Anglo-Saxon attitudes that cause mild distress at the prospect of a party being bound by a commitment made in the absence of any reciprocal or concomitant act or abstention and that is subsequently withdrawn without adversely affecting any other party which can be said to have relied on it. On the other hand, perhaps reliance has become a meaningless concept in a tight little global community, with its crucial interdependence among the actors making it inevitable that everything one state says by way of specific promise is bound to affect the perceived world reality, the future expectations, and thus the planning of all other states.

These are matters that may well be clarified in subsequent cases. For now, it is sufficient to note the extraordinary importance of the law made by a case in which, technically, the court has refused to decide. In all, there is reason to believe that, as with *Marbury v. Madison,* the legal community will welcome and build on the foundation laid in the *Nuclear Test* cases long after the specific outcome of the dispute between France and its antipodean opponents has been forgotten.

The practical consequences for U.S. foreign policymakers should, finally, be underscored. In light of these two decisions, a statement made by President Nixon to President Thieu of South Vietnam to the effect that the United States would "react vigorously" [27] to a new North Vietnamese offensive in violation of the Paris Peace accords, which was an inducement to get Thieu's consent to the agreement, would clearly constitute a case of unilateral commitment followed—if it is, indeed, a necessary element—by reliance. The upshot is, therefore, a binding legal undertaking by the United States, made by a President endowed with the ostensible as well as constitutional authority to make such a commitment. The subsequent action of Congress in limiting the President's power to carry out his promise is irrelevant to vested international legal rights.[28] Leaders are now on notice that, in making such declarations they are not merely expressing a passing fancy, but pledging the good faith and credit of their nations. If they do so rashly, they damage their country's rating as a law-abiding and credible member of the community.

THOMAS M. FRANCK

DUE PROCESS IN THE UNITED NATIONS

Recent events in the United Nations, especially the actions taken against South Africa and Israel have led to two main types of responses. Some conclude that these actions prove that the United Nations has deteriorated to the point that it should be abandoned. Others claim that all the difficulties can be cured by a drastic revision of the Charter.

[27] The New York Times, April 10, 1975, at 1.

[28] *See* Article 46 of the Vienna Convention on the Law of Treaties, UN Doc. A/CONF.39/27 (1969), 63 AJIL 875, 890 (1969).

There is, however, a middle road which might be followed instead, a return to the basic principle of all well-balanced legal systems—due process of law. It is in the interest of all concerned that UN decisions should be arrived at with a proper regard to the principles of the Charter and international law. Once decisions are so adopted, there is a greater likelihood that they will be followed, rather than grossly disregarded as in the past. Without any drastic revision of the Charter of the United Nations, something can and should be done about the procedural and decisionmaking difficulties of the United Nations. The necessary changes can be easily incorporated in the rules of procedure of the General Assembly. They should restore both substantive and procedural due process.

As far as *substantive due process* is concerned, the major issue is to make certain that grave objections to the constitutionality or legality of various decisions are properly considered and are not disposed of by the same body whose powers are in question. Thus, if a group of, for instance, fifteen states should object to a proposed decision of the General Assembly on the ground that it constitutes a violation of the Charter of the United Nations, such objection should be referred by the General Assembly to some other body for a preliminary decision. As a minimum, the Legal Counsel of the United Nations, the head of the Office of Legal Affairs in the UN Secretariat, should be requested to present a statement of relevant precedents and his views on their applicability to the case in question. Whenever possible, such a question should be referred to the International Court of Justice for an advisory opinion. Should there be need for a speedy action, a special committee of eminent jurists might be asked for guidance.

From the point of view of *procedural due process,* the most undersirable aspect of some recent decisions is their ad hoc character, without any attempt to consider the matter carefully and to negotiate an agreed solution. In particular, it is dangerous to have matters decided on the floor of the Assembly without prior consideration by a committee. Important questions should not be decided on the spot by means of procedural motions and points of order. A chance should be given to develop maximum consensus through consultations among the regional groups and major powers.

In this respect, it might be desirable to make more general the procedure developed recently at the Caracas Conference on the Law of the Sea, where it was agreed that every effort should be made to reach agreement on substantive matters until all efforts at consensus have been exhausted. To implement this approach, it was agreed, for instance, that any vote on a matter of substance should be deferred for a period not exceeding ten days, if this is requested by at least fifteen representatives. During the period of deferment, the President would be obliged to make every effort to facilitate the achievement of a general agreement. At the end of the period, if agreement is not reached, another decision should be taken whether further consultations would seem desirable, before all efforts to reach agreement are abandoned.

As a minimum, the surprise element might be avoided by requiring that no vote should be taken on any matter of substance less than two days after an official, properly publicized, announcement of such a vote.

Doubts have also been expressed about the actual amount of support a particular resolution has obtained. The numerical majority of states does not automatically represent the views of the real majority of the world's power, however calculated. Without introducing any system of weighted voting, the United Nations computer which tabulates the votes might be programmed to include data relating to each state's population and gross national product. The General Assembly could then authorize the Secretary-General to announce, when so requested by at least ten states, not only the number of states which voted for or against a resolution but also the percentages of the world population and world gross product which are represented by the states voting for or against the resolution. In this manner the claims of alleged nonrepresentativeness of the majority behind a particular resolution could be easily resolved.

The suggestions made here are merely illustrative. The details could easily be changed without impairing their intrinsic merit, and one can imagine many other ways in which UN procedures could be made more satisfactory. If these or similar improvements could be made in the decisionmaking process, the decisions adopted thereby would clearly have a more persuasive force than the decisions adopted by doubtful procedures and under the shadow of unconstitutionality. The likelihood of their acceptance and implementation would be thus greatly enhanced. This would make the whole process more meaningful and would remove some frustrations of the third world countries about the fact that frequently the decisions taken have no effect whatever. There is an important link between due process and the effectiveness of decisions. If one can be improved, the other is likely to follow.

The major powers want to see the decisions made in a responsible way. The third world nations want to see the decisions executed. The obvious answer seems to be: if the decisions are made in a responsible way, reconciling the main points of view, then the major powers will help to execute them effectively and in good faith. If the due process of law is observed in the adoption of decisions, they will more easily be accepted as binding.

Louis B. Sohn

The Francis Deák Prize

Each year, the Board of Editors of the *American Journal of International Law* awards a prize in memory of the late Francis Deák for an especially meritorious article appearing in the *Journal*. The Prize for 1975 has been conferred on Messrs, Allan E. Gotlieb, Charles Dalfen, and Kenneth Katz