

The Dutch fight alone: The principle of self-determination

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Introduction

The Conference for Security and Cooperation in Europe (CSCE, 1973-75) represented the high tide of détente — the thawing of the then strained relations between the United States and the Soviet Union. For the first time 33 European states — including the Soviet Union and its satellites, in addition to the United States and Canada — sat around the same table, and agreed on a set of principles and norms for interstate relations in Europe. Most importantly, the CSCE also represented a point of no return for the Soviet system: in signing the Final Act, the Communist states agreed to specific rights — such as the principle of the protection of human rights and the principle of self-determination — enshrined in their constitutions but ignored in practice, thereby enabling domestic critics to claim rights from the Party and call upon the regime to reform. As a result, the system was for the first time forced ‘onto the defensive’.² Eventually, the non-binding declaration signed at the end of the Conference, the Helsinki Final Act, became a ‘legal and moral trap’³ for the Soviet system.⁴

Immediately before the beginning of the Conference, in The Hague the PvdA member of the Tweede Kamer Van der Stoep was appointed Minister of Foreign Affairs thereby inheriting the CSCE dossier. It was 11 May 1973. After a few weeks, he delivered the speech at the opening of the Helsinki Conference, and lay down his policy for the following years of negotiations. While The Hague had reluctantly and half-heartedly joined the conference preparatory talks in November 1972 and had proved apathetic before the CSCE’s official inauguration, Van der Stoep turned that initially lukewarm response into an urgent commitment to the cause of human rights. Over three years of tense negotiations, he left a powerful legacy. One of his most remarkable achievements was the wording of the principle of the self-determination of people, enshrined in Principle VIII of the Declaration of Principles of the Helsinki Final Act, which acknowledged for all peoples in Europe the right to choose their internal regime or policies. This represented a momentous achievement for people under Communist rule in Eastern Europe and the flagship for human rights activists who fought for democracy in the following years. In essence, it enhanced the overall cause of human rights on the old continent.

The background: CSCE and détente

Throughout the Cold War, human rights were one of the weapons of bipolar political and cultural confrontation:

‘Western countries found that they could use human rights as a stick to beat the socialist countries with, to show up the merits of western democracy and the demerits of the socialist system... in the dark years of the Cold War concern for human rights was justified – at least by some Western countries – by the ideological and political confrontation with the socialist Bloc’⁵

They epitomised the vast chasm between Western and Eastern European ideas.⁶ For Western countries, they were

2 Tony Judt, *Postwar* (New York: Penguin Press, 2005), 567.

3 John Lewis Gaddis, *The Cold War: a New History* (New York: Penguin Books, 2007), 190.

4 Judt, *Postwar*, 567.

5 Antonio Cassese, *International Law in a Divided World*, (Oxford: Clarendon Press, 1986), 300.

6 More generally, the gist of the ‘philosophy’ of human rights emanates chiefly from Western countries. See for example Cassese, *Human Rights in a Changing World*, 3, 51.

‘...innate in individuals, were an intrinsic factor in the ‘quality of the human person’ and hence must be absolutely respected by governments” [whereas] “for the socialist countries... human rights exist only in society and in the state, and only to the extent that they are specifically recognized. They do not pre- exist the state, but rather are accorded by it. The state may therefore limit them when circumstances require”⁷

Protecting human rights meant ‘protecting the sphere of individual freedom against the overweening power of an invasive state’ whereas for the socialist countries the individual’s freedom could be realised only within the community, and ‘does not necessarily mean putting restraints on an oppressive central power’.⁸

Besides, human rights standards were all the more ill-defined in Europe where the human rights regime was highly fragmented. First, the European Convention on Human Rights (ECHR), the very foundation of a regime of human rights in the Old Continent (signed in 1950 and entered into force on 3 September, 1953), was not accepted by socialist states.⁹ Second, the Universal Declaration of Human Rights in 1970 did not guarantee the protection of human rights, as it failed to link the commitment to the practice of diplomacy: governments substantially ignored it.

The United Nations General Assembly (UNGA) 1970 Declaration on Principles of Friendly Relations among States, and the superpowers’ 1972 Agreement on Basic Principles of Relations between the US and the USSR, both repeated the principle of non-interference in domestic affairs while making no mention of human rights.

Quite evidently, at that time discussions and agreements on human rights were not designed to turn Europe upside down. In the eyes of policy-makers and most observers, human rights would improve the existing system of international relations — for instance, agreements on travel and trade would make borders more peaceful and permanent. They were not an alternative to opt out of the Cold War. They were, in fact, products of the Cold War itself. Jeremi Suri has rightly pointed out that ‘the anti-Cold War quality of human rights activism in the 1980s was not present a decade earlier’ and argued that, despite the contemporary rhetoric, human rights belonged to the realm of Realpolitik.

Against this backdrop, it is now clear why the 1975 Final Act — which looked prescient and revolutionary — ‘had a powerful status quo quality’ at the time. It was an essentially ‘conservative document’.¹⁰ US President Nixon remained committed to reaching an accommodation with the Soviet Union that would reduce the danger of a nuclear war and essentially recognise the status quo in Europe. US Secretary of State Kissinger did not intend to do anything that could be regarded in Moscow as a challenge to the Soviet power in Eastern Europe: for him, change would eventually occur, but not through ‘people power’ or the types of human contacts promoted by the

7 Cassese, Human Rights in a Changing World, 52

8 Cassese, Human Rights in a Changing World, 65

9 The Convention formed a framework for justiciable human rights norms and had special features that set it apart from the UN system, such as external control over states by an independent human rights Court and the possibility to file individual claims. Those norms were legally binding, whereas the CSCE was only politically binding. See Malte Brosig (ed.), Human Rights in Europe. A Fragmented Regime? (Frankfurt am Main: Peter Lang, 2006)

10 Jeremi Suri, Henry Kissinger and the American century, (Harvard: Harvard University Press, 2007), 530.

Helsinki Final Act, but rather through inter-state relations.¹¹

More broadly, the détente sanctioned by the Final Act was intended not as a force for change, but as a force for stability in a time of strategic imbalances.¹² That is why détente was interpreted as a useful means to prolong the Cold War and to give support to the Communist system of the Soviet Union and to its East European satellites.¹³ That said, the credo of the newly appointed Dutch Foreign Minister Max van der Stoel differed radically.

Van der Stoel's idea of Détente

'Détente without democratisation, détente in which the West accepts the Soviet rules of the game would be dangerous [...] it would mean cultivating a closed country where anything that happens may be shielded from outside eyes, a country wearing a mask that hides its true face'.¹⁴

Isolation enabled the regimes in Eastern Europe – the 'closed countries' described above by the Soviet dissident and nuclear physicist Andrei Sakharov – to prevent change in society. It created for all its citizens – from the bureaucratic elite to the lowest social levels – an almost surrealistic picture of the world and of their place therein. Against this background, van der Stoel aimed for a 'realistic' détente. First the Eastern regimes had to become more 'humanised' (vermenselijking) and accept an open dialogue with the West based on 'ideal and normative principles'. Only when goodwill had been shown, and the Iron Curtain had been made more porous, could the Western countries consider disarming. The most effective weapon to pierce the Iron Curtain and destabilise Soviet dominance over Eastern Europe was therefore the promotion of individual freedoms.

'East-West relations in the 1970s required both pragmatism and principle. We regarded the insistence on the respect for human rights as a way of keeping pressure on the Communist regimes to live up to their commitments'.¹⁵

Van der Stoel's agenda at the CSCE: the battle for self-determination

At the conference's opening speech on July 4, 1973, van der Stoel upheld

'...the inalienable right of the people of every State freely to choose, to develop and, if desired, to change its political, economic, social and cultural systems without interference in any form by any other state or group of States and with respect to

11 The most comprehensive account to date is Raymond Garthoff, *Detente and Confrontation: American-Soviet Relations from Nixon to Reagan*, Rev. Ed. (Washington D.C.: The Brookings Institution, 1994).

12 Détente was, as Jeremi Suri has asserted, a fundamentally conservative response to the social upheavals of the 1960s. See Jeremi Suri, *Power and Protest*, (Cambridge: Harvard University Press, 2003)

13 Gaddis, *Cold War: a New History, 195-7*. Unexpectedly, the Final Act had far-reaching effects instead: its provisions undermined the very status quo that it was supposed to sanction and its provisions on human contacts and the principle of the protection of human rights and fundamental freedom in particular became two of the tools for the people in the East to claim their rights and stand against their regimes.

14 Andrei D. Sakharov, *Sakharov speaks*, ed. Harrison E. Salisbury, (New York: Knopf, 1974), 204-5.

15 Max van der Stoel, 'Principles and Pragmatism – 25 years with the Helsinki Process', in IFSH (ed.) *OSCE-Yearbook 2000*, (Baden-Baden: Nomos Verlag, 2001), 27.

human rights and fundamental freedom'.¹⁶

In the speeches of the 35 ministries of foreign affairs gathered in Helsinki similar statements were common. However, what was indeed uncommon was a genuine commitment to ultimately break ranks and to innovate. The Dutch delegation had done so since the opening of the 2nd stage of the CSCE negotiations in Geneva on 18 September 1973. Especially in the case of the principle of self-determination, the Dutch delegation under Van der Stoel's guidance upheld a dynamic and innovative wording, which ultimately lent to the principle a broader and more complex scope.

The interest in self-determination in the CSCE did not begin once Max van der Stoel had become minister. Van der Stoel's predecessor at the helm of the Ministry of Foreign Affairs, Norbert Schmelzer, had already emphasized that self-determination had to be high on the Dutch foreign policy agenda during the preparatory stage of the CSCE.

'As for the refrain from the threat or use of force more attention should be given in general to the principles that lie at the basis of the relations between states, among which namely also the right of self-determination of people and the principle of non-interference in internal affairs'¹⁷

Dutch support for the principle of self-determination was therefore already set in late 1971.¹⁸ It comes as no surprise that when Andrei Gromyko paid an official visit to the Netherlands in early July 1972, the first Soviet Minister of Foreign Affairs to do so, the principle was mentioned. In the discussions on the communiqué to be issued after the visit, the Netherlands, in the person of Kasper Reinink, Director for Europe, insisted on the inclusion of the principle of self-determination among the principles of a CSCE, then under discussion. The Soviet negotiator, Ambassador Dubynin, refused adamantly, but Reinink did not give in and ultimately it was proposed as a compromise to mention no principle at all. This was however not to the liking of the Soviet side and discussions literally continued up to the stairs of the aircraft which was to take Gromyko on to Luxembourg and then to Brussels. It was Norbert Schmelzer who supported Reinink until the very end and finally made clear himself to Gromyko that a set of principles without self-determination was unacceptable to the Netherlands. In the end, no principles were mentioned in the Soviet-Dutch communiqué. It is almost needless to say that in Luxembourg and Brussels the Soviets got their way.¹⁹

Van der Stoel inherited and developed these political guidelines, and worked for a truly dynamic principle to be enshrined in the Final Act. However, his prominent role remains regrettably not very well known, being only

16 Human rights, European Politics, and the Helsinki Accord: the Documentary Evolution of the Conference on Security and Co-operation in Europe 1973-75, eds. Igor I. Kavass, Jacqueline Faquin Granier, Mary Frances Dominick, (New York: William S. Hein & Co., 1981), 313.

17 'Vergadering van 25 November 1971', 1379 in www.staatengeneraldigitaal.nl, accessed on 18 February 2012.

18 The principle was regarded as a key factor for stability in Europe in general. This was especially true in the German case, as Schmelzer pointed out in the Parliamentary Meeting on 21 February 1973: 'I would like to point out that the Netherlands and its allies will continue to support the effort of West Germany to achieve a condition of peace in Europe that makes possible the reunion of the German people on the basis of the right to self-determination.' See 'Vergadering van 21 Februari 1973', 625 in www.staatengeneraldigitaal.nl, accessed on 18 February 2012.

19 This episode was reported to the author by Mr. Harm Hazewinkel. The author is grateful to Harm Hazewinkel for his insightful comments on Schmelzer's political stance.

swiftly acknowledged by scholarship. It is the purpose of the present analysis to shed some light on a relatively neglected page of history. The impact of van der Stoep's policy can be grasped only by first briefly analysing the development of the principle of self-determination in the 1970s.

The principle of self-determination in the 1970s

The UN Declaration on friendly relations was at the cutting edge of the right of self-determination when the participant states broached Principle VIII. In 1970 the Declaration had outlined the two sides of the right of self-determination. While lending primary importance to the right of external self-determination — when a people breaks free from an existing state and forms its own state by means of secession —, the UN declaration also devoted some minor attention to what was later labelled internal self-determination — the case where a people asserts its political freedom by replacing the government within the boundaries of an existing state. The latter was indirectly mentioned in a convoluted saving clause.

'Nothing in the foregoing paragraph [proclaiming the principle of self-determination] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour'.

The leading international law scholar Antonio Cassese has skilfully pointed out that such wording had a perverse effect:

'If in a sovereign state the government is 'representative' of the whole population, in that it grants equal access to the political decision-making process and political institutions to any group and in particular does not deny access to government to groups on the grounds of race, creed or colour, than that government respects the principle of self-determination; consequently, groups are entitled to claim a right to self-determination only where the government of a sovereign state denies access on such grounds.'²⁰

As a matter of fact, the UN Declaration was of no use to the peoples in Eastern Europe who aspired to participate in the decision making of their governments, since they were not denied access to government on the specific grounds spelled out in the Convention. Besides, even for those religious and racial groups who were accorded the right of internal self-determination the Convention afforded only equal access to government not equal rights, thereby leaving leeway to the state as to how to implement the right itself.²¹ In conclusion, the UN Declaration reaffirmed the paramount importance of territorial integrity and sovereign rights by spelling out a very restrictive version of internal self-determination.

At that time, both Western and Eastern states were not eager to open the door to innovations. On the one

20 Cassese, Self-determination of peoples: a legal reappraisal, 112.

21 In a still smaller range of cases that very group was also entitled to secession. Secession was not ruled out per se, but was only allowed if very stringent requirements were met such as a denial of the very basic rights of representation; gross breaches of fundamental human rights; and the exclusion of any possibility of a peaceful solution within the existing state structure.

hand, Western federated states and states with national minorities wanted to keep the principle of internal self-determination within the stringent boundaries of the UN provisions. Even though the Helsinki Declaration was to be a non-binding act, states with militant minorities such as Canada and Yugoslavia wanted to guarantee themselves against the dissolution of federated states comprised of peoples of different nationalities, or other minorities. Therefore, they demanded a ‘balancing element’, i.e. a limit to the application of the principle.²² As a result, in the debates preceding the adoption of Principle VIII the participant states agreed that national minorities were to be excluded.

As for Eastern European states, Moscow suspected that the principle was aimed specifically at destabilising the Soviet Bloc and it therefore stonewalled. For the Soviets, the right once exerted was exhausted: namely, Eastern Europeans had already exerted it and could not reconsider. If the principle had been rephrased and the peoples allowed to exert their right to self-determination more than once, the Soviet system would then have been in jeopardy.

Fighting for single words at the CSCE

Against this backdrop, Van der Stoel worked relentlessly for a dynamic principle to be enshrined in the Final Act, and the Dutch delegates engaged in a battle concerning single words. The Dutch delegation inaugurated a more aggressive policy towards the Soviets and the Eastern Bloc, whereby single words could have a dramatic impact on the overall meaning of a provision. What may seem an intricate web of proposals and counterproposals and a time-wasting war of words was instead a subtle diplomatic game. First, they pressed the participants to replace ‘all peoples have the right to determine’ with the expression ‘to choose, develop, adapt and change’ — which gave to the Principle an inner dynamism (see infra).²³ The expression ‘choose, develop, adapt or change its political, economic, social or cultural system’ lent inner dynamics to the concept, which clashed with the Soviet idea of self-determination. For this reason, in order to have the proposal passed, the support of the EC members was crucial to the Dutch. The Dutch delegation’s leader, Huydecoper, was confident of the support of Western and neutral countries:

‘Since the first phase of the CSCE many Western and neutral countries are finally inclined to think that we can breathe down the Soviets’ necks.’²⁴

Contrary to his optimism, the Dutch found themselves isolated. The major EC member countries deserted. West Germany did not intend to endorse The Hague’s stance. France pursued the role of a bridge with the Soviet Union, and French delegates took the liberty of discussing issues that were still at a confidential drafting level at a bilateral level with the Soviets, pursuing a sort of Franco-Soviet special relationship.²⁵

Nonetheless, the Dutch proposal on self-determination was provisionally registered in a plenary session in December 1973 immediately before the Christmas recess.

22 Harold S. Russell, ‘The Helsinki Declaration: Brobdingnag or Lilliput?’, *American Journal of International Law*, n. 70, (1976): 269.

23 ABZ, DAV, 1965-1974, file n. 718, ‘Memorandum on the principle of Self-determination’, from Geneva to The Hague, 14 November 1974

24 ABZ, DAV, 1965-1974, file n. 725, ‘Notes for the visit of Minister Van der Stoel to Paris’, 8 November 1973.

25 Proposal advanced by France CSCE/II/A/12, on 19 October 1973 as the ‘Draft declaration on the principles governing relations among the states participating in the Conference on Security and Cooperation in Europe’.

On 20 May 1974, the Hungarians informed the Dutch delegation of a new compromise proposal in line with the Soviet wishes. It was a serious blow to van der Stoel's policy.²⁶ The West Germans stated that they were happy with results that were 'less than what they had really wanted'. This low profile – and a lack of assertiveness – was highly irritating: when valuable opportunities to weaken the Brezhnev doctrine arose, Bonn 'did not seem to care'. More generally, the Dutch delegate Jo van der Valk²⁷ noted sourly that the Western delegations did not seem to care at all.

'Taking into consideration the French scepticism regarding our 'maximalist' position ... and the West German turnaround, we should then consider whether we want to fight on for our proposal'²⁸

The French considered with ill-concealed scepticism the Dutch 'maximalist contribution' and they made known their disagreement from December 1973 onwards. West Germany's turnaround signalled an equally hostile reception of the Dutch stance. In the autumn of 1974, van der Stoel was therefore well aware that the Dutch delegation was isolated, or ran the risk of being so very soon if it kept pushing ahead with its requests.²⁹ Western disunity notwithstanding, The Hague did not change course.

It was a lonely fight based on many square brackets: a text enclosed in square brackets was a text which was still open to revision, and thus an object of political horse-trading at a later stage of the negotiations. Van der Stoel claimed that an 'unnecessary acceleration' of the drafting stage of the Declaration of Principles was out of the question, since the sooner the drafting of principles was accomplished, the less room for manoeuvre the Dutch would have had to close a good deal on other items. Therefore, unless it was completely isolated, the Dutch delegation had to stick to the proposal, not to give in and, if needed, insert square brackets.³⁰ Van der Valk suggested in a memo sent to The Hague: 'I would be happy to press for a number of square brackets in the draft for the principle of self-determination. They could turn out to be useful in a later stage of the negotiations'.³¹

The Soviets instead pressed for a quick drafting of the Declaration of Principles in Basket I – most dear to Brezhnev, regarded as the cardinal part of the Final Act. Moscow first wanted to secure a convenient wording in Basket I, and then to broach other items.

There were many calls for a revision. The Romanians stood against the reference to the UN Charter; West

26 ABZ, DAV, 1965-1974, file n. 718, 'Principle of Self-determination', 20 May 1974. 'The participating States recall that according to the Charter of the United Nations the development of friendly relations among States is based on respect for the principle of equal rights and self-determination of peoples. By virtue of this principle, all peoples have the right to determine their internal and external interference and to pursue their economic, social and cultural development, and all states have the duty to respect this right. The participating states consider that respect for this principle must guide their mutual relations among all states, that is why we will contribute to the eradication of any form of racial and national oppression of the peoples in any area of the world.'

27 Jo van der Valk was the Head of the Atlantic Security Desk at the Foreign Ministry. He replaced Huydecoper as the Dutch delegation leader in the summer of 1974.

28 ABZ, DAV, 1965-1974, file n. 718, 'Memorandum on the principle of Self-determination', 2 October 1974. In the text, the expression used in Dutch was – translated – the 'German obsession'.

29 ABZ, DAV, 1965-1974, file n. 718, 2 October 1974. See also 8 October 1974.

30 ABZ, DAV, 1965-1974, file n. 718, 'Memorandum on the principle of Self-determination', from The Hague to Geneva, 8 October 1974. The negotiations were based on the principle of consensus, therefore unanimity was not required.

31 Ibid.

Germans wanted the word ‘States’ to replace the word ‘nations’; only the UK, Belgium, Malta and Turkey backed the expression ‘develop, choose, change and adapt’ used in the Dutch proposal — the French and the Hungarian proposals had replaced it with the verb ‘determine’. It was clear enough that ‘we won’t be done soon’.³² The following day van der Valk’s bleak account found an echo in a memo of another representative from the Dutch embassy in Paris. The Dutch diplomat Adrian van der Willigen reported on a meeting of the European Political Cooperation (EPC) Political Committee held that day in Paris. He warned The Hague that opinions diverged between the Nine and that Moscow could easily benefit from playing one country against another: ‘the Nine must be united as a group in order not to allow the Soviet Union to take advantage of their divergent opinions’.³³

While the Dutch determination did not encounter great support in the Western bloc, van der Stoel’s agenda was not of Soviet liking either. The Soviets suspected that the Dutch proposal was only addressed to East European States. Van der Valk recounted that in a friendly chat with the Soviet Ambassador Lev Mendelevitch one of his members of staff pointed out that the Dutch wording aimed to encompass not only the peoples in Eastern Europe but those in all of Europe, as the Dutch policy towards Portugal and Greece showed.³⁴ The argument eventually won over the Soviet Ambassador who in the following plenary session presented a trilingual proposal. First, Mendelevitch suggested translating the verb ‘determine’ with the imperfect form of the Russian verb. The use of the imperfect verbal form gave a dynamic character to the interpretation of the sentence.³⁵ Second, he suggested using an expression like, for instance, ‘to determine as they wish’ or a ‘manipulation of words’ with words taken from the original Russian text like ‘which they consider expedient and necessary’.

The Dutch did not like this Soviet overture. First, provided that the imperfect form of the verb lent some sort of dynamism to the sentence, the main verb — ‘determine’ — still lacked the intrinsic dynamism and thoroughness of the expression formulated by the Dutch: ‘choose, develop, adapt or change’. Second, translating the meaning of the imperfect form of the Russian verb into another language was bound to cause endless trouble and disputes.³⁶ Eventually, on 29 November 1974 Sub-commission I accepted the following formulation:

‘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’³⁷

The Dutch succeeded in replacing the verb ‘determine’ with a more complex expression ‘to determine, when and as they wish’. The word ‘always’ substituted ‘inalienable’, which was rejected by the Eastern delegation.

32 Ibid.

33 Ibid.

34 Van der Valk referred to one of the delegation members, but did not mention his name.

35 There are two types of verbs in Russian: perfect verbs, and imperfect verbs. Perfect verbs carry the meaning of complete action, while imperfect verbs carry the meaning of a process or state, and refer to those actions which are incomplete, or are of an ongoing nature.

36 ABZ, DAV, 1965-1974, file n. 718, ‘Self-determination’, 14 November 1974.

37 The full text included two additional paragraphs. The most relevant and debated one was the one mentioned above.

The Dutch proposal was not accepted as a whole, but still the Dutch contented themselves: as the French thought, ‘c’est bien plus que vous n’auriez pu espérer.’³⁸ Van der Valk reported, ‘I don’t think that the cooperation of the Western countries can be stretched further in a longer negotiating process’. The proposal registered at the end of the second stage, on 19 February 1975, bore the mark of hard bargaining.

It provided in the first paragraph that

‘The participating states will respect that equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the UN and with the relevant norms of international law, including those relating to territorial integrity of states.

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.’³⁹

With some minor changes, the proposal became Principle VIII in the Final Act. The proposal stressed the principle of internal self-determination, and referred vaguely to the UN charter but not to the UN Declaration on friendly relations. Nonetheless, at that stage of the negotiations the (restricted) scope of the right to internal self-determination was already set. There was consensus that national minorities had to be excluded and that only entire populations of sovereign states should be the beneficiaries of the rights. By this token, countries like Spain, Ireland, Great Britain, Cyprus, Greece, Turkey, Canada or Yugoslavia did not oppose the Dutch proposal.

Final remarks

In conclusion, the negotiation of Principle VIII represented a key intervention by the Dutch and the personal achievement of van der Stoel’s political strategy, and they call for three overall remarks.

First, the Dutch proposal undermined two major pillars of the Soviet empire.⁴⁰ On the one hand, it enshrined the idea of change and respect for democracy in Europe, enabling European peoples to exert their permanent right with neither restraints nor conditions: it served as the ultimate antidote to any status quo. The insertion of the word ‘always’ lent an internal dynamism to the principle of self-determination. It namely counteracted the Soviet idea that the right, once exerted, was exhausted and that then the peoples of Eastern Europe, which had already used it in the past choosing for socialism, were not entitled to exert it again.⁴¹ On the other hand, it was a provision regulating relations between the individual and the state rather than inter-state relations, thus strongly emphasising the individual, and stressing the interrelationship between human rights to self-determination — since self-determination could only be exerted if peoples did enjoy basic human rights and fundamental freedoms.

38 ABZ, DAV, 1965-1974, file n. 718, ‘Memorandum on the Dutch proposal on the principle of Self-determination’, from Geneva to The Hague, 29 November 1974.

39 OSCE/II/A/137, 19th February 1975. See Russell, ‘The Helsinki Declaration: Brobdingnagor Lilliput?’, 283.

40 Cassese, Self-determination of peoples: a legal reappraisal, 282, 285


41 ABZ, DAV, 1965-1974, file n. 718, ‘Memorandum’, from The Hague to Geneva, 2 December 1974.

Second, what is most striking is indeed what is missing: in none of the analysed communications or memoranda from Geneva is there any reference to a successful close entente with other EC countries, nor are references to the results of the purportedly successful EPC to be found. What emerges is rather the picture of a country fighting for a precise agenda in ‘isolation’ among its Allies and the EC peer countries. At the end of a long battle for the principle of self-determination, van der Stoel wrote to the delegates in Geneva half-heartedly: ‘I recommend to accept what has been achieved [during the negotiations]’.⁴²

Third, Van der Stoel was a vocal advocate of human rights, a cultivated lawyer with a sharp mind. It is thanks to his political foresight that the Helsinki Final Act represented one of the key moments in the development of the principle of self-determination. He greatly contributed to lending a dynamic and ongoing character to it, so to preclude coercion by a government with respect to the choice of people for their internal regime or policies. It is namely thanks to his innovative wording that human rights activists felt empowered to claim the right to participate in the decision making of their governments. Nowadays this may sound as a trivialization of self-determination: the right to participate in the decision making of the government may not seem a momentous development. However, at the time of the Cold War it was a very significant achievement, and one with a most powerful legacy. We must not forget the ones who fought this forceful battle in the 1970s with the deep-seated commitment to advance the cause of human rights.



42 ABZ, DAV, 1965-1974, file n. 718, 29 November 1974.



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