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# U.S. Human Rights Policy Toward the Soviet Union and Eastern Europe During the Carter Administration

LISA L. HELLING\*

Because we are free we can never be indifferent to the fate of freedom elsewhere. Our moral sense dictates a clear-cut preference for those societies which share with us an abiding respect for individual human rights. We do not seek to intimidate, but it is clear that a world which others can dominate with impunity would be inhospitable to decency and a threat to the well-being of all people.<sup>1</sup>

## I. INTRODUCTION

With the coming of the Carter administration, the United States and the rest of the world have seen a new era in the conduct of U.S. foreign policy. In sharp contrast to preceding administrations, President Carter has placed human rights issues as a top priority in his relations with foreign countries.<sup>2</sup> The Warsaw Pact nations,<sup>3</sup> in particular, have felt the impact, both politically and economically, of this new style of diplomatic relations. To provide support for his position, President Carter has relied upon a number

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1. Inaugural address by President Carter (Jan. 20, 1977), *reprinted in* 76 DEP'T STATE BULL. 121-22 (1977).

2. For general policy statements on human rights by the Administration, *see inter alia*, Address by President Carter, *A Foreign Policy Based on America's Essential Character* (June 13, 1977), *reprinted in* 76 DEP'T STATE BULL. 621-23 (1977); Address by Secretary of State Vance, *Human Rights and Foreign Policy* (May 23, 1977), *reprinted in id.* at 505-8; Statement by Deputy Secretary Christopher, *Human Rights: An Important Concern of U.S. Foreign Policy* (Mar. 28, 1977), *reprinted in id.* at 289-91; Address by Assistant Secretary Maynes, *New Hopes for Human Rights*, *reprinted in 77 id.* at 556-61 (1977); and Speech by Deputy Secretary Christopher, *The Diplomacy of Human Rights: The First Year*, Dep't of State, Bureau of Pub. Aff. (Feb. 13, 1978). For an evaluation of President Carter's human rights policy, *see inter alia*, McGeehan, *American Policies and the U.S.-Soviet Relationship*, 34 WORLD TODAY 346 (1978); Rachwald, *United States Policy in East Europe*, CURR. HIST., Apr. 1978, at 150, 153; Vogelgesang, *What Price Principle? U.S. Policy on Human Rights*, 56 FOR. AFF. 819 (1978); and Arbatov, *A Six-Month Report for Carter*, Pravda, Aug. 3, 1977, at 4, *reprinted in* 29 CURRENT DIG. SOVIET PRESS, Aug. 31, 1977, at 1.

3. The Warsaw Pact countries include: the Soviet Union, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania.

of international and domestic documents which give both ideological and coercive support to his policy. The documents which have played the most prominent role in relation to the Eastern European countries as targets of President Carter's new human rights policy include the Helsinki Final Act of the Conference on Security and Cooperation in Europe (Final Act),<sup>4</sup> which incorporates<sup>5</sup> the U.N. Charter,<sup>6</sup> the Universal Declaration of Human Rights,<sup>7</sup> and the U.N. Covenants on Civil and Political, and Economic, Social and Cultural Rights,<sup>8</sup> together with the Belgrade Followup Meeting,<sup>9</sup> and the

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4. The complete text of the Final Act is found at 14 INT'L LEGAL MATERIALS 1293 (1975); and 73 DEP'T STATE BULL. 323 (1975).

The Conference on Security and Cooperation in Europe opened at Helsinki on July 3, 1973, continued in Geneva from September 18, 1973 to July 21, 1975, and was concluded in Helsinki on August 1, 1975 by the representatives of the 35 participating states: Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic (GDR), Federal Republic of Germany (FRG), 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 (USSR), the United Kingdom, the United States, and Yugoslavia. The only European country not represented at the Conference was Albania.

The Final Act deals with a broad range of topics, including military, political, social, economic, scientific, cultural, humanitarian, and educational matters. The document has been divided into separate sections, commonly referred to as Baskets, each of which ostensibly has equal significance. Basket One consists of Questions Relating to Security in Europe, Declaration on Principles Guiding Relations between Participating States, and Document on confidence-building measures and certain aspects of security and disarmament. Basket Two deals with Co-Operation in the Field of Economics, of Science and Technology and of the Environment, and Questions Relating to Security and Co-Operation in the Mediterranean. Basket Three concerns Co-Operation in Humanitarian and Other Fields. Basket Four contains provisions for the Follow-Up to the Conference.

5. Principle VII of the Declaration on Principles Guiding Relations between Participating States (Declaration) of the Final Act states that "[i]n 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." Final Act, note 4 *supra*.

6. The U.N. Charter contains several references to human rights observance in the Preamble and in six articles. The most important provisions are found in articles 55 and 56. Article 55 provides for "universal respect for, and observance of, human rights and fundamental freedoms for all." Article 56 requires the U.N. member states "to take joint and separate action in cooperation with the Organization for the achievement of [these] purposes."

7. G.A. Res. 217 A (III), 3 U.N. GAOR 71, U.N. Doc. A/810 (1948).

8. International Covenant on Civil and Political Rights, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 52-58, U.N. Doc. A/6316 (1966); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49-52, U.N. Doc. A/6316 (1966).

Principle VII of the Declaration provides that "[i]n the field of human rights and

Trade Act of 1974.<sup>10</sup>

The area of human rights is conceptually extremely broad and pervades numerous aspects of the vast and complex body of relations between the United States and Eastern Europe. In addition, the United States does not consistently apply one single policy to Eastern Europe as a whole. If any generalization can safely be made, it is that the U.S. Government has adopted one attitude toward the Soviet Union, and a separate and distinct attitude toward the remainder of the Warsaw Pact nations. As a result of the complexity of the issues involved and the broad and disparate geographic region to which they are to be applied, the focus of this article will be directed toward the essential elements involved in the East-West human rights dispute. The documents which have played a major role in this relationship—the Helsinki Final Act and the Trade Act of 1974—will be considered in conjunction with a representative group of actors who have been most intimately involved in the human rights dialogue with the U.S.: the Soviet Union, Czechoslovakia, Hungary, Poland, and Romania.<sup>11</sup> The effectiveness of the Carter administration's human rights policy will be analyzed, both from the standpoint of consistency and evenhanded application, as well as from the reaction of the Eastern European countries to these policies. Finally, recommendations will be made, based on an evaluation of the key issues as perceived in both the East and West, as to how the U.S. human rights policy might be more effectively applied.

## II. THE PURPOSE AND SIGNIFICANCE OF THE HELSINKI FINAL ACT

An essential element to determining the proper role of the Final Act in the conduct of U.S. foreign relations is to understand exactly how the pertinent parties view the purpose and significance of the

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fundamental freedoms, the participating States will . . . 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." Final Act, note 4 *supra*.

9. The text of the concluding document of the Belgrade Followup Meeting is found at 78 DEP'T STATE BULL. 43 (1978).

10. Pub. L. No. 93-618, § 1 (Jan. 3, 1975), 88 Stat. 1978 (codified in 19 U.S.C. §§ 2101-2487).

11. Although the U.S. has dealt with all of the Eastern European countries in the context of the Final Act, the nature of those relationships has fallen somewhat into a pattern, which is fairly represented by a consideration of the Soviet Union and Czechoslovakia, contrasted with Hungary, Poland, and Romania. Therefore, in the interests of manageability, U.S. relations with the German Democratic Republic and Bulgaria will be mentioned only indirectly. Those with Yugoslavia, which is not a member of the Warsaw Pact, will not be discussed.

agreement.<sup>12</sup> The concluding document of the conference is not a treaty to be officially ratified by the governments of the participating states, but rather a statement of good intentions, officially acknowledged by all participants to be morally, if not legally, binding.<sup>13</sup> The system adopted for writing the final text was one of consensus,<sup>14</sup> which means that each party had to agree to every point at issue before it became incorporated into the document. The result is a text, the words of which all parties agree to, but the actual interpretation of which is subject to very divergent views. The limited effectiveness that the Final Act has had in U.S. policy may be attributed partially to a lack of agreement between East and West regarding the essential purpose and function of the document. In order to determine the most viable application of the Final Act, it is necessary first to consider how the document is viewed by East and West.

A. *Status of the Final Act in International Law*

1. *The Soviet Interpretation*

The Conference on Security and Cooperation in Europe (CSCE) was convened at the instigation of the Soviet Union, which had for many years pressed for a document which would, by international agreement, recognize the national borders that were set at the conclusion of World War II, and the concurrent Soviet supremacy in Eastern Europe.<sup>15</sup> The document that was concluded at Helsinki rec-

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12. The composition of the participating states, listed in note 1, *supra*, includes the NATO nations, the Warsaw Pact states, neutral and nonaligned countries, as well as the United States and Canada. For a consideration of the significance of the makeup of the participants at the Conference, see Bastid, *The Special Significance of the Helsinki Final Act*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 11 (T. Buergenthal ed. 1977) [hereinafter cited as Buergenthal].

13. Basket Four of the Final Act, relating to the Follow-Up to the Conference, requests the government of Finland "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, . . . as an official document of the United Nations.*" (Emphasis added.) The document is, therefore, not registered as an official treaty or international agreement. Nevertheless, the wording of the document does indicate its morally binding quality throughout the text, particularly in Basket Four, in which "the undersigned High Representatives of the participating States, mindful of the high political significance which they attach to the results of the Conference, . . . [declare] their determination to act in accordance with the provisions contained in the above texts."

14. The Rules of Procedure of the Conference provide that: "Decisions of the Conference shall be taken by consensus. Consensus shall be understood to mean the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question." Cited in Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?* 70 AM. J. INT'L L. 242, 249 (1976).

15. See, *inter alia*, Povolny, *The Soviet Union and the European Security Con-*

ognizes all of the issues of primary concern to the Soviets, especially the principles of equal sovereignty,<sup>16</sup> inviolability of frontiers,<sup>17</sup> and nonintervention in internal affairs.<sup>18</sup> However, the Final Act also provides for observance of human rights and fundamental freedoms,<sup>19</sup> and cooperation in humanitarian fields:<sup>20</sup> issues that the Soviet Union did not intend to deal with, but which were a condition to the Western countries' participation in the conference. As a result, the Soviet Union has consistently emphasized those aspects of the Final Act most favorable to its own policies, and has considered that they

*ference*, 18 ORBIS 201 (1974); Russell, *supra* note 14, at 244; and COMMISSION ON SECURITY AND COOPERATION IN EUROPE, THE BELGRADE FOLLOWUP MEETING TO THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE: A REPORT AND APPRAISAL, 95TH CONG., 2D SESS., at 3-4 (Comm. Print 1978) [hereinafter cited as BELGRADE FOLLOWUP MEETING REPORT].

16. Principle I of the Declaration states: "The participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence." Final Act, note 4 *supra*.

17. Principle III of the Declaration states: "The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers." Final Act, note 4 *supra*.

18. Principle VI of the Declaration states:

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 likewise . . . 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.

Final Act, note 4 *supra*.

19. Principle VII of the Declaration requires respect for human rights and fundamental freedoms and enumerates the freedoms of thought, conscience, religion or belief, which are to be accorded to all without distinction as to race, sex, language, or religion. National minorities are to be afforded equality before the law and full opportunity to practice their fundamental rights. Final Act, note 4 *supra*.

20. Basket Three, Co-Operation in Humanitarian and Other Fields, is divided into four sections: 1. Human Contacts: (a) Contacts and Regular Meetings on the Basis of Family Ties, (b) Reunification of Families, (c) Marriage between Citizens of Different States, (d) Travel for Personal or Professional Reasons, (e) Improvement of Conditions for Tourism on an Individual or Collective Basis, (f) Meetings among Young People, (g) Sport, (h) Expansion of Contacts; 2. Information: (a) Improvement of the Circulation of, Access to, and Exchange of Information, (b) Co-operation in the Field of Information, (c) Improvement of Working Conditions for Journalists; 3. Co-operation and Exchanges in the Field of Culture; 4. Co-operation and Exchanges in the Field of Education: (a) Extension of Relations, (b) Access and Exchanges, (c) Science, (d) Foreign Languages and Civilizations, and (e) Teaching Methods.

evidence an established norm of customary international law which is asserted to be legally binding on all signatories.<sup>21</sup>

If the Final Act is legally binding with respect to sovereignty, inviolability of frontiers, and nonintervention in domestic affairs, then logically it is equally binding with respect to the humanitarian provisions of the document, since the Final Act is a unified instrument, not to be selectively adopted.<sup>22</sup> However, in order to avoid this interpretation of Basket Three and Principle VII, the Soviets have persisted in asserting that matters of human rights are an internal affair properly within the domestic jurisdiction of the national government.<sup>23</sup> This argument has been refuted consistently as being without logical justification,<sup>24</sup> and is, furthermore, contradictory to the equally binding Principle VII of the Declaration, which states that the signatories will abide by the principles and obligations of the United Nations Charter, the Universal Declaration of Human Rights, and the International Covenants on Human Rights, to all of which the Soviet Union is a party.

Under Soviet legal theory, the primary source of international law is to be found in international treaties, *i.e.* in documents which each party has taken an active role in creating and has agreed to be bound.<sup>25</sup> In addition, those documents which have been adopted by

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21. See, *inter alia*, Kartashkin, *The Conference on Security and Cooperation in Europe and Human Rights* (in Russian), SOVETSKOE GOSUDARSTVO I PRAVO 89 (Apr. 1976); Lukatchuk, *International Political Norms Under the Conditions of Detente* (in Russian) SOVETSKOE GOSUDARSTVO I PRAVO 106 (Aug. 1976); Blitchenko, *The Final Act of the Conference on Security and Cooperation in Europe—Further Development of International Law* (in Russian), SOVETSKOE GOSUDARSTVO I PRAVO 82 (Dec. 1976); and Matveyev, *The Final Act: A Guide for Decades to Come*, INT'L AFF. (Moscow) 69 (Feb. 1978).

22. Principle X of the Declaration, which concerns "[f]ulfilment in good faith of obligations under international law" provides that "[a]ll the principles set forth above are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into account the others." Final Act, note 4 *supra*.

23. See, *e.g.*, Kartashkin, *supra* note 21, at 95; Blitchenko, *supra* note 21, at 87; Matveyev, *supra* note 21, at 75; Shitikov, *Gains From Helsinki Accords Reviewed*, *Izvestia*, July 31, 1977, at 3, reprinted in 29 CURRENT DIG. SOVIET PRESS, Aug. 31, 1977, at 6; U.S. 'Interference in Internal Affairs' Seen, *Pravda*, Oct. 22, 1977, at 5, reprinted in *id.*, Nov. 16, 1977, at 3.

24. For an excellent discussion of the jurisdictional status of human rights in international domestic law, see Henkin, *Human Rights and "Domestic Jurisdiction,"* in Buergenthal, *supra* note 12, at 21, and sources cited therein.

25. For a general background on the Soviet theory of international law, see generally, K. GRZYBOWSKI, SOVIET PUBLIC INTERNATIONAL LAW 408-52 (1970); T. TARACOUZIO, THE SOVIET UNION AND INTERNATIONAL LAW 12-14 (1935); G. TUNKIN, THEORY OF INTERNATIONAL LAW 91-190 (W. Butler trans. 1974). See also Hazard, *Soviet Tactics in In-*

international consensus are deemed to establish a norm of customary international law.<sup>26</sup> Applying these theories to the Final Act, while it is not a treaty *per se*, it is a document that has been adopted by the consensus of thirty-five nations of both capitalist and communist persuasion, and also incorporates principles of the U.N. Charter and Universal Declaration of Human Rights. Therefore, it may arguably be considered to be a document of binding legal significance under this theory.

## 2. *The U.S. Interpretation*

The Western nations, and the United States in particular, in contrast to the Soviet view, do not regard the Final Act as legally binding. Both U.S. public officials<sup>27</sup> and legal scholars<sup>28</sup> have consistently asserted that the Final Act is merely a statement of good intentions by which the signatories are morally bound. However, there is no mechanism for enforcing the agreement, therefore, it has no legal effect either internationally or domestically. The reason for this nonlegal character is that the agreement is not subject to ratification by the U.S. Congress, or any other national body of a participating state, and expressly does not have treaty status.<sup>29</sup> Therefore, it cannot acquire legal significance in the body of international law recognized by the U.S.

There is very little agreement between the U.S. and Soviet Union as to the proper interpretation of the Declaration of Principles. In the U.S. view, each participating state has equal sovereignty. The frontiers of each state are inviolable by means of aggression, but may be freely altered by means of agreement, as provided

*ternational Lawmaking*, 7 DEN. J. INT'L L. & POL'Y 9 (1977).

26. See TUNKIN, *supra* note 25, at 147-60; Hazard, *supra* note 25, at 19-24; and Movchan, *Detente and International Law* (in Russian), SOVETSKOE GOSUDARSTVO I PRAVO 94 (Nov. 1976).

27. "The provisions of the Helsinki declaration represent political as well as moral, not legal, commitments." Statement by President Ford en route to the CSCE in Helsinki (July 26, 1975) 73 DEP'T STATE BULL. 289 (1975). See also News Conference by Secretary of State Kissinger (July 25, 1975) 73 DEP'T STATE BULL. 199 (1975); Speech by Staff Director and General Counsel Spenser Oliver, UCLA Law Day Symposium on Soviet Jews Under Soviet and International Law (May 1, 1979); U.S. NEWS & WORLD REPORT, Aug. 4, 1975, at 18; and Russell, *supra* note 14, at 247-48. For a general overview of the various positions of the participating States, see Klafkowski, *The CSCE Final Act—Foundations of Legal Interpretations*, 29 SPRAWY MIĘDZYNARODOWE (Warsaw) 26 (Summary in English) (July-Aug. 1976).

28. See Russell, *supra* note 14, at 246-49; Robertson, *The Helsinki Agreement and Human Rights*, 53 NOTRE DAME LAW. 34 (1977); Note, *The Conference on Security and Cooperation in Europe: Implications for Soviet-American Detente*, 6 DEN. J. INT'L L. & POL'Y 122, at 142-48 (1976).

29. 73 DEP'T STATE BULL. 348-49 (1975).



by Principle I of the Declaration<sup>30</sup> in furtherance of each state's right to self-determination.<sup>31</sup> In application, the U.S. Congress has interpreted these theories to mean that the U.S. will continue its policy of nonrecognition of Soviet dominance over the Baltic States, and that in the exercise of their right to self-determination, their borders may change to the extent that they would no longer be within the territory of the U.S.S.R.<sup>32</sup> This reservation to Principle VI is nowhere indicated in the text of the Final Act, due to the consensual nature of the document, which makes it difficult for the U.S. to convincingly assert this position. With regard to sovereignty, however, the U.S. has asserted that the 1968 invasion of Czechoslovakia was an

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30. "[T]he participating States . . . consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement." Final Act, note 4 *supra*.

31. Principle VIII of the Declaration provides certain standards of self-determination:

By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

Final Act, note 4 *supra*.

32. See *Conference on Security and Cooperation in Europe: Hearings Before the Subcomm. on International Political and Military Affairs on H. Res. 864 and Related Resolutions*, 94th Cong., 1st & 2d Sess. (1975-76) [hereinafter cited as *CSCE Hearings*]; and Statement by Robert L. Barry, Deputy Assistant Secretary for European Affairs before the Subcommittee on International Organizations of the House Committee on Foreign Affairs (June 26, 1979), *The Baltic States*, reprinted in 79 DEP'T STATE BULL. 52 (Sept. 1979).

H. Res. 864, which passed the House of Representatives on Dec. 2, 1975, states in part:

[A]lthough neither the President nor the Department of State issued a specific disclaimer in conjunction with the signing of the Final Act at Helsinki . . . both the President . . . and the Assistant Secretary of State for European Affairs . . . stated quite explicitly that the longstanding official policy of the United States on nonrecognition of the Soviet Union's forcible incorporation and annexation of the Baltic nations is not affected by the results of the European Security Conference: Now, therefore, be it

Resolved, That notwithstanding any interpretation which the Soviet Union or any other country may attempt to give to the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki, it is the sense of the House of Representatives (1) that there has been no change in the longstanding policy of the United States on nonrecognition of the illegal seizure and annexation by the Soviet Union of the three Baltic nations of Estonia, Latvia, and Lithuania, and (2) that it will continue to be the policy of the United States not to recognize in any way the annexation of the Baltic nations by the Soviet Union.

interference with Czech sovereignty in violation of Principles II<sup>33</sup> and IV<sup>34</sup> of the Final Act.

### 3. *U.S. vs. Soviet Interpretation of Human Rights*

There is a fundamental ideological difference between the U.S. and the Soviet Union as to the meaning of the term human rights, and as to the role that the government should play both domestically and internationally.<sup>35</sup> This fundamental disagreement between East and West regarding the nature and priorities of human rights has produced a situation in which a meaningful dialogue is virtually impossible. East and West have become entrenched in an ideological battle and have resorted to hurling epithets and accusations at each other rather than exchanging progressive ideas on the basis of cooperation.<sup>36</sup>

With this stalemate in mind, it is appropriate to consider the American use of the Final Act in its foreign policy, as well as the U.S. response to Eastern European implementation of the Final Act.

### B. *The Instruments of U.S. Human Rights Policy*

At the time that President Ford signed the Helsinki Final Act in 1975, there was a general feeling in the U.S. that the Soviet Union had scored a triumph over the West by gaining acceptance from the Western nations of the established borders in Eastern Europe, and, in effect, also recognition of Soviet supremacy over the Warsaw Pact

33. "[T]he participating States will refrain from any acts constituting a threat of force or direct or indirect use of force against another participating State." Final Act, note 4 *supra*.

34. "The participating States will . . . refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law . . . . No such occupation or acquisition will be recognized as legal." Final Act, note 4 *supra*.

35. For a general overview and comparison of U.S. and Soviet priorities, see, e.g., *Worlds Apart: U.S. and Soviet Ideas About Freedom*, 4 CIVIL LIBERTIES REV. 46 (Sept.-Oct. 1977); Kudryavtsev, *The Truth About Human Rights*, 5 HUMAN RIGHTS 193 (1976); Buergenthal, *International Human Rights: U.S. Policy and Priorities*, 14 VA. J. INT'L L. 611 (1974); Farer, *United States Foreign Policy and the Protection of Human Rights: Observations and Proposals*, *id.* at 623; Henkin, *The United States and the Crisis in Human Rights*, *id.* at 653; and Shestack & Cohen, *International Human Rights: A Role for the United States*, *id.* at 673.

36. See, e.g., *Now a Cold War Over Human Rights*, U.S. NEWS & WORLD REPORT, Feb. 14, 1977, at 52; *Tough Talk on Human Rights—Will It Scuttle Detente?* *id.*, Mar. 7, 1977, at 30; *U.S. Weighing Response to Soviet Dissident Trials*, N.Y. Times, July 16, 1978, at 3, col. 1; *A Little Bit of Censorship*, *id.*, July 16, 1978, part IV, at 20, col. 1; *Pravda Rebuts Carter Policy Speech*, Pravda, June 17, 1978, at 4, reprinted in 30 CURRENT DIG. SOVIET PRESS, July 12, 1978, at 1; *U.S. Reaction Seen As Blow to Detente*, Pravda, July 15, 1978, at 5, reprinted in *id.*, Aug. 9, 1978, at 5; and *Soviet Warns U.S. of Showdown*, N.Y. Times, July 16, 1978, at 3, col. 2.

countries.<sup>37</sup> However, realizing the potential of the human rights provisions of the Final Act, Congress in 1976, and the Carter administration in 1977, began to use the Final Act in conducting relations with Eastern Europe, as both a psychological and a policy tool.

1. *The Commission on Security and Cooperation in Europe*

In June of 1976 Congress passed a bill which provided for the creation of a Commission on Security and Cooperation in Europe (Commission).<sup>38</sup> The main function of the Commission is to monitor the compliance with, or violation of, the Final Act by the signatories, with particular regard to the humanitarian provisions of the Act.<sup>39</sup> Additionally, the Commission is

authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation, and a greater interchange of people and ideas between East and West.<sup>40</sup>

In order to carry out these functions, the Commission holds hearings to gather information and evidence<sup>41</sup> and also requires the President to submit a semiannual report giving a survey of the actions of the signatories in compliance with, or in violation of, the Final Act.<sup>42</sup> Since its inception, the Commission has been quite active. In 1976 a congressional mission was sent to Europe to study the implementation of the Final Act and to make a report to the Commission.<sup>43</sup> Significantly, the mission toured all of the Western European countries,

37. See, e.g., Friendly, *Cold War to Cold Peace*, NEWSWEEK, July 28, 1975, at 31 (CSCE "written to the specifications of the Soviet Union"); *At European Summit, Russia Will Achieve a Major Goal*, U.S. NEWS & WORLD REPORT, July 28, 1975, at 17; Ball, *Capitulation at Helsinki*, NEWSWEEK, Aug. 4, 1975, at 13 (CSCE "a triumph for Brezhnev and a defeat for the West"); and TIME, Aug. 18, 1975, at 28 (cartoon caption of Pres. Ford, sitting next to Brezhnev and Kissinger, saying to Kissinger: "Then it's all settled—he gets Eastern Europe and we get detente, Park Place and Marvin Gardens").

38. Pub. L. No. 94-304 (June 3, 1976), 90 Stat. 661 (1976).

39. *Id.* § 2.

40. *Id.*

41. *Id.* § 4.

42. *Id.* § 5.

43. The Study Mission was made up of four Representatives and one Senator who met with representatives from 18 signatory countries. In addition, the Study Mission conferred with a number of U.N. commissions, as well as with experts from NATO, the European Community, and the Council of Europe. REPORT OF THE STUDY MISSION TO EUROPE TO THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, 95TH CONG., 1ST SESS. (Comm. Print 1977) [hereinafter cited as STUDY MISSION REPORT].

but was not invited to any of the Warsaw Pact nations.<sup>44</sup> The Commission, nevertheless, has compiled a wealth of information on Eastern Europe by conducting hearings, and has presented a report of findings and recommendations to the House Committee on International Relations regarding the implementation of the Final Act since its inception.<sup>45</sup> The Commission's report was primarily concerned with the human rights provisions of the Final Act as implemented in the Warsaw Pact nations, although it did investigate other aspects of the accord as well.<sup>46</sup> In addition, the President has submitted six semiannual reports to date to the Commission on the status of all aspects of the Final Act.<sup>47</sup>

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44. *Id.* at 1, 5. Although the Study Mission was not permitted to visit the Warsaw Pact countries, it did, nevertheless, have an opportunity to consult with a number of East European exiles, emigres, trade representatives, and journalists regarding the impact that the Final Act has had in Eastern Europe. *Id.* at 1-3.

45. COMMISSION ON SECURITY AND COOPERATION IN EUROPE, IMPLEMENTATION OF THE FINAL ACT OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE: FINDINGS AND RECOMMENDATIONS TWO YEARS AFTER HELSINKI, 95TH CONG., 1ST SESS. (Comm. Print 1977) [hereinafter cited as COMMISSION FINDINGS TWO YEARS AFTER HELSINKI].

46. The Commission devoted part of its study to implementation of Basket II, but the bulk of the findings related to the human rights provisions of Principle VII of the Declaration and Basket III, particularly as implemented by the Warsaw Pact countries. The rationale for this approach was namely that the act creating the Commission calls for attention to the humanitarian portions of the Final Act. Additionally, the Commission felt that the Western European countries were substantially in compliance with the spirit of the Final Act, therefore, their energies would be better spent evaluating the progress made in the Eastern European countries. *Id.* at 1-3. For a Commission report on implementation of the Basket Two provisions, see *Hearings Before the Commission on Security and Cooperation in Europe on Basket II—Helsinki Final Act East-West Economic Cooperation*, 95th Cong., 1st Sess. (1977).

47. The President and the Department of State have submitted six semiannual reports to the Commission, beginning in December 1976, the most recent being presented in June 1979. The report gives a general overview of implementation of all aspects of the Final Act by all of the signatories. For the reports submitted during the Carter administration, see SECOND SEMIANNUAL REPORT BY THE PRESIDENT TO THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, 95TH CONG., 1ST SESS. (Comm. Print 1977) [hereinafter cited as SECOND SEMIANNUAL REPORT]; Third Semiannual Report to the Commission on Security and Cooperation in Europe, June 1-December 1, 1977, Dep't State, Bureau of Pub. Aff. Spec. Rep. No. 39 (Dec. 1977); Fourth Semiannual Report by the President to the Commission on Security and Cooperation in Europe, December 1, 1977-June 1, 1978, Dep't State, Bureau of Pub. Aff. Spec. Rep. No. 45 (June 1978); Fifth Semiannual Report by the President to the Commission on Security and Cooperation in Europe on the Implementation of the Helsinki Final Act, June 1-December 1, 1978, Dep't State, Bureau of Pub. Aff. Spec. Rep. No. 51 (Dec. 1978) [hereinafter cited as Fifth Semiannual Report]; and Sixth Semiannual Report by the President to the Commission on Security and Cooperation in Europe on the Implementation of the Helsinki Final Act, December, 1 1978 [sic]—May 31, 1979, Dep't State, Bureau of Pub. Aff. Spec. Rep. No. 54 (July 1979).

By far the most prolific function of the Commission has been the hearings that it has held during 1977-1979. As required by the enabling legislation, the Commission has focused its attention on Basket Three implementation by the Eastern European countries. The Commission has been thorough in gathering information from a collection of U.S. government officials, American scholars and journalists, and Soviet and Eastern European émigrés, relative to every aspect of the humanitarian provisions of the Final Act. The areas that have received the in-depth attention of the Commission include: family reunification and binational marriages in Eastern Europe;<sup>48</sup> religious liberty and minority rights in the Soviet Union;<sup>49</sup> and information flow, cultural and educational exchanges.<sup>50</sup> In support of the activities of the Soviet Helsinki monitoring groups and dissidents, the Commission has held hearings on the reports of repression of the Helsinki Watch,<sup>51</sup> the right to citizenship in the Soviet Union,<sup>52</sup> Soviet law as applied to the Helsinki Monitors,<sup>53</sup> and the repercussions of the trials of the Helsinki Monitors.<sup>54</sup> Finally, the Commission has been gathering detailed information compiled by the Public Groups in Eastern Europe who are promoting observance of the Final Act by publishing extensive reports on their governments' human rights performances.<sup>55</sup>

The wealth of information that has been compiled as a result of the study mission, the Commission hearings, and the President's semiannual reports is intended to enable the Commission to evaluate the effect that the Final Act has had, primarily in Eastern Europe, and to consider how it may be used and promoted more effectively by the U.S. Prior to the Belgrade Followup Meeting, the findings of the Commission were used to determine the approach

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48. *Basket Three: Implementation of the Helsinki Accords, Hearings Before the Commission on Security and Cooperation in Europe* (vol. I), 95th Cong., 1st Sess. (1977) [hereinafter cited as *Basket Three: Implementation of the Helsinki Accords*].

49. *Id.*, vol. II.

50. *Id.*, vol. III.

51. *Id.*, vol. IV.

52. *Id.*, vol. V, 95th Cong., 2d Sess. (1978).

53. *Id.*, vol. VI.

54. *Id.*, vol. VII.

55. Commission on Security and Cooperation in Europe, *Reports of Helsinki-Accord Monitors in the Soviet Union: Documents of the Public Groups to Promote Observance of the Helsinki Agreements in the U.S.S.R.* (3 vols.), 95th Cong., 1st & 2d Sess. (1977-78); *The Right To Know, the Right To Act: Documents of Helsinki Dissent from the Soviet Union and Eastern Europe*, 95th Cong., 2d Sess. (1978) [hereinafter cited as *The Right To Know, the Right To Act*]; and *On Leaving the Soviet Union: Two Surveys Compared*, 95th Cong., 2d Sess. (1978).

that should be taken by the U.S. at Belgrade.<sup>56</sup> The success of the U.S. approach at Belgrade as well as the significance of the Belgrade Meeting itself will be considered *infra*.

The trend that can be seen from the content of the most recent of the Commission's hearings and reports is one of decreased cooperation between the U.S. and the Soviet Union. Initially, the reports of the Commission enumerated the positive steps that had been taken between East and West toward increasing contacts and exchanges of people and information within the framework of the Final Act. However, as time goes on, the tenor of the Commission reports can be seen to be changing to a recording of Soviet transgressions of the Final Act. This observation is not intended as a criticism of the activities of the Commission, in that it is keeping an ongoing record of the development of the Final Act. Nevertheless, the changed focus of the Commission from reporting implementation to recording transgressions indicates that perhaps it is time for both the U.S. and the Soviet Union to reevaluate their attitudes toward the Final Act. On the one hand, the Soviet Government cannot continue to deemphasize the Basket Three provisions of the accord, nor can it continue to assert that matters of human rights are of exclusively domestic competence. On the other hand, the U.S. must recognize the limitations of trying to coerce the Soviet Union into conforming with American perceptions of the requirements of the Final Act. The Commission's attention has been devoted, until now, almost single-mindedly to Eastern Europe's implementation of Basket Three, with an emphasis on the Soviet Union. In these circumstances, it is hardly surprising that the Soviet Union has felt singled out for criticism and has been less inclined to operate in a framework of cooperation and less responsive to attempts at promoting increased communication by means of the Final Act.

Finally, there is now a Helsinki Watch Committee for the United States, which monitors U.S. compliance with the human rights aspects of the Final Act. In April 1979 the Commission held hearings on U.S. implementation of the Final Act, at which numerous civil liberties organizations appeared to present evidence.<sup>57</sup> This broadened focus by the Commission is commendable, since U.S. compliance is certainly not faultless. By taking a broader perspec-

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56. See STUDY MISSION REPORT, *supra* note 43, at 7-10; COMMISSION FINDINGS TWO YEARS AFTER HELSINKI, *supra* note 45, at 3-10; SECOND SEMIANNUAL REPORT, *supra* note 47, at 45; and *Basket Three: Implementation of the Helsinki Accords*, *supra* note 48, at 85-104.

57. *Basket Three: Implementation of the Helsinki Accords*, note 48 *supra*, (vol. VIII) U.S. Compliance: Human Rights, 96th Cong., 1st Sess. (1979).

tive on implementation of the Final Act, the Commission's activities are given an aura of objectivity and legitimacy, rather than appearing to be an organ of propaganda of the U.S. Government, forever denouncing the Soviet Union.

## 2. *Title IV of the Trade Act of 1974*

The primary value of the Final Act in U.S. foreign policy has been its ability to generate psychological support for a standard of observation of fundamental human rights. There is actually no enforcement mechanism that is capable of ensuring compliance with the letter of the Act, and implementation depends essentially upon the willingness of the participating states to voluntarily fulfill their obligations. In the event of violation of the standards proclaimed in the Final Act, the most that another signatory can do in retaliation is to register its disapproval vocally and attempt to generate as much unfavorable publicity as possible.

In view of the inadequacy of this enforcement mechanism the U.S. has developed methods to attempt to coerce compliance with certain minimal standards of human rights, particularly by nonmarket economies, such as economic sanctions. These sanctions are provided for in Title IV of the Trade Act of 1974.<sup>58</sup> The methods provided by this Act and their effectiveness in actual practice will be considered in this section.

At the time of the passage in Congress of the Trade Act of 1974, an amendment was proposed in both the House and the Senate which became known as the Jackson-Vanik amendment, in honor of its sponsors.<sup>59</sup> The purpose of the amendment was to require that nonmarket economies meet certain standards of emigration of their citizens in order to gain most-favored-nation (MFN) tariff treatment. The amendment was incorporated into the Act and has become section 402. Section 402 provides that the products of any nonmarket economy are not eligible for nondiscriminatory treatment, the country may not participate in any U.S. program extending credit or credit investment guarantees, and the President may not conclude any trade agreements with a nonmarket economy

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58. Trade Act of 1974, Pub. L. No. 93-618, § 1, 88 Stat. 1978 (1975) (codified in 19 U.S.C. §§ 2101-2487). Title IV deals with Trade Relations with Countries not Currently Receiving Nondiscriminatory Treatment, the most pertinent provision being § 402, Freedom of Emigration in East-West Trade.

59. For a background of the Jackson-Vanik Amendment and Title IV of the Trade Act, see Note, *An Interim Analysis of the Effects of the Jackson-Vanik Amendment on Trade and Human Rights: The Romanian Example*, 8 LAW & POL'Y INT'L BUS. 193 (1976) [hereinafter cited as *Interim Analysis of the Jackson-Vanik Amendment*].

country<sup>60</sup> that

- (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 . . . ; or
- (3) imposes more than a nominal tax . . . on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice.<sup>61</sup>

However, under section 402(c) the President may, by Executive order, waive the emigration requirement for eighteen months and renew the waiver for subsequent twelve-month periods,<sup>62</sup> subject to the approval of Congress,<sup>63</sup> if he determines that "(A) . . . such waiver will substantially promote the objectives of this section, and (B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section."<sup>64</sup> The only Warsaw Pact nation which was unaffected by this provision was Poland, since it was already receiving MFN treatment.<sup>65</sup> The remainder of the Eastern European countries were effectively precluded from receiving MFN treatment until the President had examined their emigration policies.

The response of the Soviet Union to this provision was predictable: it constituted an unwarranted interference with their internal affairs. Consequently, the Soviet Union refused to accept MFN treatment under the conditions of section 402.<sup>66</sup>

In 1975 a trade agreement was entered into between the U.S. and Romania<sup>67</sup> in which Romania was granted MFN tariff treat-

60. Trade Act § 402(a).

61. *Id.*

62. *Id.* § 402(c), (d).

63. *Id.* §§ 153, 402(d)(4). The President's recommendation must be approved by a resolution passed through both the House and Senate. If Congress takes no action within the sixty-day period, the waiver becomes effective automatically.

64. *Id.* § 402(c)(1).

65. See Gabor, *The Trade Act of 1974—Title IV: Considerations Involved in Granting Most-Favored-Nation Status to Nonmarket Economy Countries*, 11 INT'L LAW. 517, at 518-19 (1977); and 1974 U.S. CODE CONG. & AD. NEWS 7213.

66. See *Interim Analysis of the Jackson-Vanik Amendment*, *supra* note 59, at 200-01; and Gabor, *supra* note 65, at 522. For a background of the U.S.-Soviet trade agreements prior to the Trade Act of 1974, see *id.* at 517-19; Usenko, *Most-Favored-Nation Treatment in Soviet-American Trade Relations*, 5 DEN. J. INT'L L. & POL'Y 243 (1975); and Metzger, *Most-Favored-Nation Treatment of Imports to the United States from the U.S.S.R.*, *id.* at 251.

67. The text of the agreement is found at 72 DEP'T STATE BULL. 655 (1975), reprinted in *Emigration Waiver to the Socialist Republic of Romania and the Hungarian People's Republic and Nondiscriminatory Treatment of the Products of Romania: Hearing Before the Subcomm. on Trade of the Comm. on Ways and Means*,



ment and the emigration requirement was waived by the President for an eighteen-month period by Executive order.<sup>68</sup> In 1976 the waiver came up for review and extension. To justify the recommendation the President was required to establish that it had promoted improved relations between the U.S. and Romania and that Romania would undertake to improve its emigration policies. The President was also required to submit a report on the status of Romanian emigration policies.<sup>69</sup> Congress neither approved nor disapproved the President's request and the waiver was extended automatically for another year. In 1977, and again in 1978, President Carter requested a waiver of the emigration requirements.<sup>70</sup> The reports submitted on the improvement of Romanian emigration policies over a three-year period have been conflicting and do not reflect any clear-cut liberalization of emigration.<sup>71</sup> The primary reasoning behind extending MFN status was the increased trade between the U.S. and Romania that resulted from the agreement, and a favorable reaction to Romania's independence from Soviet domina-

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95th Cong., 2d Sess. 27-39 (1978) [hereinafter cited as *Hearing on Emigration Waiver to Romania and Hungary*].

68. Exec. Order No. 11,854, 40 Fed. Reg. 18,391 (1975). The Executive order was supported by a proclamation by the President. Pres. Proc. No. 4369, 40 Fed. Reg. 18,389 (1975).

69. Trade With Romania—The President's Message to the Congress Transmitting His Recommendation To Extend Waiver Authority Granted by Section 402(c)(1) of the Trade Act of 1974, June 2, 1976, 12 WEEKLY COMP. OF PRES. DOC. 991 (June 7, 1976), reprinted in *Continuing Most-Favored-Nation Tariff Treatment of Imports from Romania: Hearing Before the Subcomm. on International Trade of the Comm. on Finance, 94th Cong., 2d Sess. 131-32 (1976)* [hereinafter cited as *Hearing on Continuing MFN Treatment to Romania*]; and *Interim Analysis of the Jackson-Vanik Amendment*, *supra* note 59, at 201-08.

70. *Recommendation for Extension of Waiver Authority, Hearing on Continuing MFN Treatment to Romania—1977*, 95th Cong., 1st Sess. 162-63; *Recommendation for Extension of Waiver Authority, Hearing on Emigration Waiver to Romania and Hungary*, *supra* note 67, at 12-13.

71. Compare statistics compiled on Romanian emigration by the Department of State, *Hearing on Continuing MFN Treatment to Romania*, *supra* note 69, at 128-29, with statistics presented by Hon. Edward I. Koch, Rep. from N.Y. at the congressional hearings, *id.* at 7-9, and tables presented at the hearing by Hon. Arthur A. Hartman, Assistant Secretary of State for European Affairs, *id.* at 45-47. The statistics compiled by the Department of State in 1977 did not indicate any astounding improvement in emigration over previous years. See *Hearing on Continuing MFN Treatment to Romania—1977*, at 19-21. By 1978, the statistics showed that while emigration to the U.S. had increased, emigration to Israel from Romania had actually decreased. See *Continuing the President's Authority To Waive the Trade Act Freedom of Emigration Provisions: Hearing Before the Subcomm. on International Trade of the Comm. on Finance, 95th Cong., 2d Sess. 17-18 (1978)*.

tion.<sup>72</sup> Romania was the first Warsaw Pact country to receive MFN treatment under the Trade Act of 1974, and it is significant to note that the very provision that was intended to determine a nonmarket economy country's eligibility for nondiscriminatory treatment has consistently been waived.

For several years Romania and Poland were the only Warsaw Pact nations receiving MFN treatment. However, in 1978 a trade agreement granting MFN tariff treatment to Hungary was completed.<sup>73</sup> Pursuant to the requirements of the Trade Act, President Carter issued a proclamation stating that an agreement granting nondiscriminatory treatment to Hungary had been reached, and an Executive order stating that the emigration requirement of section 402(a) and (b) had been waived.<sup>74</sup> The agreement was approved by the passage of a concurrent resolution through the House and Senate,<sup>75</sup> and the waiver provisions became effective for the same twelve-month period as the one in force for Romania. Hungary has become, therefore, the third Warsaw Pact nation to be accorded MFN status.

In 1979 President Carter again recommended to Congress that section 402(a) and (b) be waived for another twelve months with respect to Romania and Hungary.<sup>76</sup> There was considerable discussion in the House of Representatives over whether the waiver should be continued to Romania,<sup>77</sup> and a resolution was introduced disapprov-

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72. See President's recommendations to extend waiver authority, notes 69 and 70 *supra*; and Statement of Hon. William Luers, Deputy Assistant Secretary of European Affairs, Department of State, reprinted in *Hearing on Emigration Waiver to Romania and Hungary*, *supra* note 67, at 68-71.

73. Pres. Proc. 4560, Agreement on Trade Relations Between the United States of America and the Hungarian People's Republic, 43 Fed. Reg. 15,125 (1978). The text of the agreement is reprinted in *Most-Favored-Nation Treatment With Respect to the Products of Hungary: Hearing Before the Subcomm. on Trade of the Comm. on Ways and Means*, 95th Cong., 2d Sess. 7-16 (1978) [hereinafter cited as *Hearing Before Subcomm. on Trade*].

74. Exec. Order No. 12,051, 43 Fed. Reg. 15,131 (1978). The proclamation is reprinted in *Hearing Before Subcomm. on Trade*, *supra* note 73, at 6. For a congressional report on approval of the agreement, see *Extension of Nondiscriminatory Treatment to Products of Hungary*, H.R. REP. No. 95-1106, 95th Cong., 2d Sess. (1978), reprinted in *Hearing on Emigration Waiver to Romania and Hungary*, *supra* note 67, at 15-22.

75. H.R. Con. Res. 555, 95th Cong., 2d Sess., 124 CONG. REC. H4367 (1978), reprinted in *Hearing Before Subcomm. on Trade*, *supra* note 73, at 22.

76. President's Message to the Congress, Recommendation for Extension of Waiver Authority, 15 WEEKLY COMP. OF PRES. DOC. 978 (June 1, 1979); Pres. Determination No. 79-10, 44 Fed. Reg. 34,095 (1979).

77. There was a lengthy debate in the House over the recommended waiver, each

ing the recommended waiver.<sup>78</sup> The resolution and accompanying debate revolved solely around Romania, so there was no disapproval of extending the waiver to Hungary. The resolution was disapproved,<sup>79</sup> following the recommendation of Congressman Vanik, one of the sponsors of the emigration amendment,<sup>80</sup> and with the support of Congresswoman Fenwick, who was a member of the Study Mission to Europe of the Commission on Security and Cooperation in Europe.<sup>81</sup> Consequently, the emigration provisions have been waived yet again to both Romania and Hungary.

The effectiveness of section 402 of the Trade Act, both in respect to its purpose and its application must be seriously questioned. The purpose of the provision is essentially to attempt to coerce the Soviet Union and other Warsaw Pact countries to allow free emigration of their Jewish population. In practice the provision may be viewed as a political expedient which has emotional appeal in the U.S., but which has not achieved the purpose that was intended. The provision deals with only one very limited aspect of the human rights perspective which was intended to benefit Soviet Jews and would incidentally benefit other groups or individuals who also wished to emigrate. Other human rights considerations do not enter into the picture at all: *e.g.*, reunification of families, freedom to travel, the right of minorities to remain within the country and practice their religion and/or culture, increased exchange of information, to mention only a few. Therefore, a country could conceivably meet emigration standards to be eligible for MFN treatment and violate numerous other fundamental human rights.

Any nation has a legitimate economic interest in preventing large segments of its work force, particularly its highly technically trained work force, from leaving the country. However, section 402 proceeds on the assumption that any restrictions on emigration are arbitrarily imposed with the intention of denying fundamental

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side citing information favorable to its point of view, and including a long list of Romanian citizens who wish to emigrate. The text of the debate is found at 125 CONG. REC. H6622-36 (daily ed. July 25, 1979). Further remarks were made in favor of the resolution by Congressman Dodd, *id.* at E3807 (daily ed. July 23, 1979), and Congressman Symms, *id.* at E3924 (daily ed. July 27, 1979).

78. The resolution was introduced by Congressmen Schulze, McDonald, and Doran, 125 CONG. REC. H4509 (daily ed. June 14, 1979). The text of H.R. Res. 317 is found in *id.* at H6636 (daily ed. July 25, 1979).

79. *Id.* The vote was 126 in favor, 271 opposed, 37 not voting. The Committee on Ways and Means had earlier reported the resolution adversely, H.R. REP. No. 96-336, 96th Cong., 1st Sess. (1979).

80. *Id.* at H6636 (daily ed. July 25, 1979).

81. *Id.* at E4091 (daily ed. Aug. 2, 1979).

human rights. Thus, the criteria spelled out in the section also do not take adequate account of legitimate national policies in restricting emigration, and therefore, the Soviet argument that the provision does interfere with domestic affairs is not without merit.

The actual application of section 402 has also not proven its effectiveness. The Soviet Union refuses to be considered for MFN treatment on the basis of the unacceptable emigration provision and proceeds to trade elsewhere, in countries that do not impose the restriction. The U.S. has been made aware of the fact that it is not an indispensable trading partner of the Soviet Union. As a consequence, the U.S. has lost Soviet trade<sup>82</sup> and section 402 has had no effect on Soviet emigration policies. In extending MFN treatment to Romania, the emigration provision was not only waived, but the waiver has been extended, not so much because of improved emigration policies, but rather on the basis of supporting Romanian independence from Soviet domination. If the provision is so inconsistently applied, the commitment of the U.S. to encouraging human rights observance in other countries by means of economic sanctions is open to question. Finally, the extension to Hungary of MFN treatment with the same waiver granted to Romania has pointed out that the standards of emigration required by section 402 must compete with the economic preferences of improved trade. While Hungary may have the least restrictive emigration policies of any of the Warsaw Pact nations, there are still reports of abusive practices, both in Hungary and Romania.<sup>83</sup> By waiving the emigration requirements the Administration and Congress have successfully managed to avoid establishing a guiding standard, and have implicitly accepted a certain level of restriction.

The application of section 402 is the clearest example of the inconsistency of U.S. foreign relations with Eastern Europe. In practice it is strictly applied to the Soviet Union, while a much more liberal attitude is taken toward the remainder of the Warsaw Pact countries.<sup>84</sup> Furthermore, the very purpose of section 402 is contrary

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82. See *Interim Analysis of Jackson-Vanik Amendment*, *supra* note 59, at 213-21; and Gabor, *supra* note 65, at 522-27.

83. Statement of Istvan B. Gereben, Executive Secretary, Coordinating Committee of Hungarian Organizations in North America, *reprinted in Most-Favored-Nation Treatment for Hungary: Hearing Before the Subcomm. on International Trade of the Comm. on Finance*, 95th Cong., 2d Sess. 214 (1978); and *Hearing on Emigration Waiver to Romania and Hungary*, *supra* note 67, at 150-61, and 287-301.

84. Czechoslovakia receives similar treatment as the Soviet Union. Section 408 of the Trade Act provides that Czechoslovakia is not eligible to receive MFN treatment, U.S. Government credits or guarantees, or the release of Czechoslovakian gold until

to the spirit of Basket Two of the Helsinki Final Act, under which "[t]he participating States . . . recognize the beneficial effects which can result for the development of trade from the application of most favoured nation treatment . . . [and] will endeavour to reduce or progressively eliminate all kinds of obstacles to the development of trade."<sup>85</sup>

In view of the actual use of section 402 of the Trade Act, compounded by the Export-Import Bank Amendments of 1974,<sup>86</sup> it is hardly surprising that the Soviet Union feels that it has been singled out for criticism by the U.S. for seemingly political motives. Such an obviously inconsistent attitude toward the Soviet Union and the remainder of Eastern Europe can hardly be expected to promote understanding and trust between the U.S. and the Soviet Union.

### 3. *Executive Actions*

From the early days of his administration, President Carter indicated that human rights issues would be a high priority consideration in his foreign policy decisions.<sup>87</sup> In relation to the Soviet Union, a few notable incidents have taken place which provided President Carter with a perfect opportunity to prove the sincerity of his commitment. In January 1977, the prominent Soviet dissident, Andrei Sakharov, wrote a letter to President Carter requesting him to continue efforts to release incarcerated dissidents and to provide vocal support for the Charter 77 signers in Czechoslovakia and the Worker's Defense Committee in Poland.<sup>88</sup> The extraordinary aspect of the incident was that President Carter responded personally to the let-

the Government of Czechoslovakia pays U.S. citizens all claims it owes on awards rendered by the U.S. Foreign Claims Settlement Commission. See 1974 U.S. CODE CONG. & AD. NEWS 7125.

85. See Statement by Hon. Gerald L. Parsky, Assistant Secretary of the Treasury, reprinted in *Hearings Before the Commission on Security and Cooperation in Europe on Basket II—Helsinki Final Act East-West Economic Cooperation*, 95th Cong., 1st Sess. 58-59 (1977).

86. Export-Import Bank Amendments of 1974, Pub. L. No. 93-646, § 1, 88 Stat. 2333 (1975) (codified in 12 U.S.C. § 635). Section 8(b) of the amendments provides that the Export-Import Bank "shall not approve any loans or financial guarantees . . . in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of \$300,000,000." This limitation on credit echoes section 613 of the Trade Act, which provides that "no agency of the Government of the United States, other than the Commodity Credit Corporation, shall approve any loans, guarantees, insurance, or any combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of \$300,000,000 without prior congressional approval."

87. Inaugural Address, note 1 *supra*; speech before the United Nations (Mar. 17, 1977), reprinted in 76 DEP'T STATE BULL. 329 (1977).

88. N.Y. Times, Jan. 29, 1977, at 2, col. 3.

ter, and assured Sakharov that "[t]he American people and our government will continue our firm commitment to promote respect for human rights not only in our own country but also abroad."<sup>89</sup> There was general amazement that the President should offer such unprecedented support for a voice in opposition to the Soviet Government, which was accompanied by an overall uneasiness with the daring but uncertain policy that President Carter seemed to be following.<sup>90</sup> The next step that President Carter took was to receive exiled Soviet dissident Vladimir Bukovsky at the White House.<sup>91</sup> The Soviet Government was again amazed and displeased that President Carter should provide such open support for one who is labeled a common criminal in the Soviet Union.<sup>92</sup> In spite of these rather provocative moves on the part of the Administration, President Carter maintained that he was not singling out the Soviet Union to publicize and discredit their human rights policy, but that he was concerned equally with any country in which human rights violations occurred.

In the summer of 1978, after the trials of Orlov, Shcharansky, and other dissidents, President Carter once again was vocally critical of the Soviet Government's action, but on this occasion he accompanied his words with actions. In response to the outcome of the trials, President Carter placed all exports of oil technology to the Soviet Union under government control.<sup>93</sup> Additionally, the contract for the sale of the Sperry Rand Univac computer to the Soviet news agency, TASS, was cancelled.<sup>94</sup> In the same spirit of moral outrage, a number of government delegations to the Soviet Union, including Lawrence Simons, Assistant Secretary of Housing, Barbara Blain of the Environmental Protection Agency, and Frank Press, President Carter's science advisor, were cancelled expressly in protest of the trials.<sup>95</sup> The President was not alone in acting to protest the treatment of the dissidents. After Alexandr Ginzburg had been arrested, but before he came to trial, the State Department made public its concern for the treatment of Ginzburg, stating that "[w]herever it may occur, the harrassment of individuals who are . . . working for the implementation of the Final Act of the Helsinki Conference, is a

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89. *Id.*, Feb. 18, 1977, at 3, col. 1.

90. Reston, *The Sakharov Letter*, *id.*, Feb. 20, 1977, § IV, at 15, col. 1; Sulzberger, *Where Do We Go Now?*, *id.*, § IV, at 15, col. 2. See also *Daring To Talk About Human Rights*, TIME, Feb. 7, 1977, at 38.

91. NEWSWEEK, Mar. 14, 1977, at 31.

92. *Id.*

93. N.Y. Times, July 19, 1978, at 1, col. 2.

94. *Id.*, July 23, 1978, § IV, at 3, col. 1.

95. *Id.*, July 26, 1978, at 2, col. 3.

matter of profound concern for all Americans."<sup>96</sup>

After the trials took place, a delegation of physicists from the National Academy of Science cancelled their trip to the Soviet Union, and a number of American doctors boycotted the Congress of Genetics which was held in Moscow.<sup>97</sup> An ad hoc group of scientists also sponsored a visit to the United States by Madame Shcharansky, and indicated their intention to discontinue their cooperation with the Soviet Union in the area of science and technology until Orlov and Shcharansky are released.<sup>98</sup> After the arrest of Shcharansky, but before his trial, an ad hoc committee of attorneys, Congressmen, and other interested persons convened to present evidence on behalf of Shcharansky to submit to Soviet authorities. A resolution by law professors and law school administrators on behalf of Shcharansky was also drawn up and submitted to Brezhnev.<sup>99</sup> Members of the U.S. legal community have urged protest of the repressive actions of the Soviet Government, and have suggested the duty and ability of American lawyers to vocally express support for Soviet dissidents and disapproval of the Soviet Government.<sup>100</sup>

The response to President Carter's activities was somewhat variable. The President maintained that his criticism of the Soviet Government's actions was not a vendetta, and was actually fairly moderate.<sup>101</sup> The Soviet press did not agree. The Soviets accused President Carter of interfering in their internal affairs, and further maintained that President Carter was doing his best to destroy détente and revert to Cold War tactics.<sup>102</sup> The U.S. companies affected by the cancellation or regulation of their contracts with the Soviets, Sperry Rand and Dresser Industries, were particularly displeased. It was

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96. Statement by Frederick Brown, Director, Office of Press Relations (Feb. 7, 1977), reprinted in 76 DEP'T STATE BULL. 161 (1977). See also N.Y. Times, July 24, 1978, at 6, col. 1 (wherein Secretary of State Vance calls trials a setback, and a deplorable action).

97. Lewontin & Levins, *A Boycott Bandwagon*, N.Y. Times, July 23, 1978, § IV, at 19, col. 2.

98. *Key Issues in U.S.-U.S.S.R. Scientific Exchanges and Technology Transfers: Hearings Before the Subcomm. on Domestic and Int'l Scientific Planning, Analysis and Cooperation of the Comm. on Science and Technology*, 95th Cong., 2d Sess. 507 (1978).

99. *Proceedings of the Ad Hoc Commission on Justice for Anatoly Shcharansky*, 6 HUMAN RIGHTS 247 (1977); and *Resolution of Deans and Law Professors on Behalf of Anatoly Shcharansky*, *id.* at 285 (1977).

100. See Salter, *American Lawyers and Russian Dissidents: The Lawyer as Social Engineer*, 12 INT'L LAW. 869 (1978).

101. N.Y. Times, July 21, 1978, at 6, col. 1.

102. TIME, Feb. 28, 1977, at 30; N.Y. Times, July 27, 1978, at 5, col. 1; and 30 CURRENT DIG. SOVIET PRESS, Aug. 9, 1978, at 5.

their contention that the only effect the restrictions would have would be to invite the Soviets to buy their goods elsewhere.<sup>103</sup> Some of the American press were not convinced of the sincerity or efficacy of President Carter's policy, and dismissed it as "morality of convenience."<sup>104</sup>

It is impossible to say whether the vocal protest and extensive adverse publicity of the trials had any ameliorative effect on the sentences imposed on Orlov, Shcharansky, and other dissidents. As a result of President Carter's criticism of Soviet actions, U.S.-Soviet relations hit a new low, and were fraught with hostility and mutual mistrust.

For quite some time the United States has been unable to convincingly flaunt its own sterling observance of human rights simply because the U.S. was not a signatory to any of the U.N. human rights covenants. Accordingly, President Carter has taken steps to rectify the situation by signing the covenants and urging Congress to rectify them.<sup>105</sup> In addition, a Helsinki Watch Committee for the U.S. has been formed, which is monitoring U.S. compliance with the Final Act, so that the U.S. can measure its own performance against other participating states.<sup>106</sup>

While the cause of U.S.-Soviet cooperation suffered a severe blow in the early days of the Carter administration, and even more markedly during the trials of the summer of 1978, President Carter is to be commended for sustaining his firm position on human rights observance.<sup>107</sup> He has continually asserted that no nation can persist in persecuting its citizens under the guise of domestic jurisdiction.<sup>108</sup> While enforcement of this assertion can only be done by indirect means, by bringing these transgressions to the attention of the world, the persecuting government is forced to justify its actions to

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103. N.Y. Times, July 21, 1978, § IV, at 1, col. 3; *id.* July 26, 1978, § IV, at 1, col. 3.

104. Lewontin & Levins, note 97 *supra*.

105. See President Carter's speech before United Nations, *supra* note 87, at 332.

106. See note 57 *supra*, and accompanying text.

107. President Carter has requested all departments of the government to continue their efforts toward full implementation of the Final Act in the spirit of cooperation, and has reaffirmed his own commitment to promote observance of the Final Act. Memorandum from the President, *Implementing the CSCE Final Act* (Dec. 6, 1978), reprinted in 79 DEP'T STATE BULL. 40 (Feb. 1979).

108. In his speech before the United Nations, President Carter maintained that "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 review and to speak when torture or unwarranted deprivation occurs in any part of the world." Speech before the United Nations, *supra* note 87, at 332.



the world, and finds it difficult to do so.

Events of the past year amply reflect the tenuous nature of the U.S.-Soviet relationship. In April 1979, five Soviet dissidents were released and sent to the U.S. in exchange for two Soviet spies held in the United States.<sup>109</sup> While this action appeared to indicate the possibility of greater U.S.-Soviet cooperation in human rights, more recent events have thoroughly negated that indication. In January 1980, Andrei Sakharov was banished to internal exile at Gorky, safely out of reach of any Western correspondents.<sup>110</sup> This action is clearly incidental to the current tension surrounding the Soviet invasion of Afghanistan and the SALT Treaty, which have totally subsumed all other aspects of the U.S.-Soviet relationship for the moment. The deterioration of U.S.-Soviet cooperation will inevitably make human rights concerns a matter of secondary importance in executive foreign policy decisions.

*C. Implementation of the Final Act by the Soviet Union and Eastern Europe*

When the Final Act was signed in Helsinki in August 1975, it was greeted with general optimism throughout Eastern Europe. The Soviet Government regarded it as legitimization of its supremacy over the remainder of Eastern Europe. However, dissident and minority groups in all of the Warsaw Pact countries viewed it as an expression of obligations undertaken by their governments to grant certain minimum standards of human rights and fundamental freedoms. Numerous Public Groups were created throughout the Soviet Union and Eastern Europe to monitor governmental compliance with the Basket Three provisions of the Final Act. It was in fact the activities of the Helsinki monitoring groups in Eastern Europe that made the U.S. realize the full potential of Basket Three. Since the creation of the Commission, the U.S. has been actively supporting the efforts of these monitoring groups and has become a central mechanism for receiving reports from the monitoring groups, holding hearings to receive testimony from interested parties, and obtaining evaluations and analyses on the circumstances and legal ramifications of events surrounding Helsinki monitoring activities from U.S. experts in Soviet and international law.

The bulk of the information available on Eastern European implementation of the Final Act has been made easily accessible by the Commission. In terms of the Basket Three and Declaration VII provisions, the Commission has essentially had a dual function. First, it

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109. Wash. Post, Apr. 28, 1979, at A1, col. 4, and A13, col. 1.

110. Rocky Mtn. News, Jan. 23, 1980, at 3.

has evaluated governmental implementation of Basket Three, particularly concerning improvements in emigration policies, reunification of families, increased flow and exchange of information, etc. Second, it has published reports compiled by the Public Groups on governmental violations of the Final Act, and has conducted its own studies and analysis of those governmental violations.<sup>111</sup>

As stated previously, an evaluation of the overall activities of the Commission leads to the conclusion that it is predominantly concerned with the activities in the Soviet Union, and takes a very moderate view of the remainder of the Warsaw Pact countries. In terms of governmental compliance with the Final Act, the countries with the best record are Hungary and Poland, and the worst are Czechoslovakia and the Soviet Union.<sup>112</sup> For purposes of comparison, it is well to mention briefly certain aspects of compliance by the best and the worst of the Warsaw Pact countries.

#### 1. *Hungary and Poland*

Hungary appears to have the best record of all, largely due to its comparatively liberal practices even before Helsinki. Its emigration and travel procedures are set up according to established standards, which are fairly leniently applied, with the result that a citizen who desires to emigrate or travel is able to obtain the requisite documentation with a minimum of delays and official obstruction.<sup>113</sup> When Charter 77 appeared in Czechoslovakia, a group of thirty-four intellectuals in Hungary published a letter of support for the Charter signers, and were not subject to any governmental harassment, unlike the Charter signers themselves.<sup>114</sup> While Hungary is by no means perfect, it does, nevertheless, set a good example of the degree of liberalization possible in a controlled country.

The Polish government, while it has often reacted harshly to dissent, is often responsive to internal and external pressures. During 1976, when Poland was undergoing an economic crisis, there was considerable unrest, and numerous arrests of rioters were made. Under domestic and Western criticism, however, the workers and their defenders were released.<sup>115</sup> The dissident movement in Poland

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111. For an accounting of the practices of each of the Warsaw Pact nations individually in implementing all aspects of the Final Act, and particularly Basket Three, see COMMISSION FINDINGS TWO YEARS AFTER HELSINKI, note 45 *supra*; SECOND SEMI-ANNUAL REPORT, note 47 *supra*; and Fifth Semiannual Report, note 47 *supra*.

112. See COMMISSION FINDINGS TWO YEARS AFTER HELSINKI, *supra* note 45, at 36.

113. *Id.* at 103-06; SECOND SEMI-ANNUAL REPORT, *supra* note 47, at 27.

114. COMMISSION FINDINGS TWO YEARS AFTER HELSINKI, *supra* note 45, at 36.

115. *Id.* at 40. More recently, a number of dissidents were arrested for organizing commemorative meetings for those who died in the riots. Several of them were re-

is active and vocal, and is tolerated to a remarkable degree by the government: the Worker's Defense Committee, as a prominent example, has achieved tangible results for workers in the face of constant economic crisis. Primarily, however, the Catholic church, which represents a large percentage of the Polish population, is a vocal force which the government must take into account.<sup>116</sup> The Poles have traditionally had an affinity with the West, which has perhaps contributed to their favorable response to Western pressures. In addition, the Poles have taken an active interest in implementation of the Final Act by East and West alike.<sup>117</sup>

## 2. *Czechoslovakia and the Soviet Union*

Czechoslovakia has rated very poorly in implementation of the Final Act. The most prominent action that grew out of the Final Act was the issuance in Prague of Charter 77 in January 1977. The document, signed by more than 700 Czech citizens, called on the Czech Government to fulfill its obligations under the international human rights covenants as confirmed by the Helsinki Conference.<sup>118</sup> The signers of Charter 77 received broad public international support from both Eastern European intellectuals and dissidents and the Western public. However, they received very harsh treatment from their own government.<sup>119</sup> The reaction of the Czech Government to Charter 77 was very characteristic. Ever since the Husak regime came to power, it has closely followed the directives from Moscow, rendering it intolerant to any assertions of human rights. The lack of independence of the Czech Government is best demonstrated by the continued occupation of Czech territory by Soviet troops—clearly in violation of Declaration VI of the Final Act.<sup>120</sup>

The Soviet Union has been the object of most of the Commission's attention, in part because of the flagrant violations of the Fi-

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leased after five members of the Committee for Social-Self Defense protested the arrests. *Fourteen Polish Dissidents Freed*, Rocky Mtn. News, Dec. 20, 1979, at 45.

116. For further comment on the success of the dissident movement in Poland, see Carroll, *The Dissident Movement in Poland*, reprinted in *The Right To Know, the Right To Act*, *supra* note 55, at 30. See also *Fifth Semiannual Report*, *supra* note 47, at 6; and *The flowers that push through the cracks in the concrete*, *ECONOMIST* (London), Sept. 9, 1978, at 51-52.

117. See, e.g., Nowak, *Cooperation Between the East and the West in Humanitarian Domains After the CSCE*, 29 *SPRAWY MIĘDZYNARODOWE* (Warsaw) 36 (Sept. 1976) (summary in English).

118. For further background on Charter 77, see Precan, *An Introduction to Charter 77*, in *The Right To Know, the Right To Act*, *supra* note 55, at 6.

119. COMMISSION FINDINGS TWO YEARS AFTER HELSINKI, *supra* note 45, at 37-39.

120. Skilling, *Czechoslovakia and Helsinki*, 18 *CANADIAN SLAVONIC PAPERS* 245 (1976).

nal Act that have occurred. A brief rundown on some of the trials that took place during 1978 provides an indication of the type of abuses that have been perpetrated. The maze of legal ramifications involved in the trials are testimony to the contradictions inherent in the Soviet Criminal Code and Constitution.<sup>121</sup>

The trials during the summer of 1978 of Orlov and Shcharansky were well publicized and gave rise to considerable international comment.<sup>122</sup> Nevertheless, they were but two of a long list of trials of dissidents from Public Groups in Lithuania, Georgia, Armenia, the Ukraine, and Moscow. By monitoring the Soviet Government's compliance with the Final Act and distributing their reports, or by protesting the denial of permission to emigrate, the dissidents were subjected to all manner of charges and punishments under the Criminal Code. The most common charge, and the one brought against Orlov and Ginzburg, is for "anti-Soviet agitation and propaganda."<sup>123</sup> The criteria of the charge are indeterminate enough to be applied to any type of political dissidence.

A related charge is that of "dissemination of fabrications known to be false which defame the Soviet state and social system."<sup>124</sup> This charge was brought against Alexander Podrabinek, who was a member of the Working Committee to Investigate the Abuse of Psychiatry for Political Purposes.<sup>125</sup>

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121. For a general overview of the nature of the charges brought against dissidents and their application in specific instances, see *Basket Three: Implementation of the Helsinki Accords* (vol. VI), *supra* note 53, at 115-44; and AMNESTY INTERNATIONAL, ANNUAL REPORT 276-85 (1977). For further analysis of Soviet legality, see Grzybowski, *Socialist Legality and Uncensored Literature in the Soviet Union*, 10 CASE W. RES. J. INT'L L. 299 (1978).

122. For an account of the trials as presented in the Soviet press, see *Orlov Sentenced for 'Anti-Soviet Activity'*, Pravda, May 21, 1978, at 6, reprinted in 30 CURRENT DIG. SOVIET PRESS, June 14, 1978, at 1; and *The Shcharansky and Filatov Trials*, Pravda, July 11, 1978, at 6; *id.* July 15, at 6; *id.* July 19, at 4, reprinted in 30 CURRENT DIG. SOVIET PRESS, Aug. 9, 1978, at 1-5.

123. Art. 70 of the Criminal Code of the Russian Soviet Federated Socialist Republic (RSFSR Criminal Code). The charge is a "desire to undermine or weaken Soviet authority." The penalty is up to ten years deprivation of freedom and up to five years of exile. See *Basket Three: Implementation of the Helsinki Accords* (vol. VI), *supra* note 53, at 120.

124. Art. 190-1 RSFSR Criminal Code. See *id.* at 121.

125. Another method of punishing dissidents for their nonconformist convictions about Soviet society is to confine them in insane asylums and subject them to psychiatric investigation. There are numerous reports of various psychiatric abuses that have been inflicted on dissidents. See generally Young-Anawaty, *International Human Rights Norms and Soviet Abuse of Psychiatry*, 10 CASE W. RES. J. INT'L L. 785 (1978); Comment, *Soviet Abuse of Psychiatric Commitment: An International Human Rights Issue*, 9 CAL. W. INT'L L. J. 629 (1979) and sources cited therein; COM-

The most serious charge is that of treason, which was brought against Anatoly Shcharansky.<sup>126</sup> Shcharansky was convicted of espionage for being an agent of the CIA. The U.S. denied the charge, but since the trial was not open it cannot be known what evidence was presented to support the charge. Some other charges that are frequently brought are for "parasitism"<sup>127</sup> or "malicious hooliganism."<sup>128</sup> These charges are customarily the sequel to loss of employment for applying for emigration, or visible protest after an application for emigration has been denied.<sup>129</sup>

These charges should be balanced against provisions of the 1977 Soviet Constitution. The new Constitution provides that "citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations."<sup>130</sup> Furthermore, "citizens of the USSR have the right to associate in public organizations that promote their political activity and initiative and satisfaction of their various interests."<sup>131</sup> The twist of these guarantees that makes them actually support the provisions of the Criminal Code is that they can only be exercised "in order to strengthen and develop the socialist system,"<sup>132</sup> "[i]n accordance with the aims of

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MISSION FINDINGS TWO YEARS AFTER HELSINKI, *supra* note 45, at 27-30; AMNESTY INTERNATIONAL, ANNUAL REPORT 282 (1977); Amnesty International, *Psychiatric Abuses Documented by Workers' Group in the USSR*, Mar. 1, 1978 (AI Index: EUR 46/13/78); and Amnesty International, *A Biographical Note on Yevgeny Nikolaev*, Apr. 1978 (AI Index: EUR 46/16/78).

126. Art. 64 RSFSR Criminal Code. Treason is defined as acts "intentionally committed by a citizen of the USSR to the detriment of the state independence, the territorial inviolability, or the military might of the USSR." The penalty is death or 10-15 years deprivation of freedom plus 2-5 years in exile. *Basket Three: Implementation of the Helsinki Accords* (vol. VI), *supra* note 53, at 121.

127. Art. 209-1 RSFSR Criminal Code. The charge is "malicious evasion of performance of decision concerning arrangement of work and discontinuance of parasitic existence." *Id.*

128. Art. 206 RSFSR Criminal Code. The charge is for any intentional act which violates public order and expresses "clear disrespect for society" and is committed with "exceptional cynicism or special impudence." The penalty is up to five years deprivation of freedom. *Id.*

129. *See id.* For further analysis of Soviet practices in emigration and observance of their obligations under international law, *see, inter alia*, Mehl & Rapoport, *Soviet Policy of Separating Families and the Right to Emigrate*, 27 INT'L & COMP. L.Q. 876 (1978); and Note, *Soviet Emigration Law and International Obligations Under United Nations Instruments*, 13 J. INT'L L. & ECON. 403 (1979).

130. Art. 50 Constitution (Fundamental Law) of the Union of Soviet Socialist Republics (1977).

131. *Id.* art. 51.

132. *Id.* art. 50.

building communism.”<sup>133</sup> Nevertheless, the Constitution does recognize international obligations: “The USSR’s relations with other states are based on observance of the following principles: . . . respect for human rights and fundamental freedoms; . . . and fulfillment in good faith of all obligations arising from the generally recognized principles and rules of international law, and from the international treaties signed by the USSR.”<sup>134</sup>

There is an irreconcilable conflict between the provisions of the Criminal Code and the international covenants which the Soviet Union claims to observe. This conflict is made even more apparent by the unique Soviet claim that the Helsinki Final Act is evidence of emerging principles of international law.<sup>135</sup>

### 3. *Evaluation*

The value and accuracy of the reports and studies compiled by the Commission and the Department of State must be evaluated in proper perspective. In assessing the impact that the Final Act has had on the signatories, it must be borne in mind that, prior to the creation of the Commission, this type of information was not being systematically gathered, making it difficult to observe a trend in Eastern European policies in so short a period of time. Furthermore, the studies have been focused on the Eastern European nations and until now have done very little evaluation of the practices and improvements of the Western European countries or of the United States since the signing of the Final Act. While there is a volume of information compiled by reliable sources, such as Amnesty International, and the public monitoring groups in Eastern Europe, it still presents only one side of the issue, and there is no basis for making a critical comparison between the performances of the Western and Eastern signatories. Finally, the U.S. has been primarily concerned with the human rights aspects of the Final Act and has expended comparatively little effort in assessing any progress that may have been made in other areas of the Final Act, and which are indirectly or directly related to human rights.

The Eastern European countries, on their part, have evaluated the U.S. performance in implementing the provisions of the Final Act and have not found the U.S. to be above reproach. Their main criticism has been that the U.S. has not treated the Final Act as an integrated document, with each section of equal importance, nor has it honestly evaluated its own compliance with the Final Act, includ-

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133. *Id.* art. 51.

134. *Id.* art. 29.

135. *See note 7 supra.*

ing Basket Three.<sup>136</sup> The conclusion that emerges is that, in the view of both Eastern and Western signatories, the Final Act is a viable stimulant for expanding and improving humanitarian relations. However, both East and West have proven adept at pointing to their own sterling implementation of their obligations under the Final Act, while at the same time pointing out each other's shortcomings. A more balanced combination of self-criticism and self-praise would doubtless render the process of cooperation more meaningful and effective.<sup>137</sup>

### III. THE OUTCOME AT BELGRADE

One of the unique aspects of the Helsinki Final Act is its provision for regular followup meetings to review the progress made in the intervening time and to continue the development and improvement of détente. The first such followup was held in Belgrade in 1977 and was completed in 1978. Before the participants met in Belgrade there was sharp disagreement between East and West regarding the substance and purpose of the meeting. The U.S. made it known that it viewed the meeting as a forum for evaluating the past performances of the participating states, and that it intended to review and critique the East's observance of the human rights provisions.<sup>138</sup> The East, notably the Soviet Union, indicated that it would not tolerate criticism of its performance, once again falling back on the argument that such criticism would constitute interference with its internal af-

136. Several press sources in Eastern Europe have suggested that the U.S. has placed a disproportionate emphasis on Basket Three to the exclusion of the other baskets. See, e.g., Rotfeld, *The 'Third Basket,'* 20 POLISH PERSPECTIVES (Warsaw) 18 (Apr. 1977); Dobrosielski, *Global and Regional Aspects of Security in Europe After the Conference in Helsinki,* 29 SPRAWY MIĘDZYNARODOWE (Warsaw) 7 (Sept. 1976) (summary in English); and Valentinov, *One Year After Helsinki,* INT'L AFF. (Moscow) 22 (Sept. 1976). One author has done a comparison between West and East (specifically Poland) in the area of exchange and free flow of information. The conclusion he reaches, based on a comparison of exchanges of newspapers and film, translations of literature and information, etc., is that the West is actually dragging its feet in fulfilling Basket Three. E. GUZ, TRZECI KOSZYK (BASKET THREE) (1977), reviewed by S. Milc, 20 POLISH PERSPECTIVES (Warsaw) 79 (Nov. 1977).

137. One author has suggested that:

Meetings between experts and practitioners [sic] from East and West make for a better grasp of their respective points of view. The discussions held to date have helped to spread an awareness that it is essential to remedy the glaring disproportions and eradicate the pejorative stereotypes that have clouded the image of the socialist countries in many western societies.

Rotfeld, *supra* note 136, at 24.

138. See SECOND SEMIANNUAL REPORT, *supra* note 47, at 45; BELGRADE FOLLOWUP MEETING REPORT, *supra* note 15, at xi; Statement by Arthur Goldberg, (Oct. 6, 1977), *Review Meeting of the CSCE Opens at Belgrade,* 77 DEP'T STATE BULL. 674 (1977).

fairs.<sup>139</sup> The Soviet Union regarded the U.S. position as a political ploy designed to draw attention away from U.S. shortcomings and toward Eastern European deficiencies.<sup>140</sup> Nevertheless, the Soviet Union undermined its nonintervention argument by proceeding to point out U.S. inadequacies in implementing the Final Act, which under their theory should constitute interference in U.S. affairs.<sup>141</sup> The aura of tension and disagreement that surrounded the meeting made it evident that the document that emerged would contain very little substance, due to the lack of consensus. In fact, the concluding document is a very short instrument, and states only that the signatories met, discussed the implementation of the Final Act, but arrived at no agreement.<sup>142</sup> All of the discussions took place in closed session so that there is no public record of those proceedings.

While it would appear that the result of the Belgrade Followup Meeting was disappointing, taken in its proper perspective there are a number of positive aspects of both the meeting itself and the document produced.<sup>143</sup> In the first place, it is unusual for an instrument such as the Final Act to have a provision for followup meetings. The fact that there was a meeting and that all signatories were in attendance indicates a willingness by all to continue the process begun at Helsinki and to continue to strive for understanding and cooperation among all participants. Furthermore, the document produced at Belgrade provides for continued unilateral, bilateral, and multilateral discussion, as well as for a second followup meeting to be held in Madrid in September 1980.<sup>144</sup>

The U.S. delegation sent to Belgrade was composed of both executive and legislative personnel, who worked in close harmony, indicating an ability of the two branches to develop a unified and cohesive policy. Furthermore, the U.S. and its NATO allies were generally able to present a unified stance, which also enabled them to reaffirm their areas of agreement.<sup>145</sup> Although the East-West dialogue tended to be more contentious than conciliatory, there were

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139. BELGRADE FOLLOWUP MEETING REPORT, *supra* note 15, at 10.

140. Matveyev, *supra* note 21, at 70.

141. BELGRADE FOLLOWUP MEETING REPORT, *supra* note 15, at xii.

142. The text of the concluding document is found at 78 DEP'T STATE BULL. 43 (1978).

143. For a general evaluation by the media of the significance of the Belgrade Meeting, see *inter alia*, BELGRADE FOLLOWUP MEETING REPORT, *supra* note 15, at 100-05; Matveyev, note 21 *supra*; *What the West Accomplished in Belgrade*, BUSINESS WEEK, Jan. 30, 1978, at 41; and Davy, *No Progress at Belgrade*, 34 WORLD TODAY 128 (1978).

144. See BELGRADE FOLLOWUP MEETING REPORT, *supra* note 15, at 47-50.

145. *Id.* at 82-91; 78 DEP'T STATE BULL. 41 (1978).



issues that arose that had never before been discussed. While the majority of the Warsaw Pact nations have indicated a willingness to support the cooperative effort initiated by the Final Act, it would appear that the Soviet Union would prefer to deemphasize the significance of the followup procedure. The Soviet Union's primary concern with the followup meetings is the discussion of prospective measures of implementation, but it does not wish to be held accountable by the other participating states for its past practices.<sup>146</sup>

Although the achievements at Belgrade would seem to be modest, it can hardly be expected that progress will occur overnight.<sup>147</sup> Considering the broad divergence between the systems and ideologies represented, it is natural that disagreements and setbacks will arise. What is essential is that the dialogue continue in spite of disagreements and that the opposing systems develop a framework in which they can discuss their viewpoints rationally and in a spirit of cooperation. The Belgrade Meeting indicates that this ideal has not yet been achieved, but it also provides hope that it may be forthcoming.

The next opportunity for the participating states to evaluate the progress made within the parameters of the Final Act is fast approaching with the next scheduled followup meeting in Madrid in 1980. Already there has been some planning as to what objective should be sought in Madrid.<sup>148</sup> The executive department has reaffirmed its confidence in the Helsinki process as well as its commitment to full observance and implementation of all aspects of the Final Act.<sup>149</sup> The fact that the procedure begun in Helsinki is still continuing with increased force and vitality confirms that the Final Act has actually created a framework for conducting foreign policy and achieving international cooperation. With the prospect of meeting biannually, every participating state has the opportunity to coordinate its policies with other participants and to evaluate its own

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146. BELGRADE FOLLOWUP MEETING REPORT, *supra* note 15, at 13-45.

147. For further evaluation of the results of the Belgrade Meeting, see Coughlin, *Monitoring of the Helsinki Accords: Belgrade 1977*, 10 CASE W. RES. J. INT'L L. 511 (1978); Goldberg, *Human Rights and the Belgrade Meeting*, 30 HASTINGS L. J. 249 (1978); and Turack, *Freedom of Transnational Movement: The Helsinki Accord and Beyond*, 11 VAND. J. TRANSNAT'L L. 585 (1978).

148. ASPEN INSTITUTE FOR HUMANISTIC STUDIES, *THE ROAD TO MADRID: RECOMMENDATIONS FOR UNITED STATES HUMAN RIGHTS POLICY* (1979).

149. See Address by Matthew Nimetz before the Leadership Conference of the National Interreligious Task Force on Soviet Jewry in New York City (Oct. 30, 1979), U.S. Dep't State, Bureau of Pub. Aff., *The Helsinki Process: Continuity and Commitment*, Current Policy No. 104; and Statement by the President, *Fourth Anniversary of the Helsinki Final Act*, reprinted in 79 DEP'T STATE BULL. 39 (Nov. 1979).

performance and make plans for improved compliance. As the followup procedure continues, the prospects are good that East and West may gradually develop a better understanding of each other's perceptions of human rights and achieve increased compliance with all phases of the Final Act on the basis of cooperation rather than confrontation.

#### IV. CONCLUSIONS

The human rights provisions of the Helsinki Final Act have become a dynamic aspect of U.S. relations with Eastern Europe. They have established a standard of human rights observance that every participating state has expressly acknowledged and voluntarily promised to fulfill. Nevertheless, the time that has passed and the events that have transpired since the signing of the Final Act at Helsinki have shown that, although the words were agreed to by all, the meaning behind the words is subject to many and varied interpretations. The fundamental ideological conflict between East and West persists and cannot reasonably be expected to disappear, but a spirit of peaceful coexistence and of ever increasing mutual understanding is a necessity, and a prospect that can be achieved within the framework of the Final Act. The process begun at Helsinki is still new and developing and only the passage of time will disclose how fully the potential of the Conference on Security and Cooperation in Europe (CSCE) has been realized.

In evaluating the U.S. and Soviet implementation of the Final Act, several shortcomings are apparent which, if remedied, would greatly enhance the operation of the agreement. Both the U.S. and the Soviet Union view themselves as leaders of the opposing ideological camps in the struggle that exists between capitalism and communism. As a result, neither party wants to lose stature by seeming to compromise with the opposition. The outcome thus far has been an exchange of epithets instead of a constructive dialogue.

No participating state can claim that it has implemented every phase of the Final Act faithfully and is, therefore, above criticism. The U.S. is the first to admit that its record is not free from blemish and further claims to be open to constructive criticism. Nevertheless, it is significant to note that, while the U.S. does accept criticism of its fulfillment of its obligations, until the recent creation of a U.S. Helsinki Watch Committee, the U.S. has been more attentive to others' compliance with the Final Act than to its own. While the U.S. purports to accept and interpret the Final Act as a unified document, in reality certain portions, especially the human rights provisions, are given considerably more attention. The U.S. appears to place more emphasis on those portions of the Final Act in which it

has the best record of implementation. However, without a frank appraisal of its performance in areas of deficiency, the U.S. cannot claim to be making genuine progress toward cooperation. The U.S. has justified the focus it has taken by stating that it is devoting its attention to the areas in which the spirit of Helsinki has been most seriously transgressed. While this may be true from the Western perspective, if the U.S. is truly responsive to criticism, it should listen to some of the evaluations of its own performance offered by other participating states.

Essentially the same criticism can be leveled at the Soviet Union. The Soviets' primary objective in the CSCE process was to obtain a document that would support socialist ideals: nonintervention in internal affairs, respect for sovereignty, and inviolability of frontiers. The document they received was far more extensive, and they have chosen to interpret the Final Act with characteristic selectivity.

True progress in cooperation and understanding will come only when all parties accept the entire document as a unity, with all provisions being accorded equal significance, and all potentially conflicting sections being interpreted in such a way as to avoid conflict and promote consistency. Much progress has already been made toward breaking down the barriers of communication, but there still remains potential for improvement. It is imperative that the process begun at Helsinki continue to be applied and improved in the future by all the participating states.