted the following." It then continues: "The participating States will respect each other's sovereign equality . . ."; "The Participating States regard as inviolable all one another's frontiers . . ."; "The participating States will respect the territorial integrity of each of the participating States" and so on.

At first sight, it may seem that there is little practical difference between an undertaking by states to do certain things and a statement that they will do certain things. One might think that the difference is no more than a lawyer's

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1 In addition, statements were made to the Conference by representatives of Algeria, Egypt, Israel, Morocco, Syria, and Tunisia. One section of the final act relates to "Security and Cooperation in the Mediterranean."

2 The full text of the final act may be found in various official publications. Extensive extracts are given in KESING, *CONTEMPORARY ARCHIVES*, 27, 301-8 (1975); [1975] *Y.B. ON HUMAN RIGHTS* 23 (United Nations) at 211 nn.

quibble, but to do so would be a mistake. There are at least two important differences between a legal undertaking and a declaration of intention. First, a treaty is not binding in most countries unless it is ratified by a legislature; however, because the Helsinki final act is not a treaty, it does not require ratification and consequently has not been submitted to the various national parliaments for this purpose. Secondly, while non-observance of a treaty constitutes a breach of international law and can, in many cases, lead to proceedings before the International Court of Justice, no such consequences can result from the non-observance of a declaration of intention.

The fact that it is not a treaty does not mean that the Helsinki final act is unimportant. But a failure to understand that the Helsinki final act is something less than a treaty and does not establish legal obligations would lead to confusion—perhaps even to acrimony. Most people would agree that the final act sets out moral, and no doubt political, obligations of states, but these obligations are less than binding in international law. As a result, it is inaccurate, from a legal point of view, to speak of the “Helsinki Agreement.” But since this expression has come into common use and is more manageable than “Final Act of the Conference on Security and Cooperation in Europe,” there is no harm in adopting it so long as it is understood that the word “Agreement” is used in its popular, not legal, sense.

The second point to be noted is that the final act is concerned principally with international security and relations between states. For various reasons, it was impossible to conclude a peace treaty after the end of World War II; during the period of the “Cold War,” it was evident that formulation of a mutually satisfactory definition of relations between East and West remained an impossibility. But after the agreement between the two Germanies and the admission of both to the United Nations after some years of “detente,” some new arrangements for “peaceful coexistence” between East and West finally seemed possible. For years, the Soviet Union had been seeking the recognition by the other Powers of its western frontiers as established after the end of the war, and Mr. Brezhnev had made this recognition a central focus of his foreign policy. After much hesitation, the Western Powers agreed to a Conference on Security and Cooperation in Europe, even though many people in the West feared that, while the Soviet Union had much to gain from the recognition of its frontiers, there was little that the Western Powers were likely to receive in return from such a conference. They had no territorial claims to make (except for the Germans, who knew in advance that the reunification of Germany was not to be expected) and they recognized that no fundamental political changes by the eastern nations would result. Nonetheless, the western nations tried to obtain certain modest concessions in regard to freedom of movement and of information between East and West. Such concessions, it was thought, might be the beginning of a gradual liberalization of authoritarian regimes.

The third preliminary point concerns the human rights provisions of the final act. Since the final act is concerned with relations between and interests of states, the provisions concerning human rights are more concerned with reasons of state than they are with the protection of the rights of the individual

per se. The final act does not follow the lead of the Universal Declaration or of the United Nations Covenants in providing that "everyone has the right to" a number of fundamental rights and freedoms; rather, it provides that "the participating States will respect human rights and fundamental freedoms. . . ." Thus, in accordance with the whole philosophy of the final act, the action of states rather than the situation or behavior of individuals is the target of the human rights provisions.

The first three sections of the actual text of the final act are commonly known as three "baskets." It is commonly believed that the Third Basket contains the provisions which are most concerned with human rights, but this assumption is a mistake. More important to a consideration of human rights is Basket I which begins with a "Declaration on Principles guiding Relations between Participating States." This declaration sets out ten fundamental principles. They are:

1. Sovereign equality and respect for the rights inherent in sovereignty.
2. The refraining from the threat or use of force.
3. Inviolability of frontiers.
4. Territorial integrity of states.
5. Peaceful settlement of disputes.
6. Nonintervention in internal affairs.
7. Respect for human rights and fundamental freedoms, including freedom of thought, conscience, and religion or belief.
8. Equal rights and self-determination of peoples.
9. Cooperation among states.
10. Fulfillment in good faith of obligations under international law.

Each of these principles is explained in some detail in the final act. It is perhaps significant that the principle concerning human rights and fundamental freedoms has an eight-paragraph explanatory text. This text (see Appendix) makes four principal points. First, "the participating States will respect human rights and fundamental freedoms"; freedom of thought, conscience, and religion or belief are mentioned specifically. Secondly, the participating states promise to "promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms." It is important to note that while this affirmative statement relates to human rights and fundamental freedoms in general, it does not specify expressly those rights and freedoms, except for freedom of thought, conscience, religion or belief, to which it applies. It is significant that the very widely drawn reference to "civil, political, economic, social, cultural and other rights and freedoms" is preceded by the words "promote and encourage." Thus, the participating states agree to a considerably weaker statement than would be a promise to "respect" these rights and freedoms. It recalls Article 1(3) and Article 55 of the Charter of the United Nations, which by speaking of "promoting and encouraging respect" for human rights and fundamental freedoms contain an expression of intention for the future without an immediate obligation. The third principal point to note in the text is that it contains a

statement that the participating states will respect the rights of national minorities; the text thus recalls Article 27 of the Covenant on Civil and Political Rights. The fourth point is that there are two references in the text to the human rights work of the United Nations. The sixth paragraph which states that the participating States will endeavor "jointly and separately, including in cooperation with the United Nations, to promote universal and effective respect" for these rights and freedoms, substantially repeats Article 56 of the Charter. Finally, in the eighth paragraph, the participating States assert that they "will act in accordance with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights." This paragraph refers specifically to the states' "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."

In summary, then, it is evident that the "Declaration on Principles Guiding Relations between Participating States" includes respect for human rights among its basic principles, placing human rights alongside such other principles as the inviolability of frontiers, the peaceful settlement of disputes, and the refraining from the use or threat of force. The seventh principle in the final act is wide in scope because the second paragraph refers to the effective exercise of all categories of rights and freedoms, but it is also limited in effect because (like the Charter itself) it contains expressions of intention rather than affirmative statements of a determination to "respect" human rights. In addition, some of its provisions would appear to be tautologous, as, for example, the reaffirming of existing obligations; however, this is not a criticism, since the constant reaffirmation of the obligation to respect human rights may help to impress that obligation more indelibly in the conscience of both governments and the general public.

It is now time to examine the "third basket." It is not necessary for the purpose of this essay to consider "Basket Two" which sets out a series of measures relating to commercial exchanges, industrial cooperation, science and technology, and the environment. The contents of Basket Three can be summarized briefly. Entitled "Cooperation in Humanitarian and Other Fields," Basket Three contains four sections. The first relates to "human contacts" and deals *inter alia* with reunification of families, marriages between citizens of different states, travel, tourism, meetings of young people, and sports activities. The second section—which would be of great importance for the future if effectively implemented—concerns the free flow of information. The participating states "make it their aim to facilitate the freer and wider dissemination of information of all kinds" and set out a number of steps to be taken for this purpose through the use of oral, printed, film, and broadcast information. The steps to be taken include measures "to facilitate the improvement of the dissemination on their territory of newspapers and printed publications . . . from the other participating States" and measures "to improve the conditions under which journalists from one . . . State exercise their profession in another. . . ." Finally, Basket Three contains two short sections about cooperation and exchanges in the fields of culture and education.

Part II. Post-Helsinki Developments

The signature of the Final Act of the Conference on Security and Cooperation in Europe was much more widely acclaimed and its contents more widely publicized in the East than in the West. This fact is not surprising. The Soviet Union had a greater interest in the successful conclusion of the Conference because the Final Act constituted an official acceptance by the West of the territorial acquisitions of the U.S.S.R. during World War II. What had been agreed by three Powers at Yalta—and a good deal more than that—had now been accepted as permanent by the whole of Europe, plus the United States and Canada. This was a real achievement for Soviet diplomacy.

One might have thought that this agreement would mark the beginning of a new era of detente and cooperation in Europe. Such hopes, however, have so far been disappointed. In fact, little has changed, and the old atmosphere of mutual suspicion seems to continue almost unabated. What has changed, however, is public opinion, at least in certain intellectual circles in Eastern Europe. The publicity given to the Final Act led many people to believe that its provisions on human rights would be implemented and that an era of liberalization was about to begin. The well-informed knew that all the East European States except Poland also had ratified the United Nations Covenants and thus accepted binding obligations in international law to respect human rights. With these two significant developments, it was hardly surprising that politically conscious individuals began to expect their governments to allow a freer flow of information and greater liberty of expression—even if they were not so foolhardy as to expect the right to form a political opposition.

The most striking example of this new spirit was in Czechoslovakia; there nearly 500 intellectuals and others subscribed early in 1977 to a human rights manifesto which they called "Charter 77." The manifesto takes as its point of departure the ratification by Czechoslovakia and the publication in the "Czechoslovak Register of Laws" on October 13, 1976, of the two United Nations Covenants on Human Rights and the reaffirmation of the Covenants in the Final Act of the Helsinki Conference. "Charter 77" welcomes accession to those agreements but also continues: "Their publication, however, serves as a powerful reminder of the extent to which basic human rights in our country exist, regrettably, on paper alone." A series of examples are then given of various rights which have been proclaimed and protected by the Covenants but, in fact, are systematically violated in Czechoslovakia; these rights include: freedom of expression, freedom of information, freedom of religion, freedom of association, the right to form trade unions, the right to privacy, and the right to emigrate freely.³

"Charter 77" is not the basis of an organization and expressly states that it does not form the basis for a political opposition; rather, its subscribers seek to conduct a constructive dialogue with the political and state authorities, just as many non-governmental organizations do in democratic countries. The signatories authorized three of their number to act as spokesmen; the first of these was

³ For the full text of "Charter 77," see *The Times*, Feb. 11, 1977.

Professor Jan Patocka.

The repressive measures taken against the signatories of "Charter 77" have been widely reported in the press.⁴ Alexander Dubcek, head of the government responsible for the "Prague spring" in 1968, was prevented from signing the Charter because of police supervision but indicated his support through an intermediary.⁵ In March of 1977, Max van der Stoel, the Dutch Foreign Minister and well-known champion of human rights was in Prague on an official visit.⁶ He honored Professor Patocka's request for a meeting. The Czech Government responded by cancelling van der Stoel's appointment with the President of the Republic.⁷ Professor Patocka died shortly after, having been subjected to prolonged interrogation; two other spokesmen for the group were arrested. Eleven signatories of the Charter, all ousted members of the Central Committee of the Czechoslovak Communist Party, have appealed to other European Communist Parties to protest against their repression, insisting that the government's actions gravely discredit socialism not only in Czechoslovakia but in the whole of Europe.⁸

"Charter 77" has, in fact, evoked considerable support in other Eastern European countries. In Yugoslavia, Milovan Djilas, a former leader of the Communist party, has appealed to West European Communist Parties to support the Charter and the movement for human rights not only in Czechoslovakia but also in his own country, where he says that, on a proportional basis, there are as many political prisoners as in the Soviet Union.⁹ Repercussions to the Charter also have been observed in East Germany, in Poland,¹⁰ and in Roumania, where the writer Paul Goma, who led the movement, has been arrested.

The new British Foreign Secretary, David Owen, has publicly expressed his government's intention to make action for the defense of human rights a basic issue of foreign policy, and his Minister of State has informed the Russians of the importance the British attach to application of the Helsinki Agreement.¹¹ A committee of the Inter-Parliamentary Union, which includes Russian members, will hold a conference early in 1978 to review compliance with the provisions of the Final Act; the president of the Inter-Parliamentary Union has declared that 1977 and 1978 will be crucial to the success of the Helsinki Agreement.¹²

But the most important reaction to the Helsinki Agreement is no doubt that of the Soviet Union itself. A committee, under the chairmanship of Youri Orlov, has been established to supervise the application of the Helsinki Agreement; the detention of Alexander Guinzbourg has led to the signature of a manifesto by 248 supporters; Andrei Sakharov, who formed the Soviet Committee on Human Rights nearly ten years ago, has continued his struggle in unprecedented fashion,

4 For example *Le Monde*, Jan. 29, 1977; *Herald-Tribune*, Mar. 18, 1977.

5 See note 3 *supra*.

6 Van der Stoel was *Rapporteur* of the Assembly of the Council of Europe for the question of human rights in Greece in 1968 and 1969. Later he was President of the Parliamentary Conference on Human Rights held by the Council of Europe in Vienna in 1971.

7 *The Times*, Mar. 14, 1977.

8 *Herald-Tribune*, Mar. 18, 1977.

9 *The Times*, Feb. 10, 1977.

10 *Le Figaro*, Feb. 9, 1977.

11 *The Times*, Feb. 9, 1977.

12 *Le Figaro*, Feb. 18, 1977.

including an American television interview, a personal letter to President Carter, and a letter to all the heads of State or of government who signed the Helsinki Agreement. To Sakharov's letter, President Carter replied, "You may be assured that the American people and our government will maintain their firm engagement to promote respect for human rights not only in our country but also abroad."¹³ Vladimir Boukovski, who was exiled from the Soviet Union in December 1976 after serving twelve years in prison, in an exchange for the Chilean Communist leader Luis Corvalan, was received by President Carter in February 1977 and testified to a Congressional Committee that none of the human rights provisions of the Helsinki Agreement are being respected in the U.S.S.R. In February 1977, Andrei Amalrik, a dissident historian exiled in 1976, solicited an interview with President Giscard d'Estaing of France which was refused, but Amalrik spoke to the press in Paris more or less as a representative of the Committee on the application of the Helsinki Agreement.¹⁴

This brief—and necessarily incomplete—summary of recent and well-known developments paints the broad outlines of a picture of the contemporary scene and shows that the Helsinki Agreement—or, more specifically, the human rights provisions of the Helsinki Agreement—have had an effect. In Eastern Europe the impact has surpassed the expectations of some of its authors; in the Communist world, reaction to the Agreement highlights the fact that human rights principles remain largely a dead letter in these nations. What is unique is that the Helsinki texts have been widely publicized in eastern European countries and that this publicity has given new courage to those who are prepared to fight for their rights.

Still another new factor is the reaction to the Agreement in the West, particularly that of the President of the United States. The Soviet Union has retorted that this Western reaction constitutes an improper interference in its internal affairs, a reaction which in itself is contrary to the Helsinki Agreement. The withdrawal of an American proposal to the U.N. Commission on Human Rights requesting that the Soviet Government provide information "about recent reports of arrest and detention in the U.S.S.R. of persons who have been active in the cause of promoting human rights"¹⁵ in the face of a counter motion by Bulgaria to cut off discussion of the American proposal illustrates the extent of Communist hostility to American championing of human rights.

However, the Russian point of view cannot and should not be dismissed out of hand. The sixth principle in the "Declaration on Principles Guiding Relations (see Appendix) between Participating States" mandates non-intervention in internal affairs. This principle states in part:

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.

Therefore, it is necessary to ask whether acts such as President Carter's

13 Daily Telegraph, Mar. 4, 1977; The Times, Feb. 24, 1977.

14 Le Figaro, Feb. 22, 1977.

15 U.N. Doc. E/CN. 4/1352 (1977).

letter to Andrei Sakharov, the testimony of Vladimir Boukovski before a Congressional committee, or the American proposal to investigate Soviet human rights violation made to the U.N. Commission on Human Rights constitute an "intervention, direct or indirect . . . in the internal affairs falling within the domestic jurisdiction" of the Soviet Union. A similar question is also raised by the repeated attempts of western nations to introduce a procedure which would permit the U.N. Commission to consider complaints of violation of human rights and the equally repeated objection of the U.S.S.R. that such action would violate Article 2, Paragraph 7 of the Charter, which prohibits the United Nations from intervening "in matters which are essentially within the domestic jurisdiction of any State. . . ." ¹⁶

The problem of the meaning and effect of this provision of the United Nations Charter is as old as the United Nations itself. Since the same problem arises in relation to the Helsinki Agreement, it seems appropriate to summarize the issues involved at this point. ¹⁷ Of course, different governments have taken different positions at different times, depending on their own political context; one of the more remarkable feats of U.N. diplomacy is the facility with which some delegates argue that it is outside the competence of the U.N. to discuss human rights situations in their own territory or that of their allies but quite proper to discuss alleged violations by their political opponents. For example in 1946, Vyshinsky of the Soviet Union noted that this provision did not prevent the U.N. from discussing the situation of Indians in South Africa; in 1952, Santa Cruz of Chile insisted that "abuse of Article 2(7) of the Charter might paralyze the action of the United Nations," while in 1952 he insisted that "the international law created by conventions and agreements among countries removes a number of questions from the exclusive competence of States . . . since the adoption of the Charter, all fundamental human rights have formed part of international law since they are included in that multilateral treaty, the Charter."

Among the texts of major importance to a discussion of Article 2, Paragraph 7 is the 1953 Report of the U.N. Commission on the Racial Situation in South Africa which discusses at length the meaning of Article 2(7) of the Charter and cites the views of such eminent jurists as Lauterpacht, Cassin, and Kelsen. This report contains the following statement:

[T]he United Nations is unquestionably justified in deciding that a matter is outside the essentially domestic jurisdiction of a State when it involves systematic violation of the Charter's principles concerning human rights, and more especially that of non-discrimination, above all when such actions affect millions of human beings, and have provoked grave international alarm, and when the State concerned clearly displays an intention to aggravate the position.

When this report was discussed in the General Assembly in 1953, South

16 U.N. Doc. E/CN. 4/1354 (1977).

17 A most useful collection of the relevant texts is *International Protection of Human Rights* 536-856 (L. Sohn + T. Buergenthal, eds., 1973). A brief summary of some of the issues is given in a review of that book by the present author in 8 *Human Rights J.* 289, 293-96 (1975).

Africa introduced a draft Resolution rejecting the report's conclusions and maintaining that the matters dealt with therein were "matters essentially within the domestic jurisdiction of a Member State" and therefore outside the competence of the United Nations; this draft was rejected by a vote of forty-two to seven with seven abstentions. The same situation has, of course, arisen on many subsequent occasions, as illustrated by the Second Report on the Racial Situation in South Africa, by discussions in the Security Council in 1960 on the request of twenty-nine states that the Council consider the Sharpeville massacre, by the discussions in the Security Council in 1963-1964 on the report of the Special Committee on the Policies of Apartheid, and by discussions in 1970 on the question of the arms embargo against South Africa. Henry Cabot Lodge stated the American position in regard to such discussions in 1960:

We all recognize that every nation has a right to regulate its own internal affairs. This is a right acknowledged by Article 2, paragraph 7, of the Charter. At the same time, we must recognize the right—and the obligation—of the United Nations to be concerned with national policies in so far as they affect the world community. This is particularly so in cases where international obligations embodied in the Charter are concerned.

Until 1945, international law considered that the manner in which a State treated its own nationals was, except in very unusual circumstances,¹⁸ a question within its own jurisdiction and competence, with which other states had no right to intervene. To illustrate this attitude, the late René Cassin often cited Goebbels' address to the Council of the League of Nations in which the latter asserted that the way in which the German government treated certain categories of German citizens was the concern of the German government alone. However reprehensible Goebbels' attitude may have been morally, it could be justified legally at the time.

Since the Nazi era, however, the legal position has changed. Matters in which states have accepted obligations in international law have ceased to be questions within the sole domestic jurisdiction of the individual states. The unfettered rule of national sovereignty no longer applies. States which have accepted such obligations have a legitimate interest in seeing that the common undertakings are respected. The mere fact that these undertakings may relate to the maintenance by a state of the human rights of its own citizens does not justify a derogation from the fundamental rule of international law: "Pacta sunt servanda." This reasoning provides the legal basis for President Carter's statement to the United Nations on March 17, 1977, in which he said:

The search for peace and justice means also respect for human dignity. All the signatories of the U.N. Charter have pledged themselves to observe and respect basic human rights. Thus, no member of the United Nations can claim that mistreatment of its citizens is solely its own business. Equally, no member can avoid its responsibilities to react and to speak when torture or unwarranted deprivation of freedom occurs in any part of the world.

¹⁸ SOHN & BUERGENTHAL, *supra* note 17, at 137-211. The best-known examples were intervention by the European powers in favor of the Christian minorities in the Ottoman Empire during the nineteenth century.

The same basic argument applies in relation to the final act of the Helsinki Conference. Although this agreement is not a treaty enshrining obligations in international law, it does contain firm expressions of intention to which particular solemnity was attached in an essentially political context; consequently, each participating state can expect that every other participant will honor its word.

The legal framework accepted by all members of the United Nations as the appropriate means of ensuring respect for human rights is that of the two United Nations Covenants of 1966. Entry into force in 1976 of these Covenants represented the fruition of thirty years' endeavor. The Covenants contain legal obligations which are more detailed, more specific, and more stringent than the Charter, the Universal Declaration, or the Helsinki Agreement. Consequently, any State which feels it necessary to reproach another for non-observance of human rights is in a much stronger position—both legally and morally—if it has itself accepted the international standards and commitments contained in the two Covenants.

Part III. Some Reflections on the Future

The "Fourth Basket" of the Helsinki final act concerns the follow-up to the Conference. It begins with a declaration by the participating states of their resolve "to pay due regard to and implement the provisions of the Final Act" unilaterally, bilaterally, and multilaterally. They then declare their intention of continuing the multilateral process begun at the Conference through further exchanges of views on the implementation of the Final Act, of improving security, and of developing cooperation and detente in Europe. The first follow-up meeting was scheduled to take place in Belgrade in September 1977.

The Western governments have held preparatory discussions for the Belgrade Conference in the North Atlantic Council, in the Committee of Ministers of the Council of Europe, and in the European Council of the "Nine"; no doubt the Eastern countries also have organized similar discussions among themselves. During the summer of 1977, there were press reports that the U.S.S.R. was preparing an indictment against alleged violations of human rights in Western countries, particularly by the United Kingdom in Northern Ireland. If these reports prove correct, the Western countries concerned should not raise preliminary objections about interference with their internal affairs, but, rather, they should admit that respect for human rights is a matter of common concern which should be freely and frankly discussed. In fact, regarding Northern Ireland, the United Kingdom has nothing to fear. In the course of a civil war in which hundreds of innocent civilians have been killed, there have indeed been violations of human rights in the course of the interrogation of prisoners. However, the British government has accepted the procedures of international control instituted by the European Convention on Human Rights, and by the time of the Belgrade conference, the case was before the European Court of Human Rights. The Attorney General, on behalf of his government, has publicly expressed regret at the violations which have occurred, has promised that they will not be repeated, and has stated that there is an effective remedy before the courts for those who

have suffered. Significant sums in damages already have been awarded to some of those who were victims of human rights violations.

The situation of the British in Northern Ireland illustrates how violations of human rights should be handled—by an impartial investigation followed, if necessary, by remedial action. It is, after all, more honorable for a government to admit its mistakes and seek to remedy them than to deny their existence. How refreshing it was to learn that the American representative on the U.N. Commission on Human Rights expressed his regret at the action of the C.I.A. against Salvador Allende! How splendid it would be if a Soviet delegate would express his regret for Soviet action in Prague in 1968!

Of the thirty-five participants in the Helsinki Conference, seventeen have ratified the U.N. Covenants on Human Rights. Hopefully, one result of the follow-up conference in Belgrade will be a recommendation—or, even better, an undertaking—that the other participants should take action to ratify the Covenants and thus establish reciprocity of obligations about respect for human rights. Ideally, a separate “human rights committee” of the C.S.C.E. States would be established to supervise the application of the human rights provisions of the Helsinki Agreement. Even if it had no greater powers than the U.N. Human Rights Committee established under the Covenants, such a committee would be an important step in the right direction. States which have ratified the Covenants should, in principle, have no difficulty in accepting the organization of such a committee though it would be unrealistic to expect such a development in the near future, the idea might be retained for the post-Belgrade negotiations.

Finally, if human rights are to be protected, the human rights machinery of the United Nations must be strengthened. In his March 17, 1977, speech to the United Nations, President Carter said: “We have allowed its [the U.N.’s] human rights machinery to be ignored and sometimes politicized. There is much that can be done to strengthen it.” He then made three specific proposals: that the Commission on Human Rights should meet more often and that all States should welcome its investigations, work with its officials, and act on its reports; that the Human Rights Division should move back from Geneva to New York; and that the proposal to appoint a U.N. High Commissioner for Human Rights, made by Costa Rica twelve years ago, should be revived.

Even while recognizing the difficulties in implementing these proposals, one can only support them. One might entertain some doubts about the proposal relating to the location of the Human Rights Division. After nearly thirty years in New York, it was moved to Geneva in 1974 and the advantage of moving it back again now may be questioned. The most important thing, however, is to strengthen the standing and authority of the Commission on Human Rights. If moving the Human Rights Division will work toward that end, such a move should be considered.

Several suggestions to this effect have been made in recent years. The Assembly for Human Rights held in Montreal in March 1968, an unofficial conference of experts during International Human Rights Year, determined that the Commission has “a status which is not commensurate with the important responsibilities entrusted to it” and proposed that the Commission be given the

same standing as the Economic and Social Council.¹⁹ This suggestion has been repeated on several occasions, notably by representatives to the Commission T. van Boven²⁰ and John Carey.²¹ The author of this essay also has called for strengthening the Commission.²² Professor Louis Sohn has even suggested the establishment of new machinery, including an Organization for the Promotion of Human Rights (UNOPHR) as a subordinate body of the U.N. with a Human Rights council as its main organ.²³ If this solution is adopted, the new body might be known simply as the U.N. Agency for Human Rights (UNAHR).

There are indeed several reasons why the status of the Commission on Human Rights should be reviewed. The first is that such a review would underscore the increased concern with human rights which the United Nations has shown over the years and which many governments now wish to emphasize. Since the third aim of Article 1 of the United Nations Charter is subdivided into the *two* objectives of "solving international problems of an economic, social, cultural or humanitarian character" and "promoting and encouraging respect for human rights," and since there is a Council responsible for the first objective, it seems only logical to have another Council responsible for the second. Secondly, important new functions have been conferred on the Commission as a result of the adoption in 1970 by ECOSOC of Resolution 1503 (XLVIII) on the "Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms." These powers are important even if the results of the Commission's efforts have so far been disappointing. Thirdly, the entry into force of the Covenants will require the exercise by a U.N. organ of new functions which the Economic and Social Council does not appear particularly well-qualified to discharge. There is therefore much to be said for reinforcing the position of the Commission on Human Rights and promoting it to the status of a Council. And if one insists that with the three existing Councils established under Article 7 of the Charter the machinery of the United Nations is already sufficient, the reply might be that with the passage of time, the responsibilities of the Trusteeship Council have considerably diminished because most of the territories whose interests the Trusteeship Council was designed to protect have become independent members of the Organization. A good case can therefore be made for transferring the remaining functions of the Trusteeship Council to a new Council on Human Rights. This case can be strengthened additionally since the Trusteeship Council's duties in relation to the trust territories which remain are largely concerned with protecting the human rights of their areas' inhabitants. Of course, creating a Council on Human Rights would not be easy, because it would entail amending the Charter. But if the result would be to strengthen the effectiveness of the United Nations as an instrument for the protection of human rights, it would be worthwhile to make the attempt. As an

19 Montreal Statement of the Assembly for Human Rights, presented to the U.N. Conference on Human Rights in Teheran, 1968.

20 T. Van Boven, *The U.N. Commission on Human Rights and Violations of Human Rights*, *Nederlands Tidschrift*, XV (1968). Van Boven is presently director of Human Rights in the United Nations.

21 J. CAREY, *U.N. PROTECTION OF CIVIL AND POLITICAL RIGHTS* 175 (1970).

22 *Human Rights in the World*, 46-49 (1972); an extract from which is used in the text.

23 Sohn, *U.N. Machinery for Implementing Human Rights*, 62 *A.J.I.L.* 909 (1968).

alternative, if it is considered too difficult to amend the Charter, then a U.N. Agency for Human Rights could be created by resolution of the General Assembly.

A Council or Agency on Human Rights entrusted with wide powers and responsibilities also could take over the tasks conferred on the Economic and Social Council by the two Covenants; it would thus constitute an organ capable of discharging one of the principal functions of the United Nations with great authority and with all the necessary means of enforcement at its disposal.

It is interesting to note that these proposals have recently been given new force through the support of several governments and non-governmental organizations. In accordance with Resolution 3221 (XXIX) adopted by the General Assembly in 1974, the Secretary-General presented a report to that body in 1975 on "Ways and Means in the Framework of the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms";²⁴ this report was based on information and opinions submitted by governments, the Specialized Agencies, and regional and non-governmental organizations. In his report, the Secretary General stated that several governments—particularly Italy, the Netherlands and the Philippines—had suggested that the status of the Human Rights Commission be raised to that of a "Human Rights Council" which would report directly to the General Assembly.²⁵ Moreover, the Group of Experts on the Structure of the United Nations System has made certain similar suggestions, adding that a new Council on Human Rights should replace the Trusteeship Council.²⁶ The proposal has also been supported by the Christian Democratic World Union and the International Commission of Jurists.²⁷

Having considered this report during its thirtieth session in 1975, the General Assembly asked governments and organizations which had not yet sent in their views to do so without delay and decided to return to the matter at its thirty-second session in 1977 on the basis of an updated report by the Secretary-General.²⁸ As a contribution to this study, a sub-committee of the NGO Committee on Human Rights in New York has made its own examination of the problem and has considered a paper which favors either the "upgrading" of the Human Rights Commission to the status of a Council by means of the amendment of the Charter or the alternative of creating a U.N. Agency for Human Rights by resolution of the General Assembly.²⁹ Other useful suggestions for improving coordination in the human rights work of the United Nations have been made by Austria and Denmark.³⁰ Canada has proposed the establishment of two new sub-commissions of the Commission on Human Rights with five members in each sub-commission and with groups having competence for the

24 U.N. Doc. A/10.235 (1975).

25 *Id.* at ¶ 116.

26 U.N. Doc. E/AC.62/9, at ¶ 62.

27 U.N. Doc. A/10.235, at ¶ 122 (1975).

28 G.A. Res. 3451 (XXX) (1975).

29 Unpublished paper of Sept. 28, 1976, by Daniel Lack, legal advisor of the World Jewish Congress, Geneva, to whom I am indebted for the information given in the text.

30 U.N. Doc. A/10.235, at ¶ 117 (1975).

promotion of human rights and the protection of human rights, respectively.³¹

It is evident that new ideas are in the air³² and that significant discussions may be expected both at the Belgrade Conference on Security and Cooperation in Europe and at upcoming sessions of the General Assembly in New York. President Carter's recent initiative is very timely. Our objective must be to strengthen the international machinery for the protection of human rights, whether in a pan-European or a worldwide framework, in order to ensure that "all persons . . . shall be treated with humanity and with respect for the inherent dignity of the human person." The last word may be left to the late Wilfred Jenks, Director General of the International Labor Office and an ardent long-time champion of human rights: "In the last analysis there is no answer to Abraham Lincoln; it is no more possible internationally than nationally for a society to endure permanently half slave and half free."³³

APPENDIX

Extract from the Final Act of the Conference on Security and Co-operation in Europe

"Declaration on Principles guiding Relations between Participating States"

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.

31 U.N. Doc. E/CN.4/L. 1324 (1976).

32 Another new project concerns new international measures for the suppression of torture. Largely as the result of initiatives by Amnesty International, the General Assembly adopted two texts on this subject in 1975: G.A. Res. 3452 (XXX) and G.A. Res. 3453 (XXX). The Commission on Human Rights in March 1977 worked on the question of measures of implementation.

33 C. JENKS, HUMAN RIGHTS AND INTERNATIONAL LABOUR STANDARDS 46 (1960).

VII. *Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief*

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognise and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

The participating States on whose territory national minorities exist will respect the rights of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

The participating States recognise the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.

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

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil 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.