

Antitrust Division in its "Antitrust Guide for International Operations."⁶⁴ Manzi's criticism of what he considers to be the Antitrust Division's "eccentric interpretation of previous judicial directions"⁶⁵ is thus unjustifiable, while his own interpretations are often inaccurate.

A fundamental failure by Manzi is his confusion of the effects doctrine, which relates to subject matter jurisdiction, and the rule of reason, which relates to substantive liability. A second shortcoming is his assumption that all aspects of an international joint venture are governed by the same substantive standards, instead of recognizing that the standards applied to the creation of a joint venture are different from those applied to collateral agreements.

A reexamination of antitrust law as it affects international business is never welcome. The perception that extraterritorial jurisdiction interferes with the sovereignty of foreign states is a source of controversy in U.S. foreign relations.⁶⁶ The interplay of antitrust policy and restrictive business practices in developing countries forms a component of multilateral steps toward economic development.⁶⁷ But a prerequisite for any recommendation on the future course of antitrust law is an understanding of the issues posed by international transactions and an accurate analysis of the existing law relating to those issues. Manzi's article fails to meet that prerequisite.

Disquiet on the Western Front: Observations on the Twentieth Anniversary of the Berlin Wall

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Once a disorderly tangle of concrete blocks, mortar, barbed wire, and armed border patrols, the Berlin wall today represents one of the most sophisticated and formidable territorial barriers ever constructed. For almost twenty years, the Wall, backed by an array of tough criminal laws, has served to insulate East Berlin and the German Democratic Republic (GDR) from the disruptive presence of non-Communist West Berlin. During the 1970s, hopes that a lasting relaxation of the GDR's repressive

boundary controls could be achieved through negotiation were quickened by

64. U.S. Department of Justice Antitrust Division, *supra* note 16, at E-1.

65. Manzi, *supra* note 1, at 67.

66. See, e.g., Nash, "Contemporary Practice of the United States Relating to International Law," 74 AM. J. INT'L L. 657, 655-67 (1980).

67. See, e.g., "Restrictive Business Practices in Relation to the Trade and Development of Developing Countries: Report by the Ad Hoc Group of Experts," 18 ANTITRUST BULL. 509 (1973).

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the drive to normalize East-West relations in Germany. Although great progress was made, recent East German crackdowns on the flow of persons and ideas between the GDR and the West have punctured those optimistic hopes. This note will consider several of the GDR's most recent efforts to restrain the East-West movement of persons and ideas and will briefly gauge their implications on this, the eve of the Berlin Wall's twentieth anniversary.

On August 13, 1961, in the dark pre-dawn hours, units of the GDR's *Volks-polizei* (People's Police) streamed to the heart of Berlin and, in unison with other security forces posted around the perimeter of West Berlin, began emplacing barriers.¹ Their goal was to seal off the channel through which the GDR's desperately needed industrial and professional labor force had been spilling into the more affluent, free wheeling West.² For all parties involved, the East German maneuver was a drastic, embarrassing, and regrettable response to an explosive political situation. By its action, the GDR's Ulbricht regime, although successful in stemming mass exodus, implicitly acknowledged its inability to stabilize the population of the GDR by means other than force.³ By their inaction, the Western authorities demonstrated their incapacity

1. *Die Flucht aus der Sowjetzone und die Sperrmassnahmen des kommunistischen Regimes vom 13. August 1961 in Berlin* (Bonn and Berlin: Bundesministerium für gesamtdeutsche Fragen, 1961), pp. 28-51.
2. In the period between the end of World War II and the 1961 closure of Berlin's sectoral border, roughly 2,686,942 refugees from the GDR registered in the Federal Republic of Germany [FRG]. Bundesministerium für innerdeutsche Beziehungen, *DDR Handbuch*, 2nd ed. (Cologne: Verlag Wissenschaft und Politik, 1979), p. 400. An estimated 1,000,000 additional persons fled the GDR without being counted. David Shears, *The Ugly Frontier* (London: Chatto & Windus, 1970), p. 43. The GDR's imposition of barriers on its "green border" with the FRG in mid-1952 transformed Berlin into the major conduit for refugees fleeing to the West. *Id.*, p. 39. See also *Die Sperrmassnahmen der Sowjetregierung an der Zonengrenze und um Berlin* (Bonn: Bundesministerium für gesamtdeutsche Fragen, 1953), pp. 7-31. For an excellent tabular presentation of statistics on the refugee outpour, see the "A" appendix to Ernst Friedrich Mueller and Peter Greiner, *Mauerbau und Neues Deutschland: die Vorgeschichte des Baus der Berliner Mauer in der Parteipresse der Deutschen Demokratischen Republik* (Bielefeld, FRG: Bertelsmann Universitätsverlag, 1969), pp. 73-79.
3. Official East German pronouncements concerning the Wall described it as a bulwark against "fascist" spies and armed invasion, and not as a device designed to hold the East German working force captive. A 1961 judgment handed down by the GDR Supreme Court exemplified the East German position on the open border to the West:

West Berlin today plays the role — as once did Shanghai — of the central port of reshipment in the traffic in human beings [*Menschenhandel*]. Numerous West German agencies and organizations, illegally present in West Berlin, exploit the current situation to engage in man-trafficking in the middle of the German Democratic Republic. The West German militarists are actively supported by the secret services of the Occupying Powers in that part of the city. For this purpose they abuse the traffic and communications channels which according to the agreements struck between the Allies were supposed to be used solely for the provisioning of the Western occupation forces. . . . [The] victims [of the traffic in human beings] are lured to West Berlin to bring them to give up their secure existences and betray the German Democratic Republic. . . . From West Berlin, the man-traders supply the NATO bases where young men are drilled by Nazi officers to be the cannon fodder of the

to counter the East German moves. And, of course, the people of Berlin suffered. Yet, despite the enormous risks and costs which the erection of the Wall entailed, it is certain that the decision taken was, from the Communist perspective, correct and perhaps unavoidable.⁴ Had the Ulbricht Government failed to deliver an Alexandrian blow to the knot of emigration and security problems it faced, the East German state would have indubitably collapsed, "bled white" by worker flight. A violent superpower confrontation might easily have followed.⁵

Over the ensuing two decades, the East German Government has tolerated

imperialists. . . . For many young men and girls, the way through West Berlin leads into the swamp of immorality. West Berlin is for many the first step into the gutter or the grave.

Urteil des Obersten Gerichts vom 2 August 1961 — 1 Zst (I) 2/61 — gegen Adamo und andere *Neue Justiz* [GDR] (1961), p. 551. [Translation by the author.] Berlin's unique status as a city under technical Four Power Administration had deterred the Ulbricht Government from severing East-West inter-sectoral traffic until 1961, when the gravity of the GDR's condition forced the Communists' hand.

4. A recent West German report pegged the cost of the GDR's system of border fortifications at more than \$500 million annually. *New York Times*, 6 October 1979, p. A1, col. 3. A considerable sum, the expenditure nonetheless pales in comparison with East German leader Walter Ulbricht's claim (perhaps exaggerated) that the GDR prior to 1962 sustained, as a direct result of West German recruitment of East German labor, direct damages in excess of 30 billion East German marks. "Aus dem Referat des Staatsvorsitzenden Ulbricht auf der 15. Tagung des ZK," *Dokumente zur Deutschlandpolitik*, Ernst Deuerlein, ed., IV. Reihe/Band 8, Erster Halbband (Bonn and Berlin: Bundesministerium für innerdeutsche Beziehungen; Frankfurt a.m. and Berlin: Alfred Metzner Verlag, 1977), p. 276. A more recent estimate pegged the cost of "imperialist" interference in the GDR's pre-Berlin Wall economy at over 100,000 million marks. *Introducing the GDR* (Berlin: Panorama der DDR, 1978), p. 147.

Persons unfamiliar with the appearance of the Berlin Wall and misled by the simplicity of its title may be surprised by the size of the GDR's expenditures. There is more to the "Wall" than a whitewashed barricade eleven feet high. A barren no-man's land of variable width and littered with an eight-foot deep, concrete-reinforced vehicle trap, approximately 268 watchtowers, massive concrete anti-tank barrier runs, bunkers, trip-wires, dog runs, steel girder tank traps, miles of wire fence, and a variety of other devices separates West Berlin from its surroundings. Gratings and sensitive electronic warning devices rest in the sewers, canals, and underground railway tunnels that intersect the border zone. See Shears, *The Ugly Frontier*, *supra* note 2, pp. 70-87; *New York Times*, 15 September, 1978, p. 138 (describing improvements in border safeguards); *id.*, (providing the \$500 million figure); *The Times* [London], 31 August, 1980, p. 7, col. 7 (describing the installation of new automatic shooting devices along the Wall). An exhaustive but dated description of the Wall's physical characteristics is in *Ulbricht's Wall: Facts, Figures, Dates* (Bonn and Berlin: Federal Ministry of All-German Affairs, 1962).

5. East German legal theoreticians commonly defended the Wall as a peace-keeping device. See, e.g., Fritz Mühlberger, "Grenzverletzer werden streng zur Verantwortung gezogen," *Deutsche Aussenpolitik* [GDR], No. 11 (November 1962), p. 1275; Michael Kohl and Heinz Krusche, "Völkerrechtliche Gedanken an den Schutzmassnahmen der Deutschen Demokratischen Republik vom 13. August 1961," *Deutsche Aussenpolitik* [GDR], No. 10 (October 1961), p. 1151; Gregor Schirmer, "Völkerrecht stützt Schutzmassnahmen der DDR," *Deutsche Aussenpolitik* [GDR], No. 11 (November 1962), p. 1281; Rolf Felber, "The Protection of the GDR State Frontier in the Light of International Law," *German Foreign Policy* [GDR], No. 2 (February 1966), p. 115.

numerous exceptions to its once almost total ban on border crossing.⁶ The most significant exceptions, however, relate almost entirely to the passage of West Germans and West Berliners in and out of the GDR and West Berlin, and, in many respects, do not come near to restoring the degree of liberty enjoyed by travellers in Berlin before the erection of the Wall. Travel by East Germans into the West has been limited largely to prize athletes and trustworthy bureaucrats on the one hand, and to persons drawn from unproductive or undesirable classes of society, such as the elderly⁷ or the ranks of political dissidents,⁸ on the other.

The GDR's participation in the drafting and signing of the Final Act of the 1975 Conference on Security and Cooperation in Europe in Helsinki stirred hope on both sides of the Wall that the GDR would follow through on its non-binding pledge to promote the reunification of families, to ease restrictions on travel, to eschew the harassment of journalists, and to honor the 1948 Universal Declaration on Human Rights,¹⁰ especially its provisions on the free movement of persons and ideas.¹¹

6. The history of the concessions is too complex to recount here. Particularly important liberalizations were realized in the wake of the FRG's post-1971 *Ostpolitik* initiatives. For nutshell descriptions of the progress, see Jonathan Steele, *Inside East Germany* (New York: Urizen Books, 1977), pp. 211-12; [Helmut Schmidt,] "Bericht zur Lage de Nation [1980]," *Deutschland Archiv*, No. 5 (1980), pp. 552-54; Wolfgang Seiffert, "Wer mischt sich ein? Über Hintergründe und rechtliche Bewertung der jüngsten DDR-Maßnahmen," *id.*, No. 6 (1979), p. 586; Lawrence L. Whetten, "Scope, Nature, and Change in Inner-German Relations," *International Affairs* [London], vol. 57, (1980-81), pp. 60-78.
7. FRG Chancellor Helmut Schmidt observed in his 1980 State of the Nation Address that although approximately 1,400,000 East German pensioners are permitted to visit the FRG yearly, only about 40,000 people under the age of 60 are permitted to journey west, and then almost exclusively in cases involving urgent family affairs. He also noted, however, that before 1972, it was even more difficult for non-pensioners to travel west ("Bericht zur Lage der Nation, 1980," *supra* note 6, 552). The liberality shown toward the elderly may stem, first, from the belief that pensioners are unlikely to abandon their friends and benefits in the GDR for a fresh start in the West, and second, from the fact that a defection of an unproductive public charge, *i.e.*, a pensioned employee of a state enterprise, saves the government money.
8. See generally Norman M. Naimark, "Is It True What They're Saying About East Germany?" *Orbis*, Vol. 23 (Fall 1979), pp. 549-77; *New York Times*, 24 September 1977, p. A1, col. 1; *id.*, 16 March 1980, p. A8, col. 1. A stirring introduction to the GDR's practice of releasing political prisoners into the West in exchange for goods from the FRG is Michel Meyer, *Freikauf: Menschenandel in Deutschland* (Vienna and Hamburg: Paul Zsolnay Verlag, 1978).
9. The magnitude of the reaction within East Germany was surprising. More than 100,000 persons, many of them citing the Helsinki Final Act and the Universal Declaration of Human Rights, reportedly applied for permission to emigrate. East German authorities responded by announcing that only cases involving genuine family reunification would thenceforth be processed. See *New York Times*, 11 October 1977, p. 14, col. 4; Thomas E. Heneghan, "Human Rights Protests in Eastern Europe," *The World Today* [UK], Vol. 33, No. 3 (March 1977), pp. 96-98; Werner Volkmer, "East Germany: Dissenting Views During the Last Decade," in *Opposition in Eastern Europe*, Rudolf L. Tokes, ed. (Baltimore and London: The John Hopkins University Press, 1979), pp. 120-22.
10. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/8 10 at 71-77 (1948).
11. Article 13 of the Universal Declaration states:
 - (1) Everyone has the right to freedom of movement and residence within the borders of each state.

The experience of the past five years has demonstrated, however, that the gap between the legal formulae assented to by the GDR's representatives in foreign capitals and the actual practice of the authorities in East Berlin remains large. Particularly striking is the profusion of regulations designed to restrict mobility issued by the GDR since early 1979, descriptions of which follow.¹²

In mid-April of 1979, the GDR decreed that foreign journalists would no longer be permitted to interview East German citizens without first obtaining Government approval.¹³ Prior to the issuance of this decree, the GDR had insisted that journalists seek official approval only before interviewing officials of the Government, the ruling Socialist Unity Party, and state-run economic concerns. Nettled by unflattering accounts of life and dissidence in the GDR,¹⁴ the East German authorities also announced that journalists would thenceforth be required to provide the Government with at least 24 hours' advance notice of any trips they planned beyond Berlin. The concurrent submission of a list of intended destinations and an explanation of the purpose of each trip was also demanded. Presumably to curb journalists' involvement in black market currency speculation and to facilitate the enforcement of the just mentioned controls, foreign reporters were also required to account for all income and expenditures made in the GDR.¹⁵

The April 1979 clampdown on journalists came on the heels of an order in-

- (2) Everyone has the right to leave any country, including his own, and to return to his country.

A classic defense of the GDR's emigration policies in the light of international law may be found in Eberhard Poppe, "The UN Declaration of Human Rights and the Constitution of the GDR," *German Foreign Policy* [GDR], No. 3 (March 1968), pp. 205-09. A blunt assault on the GDR's performance is offered in William Sölyom-Fekete, *Legal Restrictions on Foreign Travel by the German Democratic Republic* (Washington, D.C.: Library of Congress, 1978). Lengthier treatments of the Communist states' obligations under the Helsinki Accord may be found in the collection of commentaries in Thomas Buergethal, ed., *Human Rights, International Law, and the Helsinki Accord* (Montclair, NY: Allanheld, Osmun/Universe Books, 1977).

12. East German measures to restrict free movement from 1977 through 1979 are described in Daniel C. Turack, "Freedom of Transnational Movement: The Helsinki Accord and Beyond," 11 *Vand. J. Transnat'l L.* 585, 593-98 (1978). More recent developments are treated in Seiffert, *supra* note 6, pp. 586-89 (1979).
13. "Durchführungsbestimmung zur Verordnung vom 21. Februar 1973 über die Tätigkeit von Publikationsorganen anderer Staaten und deren Korrespondenten in der Deutschen Demokratischen Republik," reprinted in *Deutschland Archiv*, No. 7 (1979), pp. 773-77. See also *New York Times* 15 April 1979, p. 10, col. 3; Ulrich Fastenrath, "Völkerrechtliche Beurteilung der neuen DDR Bestimmung für Journalisten," *Deutschland Archiv*, No. 11 (1979), pp. 1174-84; Manfred Raxin, "Maulkorb für Korrespondenten," *id.*, No. 5 (1979), pp. 449-50.
14. For an account of the GDR's swift reaction against an East German citizen whose writings captured Western attention, see Jeffrey Lee Canfield, "Marxist Revisionism in East Germany: The Case of Rudolf Bahro," 4 *Fletcher Forum* 23-29 (1980).
15. *New York Times*, 15 April 1979, p. 10, col. 3.

structing all East Germans to convert their holdings of foreign currencies into coupons for redemptions at state-run Intershop stores.¹⁶ The quest for "hard" Western currencies essential to the purchase of luxury Western goods in the Intershop stores had undoubtedly led many East Germans to strike up conversations with Western journalists and others. By requiring that trade in Western currencies be conducted with officially issued coupons, the GDR Government sought no doubt, among other things, to deter East Germans from initiating illicit exchanges with Westerners.

In July 1979, a sudden and sweeping revision of the GDR Criminal Code provided further evidence of the GDR's readiness to risk the gains of detente for the attainment of a more powerful internal security apparatus.¹⁷ The 1979 reform made considerably more harsh the GDR's treatment of prescribed political acts. Among the somewhat elastic prohibitions that were either reinforced with heavier penalties or more broadly defined were those of § 100 (treasonous association with anti-GDR interests), § 105 (anti-state trade in human beings, *i.e.*, refugee-smuggling), § 106 (anti-state agitation), § 109 (jeopardization of the GDR's international relations), § 202 (resistance to state actions), § 213 (unlawful border crossing and visitation abroad), § 214 (impairment of state or business activity), §§ 215-216 ("rowdiness"), § 217 (unlawful assembly), § 219 (unlawful association with parties hostile to the state order), § 220 (slandering the GDR and its institutions), § 225 (failure to report suspected criminal activities), and § 249 (impairment of public order through asocial behavior). Perhaps the most remarkable of the new curbs was contained in § 99 (treasonous transfer of news), which, along with §§ 219-221 and other sections, effectively criminalized not only the previously forbidden collection and transmittance of information to organizations whose activity is directed against the GDR, but also the collection, transmission, or *making accessible* of non-secret information against the GDR's interests to *any* "foreign organizations, as well as their helpers." By operation of § 99, East Germans may thus be subject to imprisonment of up to 12 years for making disparaging statements to

16. *Id.*; Hans-Dieter Schulz, "Vor dem Einkauf schnell zur Bank," *Deutschland Archiv*, No. 5 (1979), pp. 451-53.

17. Gesetz zur Änderung und Ergänzung straf- und strafverfahrensrechtlicher Bestimmungen und des Gesetzes zur Bekämpfung von Ordnungswidrigkeiten (3. Strafrechtsänderungsgesetz) vom 28. Juni 1979, *Gesetzblatt der Deutschen Demokratischen Republik* [GB1.DDR] I 1979 No. 17, p. 139. This 1979 revision succeeded the reforms of the Law of 19 December 1974, GB1.DDR I 1975 No. 3, p. 14, and the Law of 7 April 1977, GB1.DDR I 1977 No. 10, p. 100. For scholarly comment, see F.J.M. Feldbrugge, "Criminal Law Reform in the German Democratic Republic," 5 *Review of Socialist Law* 473-74 (1979); Siegfried Lammich, "Das politische Strafrecht in der DDR und den anderen sozialistischen Ländern," *Deutschland Archiv*, No. 8 (1980), pp. 843-54; Friedrich Christian Schroeder, "Die neue Strafrechtsreform der DDR," *id.*, No. 10 (1979), pp. 1064-76; K.W. Fricke, "Die 9. Tagung der Volkskammer: Ausweitung und Verschärfung des politischen Strafrechts," *id.*, No. 8 (1979), pp. 787-92.

Western newsmen about the failings of the GDR.¹⁸ Lest Westerners complacently view the revised Criminal Code as a matter of purely East German concern, it should be noted that § 80, paragraph 3, point 3, arguably extends the prescriptions of the GDR Code to *anyone* who *anywhere* commits an act defined as a serious crime under the Code.¹⁹ Thus, at least in theory, visitors to East Germany could be arrested and prosecuted for actions prohibited by East German law but committed beyond the GDR's borders.²⁰ In terms of penalties, the 1979 revision introduced changes accentuating the deterrent and retributory values of the criminal sanctions. For a broad assortment of political offenses, the new provisions empowered the courts to impose fines of up to the 100,000 marks, and up to 500,000 marks for crimes involving a pronounced "lust for profit." The maximum time for short-term jailings (*Haftstrafen*) was raised from six weeks to six months, thus adding more teeth to the prosecutor's bite in cases involving minor political offenses, while at the same time, the ceiling on maximum sentences for a number of other crimes was raised from five years of imprisonment to eight. To complement these and other more strict measures, the power of the courts to supervise and regulate the lives of prisoners released before the expiration of their sentences was considerably expanded. Taken as a whole, the 1979 Criminal Code revision greatly amplified the East German government's formal statutory authority to isolate the citizenry from externally directed or inspired influences.

Further evidence of a hardening of official attitudes toward elements linked or leaning to the West could also be detected in two pronouncements in the fall of 1979. First, in late October, a unilateral call was made to end arrangements, initiated in the early 1960s, through which thousands of political prisoners had been released to West Germany in exchange for Western goods.²¹ Second, a general amnesty proclaimed in celebration of the GDR's thirtieth anniversary reportedly flushed approximately 22,000 prisoners out of East German jails, but unlike in earlier amnesties, only a few of them were permitted to leave the GDR.²² Although a variety of considerations may have shaped these actions,

18. *New York Times*, 29 July 1979, p. A5, col. 1; Schroeder, *supra* note 16, p. 1069.

19. Feldbrugge, *supra* note 17, p. 473.

20. *Cf.*, The Cutting Case, 2 J.B. Moore, *A Digest of International Law* 228-42 (1906) (prosecution in Mexico for acts done in Texas by a United States citizen).

21. *New York Times*, 28 October 1979, p. L5, col. 1. Ironically, the unexplained renewal of the ransom-political prisoner exchange arrangements in March 1980 (see *New York Times*, 16 March 1980, p. A8, col. 1) again made the route through the GDR's prisons one of the less hazardous avenues of escape to the West.

22. *New York Times*, 28 October 1979, p. L5, col. 1; *id.*, 16 March, 1980, p. A8, col. 1; *id.*, 18 December 1979, p. A6, col. 6; *id.*, 22 September, See also *Frankfurter Allgemeine Zeitung*, 29 October 1979, p. 1, col. 1; *id.*, 18 December 1979, p. 6, col. 5. See generally, Karl Wilhelm Fricke, "Bilanz der DDR Amnestie '79'", *Deutschland Archiv*, No. 2 (1981), pp. 127-30.

their effect was to reduce once again the accessibility of the West to East Germans. To those individuals who may have committed minor political crimes in the hope of being ransomed out, the premature release from prison without prospect of travel to the West must have seemed a cruel joke.²³

The most controversial recent restriction of intra-German movement came with the abrupt elevation of the minimum currency exchange requirement (*Zwangsumtausch*) at the GDR's border checkpoints.²⁴ The new rule requires that each Western entrant exchange at least 25 West German marks (or their equivalent) for 25 East German marks for every day of a visit to East Berlin or the GDR. The former rule required that a minimum of 6.5 marks be exchanged for a 24-hour stay in East Berlin and 13 marks for each day in the GDR. Children and pensioners, previously exempted from the *Zwangsumtausch*, must now also exchange currency. Since visitors are normally prohibited from carrying East German marks into the West, and since East German exchange booths will not reconvert them into Western currencies, the effect of the new rule is to force visitors from the West to convert and spend more of their money in East Berlin and in the GDR than they might wish (or be able to afford) and at an unfavorable rate of exchange as well.²⁵ The new rule thus inflicts a special hardship on the poor, families with many children, and frequent visitors to East Berlin and the GDR.

Communist publicists defended the elevated minimum on economic grounds, referring specifically to the erosion of the West German mark's value because of inflation, and to the West German bankers and travellers who traffic in East German marks at other than the official 1:1 ratio.²⁶ Western officials were quick, however, to decry the political ramifications of the increase. Im-

23. The existence of the exchanges is reportedly a matter of common knowledge on both sides of the FRG-GDR border. *New York Times*, 28 October 1979, p. L5, col. 1. One of the reasons the GDR declined to permit the freed prisoners to leave the country was allegedly to deter "gamblers" from wagering their reputations for a chance to leave the GDR. *Frankfurter Allgemeine Zeitung*, 1 November 1979, p. 10.
24. "Anordnung über die Durchführung eines verbindlichen Mindestumtausches von Zahlungsmitteln vom 9. Oktober 1980," reprinted in *Neues Deutschland* [Berlin], 10 October 1980, p. 2. For criticism, see Ulrich Fastenrath, "Erhöhung des Zwangsumtausches und vertragliche Bindungen," *Deutschland Archiv*, No. 1 (1981), pp. 44-47.
25. The rate of exchange is unfavorable in a sense that although West German marks are worth far more than East German marks in the international market and the FRG, the GDR insists any East German marks held by Westerners be obtained at the official one-East-German-mark-for-one-West-German-mark rate. The GDR thus, by free market standards, makes a hefty profit on each exchange. On the GDR's pursuit of Western currencies, see Melvin Croan, "New Country, Old Nationality," *Foreign Policy*, Vol. 37, (Winter 1979-80) pp. 155-58; Naimark, *supra* note 8, p. 558.
26. See, e.g., the articles from *Neues Deutschland* [Berlin], 11/12 October 1980, and from *Pravda* [Moscow], 13 October 1980, reprinted in *Deutschland Archiv*, No. 11 (1980), pp. 1216-20; "Interview mit Erich Honecker [6 February 1981], in *Deutschland Archiv*, No. 3 (1981), pp. 321-23.

posed at a time when many West German politicians were under heavy pressure to qualify their support of the detenté, the East German action was widely viewed as a slap at rapprochement. West German Government spokesman Klaus Bölling flatly labelled the measure "an attempt to reduce the number of West Germans and West Berliners who cross over to visit friends and relatives in the East."²⁷ The then West German representative to East Berlin, Günther Gaus, termed the hike "the biggest and most serious blow to inter-German relations in the last six years."²⁸

Looking ahead, the continued fortification of the Wall and elaboration of the legal matrix in which it operates raises many questions about the sincerity of East German promises and the ability of East German authorities to promote, or at least tolerate, a greater degree of free movement in and at the borders of the GDR. As political tensions in neighboring Poland swell and ripple across the Oder River, as economic pressures increase, and as West German broadcasters consequently devote more of their coverage to the shortcomings of the socialist "workers' paradises," it seems likely that the GDR will resort to increasingly restrictive controls. The commemorations and criticism which will unquestionably accompany the twentieth anniversary of the Wall will probably do little to convince the GDR's leaders that they should exercise greater leniency at state borders. A contrary reaction is more likely. If stricter controls do result, they will no doubt achieve at least a partial success in their prophylactic design, but will mark an even greater departure from the letter and spirit of the Helsinki and other human rights-related agreements.²⁹

Erich Honecker, General Secretary of the GDR's ruling Socialist Unity Party, made it clear as early as 1977 that the post-Helsinki talk of free movement in Germany would by no means result in policies that might jeopardize East German state security:

How can a lasting peace be secured? Some claim that all we need are more travel and human contact. Life has proven this stance to

27. *New York Times*, 11 October 1980, p. 12, col. 3.

28. *Id.*

29. For example, the GDR ratified on March 27, 1973, the International Convention on the Elimination of All Forms of Racial Discrimination, *made on* 21 December 1965, 660 U.N.T.S. 195; and on 8 November 1973, announced the ratification of the International Covenant on Civil and Political Rights, *made on* 16 December 1966, U.N. GOAR, Supp. (No. 21) 53, U.N. Doc. A/6316 (1966). Both contain language affirming the right to free mobility. In Helsinki, at the 1975 Conference on Security and Cooperation in Europe [CSCE], the GDR made a non-binding pledge to promote greater transnational movement and to respect the Universal Declaration of Human Rights, *supra* note 10, which proclaims the right of free emigration. See the text of the CSCE Final Act, *reprinted in* 14 INT'L LEGAL MAT'L 1292 (1975). For criticism, see H.H. Mahnke, "Die Prinzipienklärung der KSZE-Schlüsse und das Völkerrecht—Völkerrechtliche Aspekte der deutschen Frage," 21 *Recht in Ost und West* 45, 46 (1977).

be not only naive but a conscious deception. It puts people on the wrong track and diverts attention from the roots of the war danger . . . which is perpetuated by the most aggressive circles of monopoly capital.³⁰

Rudolph Bahro, a prominent East German critic of Warsaw Pact socialism, explained the Honecker government's opposition to a liberal border regime in equally discouraging terms:

The state repression in the countries of actually existing socialism is in the last analysis a function of their industrial underdevelopment, or more exactly, of the task of actively overcoming this underdevelopment by an 'inorganic' restructuring, so as to preserve their national identity. . . . The presence of a materially superior civilization can not be met by a minority regime that gives itself such a task without erecting a defensive 'iron curtain' both internally and against the outside world, and without comprehensive regimentation against any 'spontaneity'.³¹

The effective operation of the Wall is probably indispensable to the prosperity, if not the survival, of the East German state. Until the GDR wins the unwavering loyalty of the East German populace, particularly of the ambitious and the skilled, or eclipses West Germany's material abundance, the GDR's rulers will remain forced to protect both their labor pool and state order through stringent and restrictive measures. Barring an apocalyptic collapse or miraculous flowering of the GDR in the next decade, and barring an improbable Western abdication of authority in Berlin, the Wall will endure as a feature of Europe's political landscape throughout the 1980s. Thus, because of the centrality of Germany's stability to the stability of East-West relations as a whole, it appears likely that the Berlin Wall — a Wall no one wanted — will remain a Wall which no one interested in the preservation of world peace and security can do without.

30. Erich Honecker, "The Socialist Revolution in the GDR and Its Perspectives" (Speech given at Dresden, 26 September 1977), in Erich Honecker, *The German Democratic Republic, Pillar of Peace and Socialism* (New York: International Publishers, 1979), p. 223.

31. Rudolf Bahro, *The Alternative in Eastern Europe*, David Fernbach, trans. (London: NLB, 1978), p. 127.