dominate the international debate on human rights. The reader will be left with the impression that the cultural and political dimensions, which involve issues still debated internationally, are taken for granted by the authors. These issues, however, do receive considerable attention elsewhere and need not constitute the critical mass of all writings on the subject: it can even be argued legitimately that abstract debate of the inalienability of various types of rights can detract from the pragmatic pursuits of advocacy that concern these authors. On the other hand, the thematic focus on NGOs generates concern that the *Guide* might be of only limited utility to the individual victims of violations to whom international forums are a distant and intimidating vision, and whose interests might not be specifically embraced by NGOs. There is little to guide the would-be activist. While acknowledging the limitations of the protective mechanisms and the regional lacunae (e.g., Asia), the *Guide* gives only scant consideration to strategies for the promotion of human rights (as opposed to protection). There is no discussion of means of mobilizing regional interest for the purpose of establishing regional organizations or international networks. No guidance is provided for the world citizen desiring to sensitize a national bar association or broaden the international community of human rights advocacy. Some analysis of the historical development of the existing mechanisms and organizations would have been enlightening. Surely, the development of such strategies must be a priority of international human rights practice.

On the whole, however, the *Guide* will serve as a pragmatic source book for optimizing the use of instruments of redress and understanding the procedural issues involved. The value of the book lies in its demonstration of the pitfalls and limitations of the existing mechanisms, which, unless recognized, debilitate the efforts of the applicant and subvert the objective of protecting human rights. It is well written throughout and the international community should be well served by its practical and unrhetorical approach.

MICHAEL MIKLAUCIC

Human Rights, European Politics, and the Helsinki Accord: The Documentary Evolution of the Conference on Security and Co-Operation in Europe 1973–1975. 6 vols. Edited by Igor I. Kavass, Jacqueline Paquin Granier and Mary Frances Dominick. Buffalo: William S. Hein & Co., Inc., 1981. Pp. 2293. $285.

The Helsinki Final Act[1] looms more important with each passing year. Perhaps halfway through the decade following its adoption in 1975, it had reached a low point in the minds of many international observers, who seemed to despair that the humanitarian provisions of Helsinki might ever be seriously complied with by the Soviet Union. Curiously, in the last 2 or 3 years, while there seems to be no noticeable difference in the charges of noncompliance

[1] The Final Act of the Conference on Security and Cooperation in Europe, Aug. 1, 1975, text in 6 HUMAN RIGHTS, EUROPEAN POLITICS, AND THE HELSINKI ACCORD (Kavass, Granier & Dominick eds. 1981).

by the Soviet Union, an increasing sense of the *legality*, or obligatory character, of the Helsinki Accords has seemed to settle in to the writings of leading international publicists. Those accords increasingly seem to set a legal, not merely a political, standard for governmental behavior in the area of human contacts and human rights. There is, accordingly, some room for optimism at present that as the document seems to become more *legal* in character, that development might be followed in years to come with increasing compliance with its terms on the part of states that are at present resisting the principles contained therein.

Professor Igor I. Kavass and his associates have accordingly given us a compilation of the documentary evolution of the Helsinki Final Act in six volumes that will undoubtedly become increasingly valuable as time goes on. While the volumes do not reproduce *all* the Helsinki documentation (the largest omission being references to contributions from nonparticipating states), the material presented seems sufficiently complete and intelligently selected that few scholars, if any, will need to have recourse to official archives for the total documentation. The six volumes lack an index, and I hope that if and when an index is prepared it will err on the side of comprehensiveness and redundancy instead of surface clarity and simplicity.

Any collection of the Helsinki documents might perhaps address three broad scholarly needs:

> (1) to illuminate the question whether the Helsinki Final Act is a "legal" document, much like a treaty or other international agreement, that is binding as a matter of international law upon its signatories;
>
> (2) to indicate those points of agreement of the conferees as to various questions of customary international law; i.e., do the conference records constitute "evidence" of customary rules?
>
> (3) to illuminate the legislative history of the various provisions of the document itself, throwing light on what the drafters thought the terms (particularly the ambiguous terms) meant.

Of these, the latter may become the most important in the future, but at present there is more concern with the legal authoritativeness of the provisions in the text than with their particular meaning. As to the second inquiry, the present collection of documents is not particularly valuable as evidence of customary law due to the fact that so many of the meetings were not transcribed. We have instead many *drafts* of positions but little in the way of statements made for purposes of negotiation that might throw light upon underlying customary rules of law.

Inquiry (1) above, however, may be the most important for purposes of scholarly inquiry in the near future. Doctrinally, several positions have been expressed. The first is that the Helsinki Final Act is not a "legal" document at all. Unfortunately, this position was taken, among many other sources, by the editors of *International Legal Materials* in a footnote to their reprinting of the text of the Helsinki Final Act.[2] Since *ILM* is a major source for many

[2] 14 ILM 1292, note (1975).

scholars of the text of the Helsinki Accords, this prominent footnote takes on an authoritative quality that is not entirely negated by the fact that it is unsigned and obviously not part of the official text.

A second view is that *some* of the provisions of the Helsinki Accords are legally binding and others are not. Professor Rosalyn Higgins has argued that a great part of the Final Act is binding,[3] and according to Professor Jordan Paust that view was perhaps predicated on the many legal norms in the Final Act that reflect or restate customary norms of international law.[4] Although this general position is a plausible one, it raises a logical difficulty that I have expressed in the past: if the only evidence we have that a provision in an agreement restates customary law is our own judgment that it is in accord with customary law, then we must already know what that customary law is and therefore it becomes unimportant whether the given provision is itself binding.[5]

Professor Gidon Gottlieb has suggested a third approach: that the Helsinki Accords belong to an interesting subcategory of international agreements that deliberately seek out a position in the no-man's-land between law and nonlaw.[6] Though not "legally binding," Gottlieb argues that such documents "engage States politically and morally, in the sense that they are not free to act as if they did not exist."[7]

Gottlieb makes a strange though persuasive case. But a fourth possibility may even be stranger: that the Helsinki Accords over time are moving toward greater and greater legality. Such a position holds that whatever the legal bindingness of the Helsinki Accords were in 1975, with each passing year they become more treatylike. In fact, something of this process appeared to have happened *during* the Helsinki conferences! According to a negotiator for the United States:

> From the very earliest discussions in Geneva it became clear that virtually all delegations desired documents that were morally compelling but not legally binding. As the negotiations progressed, however, and as various delegations gained enthusiasm for texts which were to their liking, certain texts took on some of the tone of legally binding instruments.[8]

Some sense of this process may be gleaned from an examination of one of the points in the Helsinki Accords: marriage between nationals of different states.

[3] Higgins, Appendix to Report of the United Kingdom Helsinki Review Group, From Helsinki to Belgrade 1, 4 (1977).

[4] Paust, *Transnational Freedom of Speech: Legal Aspects of the Helsinki Final Act*, 45 LAW & CONTEMP. PROBS. 53, 59 n.36 (1982).

[5] A. D'AMATO, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW 153–54 (1971).

[6] Gottlieb, *Global Bargaining: The Legal and Diplomatic Framework*, in LAW-MAKING IN THE GLOBAL COMMUNITY 109, 121 (N. Onuf ed. 1982).

[7] Gottlieb, *Relationism: Legal Theory for a Relational Society*, 50 U. CHI. L. REV. 567, 582 (1983). For similar views, see Paust, *supra* note 4, at 56–57. Professor Gottlieb's position that there is a middle ground between law and nonlaw is similar to intuitionists in mathematics who deny the Aristotelian law of the excluded middle. *See* M. KLINE, MATHEMATICS: THE LOSS OF CERTAINTY 234–39 (1980).

[8] Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?*, 70 AJIL 242, 246 (1976).

The Norwegian delegation took a prominent interest in this matter, and formally proposed on September 26, 1973, that a married couple should be able to decide its future domicile (vol. 5, p. 23). It based its proposal on international law:

> The Norwegian Government attaches great importance to this item of the agenda, which has a clear humanitarian aspect. Article 16 of the Universal Declaration of Human Rights states that men and women, without any limitation due to race, nationality or religion, have the right to marry and to found a family. Likewise, the International Covenant on Civil and Political Rights recognizes in Article 23 the right of men and women of marriageable age to marry and to form a family [id.].

On December 7, 1973, the Norwegian delegation reworded its proposition more formally in the form of a resolution, but retained the citations to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (vol. 5, p. 50). According to the documents gathered by the editors of the volume under review, the other nations involved in drafting this provision apparently did not base their proposals on any citations to international law. Yet the Norwegian delegation's language was the one that survived! In its December 7, 1973 proposal, Norway wrote that "[t]he participating States . . . *undertake* to examine favourable [*sic*] on humanitarian grounds, applications for exit or entry permits from nationals of their own State or of other participating States who wish to marry or have married" (id.). The Helsinki Final Act stated: "The participating States will examine favourably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State" (vol. 6, p. 223).

Against the proposition that the Helsinki Final Act is increasingly taking on a legal character is the oft-voiced argument that the intention of the parties is controlling, and in this case the signatories to the Helsinki Final Act "intended" that the document not express a legally binding obligation. But upon inspection this argument is seen to be a variant of the position taken by some scholars that a treaty creates law only for the parties thereto, and does not have an impact upon customary law, because that is what the parties "intended."[9] Yet the argument is open to serious question because of the historical, almost exceptionless, impact that treaties have had upon the formation of customary law despite any inferred or even expressed intent of the parties.[10] Similarly, it may be the case that despite the intent of the signatories to the Helsinki Final Act (if such intent can indeed ever be known, and if we discount the processes I have described above that took place during the conference), the international community with the passage of time may be according legal significance to the Accords. This process may become evidenced in citations to provisions in the Helsinki Accords in various international legal negotiations

[9] *See, e.g.*, Baxter, *Multilateral Treaties as Evidence of Customary International Law*, 41 BRIT. Y.B. INT'L L. 275 (1965–66).

[10] *See* D'Amato, *The Concept of Human Rights in International Law*, 82 COLUM. L. REV. 1110, 1130–31 (1982).

or adjudications, as well as in municipal law decisions affecting international law. If so, the ramifications for the developing law of human rights will be immensely significant.

ANTHONY D'AMATO
Board of Editors

Comparative Women's Rights and Political Participation in Europe. By Gisbert H. Flanz. Dobbs Ferry: Transnational Publishers, Inc., 1983. Pp. xix, 520. Index. $45.

In an ambitious endeavor, Professor Flanz has undertaken a comparative study of the political participation of women in all 34 countries of Europe over the past two centuries. Because of its scope, the book is primarily concerned with legislative changes rather than social or economic advances. Indeed, one of the most useful aspects of the book is the appendix of legislation, which, together with an extensive bibliography, encompasses more than one-third of the book's length.

Younger readers may be particularly interested in learning how recent many of the changes are that some now take for granted: voting rights were accorded women only after World War II in France (1944), Belgium (1948), Switzerland (1971) and virtually all countries bordering the Mediterranean (1945–1971). The struggle for these rights and the crucial role of both nongovernmental women's organizations and international governmental organizations are a major focus of the text.

Because of its comprehensive scope, the book is primarily reportorial. Issues and questions arise that need to be analyzed in one or more companion works. Are women's rights distinctive from human rights, as the author seems to indicate? Is the issue one of specific women's rights rather than gender equality? What are legislative priorities for those working in the field? How can the status of women be improved within international organizations, particularly the United Nations? What can be done once the legislation is in place to implement the laws and advance the condition of women? The latter point is brought out in the book in numerous places where the author notes the impact of national or international economic crises on women. During such times, often in spite of excellent legislation, women suffer sometimes severe setbacks both economically and politically.

Questions are also raised by some of the book's omissions. At one point the author refers to the reaffirmation by the USSR of reservations it had made to the UN Convention on the Political Rights of Women, but does not state what the reservations were. Similarly, reference is made to an apparently important Portuguese feminist book that was banned and confiscated, but no more is said about it.

In spite of several such instances, this is a valuable resource guide for anyone interested in the status of women and legislative approaches to implementing sexual equality. It illustrates the interdependence of economics,