There is, however, one principle that we should never overlook; individual human rights and freedoms can be established and preserved *only* under the protection of effective authority of a sovereign state. Considering this, state sovereignty and human rights *must not be seen to contradict each other,* but rather to stand in a necessary relationship of reciprocity.[5]

Thus far, I have attempted to restrict myself solely to a strict legal response. With your permission, I wish to conclude on a more "political" note by commenting briefly on Professor Richardson's remarks about my being "too kind to both the snake and the house" (82 AJIL at 800).

May 17 of this year will only be the 35th anniversary of *Brown v. Board of Education,*[6] which declared unconstitutional apartheid American-style, imposed by law in the United States. This decision led to social, legislative and judicial events that shape race relations in the United States to this day, and will have consequences for years to come. The *Brown* decision was the legal expression of a long American historical process. In this country we are going through the same historical process, and I have good reason to believe that soon every South African will live under a system of racial equality and all that is understood under basic civil rights. South African audiences may look to the United States for guidance to supplement their own convictions about what may be achieved for race relations through the law.

By imposing economic sanctions, however, the United States is only turning the face of the man in the street in South Africa away from Washington.

GEORGE N. BARRIE*

TO THE EDITOR IN CHIEF:

February 23, 1989

Professor Franck's article on legitimacy in the international system (82 AJIL 705 (1988)) concerns an important and intellectually challenging subject, and I would agree that solutions to problems of legitimacy may help "to find a key to a better, yet realistic, world order" (*id.* at 707). To consider legitimacy as an alternative to coercive compliance with rules of international law is a valuable idea.

The analysis of the *perception of legitimacy* as a factor of noncoercive compliance, however, is linked in the article with a definition of *legitimacy as perception.* Such a definition seems to deviate from the traditional usage of the term. Legitimacy, it would appear, is not generally understood as meaning "that quality of a rule which derives from a perception on the part of those to whom it is addressed that it has come into being in accordance with right process" (*id.* at 706) (italics omitted). It is not *perception* of accordance, but *actual* accordance, with right process that is usually regarded as the essence of legitimacy: not the awareness of the worthiness of a rule to

[5] *See* Doehring, *The Relationship between State Sovereignty and Human Rights,* in 1979 ACTA JURIDICA 77.

[6] 347 U.S. 483 (1954).

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be recognized but the worthiness itself (*id.* at 709 n.8); not the perception but the substance.

Legitimacy (in fact, the perception of legitimacy and/or validity) is defined and analyzed in the article essentially as a factor inducing compliance with rules of international law, and hence as a factor of the effectiveness of international legal rules. Although legitimacy, and especially the perception of it, is indeed a factor of effectiveness, the two concepts are of a very different nature and should not be confused. Effectiveness describes the impact of rules on reality. Legitimacy, on the other hand, does not deal with reality but with the rules themselves: with their correspondence to certain "internal" requirements of law. Effectiveness, including the perception of legitimacy, belongs to the sphere of *Sein,* whereas legitimacy, similarly to validity, belongs to the sphere of *Sollen.* Thus, legitimacy and validity as concepts are much closer to each other than to effectiveness.

However, a definition of legitimacy as perception of right process runs the danger of *equating* legitimacy with effectiveness. Since the best way to find out how a rule is perceived and to measure its "pull power" (*id.* at 712) is to see whether it is complied with, the test for the legitimacy of a rule would be, after all, its effectiveness. It seems to me that a definition of legitimacy that equates it with effectiveness would have grave consequences. It would imply, for example, that some rules are "illegitimate" merely because they are *perceived* as such and not because they came into being in violation of right process, not because they are not valid or infringe basic principles and values of international law. It would follow that a discussion whether a rule is "intrinsically" legitimate is misplaced: the legitimacy of a rule would have to be ascertained empirically, through its pull power. The question of legitimacy would not be a legal but only a sociological question.

It is hard to agree with such a definition of legitimacy. Legitimacy seems better defined as correspondence with basic principles and values in law. These include right process. A rule, a claim, an expectation, a representative, etc., if they conform to basic principles and values recognized as such by international law, would be legitimate, irrespective of whether they are accepted and effective. Such a definition of legitimacy would correspond to the traditionally established use of the word, whereas a definition in terms of perception would set up a completely new concept, which at best may lead to a confusion of terms.

Although the concept of legitimacy is close to that of validity, the two are not identical. Indeed, valid rules are usually legitimate. But due concordance with basic principles and values of international law does not imply and require validity. A claim or a proposition may not be valid or recognized and yet, if it corresponds to the basic principles and values of international law, be worthy of recognition and hence legitimate. On the other hand, specific rules, especially in bilateral legal relations, may not be in conformity with generally recognized principles and values and thus be deficient in legitimacy. In the process of progressive development of the basic principles of international law, rules of positive law may in certain instances lag behind new values that have acquired general recognition.

International law develops through the emergence and recognition of new legitimate rules, claims, propositions, etc. They may initially be disputed and not very determinate. The question of legitimacy arises precisely

when a rule, a claim or a political order is disputed. Therefore, legitimacy can be described as a "contestable validity claim" (*id.* at 709 n.8). In such situations, a proposed new rule would not be generally recognized, it would not be perceived as obligatory and valid, and it would have no pull power as yet. Its only strength would be its conformity with basic principles and values of international law, i.e., its *worthiness* to be recognized. If such a rule is described as legitimate, this would improve its chances of acquiring recognition, validity and actual pull power. Legitimacy would thus be a factor for perfecting international law. A definition of legitimacy as perception of right process, on the other hand, may turn out to be counterproductive. It would describe as "illegitimate" rules that are indeterminate and not yet perceived as valid. The very fact that a claim, proposition or rule is disputed would mean that it is not legitimate and will weaken its pull power. This would induce governments to obey rules only after other governments have done so and to adopt a "wait and see" position. Thus, a definition of legitimacy as perception of right process would, in my view, exert a conservative influence on international law. It would only register developments and endorse the existing standards and values; it would not promote higher ones through new rules.

DENCHO GEORGIEV*

TO THE EDITOR IN CHIEF:

April 25, 1989

I would like to respond briefly to the recent comments by Dr. Ján Klučka (83 AJIL 342 (1989)) on my Note in the July 1986 issue (at p. 587).

The only legal basis for setting in motion the emergency session procedure of the General Assembly is the "Uniting for Peace" Resolution. In fact, the relevant provisions of the Rules of Procedure of the General Assembly were added by that resolution. It is true that the Soviet Union and other Eastern European states—all of which initially challenged the legality of the said resolution—subsequently attempted to draw a distinction between the resolution and the procedure for convening emergency sessions in order to justify their own reliance on the procedure in that form. However, this distinction is juridically untenable.

I do not subscribe to the proposition that everything done by the General Assembly becomes legal by virtue of such practice, for I find this view—so central to Dr. Klučka's argument—repugnant to the concept of the rule of law.

YEHUDA Z. BLUM†

THE FRANCIS DEÁK PRIZE

The Board of Editors is pleased to announce the selection of David J. Bederman, a legal assistant to the Iran–United States Claims Tribunal, as

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