and the role of both the Council and the General Assembly with regard to the South African question, all receive detailed coverage here. As the conflict potential for the major powers in southern Africa has steadily come into clearer focus in recent years and with the growing importance of the region in U. S. policy, the need for a precise understanding by the war college student of the key role of international law in the situation has become evident.

Rounding out the elective seminar series are sessions on Soviet, Chinese, and Third World views of international law, on recognition and treaty law, and on current problems being dealt with by the Office of the Legal Adviser of the Department of State. The last named seminar reinforces the linkages between international law and national security issues.

A final word as to trend. Some observers have expressed concern about unevenness in the level and content of instruction in international law at the senior service colleges during the past decade. At The National War College, as the foregoing description suggests, an effort has been made to expand and focus international law instruction in a manner appropriate to the growing importance of the field to national security planners. A way of approaching this instruction has been established which can form the basis for bringing international law to bear within the curriculum of The National War College.

WILLIAM H. WITT
Professor of Foreign Affairs, 1974–1977
The National War College

CORRESPONDENCE

TO THE EDITOR-IN-CHIEF: *Status of Germany*

It is not astonishing that a foreign international law expert is puzzled by the intricacies of inter-German relations, as they can only really be understood in the context of historical and political developments in Germany after World War II, including party politics in the Federal Republic. Nevertheless, Professor Grzybowski labors under a misapprehension which he asserts in his review of *Der Rechtsstatus Deutschlands aus der Sicht der DDR* by Jens Hacker (71 AJIL 389–90 (1977)) that the West German Federal Constitutional Court had declared that "the Grundvertrag [Basic Treaty] did not constitute recognition of the DDR as the second German State."

Hacker himself points out (pp. 432 ff.) that the qualification of the Deutsche Demokratische Republik as a state is no longer disputed. The Federal Government officially declared this for the first time just after the accession to power of the coalition of Social Democrats and Liberals on October 28, 1969: "Albeit two German states exist in Germany, they are not, as to one another, a foreign country; their mutual relations can only be of a specific kind." The Grundvertrag (*e.g.*, Arts. 4 and 6) speaks explicitly of "both states." Accordingly, the Federal Constitutional Court in its decision of July 31, 1973 emphasized (B.IV.3): "The German Democratic Republic is in the light of international law a state." Nevertheless,

the Federal Republic has always emphatically declined, as the Supreme Constitutional Court points out, to recognize the DDR as a foreign state under international law. Ironically, in West German legal thinking, some of the more conservative academics have tended to state that, through the Grundvertrag, the Federal Government has accorded this recognition to the DDR—a viewpoint that should be welcome to Eastern Germany.

Consequently, Professor Grzybowski is not quite correct in stating that the German Reich in its frontiers of 1937 ("Germany") is "still the only valid legal concept" according to Hacker. The predominant West German concept—shared by the Federal Constitutional Court in its judgment on the Grundvertrag (B.III.1) and by Jens Hacker (p. 433)—acknowledges three subjects of international law: the Federal Republic of Germany, the DDR, and "Germany" in the frontiers of 1937, the latter, however, being inactive due to a lack of institutions. There are still quite a few "concrete facts," it must be pointed out to the learned reviewer, indicating the existence of "Germany" as a legal concept, ranging from the still undisputed and effective responsibility of all four Allies, including the Soviet Union, for "Berlin and Germany as a whole" to the complicated details of ownership and administration of the railway in Berlin.

One must agree with what the learned reviewer probably wanted to indicate by his reference to a "puzzle": that West German diplomats will have to be rather versatile constitutional and international law experts if they are to persuade even friendly countries not to recognize a separate DDR-citizenship apart from "German" citizenship, even though they may recognize the DDR as a state under international law. This is the heritage of the continuing division of Germany.

ROBERT VON LUCIUS
University of Bonn

Professor Grzybowski replies:

I am still puzzled. How can an international treaty not be a recognition of the other party or a subject of international law, and how can there be three German states subject of international law when there are only two of them in fact.

TO THE EDITOR-IN-CHIEF: *Soviet View on Unequal Treaties*

Professor Kulski's book review of Nahlik, *Code of the Law Treaties*, in the recent issue of the *Journal* contains a comment on the silence of the Soviet delegation during the Vienna Conference on the Law of Treaties, 1968–1969, on the Soviet theory of unequal treaties;[1] his comments are in need of some further refinement.

Kulski indicated that the Soviet delegation at the Conference "never mentioned" its theory of invalidity of unequal treaties.[2] To the contrary, various Soviet delegates referred to the concept of unequal treaties generally and to specific types of treaties which fall into that category. Talalaev of the Soviet Union, in the first session of the Conference, specifically criticized treaties procured by force: for example, the Soviet Union was "firmly opposed to treaties procured by force to obtain colonial possessions."[3]

[1] 71 AJIL 567 (1977). [2] *Id.* 568

[3] UN CONF. ON THE LAW OF TREATIES, OFF. RECS. SUMMARY RECS., 1st Sess. (1968) (29th mtg.) 152, UN Doc. A/CONF.39/11 (1970).

The Soviet delegation at the Vienna Conference supported the Declaration on Economic Coercion,[4] which was intended by its principal supporters to expand the term "force," as used in Article 52 of the Convention to include both economic and political force. This would have made the rule enunciated in Article 52 as broad as the definition of unequal treaties espoused by Soviet legal writers. Professor Tunkin has written as recently as 1970:

> The idea of the invalidity of unequal treaties set forth in the Decree on Peace, the abrogation by the Soviet state of all unequal treaties . . . were an inspiring example for the dependent countries. It has become much more difficult for imperialist states to impose unequal treaties, although, taking advantage of the weakness of some states, especially the new ones, they also frequently compel them to sign such treaties at the present time.[5]

Soviet delegates and delegates of Eastern European countries often stated that the validity of treaties is destroyed by the use of military, political, or economic force—a rule that they believed was *lex lata* in customary international law.[6] Soviet delegates in other international forums during this same period of time took a similar view of unequal treaties. Movchan of the Soviet Union stated during the 1966 meetings of the Special Committee drafting the Principles of Friendly Relations:

> The Committee must therefore help to ensure compliance with treaty obligations and at the same time assist developing countries which sought to reject inequitable agreements that had been imposed on them.[7]

Of course, the Soviet legal concept of unequal treaties is not well enunciated, nor well defined, even in the writings of their leading international legal writers. The concept is certainly not well supported by recent Soviet state practice, such as the 1968 Soviet-Czechoslovakian Treaty; however, the Soviets continue to espouse it in international forums when the occasion allows. One may well speculate to what greater extent the Soviet international lawyers would herald the concept if it were not for the existence of various East European treaties and older Czarist frontier treaties with China.[8]

STUART S. MALAWER
Institute of International and Foreign Trade Law
Georgetown University Law Center

[4] Declaration on the Prohibition of Military, Political and Economic Coercion in the Conclusion of Treaties, *id.* DOCS. OF THE CONF. (1968–1969) 285, UN Doc. A/CONF. 39/11/Add. 2 (1971).

[5] G. TUNKIN, THEORY OF INTERNATIONAL LAW 14 (W. Butler trans. 1974).

[6] *See generally* Malawer, *"Coerced Treaties" and the Convention on the Law of Treaties*, in S. MALAWER, STUDIES IN INTERNATIONAL LAW 31, 38 n. 37 (2d ed. 1977) (originally appearing as *A New Concept of Consent and World Public Order: "Coerced Treaties" and the Convention on the Law of Treaties*, 4 VAND. J. TRANS. L. 1 (1970)).

[7] UN Doc. A/AC.125/SR.46, at 6–7 (1966), as quoted in S. MALAWER, IMPOSED TREATIES AND INTERNATIONAL LAW 125 (1977) (originally appearing in 7 CALIF. W. INT. L. J. 5 (1977)).

[8] Soviet writers continually struggle to justify these treaties. *See* Miasnikov, *The Manchu Invasion of the Amur River Valley and the 1689 Treaty of Nerchinsk*, 6 CHINESE L. & GOVT. 22 (1973–74) (contending the 1689 Treaty of Nerchinsk was neither unequal nor imposed).