HUMAN RIGHTS AND NON-INTERVENTION IN THE FINAL ACT OF THE CSCE

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Human rights became the source of endless disputes at the Belgrade follow-up meeting of the Conference on Security and Cooperation in Europe (CSCE). Throughout the meeting, the United States accused a number of socialist States of violations of human rights; it specified the names of the States concerned and pointed to individual cases in order to aggravate its accusations. Several other western States participated in this criticism against the socialist States, but they did it in a general form without specifying the names of the States.

According to several western analysts, respect for human rights has been recognized in the Final Act of the CSCE to be a necessary precondition of détente and to be of international concern – possibly in a new way. Some analysts think that the question of the rights of individuals is without a doubt a matter of international concern in international law; thus, it would be incorrect to claim that within the CSCE these questions would fall under the domestic jurisdiction of States.¹

In the opinion of socialist States, the Final Act does not authorize intervention in the internal affairs of States, within which the implementation of human rights falls. Socialist States would have much criticism against human rights deficiencies in many western States, but the accusations pointed at specific States would be contrary to international law and harmful for the CSCE and for détente. After repeated accusations by the United States some socialist States ultimately responded by heavily criticizing violations of human rights in the United States. They have let it be known that the counterattack should not be regarded as an attempt to brush aside the non-intervention principle but as a response to the continuous violation of the principle by the United States.

This article will deal with how the provisions of the Final Act on human rights, individuals, non-intervention and on the jurisdiction of follow-up meetings should be interpreted.

1. Legal Significance of the Final Act

From a strictly legal point of view, the Final Act is not a binding document because it was not accepted as a treaty.² It has great political and moral force, because it has been signed by the highest foreign policy authorities of the participant States and because all its provisions have been accepted by consensus.³ Neither can its legal significance be fully overlooked.

The nucleus of the Final Act is the "Declaration on Principles Guiding Relations between Participating States⁴ in Basket I. It has been intended to set the minimum standard for the conduct of participating States in their relations. The preambles of Baskets 2 and 3, which deal with cooperation in various fields, emphasize that cooperation should take place with full respect for the principles of the Declaration.

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There seems to exist general agreement that the principles of the Declaration are consistent with existing international law. The Declaration states, itself, that its principles are in conformity with the Charter of the UN. Alting von Geusau says that western States agreed to a declaration of principles in a European context on the condition that such a declaration would not impair generally recognized principles of international law.

In certain previous articles, we have submitted that most of the principles of the Declaration are among the basic principles of international law. Since the formulations of the Declaration are in conformity with the corresponding basic principles of international law – with some minor exceptions, caused by the specific conditions in Europe – States would violate the most important rules of international law, if they acted contrary to the principles of the Declaration. Thus, the Declaration is an important document from the viewpoint of international law.

As compared with the Declaration, the legal significance of the other parts of the Final Act is less. Even though States have begun to follow the specific provisions of the Final Act on prior notification of major military manoeuvres and on follow-up meetings, this has taken place on a voluntary basis and not because of a legal obligation.

Baskets 2 and 3 have only minor legal significance. These Baskets do not formulate general legal principles and rules or present minimum standards of cooperation but put forth practical measures of cooperation, which can be realized only in the course of time and of détente. The participant States have only a legal obligation not to act deliberately against the underlying principles of these Baskets. This is based on the obligation of States to cooperate, which is one of the basic principles of international law (and of the CSCE-Declaration).

The title and the introductory statement of the Final Act present the main purposes of the CSCE: to improve the relations of States, to maintain and develop security, and to increase cooperation among States. Applied to Europe, all these purposes fall within the concept of détente.

In the interpretation of the Final Act one should above all consult the Declaration and the main purposes of the CSCE.

2. Respect for Human Rights in the Final Act

In the 7th principle of the Declaration on the respect for human rights the States promise to respect civil, political, economic, social, and cultural rights and freedoms for all, without distinction as to race, sex, language, or religion. The text mentions especially the freedom of thought, conscience, religion, and belief. Minorities' rights have to be respected. The States recognize that the respect of human rights is an essential factor for peace, justice and well-being necessary for the development of friendly relations and cooperation among States. The signatories promise to cooperate and to respect these rights in their mutual relations. They also promise to act in conformity with the UN Charter and with other human rights documents.

We make the following conclusions about the text: 1) The text is very general; it does not list or formulate the human rights. 2) Some rights are specially mentioned. This is not of importance because they are undeniably among the rights to be protected. 3) The States obligate themselves to respect human rights, but the text does not speak about the right of intervention of other States. Under international law the implementation of human rights falls mainly within the domestic jurisdiction of a State. 4) The text is not formulated so as