A Preface to World Government: A Comparison of the Current State of International Governance with the State of Governance that Followed Adoption of the American Articles of Confederation

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A PREFACE TO WORLD GOVERNMENT:
A COMPARISON OF THE CURRENT STATE OF INTERNATIONAL GOVERNANCE WITH THE STATE OF GOVERNANCE THAT FOLLOWED ADOPTION OF THE AMERICAN ARTICLES OF CONFEDERATION

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INTRODUCTION

Is the current state of international governance by the United Nations and related organizations a preface to what eventually might become a world government? Is it at all similar to the structure of government in the United States after the adoption of the Articles of Confederation in 1781 and before adoption of the Constitution of 1787? Are changes in the way international institutions like the United Nations operate related to changes in our conceptions of the role of these institutions in providing international governance? When governmental institutions prove to be too weak to adequately perform the tasks expected of them is there a natural evolution toward greater centralization of power? If so, might an early sign of this evolution be decisions by public officials that afford greater deference to the decrees of international institutions that previously might have been sidestepped?

This article explores whether the current state of international governance, as set out principally in the UN Charter and related international documents, might be evolving toward becoming a world government, analogous to the way the government of the United States evolved from how it originally functioned only very weakly under the Articles of Confederation to function far more strongly as a centralized federal system under the Constitution of 1787. In examining these documents, the purpose is not to suggest that their roles are the same, but rather to

1. For a discussion, from an evolutionary biological prespective of how “human politics is subject to certain recurring patterns of behavior across time and cultures,” see Nicholas Wade, From ‘End of History’ Author, a Look at the Beginning and the Middle, N.Y. TIMES, March 7, 2011, at D3. The author thanks Professor Jona Goldschmidt of Loyola University Criminal Justice Department for bringing this article to his attention.


The United States is not going to deploy ground troops into Libya, and we are not going to use force to go beyond a well-defined goal, specifically the protection of civilians in Libya . . . . In the coming weeks, we will continue to help the Libyan people with humanitarian and economic assistance so that they can fulfill their aspirations peacefully.


However, in a veiled reference reported elsewhere, that seems to indicate that the U.S. was taking a more diplomatic approach to regime change, the president also stated: “We’ve got a wide range of tools in addition to our military efforts to support that policy.” Muscara, supra.

3. The Articles of Confederation were approved by the Second Continental Congress on November 15, 1777 and were then submitted to the states for ratification, which was completed on March 1, 1781. During the interim, the Articles provided a de facto structure of government for the United States Congress assembled until they were ratified de jure by all thirteen of the United States at which point the Congress became the Congress of the Confederation. See generally ARTICLES OF CONFEDERATION OF 1781.
find similarities, both in the values that underlined them and the inadequacies suffered by the governmental structures they produced. The intention is to see whether this might foreshadow developments in the international community, specifically in the United Nations and other international governmental organizations.

Part 1 explains the method of comparison used to show the relevance of the Articles of Confederation to the current state of international governance. It focuses on how societal values emphasizing states rights combined with fears against the creation of too strong a central government, which may have initially led to adoption of the Articles, had to make room for other, more pragmatic norms when the institutions created proved inadequate to fulfill their functions. Part 2 presents a more detailed understanding of the various provisions of the Articles of Confederation and relates that understanding not only to the government produced, but also to its successes and failures. Part 3 describes, in very brief terms, the current system of international governance under the United Nations and related organizations, and draws specific comparisons between the operation of the UN today and the way the United States government operated under the Articles. Finally, part 4 asks whether a more centralized world government can be predicted based on similarities between difficulties in international governance today and difficulties that the United States was confronted with under the Articles.

I. RELEVANCE OF THE COMPARISON

In this section, I explain the basis of my comparison of the Articles of Confederation and the current system of international governance. It is important to note not only the structural and enforcement limitations that prevented the institutions of these two periods from operating independently, but also why those limitations came about. In each case, the systems of government's ability to function was limited by certain background values, which the founders upheld as central to preserving state or national autonomy. The comparison emphasizes these similarities, as well as similarities and differences in the way the institutions operated.

A. Justification versus Legitimacy

It is important to recognize that governmental institutions are created to serve certain unmet goals or purposes. Meeting these provides the justificatory groundwork for creating the institution. It also becomes a test for evaluating how well the institutions succeed at achieving their stated goals or purposes. The goals and purposes justifying creation of the institution do not operate in isolation, but against a background context of existing values already held by the founders. These background values can also change if, for instance, a justificatory reason for creating a new institution comes to be regarded as part of the background values
the society affirms. The context for institutional change comprises the societal values and the needs being recognized for the change that were inadequately attended to, if attended to at all, by the current state of governance. How well the proposed institutions are able to close the gap between meeting current needs without sacrificing too many values determines whether they will be considered legitimate by those they were meant to serve.

The comparison between the Articles of Confederation and the current system of international governance, as exhibited by the UN Charter, serves this argument by offering an explanation of how new governments, let alone new governmental practices, acquire legitimacy. To make this comparison clear, it is helpful to draw a distinction between justification and legitimacy, since both forms of argument play important, though different, roles for any new practice or government to gain acceptance. The former refers to a reason or set of reasons for adopting a particular practice or institution. It may be that the practice is needed to meet certain goals, or that the new institution would be more efficient or better capable of sustaining the existing values of the society. The latter says the practice or institution adopted is in conformity with existing norms including laws where the institution is less than a full-government. Regarding the latter, some societies, such as theocracies, may have a particular religious dogma that the government must adhere to for its practices to be legitimated. Other, more democratic societies may have legitimacy norms that focus on practices that, for example, require that the method of adoption of some new law be in accord with specific norms. There also may be some substantive constitutional norms that ensure fairness in elections, such as one person, one vote. In addition, protections for freedom of speech and the press

4. A good example of this concerns how Americans view individual privacy today. At the turn of the nineteenth into the twentieth century, despite widespread reporting on people's private lives along with intrusions on one's seclusion an solitude, placing one in a false light, and even using one's likeness for commercial purposes without consent, few states had any laws protecting privacy, and those that did fitted it under property protections. That lack of protection began to change first in the torts area when Warren and Brandeis published their now famous essay in the Harvard Law Review entitled the "The Right to Privacy," Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 HARV. L. REV. 193 (1890), and later in the constitutional area when the U.S. Supreme Court decided a case out of Connecticut that banned the use of contraceptives by married persons and physicians from advising on their use. See Griswold v. Connecticut, 381 U.S. 479, 485 (1965). Today, privacy is so well established in both the tort and constitutional areas of the law, that any relevant legal interpretation that failed to properly acknowledge it would be thought to be illegitimate. What happened was that the conclusion of a set of justificatory reasons for recognizing a right to privacy became accepted as a cornerstone background value of the society.


7. For example, by voting.

8. An example would be the use of simple majority vote by the legislature for regular laws, super majority vote by the legislature and the states for constitutional change. The U.S. Constitution, for example, provides for majority vote by both Houses of Congress to pass most federal legislation and concurrence by the President, U.S. CONST. art. I, § 7, cl. 2, but a two-thirds vote of both Houses of Congress followed by agreement of three-quarters of the states is necessary to pass a constitutional amendment, U.S. CONST. art. V.
encourage, among other things, creation of an informed electorate. What kinds of norms apply to legitimize a new practice will thus depend on the type of society in question: Democracies seek popular agreement, oligarchies look to wealth, monarchies focus on tradition, and aristocracies look to class membership. Dictatorships, however, are more problematic. While there is literature to support charismatic leaders as typifying some dictatorships, such leaders may not be able to hold onto power if there is widespread dissension created by economic or social acceptance.\footnote{A good example of a once charismatic authority is Muammar Gaddafi, a past leader of Libya. See Eghosa E. Osaghae, \textit{The Limits of Charismatic Authority and the Challenges of Leadership in Nigeria}, 28 J. CONTEMP. AFR. STUD. 407, 408 (2010).}

Returning to the distinction between justification and legitimacy, one may adopt cost effectiveness or efficiency as a reason or justification for a new governmental practice. This reasoning would certainly count in favor of adoption of the practice. Still, unless the practice was also viewed as legitimate under prevailing norms, it may not be accepted. That is to say, while the new practice might better achieve certain purposes or goals than the current status quo, it might nevertheless be seen as contrary to, or even in violation of, societal values deemed important.\footnote{For example, while some Americans may believe that holding so-called enemy noncombatants at the American military prison at Guantanamo Bay adds to national security, the evolving legal view of the U.S. Supreme Court seems to be that these detainees have a constitutional right to challenge their detentions in federal court where Congress has not provided any adequate alternative for such a hearing. See \textit{Boumediene v. Bush}, 553 U.S. 723, 795 (2008).}

Central to the United States debate over health care\footnote{See Patient Protection and Affordable Care Act, Pub. L. 111–48 (2010).} is whether mandating personal health insurance is consistent with certain traditional American notions of freedom, notwithstanding that it would provide more efficiency and cost control in the deliverance of health care.\footnote{Benjy Sarlin, \textit{Rudy Giuliani Rips Mitt Romney On Healthcare: 'A Mandate Is a Mandate,' TALKING POINTS MEMO DC} (June 6, 2011, 10:37 AM), http://tpmdc.talkingpointsmemo.com/2011/06/rudy-giuliani-rips-mitt-romney-on-healthcare-a-mandate-is-a-mandate.php.} In contrast, unless it is likely to lead to revolt, authoritarian governments are less concerned with public opinion in creating laws, even though the laws often do not benefit their people. For this reason, such governments, although they may be more cost effective or efficient than democratic governments in meeting certain needs, are far less likely to sustain long run political legitimacy.\footnote{It was often said that Italian dictator Mussolini was able to keep the trains running on time. See Benito Mussolini, \textit{FAMOUS LIVES THAT SHAPED WORLD HISTORY}, http://www.famouslives.com/benitomussolini.html.}

This suggests that governments do not achieve stability merely because they meet certain ends, but also must be accepted by those they are meant to serve. Achieving the latter will usually involve more than momentary political preference, or even a recitation of the reasons for justification. It will require that governmental actions be compatible with sets of norms widely accepted by the society.\footnote{See id.} For countries that may have strong religious traditions, the government
may have to be in compliance with specific religious doctrines or beliefs. In contrast, in more pluralistic countries, the government must be cautious not to side too closely with any one religious sect’s particular values or traditions. Regime change does not come about just because a new institutional arrangement might prove better at serving particular needs. It must be related to the values of those whose needs are being served.

Another important distinction between legitimacy and justification is that while each operates from within some existing value framework, the justificatory framework may not coincide with the legitimizing framework. This allows each framework to perform a different task in garnering acceptance for any proposed new practice. Values originating in the legitimizing framework may challenge the justificatory framework as inadequate for social acceptance. In this sense, claims of justification are always subject to being attacked for failing to meet some important value or values held by society. For example, one may justify a particular practice because it is efficient, while others complain that it is unfair in the way it treats people. In contrast, practices found to be in keeping with background beliefs will probably be thought more legitimate, even though they may not be the most efficient way to achieve an end.

16. See id.
17. A typical example of the informal logical fallacy of missing the point illustrates this problem.

Suppose that some very controversial amendment to the tax code is proposed—say, the elimination of inheritance taxes. Such taxes, it is argued, are not fair because the money in the estate of a deceased person was already taxed at the time it was earned—and therefore to tax it again upon the person’s death is to tax the same funds twice. But, responds the supporter of the tax, inheritance taxes are imposed only on large estates that can well afford the tax; and furthermore (the advocate of the tax continues), our government needs the money. The response is an ignoratio elenchi. The inheritance tax may certainly be defended, but the size of the estates taxed and the need for the resulting funds misses the point of the argument that has been put forward: the claim of unfair double taxation. IRVING M. COPI ET AL., INTRODUCTION TO LOGIC, 119 (14th ed. 2011).
18. Not all justifications are about efficiency or cost effectiveness, but those that give rise to the acceptance of institutional practices certainly strut these values. Consider the following problem of acceptance:

If the speaker S asserts that p to the hearer H, under normal conditions, then it is proper or correct for H to accept S's assertion, unless H has special reason to object. In the case of asking for simple directions, the [case] is well illustrated: If the stranger tells you to turn right at the next corner in answer to your question of where to find a gasoline station, you accept his assertion without further inquiry. Jonathan Adler, Epistemological Problems of Testimony, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Nov. 3, 2006), http://plato.stanford.edu/archives/win2010/entries/testimony-episprob/. In other words, you don’t question whether the speaker is providing the fastest or most efficient way to your destination. It is enough that you believe that the speaker’s directions will get you there. Your guiding background belief here is that, all else being equal, a speaker’s assertion will be true unless you have a specific reason to believe otherwise. Indeed, it is this background belief about the integrity of the statement more than any concern about efficiency in getting to your destination that allows you to continue on your way without further inquiry. Granted, should you wish to return to same destination at a later time, you might seek to find the shortest or most direct route. But for your first visit it is enough that you get a direction that is clear and gets you to where you want to go.
A new law is justified, for example, when it promotes a policy that serves a community's economic or social situation.\textsuperscript{19} It is legitimate, by contrast, when it has the correct pedigree, which in the United States means it must achieve a majority vote of both houses of the legislature, be signed by the executive, and not violate the Constitution. Because limitations like these are thought to support the peoples' autonomy in making democratic choices, they are regarded as valuable.\textsuperscript{20}

The confrontation of justification by legitimacy is one reason why societies with very different value systems might find it hard to agree on a particular practice to serve their needs.\textsuperscript{21} This is not meant to suggest that in such societies agreements will never occur, nor is it meant to identify where difficulties are likely to be encountered. Rather, it is to open the door to create new solutions that may be more successful at managing potential conflicts, if not avoiding them outright.\textsuperscript{22}

B. Finding New Solutions

If one is to fathom the possibility of a world government taking shape, ideas will be needed not only to identify where the obstacles are likely to take place, but also to show how, notwithstanding very different histories and traditions, nations can still be brought together. Put another way, this discussion is meant to encourage new ways to envision coming together, while bracketing matters that may be too difficult to find agreement upon initially.

This has largely been the case in the United States, political rhetoric to the contrary, when one considers that women have legally recognized reproductive rights and gays and lesbians are finding more states willing to grant legal recognition to their relationships, despite very serious religious and moral

\textsuperscript{19} E.g., The Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, H.R. 4173, implementing financial regulatory reform in response to the late-2000s recession. See RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 22 (1978) (distinguishing policies from principles).


\textsuperscript{21} Philosophers have such difficulty justifying a universal ethical system. The problem is finding a framework that is sufficiently neutral that it will not be readily objected to as being itself value laden, as well as contrary to some important existing value(s) or belief(s) of the society. Nor is this problem confined to philosophical ethics. Since law often finds its legitimacy in moral concerns, figuring out which moral concerns to follow even in a pluralistic democratic society can be quite political.

\textsuperscript{22} John Rawls asks the question: "(H)ow is it possible that there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical, and moral doctrines?" JOHN RAWLS, POLITICAL LIBERALISM 133 (1993). His answer is that:

our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may be reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy.

\textit{Id.} at 137. In other words, some questions people debate over may never be finally resolved because the values under which the debate occurs are not fully objectifiable. Still, people can all recognize this limitation and agree to standards and procedure that allow democratic solutions, which leave untouched the ultimate, issues in question. This is the mark of what Rawls calls "public reason."
disagreements. Nevertheless, these issues are primarily resolved by appealing to Supreme Court interpretations of constitutional values involving liberty, equal protection, and privacy, which provide an important background to the country’s legitimacy. Congress may also resolve such issues by passing legislation to better serve the common good. In both cases, a balance is usually struck. For example, consider a gay person’s civil right to marry and a religious group’s right, when acting under their religion, not to recognize or participate in the marriage. Even in non-pluralistic, more homogenous societies like those in much of Western Europe, the values and needs of new immigrant groups would be more likely


25. In Romer v. Evans, 517 U.S. 620 (1996), the U.S. Supreme Court struck down an amendment to the state of Colorado constitution that would have prohibited the state and its municipalities from adopting antidiscrimination laws protecting gays, lesbians, and bisexuals from discrimination in employment, housing, public accommodations, credit guarantees, etc. The Court held that this amendment would not even satisfy the federal Fourteenth Amendment equal protection clause minimum rationality test for judging laws where heightened scrutiny was not required, because it was not grounded in a legitimate state interest but rather was based on animus. Justice Kennedy, writing for the majority, stated “to the contrary, the amendment imposes a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint.” Id. at 631. (emphasis added). In rejecting the arguments offered in support of the amendment, Justice Kennedy further wrote:

[A]mendment 2 is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence.

Id. at 633 n.6


Pursuant to marriage equality, the voters resided a marriage law in a statewide referendum. Emily Doscok, Same-Sex Marriage: Developments in the Law, NOLO LAW FOR ALL (Nov. 12, 2011, 11:10AM), http://www.nolo.com/legal-encyclopedia/same-sex-marriage-developments-law-29828.html. Illinois, Hawaii, Delaware, Rhode Island, and New Jersey also recognized civil unions by legislation. Many other state legislatures have granted different levels of spousal rights to same-sex couples.

accommodated in democratic societies than in authoritarian societies, where the need for accommodation or change might not be recognized because little attention is paid to those democratic values of free speech, free press, and equality that are likely to give an airing to the problems people face.29

Internationally, the difficulty in finding a set of intermediate common democratic values for bringing nations together may at first appear more remote, as there exists a far larger number of customs, traditions, and religious and societal views among nations. Indeed, only recently, has attention been paid to resolving conflicts among values by appealing to democratic norms.30 Still, even these differences do not seem insurmountable when one considers that the Articles of Confederation were established to meet a similar set of concerns by the states prior to the adoption of the Constitution of the United States.

For our purposes, in determining where international governance may be headed, it would be helpful to make a comparison with the state of governance that existed after the Articles of Confederation were adopted. The Articles of Confederation and the problems faced by the American government during this period gave rise to the Constitution of 1787. In that society there coexisted not only norms that affirmed state sovereignty, but other, perhaps less obvious norms that reflected the peoples' concerns with the environment, economy, war, and peace. Because the issues often affected interests of more than one state, it was commonly recognized that a resolution would require coordination among the states. Still, at the time of the founding of the United States, these other values gave way to those that supported state sovereignty, and the creation of a loosely confederated national order, no doubt out of fear that too powerful a central government would not only be too detached from the people but too likely to become authoritarian. As a result, the order agreed to in the Articles illustrates both the successes and difficulties that arise when shared goals, originally thought to support some limited collective national action, fail to create a workable government. The practical


30. Recall that it wasn't until 1934, after the Paris Peace Conference that brought an end to World War I, that the League of Nations was established to bring member nations of the world together to solve common problems, especially problems of aggression or other hostile actions that might require sanctions or other appropriate responses to avoid the outbreak of another world war. However, actions of the League required unanimity of the members, except for matters of procedure and admission of new members in cases of dispute. In the case of disputes, the disputants would not count for unanimity. See Covenant of the League of Nations, June 28, 1919, 225 Consol. T.S. 188.

31. In submitting the Articles of Confederation to the states for approval, the Second Continental Congress wrote:

   Permit us, then, earnestly to recommend these articles to the immediate and dispassionate attention of the legislatures of the respective states. Let them be candidly reviewed under a sense of the difficulty of combining in one general system the various sentiments and interests of a continent divided into so many sovereign and independent communities, under a conviction of the absolute necessity of uniting all our councils and all our strength, to maintain and defend our common liberties.

realities of putting collective action into practice required that more power be assigned to the federal government than the states at the time would tolerate.

C. Successes and Differences

Although the government created by the Articles might have been thought of as legitimate because it appeared to satisfy concerns felt by many, it soon became apparent that the emphasis given those concerns led to the creation of a governmental structure ill-equipped to meet future challenges. If the same holds true at the international level, then it is likely that governance may undergo a significant change toward a more traditional centralized form. It is important to take a close look at the Charter provisions that gave rise to the United Nations and compare them with the Articles of Confederation. This might foreshadow the direction of international governance. Were the reasons that originally supported creation of the United Nations strong enough to ensure it would have the capacity to handle all the tasks that would likely be set before it?

As it is currently structured today, the United Nations seems better equipped to meet the challenges of international governance than the United States was in meeting national challenges. The difference in time periods does not affect this comparison, despite the very different understandings of society, technology, and social interactions. The comparison depends more on how well the two documents prepared the institutions they gave rise to adapt to a changing world. Obviously, the Articles did not survive while the U.S. Constitution, ratified only ten years later, has continued to endure. The UN Charter endured through the end of the cold war and continues to function, albeit not without some criticisms, in a world confronted by very different issues than might have been imagined even a quarter of a century earlier when it was created.

This suggests caution in pursuing any serious change in international governance, so as not to undo what may have already been accomplished. That is not to suggest either that change is not needed or that change has not already taken place. Rather, it is to distinguish between those structures that work well from those that don't through an exercise of hindsight that may not have been so readily available to the authors of the Articles.

Does the UN charter need new structural changes, or might it suffice for the nations of the world to simply afford greater deference to its operations and decisions, especially in matters over which disagreement is likely? Even if most of what is needed is just greater deference, it will no doubt require some structural changes to its Charter (e.g., elimination of the five-permanent-member veto power), and a different international view of its role if it is not to suffer a fate similar to that of the national government under the Articles.

D. Changes that Might Be Needed for World Governance

In many ways, the United States Articles of Confederation both embodied and failed to bring in values similar to those the UN Charter incorporated and sometimes fails to incorporate. Those values include respect for national sovereignties, human rights, open markets and free trade, protecting the environment, and sharing of information. However, saying that these two documents are in this respect similar does little to account for why the latter has retained a wider respect among the peoples of the world, while the former did not seem to achieve any with the American public.

More must be shown to account for why the international structure under the United Nations has continued to endure, if only weakly, while the American government under the Articles did not. One difference is the operation of the UN. Like many international bodies, the UN has maintained an ongoing space for:

38. E.g., The World Trade Organization (WTO) provides, "deals with regulation of trade between participating countries; it provides a framework for negotiating and formalizing trade agreements, and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements which are signed by representatives of member governments and ratified by their parliaments." World Trade Organization (WTO)-A Short Introduction, BUKISA (Feb. 9, 2011), www.bukisa.com/articles/451751_world_trade_organization_wto_a_short_introduction. The World Health Organization (WHO) publishes a world health report that "combines an expert assessment of global health, including statistics relating to all countries, with a focus on a specific subject. The main purpose of the report is to provide countries, donor agencies, international organizations and others with the information they need to help them make policy and funding decisions." World Health Organization, The World Health Report (Nov. 12, 2011 11:00AM), http://www.who.int/whr/en/.

The Law of the Seas Convention includes a complex set of provisions for resolving various disputes under the Convention. The dispute settlement provisions of the Law of the Seas Convention are found in Part XV (Articles 279-99) and Annex VI which contains the Statute for the International Tribunal for the Law of the Sea (ITLOS), as well as in Annex V on conciliation, Annex VII on arbitration, and
discussion, investigation, and debate on all matters of global significance including, in particular, changes in the fiscal and monetary policies of strongly industrialized nations and their effects on third world countries.

This willingness to afford the nations of the world a forum to debate issues of international importance is one way in which the United Nations can be distinguished from the Congress under the Articles. That is not to say that at both the time the Articles were written and today the nation was not concerned with the economy, decent environment, social and political stability, and respect for basic rights, even if those rights have themselves undergone new understandings. Rather, at the time the Articles were ratified, a Congress was created that would be unable to act on its own, and the most important questions were left to the states to resolve.39

Of course, there were shared values among the states comprising the United States at the time the Articles were adopted. The states did share the aspiration to meet certain basic needs they could not meet on their own. There was also a concern, although with less common agreement, over what authority should be afforded different religious and social views in any national government.40 Not unsurprisingly, similar concerns appear today in the international arena. However, by the time of the founding of the United States, the nation had come to recognize a set of so-called civic republican virtues to keep such disagreements in check.41 These virtues operate to guide civil society in its creation of political institutions capable of handling conflicts among different people through the imposition of laws that protect both state sovereignty and citizen well-being without making metaphysical claims about religious or moral truth.42 Although these virtues claimed no foundational basis in ultimate truth, even in the limited


39. It may be remembered that the Congress under the Articles could not enforcedly command state attendance to ratify the Treaty of Paris that ended the Revolutionary war.

40. See THE FEDERALIST NO. 51 (James Madison); see also FOREST MCDONALD, NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION xi-xii (1985) (referencing Madison's view against levying taxes to support religion which did occur in some states like Virginia to support the Protestant Episcopal Church).

41. See generally Fergus O’Ferrall, Civic Republican Citizenship and Voluntary Action, 2 THE REPUBLIC 126, 128 (2001):

One of the most formative developments in historical research since the 1960s has been the rediscovery of the importance of the political ideas associated with Niccolò Machiavelli (1469-1527) and the Italian city-republics of the sixteenth century. The seminal work of J.G.A. Pocock and Quentin Skinner has provided the requisite historical foundation for the revival of civic republicanism in the 1990s. The last thirty years have seen great advances in Machiavellian scholarship and that concerned with civic humanism in general. In 1970, Bernard Crick had perceptively observed that Machiavelli's 'main substantive preoccupation, indeed his good obsession, was with the conditions for republican government'. The tradition of civic republicanism, recovered by Skinner, Pocock and others, provides, after Aristotle and Cicero, a further basis for developing a normative theory of voluntary action as active citizenship.

Id.

pluralistic American society of the eighteenth century they were able to define a place for the rule of law that encouraged greater social cooperation between people with very different religious or moral traditions. Whether the international community today is ready to evolve in a similar direction remains uncertain. Still, it cannot be doubted that there has been some recent movement in that direction.

E. Changes in the International Environment

In examining the evolution of society and government to predict similar developments internationally, I note how little remains fixed, not even the background values that the society began with. The values at the time of the Treaty of Westphalia recognized nation states as having the right to determine the religion of their own people without conforming to what was previously set out for whole empires. This was the beginning of what would come to be freedom of religion. Obviously, in the case of these nation states, the freedom of religion was freedom to follow the prince’s religion, not freedom of each subject to follow her own religion. Eventually, this would devolve to more of a right in the people individually. As exhibited at the international level, specific religious values that govern the operation of the international order play no role. For example, the Universal Declaration of Human Rights seeks to affirm a common respect for different religious traditions and beliefs. By so doing, it affords global recognition

43. T.S. Bogard, The Importance of Civility 167 (2008). Here it is worth mentioning that your author here follows Forest McDonald, who after finding that many scholars have departed from the earlier work of Charles A. Beard, Economic Analysis of the Constitution, also departs from more contemporary leanings in favor of an ideological approach to the American founding. McDonald writes:

I admire much of the work of the ideological school but find it ultimately unsatisfying. It fails to distinguish among the several kinds of republicanism that were espoused by various Americans, which by and large reflected regionally different social and economic norms. Those ideological historians who have concentrated on the tradition of civic humanism have all but left the influential Scots thinkers out of account, and in their eagerness to downplay the influence of John Locke—once greatly overrated—they have neglected the importance of theories of natural law and natural rights. They have largely disregarded the law and legal institutions. In the whole corpus of ideological literature there is scarcely a mention of what used to be called social, political, and economic “reality,” or of such practical men as George Washington and Robert Morris, without whom, arguably there might have been no founding. Finally, though the ideological historians have delineated the tensions between republican virtue and luxury/vice, they have inadequately addressed the counterpart tensions between communitarian consensus and possessive individualism and those between the concepts of liberty to participate in the governing process and liberty from unlimited government.

McDonald, supra note 40, at viii.

44. As will be explained more fully in the text, the U.N. Charter sets out a set of institutions that though limited in their scope of authority and power of enforcement, do emulate legislative, executive, and judicial forms of what previously might have been seen as mixed government. In this the Charter is further along than the Articles of Confederation were in their day in only creating a single national congress.


46. See Id. (“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”).
of what the American founders recognized as necessary to hold the United States together, namely, the need to advance religious liberty and uphold nonestablishment of religion by the central government. But even if this international respect is plain, it remains to be seen whether it will trickle down to all the nations of the world.

The United States adopted the Bill of Rights following replacement of the Articles of Confederation by the Constitution of 1787, which implemented religious freedom for the people. That change, however, did not take effect in the states until long after the adoption of the Fourteenth Amendment in 1865—that is, not until the Supreme Court began to interpret the Fourteenth Amendment as incorporating most of its protections to apply also against the states. At the international level today, there is controversy regarding individual human rights, especially where particular cultural or religious traditions reign. This illustrates movement toward the general idea of certain basic human rights such as those specifically mentioned in the Declaration and elsewhere. This includes the right to life, freedom of thought and worship, right to travel and emigrate, freedom of association and to be secure from arbitrary arrest and torture, the right not to be discriminated based on race or sex, and protection of children.

Taken together, and when considered in connection with notions of political legitimacy, these facts provide a guide to what ought to be possible among nations. A narrower value system will be unlikely to gain enough acceptability among nations. If this is a triumph for the greater willingness of democratic over nondemocratic governments to uphold pluralistic values, it must be accepted as a triumph in which even democratic notions of what are the background values will occasionally need to be reassessed to remain in accord with the changing needs of the people. What emerges from this discussion seems similar to what most likely

47. At the time of the American founding, the New England colonies, including Massachusetts, New Hampshire, Rhode Island and Connecticut, were largely Puritan; the middle colonies, New York, New Jersey, Delaware, and Pennsylvania, were a mixture of Quaker, Catholics, Lutherans, and Jews; the Southern colonies, Maryland, Virginia, North Carolina, South Carolina and Georgia, were primarily Anglicans and Baptists with some Roman Catholics and other Protestants in Maryland.

48. See generally International Covenant on Civil and Political Rights General Comment No. 24, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 11, 1994).

49. The Fourteenth Amendment to the U.S. Constitution, one of the so-called Reconstruction Amendments adopted after the American Civil War, principally provided:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

50. For a brief history of the incorporation clause, the way the U.S. Supreme Court came to see the Fourteenth Amendment as incorporating various aspects of the Bill of Rights against the states, see generally AKHIL REED AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION (1998).

51. E.g., LOUIS HENKIN ET AL., HUMAN RIGHTS 359 (Robert C. Clark et al. eds., 1999).

motivated early American society under the Articles of Confederation to eventually create a more centralized system of governance that would be more effective, yet one that is not too far removed from many of the values the Articles recognized. In short, the reality of American life at the time forced a change in emphasis on background values, such as those that supported state sovereignty, to allow for what eventually would be adopted as the current American government.

F. Efficiency and Effectiveness

While it is true that efficiency and effectiveness by themselves do not suffice to create, let alone maintain, a society, it is not true that they provide no support at all. They no doubt serve to justify new institutions and practices, provided no other legitimacy issues are at stake. This is where the strength of the justification for a new institution or practice becomes important. Today the world is far too integrated, economically and by shared environmental concerns, for efficiency and cost effectiveness to be out of the court. As with the replacement of the Articles of Confederation by the Constitution of 1787, the world seems to be coming to an understanding that international institutions cannot leave their member nations unchecked if global issues of poverty, famine, environmental pollution, national


It’s a warning that 2004 Nobel Laureate and W. P. Carey School professor of economics Edward Prescott echoed when he opened the forum’s discussion by declaring that “economic integration is the path to riches and peace.” Prescott replaced the word “trade” with economic integration -- reflecting a much broader, more complex relationship.

Developing countries (Japan, South Korea, Taiwan, Hong Kong, and Singapore) that have economically integrated with industrial leaders like the U.S. have caught up with those leaders in terms of GDP. Those five Asian countries averaged 31 percent of the U.S. GDP per capita level in 1961, but had advanced to 67 percent by 2001. Yet the opposite is also true. In Latin America, for example, countries are not “catching up” economically because they're not economically integrated with one another, Prescott explained.

Economic integration drives economic growth in developing countries for four reasons, Prescott said. First, through economic integration the less-developed country (China, for example), gets access to foreign know-how -- technological capital -- which it can then adopt to become more productive. "Multinational companies use their technological know-how in their foreign subsidiaries, so reciprocal multinational relationships are key -- they lead to a vested interest in both countries to remaining open," Prescott said.

Second, if development is constrained within a country's own economy (the country is not economically integrated), then productivity increases growing out of better technology lead to decreased employment (as more efficient production requires fewer workers). But, if development can spill outside the country's own economy, then productivity increases lead to increased output and increased employment.

Third, economic integration allows a more rapid diffusion of knowledge -- which is key to productivity growth. "A lot of technological capital has to be absorbed person-to-person," Prescott said, "and that happens more quickly if countries are economically integrated."

Finally, economic integration invites competition, which Prescott calls "a powerful motivator for economic development." When the first six European Union countries integrated, he said, the mere threat of competition in France from German firms led French firms to become more productive.

Id.
aggression, and economic development, to name a few, are to be attended to. For
governance to operate well, the ability to adjudicate disputes among the states is
essential, as is the enforcement of determinations.\textsuperscript{54} There is, of course, the ongoing
concern that any change toward centralization could be seen as a move away from
traditions and values central to many cultures. This, however, is unlikely, provided
those who are most influential in making the change are strongly committed to
background values as they seek to change existing institutions to accommodate
those who do not share the same culture or traditions. Centralized democratic
government, therefore, seems possible at the international level, as it did to early
Americans who worried about its possible impacts on their culture and traditions. It
requires that thoughtful and orderly reflection be paid to background values that do
not concentrate too much power, and also to those that make an effective, working
government.

A close parallel between the current state of international governance and the
Articles of Confederation can be drawn. Clearly, they are nonanalogous. Current
international governance involves the concurrence of numerous nation states, often
with very different cultures and traditions.\textsuperscript{55} The Articles of Confederation operated
in a society whose citizens were primarily white, landed males of largely European
ancestry.\textsuperscript{56} Consequently, they likely shared many values that would not be
identical to those participating in the current international community whose
culture, experience, and background may be quite different. Regardless, over the
centuries since the Treaty of Westphalia was adopted in 1648 and modern
international law began, the international community has become more aligned to\textsuperscript{57}
UN covenants on civil, political,\textsuperscript{58} economic social, and cultural rights,\textsuperscript{59}
conventions for the protection of women\textsuperscript{60} and children,\textsuperscript{61} and against torture as
well as the UN Charter itself.\textsuperscript{62} These documents together with growing widespread

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54. \textit{See generally} \textit{The Federalist} (Alexander Hamilton, et al.) (articulating to the legislatures
of the states the inadequacies of the current system of governance under the Articles of Confederation
and encouraging them to adopt the Constitution of 1787).

("Together, the three components of international environmental governance [intergovernmental organizations,
international environment governance through international law, financing mechanisms] are supposed
to set priorities and facilitate steps to protect the environment and further sustainable development.
Most of these steps must be implemented by individual nations themselves. From legislation to
regulation to enforcement, it is the actions taken by nations at the domestic level that ultimately count
most for success at the global level. But international organizations like UNDP, UNEP, and the World
Bank also play major roles in implementation. Bilateral aid agencies and civil society groups also
participate in important ways, as does the private sector.")

56. The Second Continental Congress, whose delegates came from the then thirteen British
colonies, met in Philadelphia, where they drafted the Articles of Confederation.

57. \textit{See generally} \textit{Universal Declaration of Human Rights}, supra note 33.


62. \textit{See} \textit{Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of
openness to markets and mass communication have perhaps aligned the people of the world enough to begin a debate not all that dissimilar from the one that led first to the Articles and later to the Constitution of 1787. And, if such a debate was possible then, it should be possible among nations at the international level, provided conditions are similar.

No doubt this would involve nations seeking a more efficient and cost effective means to operate through a more centralized system of world governance. But if such a government is to gain widespread legitimacy, the nations would also have to agree to protect certain basic well-established rights, although this does not seem likely to be immediately forthcoming. It is, however, worth considering whether some kind of centralized world government might be likely in the not-too-distant future, given the current structure of international governance and comparisons with the structure of government created by the Articles of Confederation.

II. THE ARTICLES OF CONFEDERATION

Following the end of hostilities in the Revolutionary War, the Treaty of Paris (1783) that formally ended the war languished in the United States Congress because it had no authority to require attendance of the several states to discuss and ratify the treaty. Why did the Articles of Confederation, which the states had unanimously adopted and which created the Congress of the United States, fail to provide itself with the power to require attendance of the states on a matter of treaty ratification? The issue is more systemic, as the failure to afford the Congress power to require attendance of the states was just one of many powers not provided that would have better allowed it to carry out its functions. To understand why these powers were not given, it helps to understand how the structure of the national government under the Articles was intended to operate.

The structure set out by the Articles for the national government did not come about because of limited resources or failed understandings of how other nations operated. The founders, who included some fairly well educated men, were well versed in various theories of government, politics, and economy. Indeed, they had just obtained the nation's independence from an empire that stretched to the four corners of the globe. Why they initially sought to establish the loose national structure set out in the Articles of Confederation and not some tighter, more

63. See generally U.N. Charter.
64. See, e.g., Li Congjun, Toward A New World Media Order, WALL STREET J., June 1, 2002.
65. Congress have come to no determination yet respecting the Peace Establishment nor am I able to say when they will. I have lately had a conference with a Committee on this subject, and have reiterated my former opinions, but it appears to me that there is not a sufficient representation to discuss Great National points.
centralized form, is representative of the values they held and what they most feared. It was these concerns, more than the values themselves, that stopped the founders from creating a stronger, more centralized national government.

To understand the framers' reasoning one begins by noting the structure of the national governance they created. Following that, one examines the goals or purposes of the structure. It is also important to distinguish the successes the new government was able to achieve from the failures it could not overcome. Finally, one inquires as to what interpretative political visions the framers had for the new government and why some of those visions may have come to be regarded as untenable.

The Articles of Confederation reads more like a multilateral treaty among nations than a constitution for a modern state. In large part this is due to the fact that the Articles afford great deference to the states even while creating a national Congress. This is due, in part, to the fact that the Congress created under the Articles had only minimal executive powers. Perhaps there is an analogy at the international level to the treaties that created organizations such as the UN, World Bank, and WTO to solve a set of common international problems that individual nations could not handle on their own. In these instances, it seems that the intent of the framers was to keep these organizations purposively weak as compared with national governments, no doubt to encourage potentially reluctant nations to become members, but also to safeguard the prerogatives of the powerful states in foreign policy matters. If this is correct, then the multilateral treaties creating these organizations, like the one Congress created under the Articles, should be viewed as no more than a cautious minimal international effort to meet needs that otherwise would be unmet. If that is true, then it should be expected that the Articles, like multilateral treaties, did very little in terms of creating a greater sense of common identity than one might expect to exist among those who share a common purpose.

A more robust common identity might still evolve, in which individual states or countries share a concern for one another's well-being. That, however, is less likely where the structure of their interaction is held to serve mostly their momentary interests. Moreover, development of a broader common identity would require more than simply working toward a common goal, or being geographically in the same region, especially where there may exist longstanding disputes in matters of culture and religion. It would also likely require that the institutions created prove successful at forging solidarity around more general themes among the member states.

In the case of the Articles, it is fair to say that the caution exercised in their drafting, as explained below, may have contributed to their failure at producing general themes around which the states could rally and the national Congress could operate. Perhaps to a lesser extent, the same may be said of the international level today, although there the successes, as identified below, may explain why these institutions survive. An evolutionary process in which institutions begin to take on
a life of their own begins with their ability to succeed in resolving the tasks
assigned to them.69

In the case of the Articles, the limitations placed on the Congress created
obstacles to its ability to govern. In contrast, the Constitution of 1787 was far more
generous in providing a freer hand to the legislative, executive, and judicial
branches in the way they would operate.64 Put another way, the Constitution’s
success in creating institutions capable of running a national government, without
requiring state approval, explains perhaps better than anything else why these
institutions were able to find a place in the social structure of the society. It also
may explain how modern constitutional law has evolved from simply referencing
what the Constitution originally provided to allowing the institutions themselves,
especially the Supreme Court, to identify the place for their operation69 as well as
the various purposes for their existence.70

Perhaps a similar pattern is emerging at the international level, but this is not
yet clear.71 This is not to say that there are no limits to what this evolution of
governmental institutions might be able to achieve, but the limits are no longer
confined to just the terms of their creation. That is because institutions such as the
United Nations and the International Court of Justice began to take on a life of

67. See, e.g., John Robb, The Evolution of Civilizations, GLOBAL GUERRILLAS (Jan. 26, 2010,
2:45PM), http://globalguerrillas.typepad.com/globalguerrillas/2010/01/book-review-the-evolution-of-
civilizations.html (reviewing Georgetown School of Foreign Service Professor Carroll Quigley’s The
Evolution of Civilizations (1961)).

Another of Quigley’s insights is a description of how cultural elements advance through the
use of social organizations that improve their function. Organizations that radically improve
the level of cultural development in their target area are termed instruments. They do what
they are supposed/designed to do and little else. Over time, since these organizations are run
by human beings, they become institutions. They take on a life of their own, protect
themselves and serve their own interests more than they advance the cultural need they were
designed to advance/solve. They become ineffective and ultimately damage the entire
culture if they aren’t radically reformed or replaced by a new instrument.

68. This is not to say that the Constitution failed to provide any checks on the way these
institutions operated. To the contrary, the Constitution insured there would be sufficient overlapping
responsibilities, as with the expenditure of money and approval of officers and judges, to name just a
few, to insure that no branch became too powerful. It also insured a realm of responsibility for state
governmental actions separate from the federal government. What it did not do was confine the
national Congress the way the Articles had to first seek the approval of all the states before any action
could be undertaken.

69. See, e.g., Marbury v. Madison, 5 U.S. 137, 177 (1803) ("It is emphatically the province and
duty of the judicial department to say what the law is. Those who apply the rule to particular cases,
must of necessity expound and interpret that rule.").

70. See id. at 178. ("If two laws conflict with each other, the courts must decide on the operation
of each. So if a law be in opposition to the constitution; if both the law and the constitution apply to a
particular case, so that the court must either decide that case conformably to the law, disregarding the
constitution; or conformably to the constitution, disregarding the law; the court must determine which
of these conflicting rules governs the case. This is of the very essence of judicial duty.").

71. I say the institutions operate together. This was part of the founding genius of the
Constitution of 1787. The framers of the Constitution as those of the Articles realized that the only
protection from overarching government was to put limits on its power. The difference now would be
that the limits would be by virtue of separation of powers and separate responsibilities for state and
federal authorities (federalism) rather than just approval by the states.
their own as independent institutional actors, just as the Supreme Court of the United States, in its role as interpreter of the Constitution, became generally accepted even by states who at first must have been reluctant to find that this power no longer resided with them. As institutions take on a more identifiable place in society, it is fair to say that society in turn comes to see them as part of itself. This is important because it signals a shift in the base of support from the states to the people.

It may help to specify the particular meanings being assigned here to the word "identity." One meaning references the way a group of persons comes to see themselves as a people; another references how others outside the group recognize it. The two perspectives need not necessarily coincide. In this sense, identity can be controversial. It can also change as people begin to develop a common identity. Even when an identity like nationality or religion has been long standing, it may change in importance depending on what else might be occurring. For example, the creation of the European Union probably altered how strongly many in Europe identified with the nation of their birth or upbringing. It has been commented that after the War of 1812 people living in the United States began to identify more as Americans than by the state in which they resided. The fact that today U.S. residents identify themselves first as Americans rather than by the state or region in which they grew up, exemplifies the vitality of this phenomenon. Although identity may play a central role in how one sees oneself, it is by no means unproblematic. One might identify as a gay Catholic, for example, which no doubt embodies an internal struggle with the problem of church opposition to homosexuality. But even when problematic, identity remains central.

72. Although the Supreme Court reserves to itself to say what is the law of the land, see Marbury v. Madison, 5 U.S. 137, 177 (1803), it should not be forgotten that Congress determines the number of members of the Court, see U.S. CONST., art. III, § 1, and their compensation, and that the President appoints with the advice and consent of the Senate members of the federal judiciary, see U.S. CONST. art. II, § 2.


74. Identity, THE FREE DICTIONARY, http://www.thefreedictionary.com/identity (last visited Oct. 4, 2011) ("The set of behavioral or personal characteristics by which an individual is recognizable as a member of a group").

75. See Kay Deaux, Social Identity, in ENCYCLOPEDIA OF WOMEN AND GENDER, VOLUMES ONE AND TWO 1, 4 (2001), available at www.utexas.edu/courses/stross/ant393b_files/ARTICLES/identity.pdf (last visited Oct. 4, 2011) ("Often the particular configurations and the importance of one versus another identity may change over time as well, reminding us that identity is a dynamic rather than static process.").

76. See id. at 3.


78. See generally The Second War for Independence, SOCYBERTY (Sept. 17, 2009), http://socyberty.com/history/the-second-war-for-independence/.

79. See Deaux, supra note 75, at 4.
to the way both institutions and individuals come to see themselves as members of society.

Identity will often relate to normative as well descriptive features, and will encompass much more than just race, nationality, or religion. It may even abandon some of these attributes if they become too emotionally problematic for the individual or institution to reconcile. In the 21st Century, individual identity includes gender, sexual orientation, culture, family status, and often profession, as well as subtler group and subgroup attributes. Identity may also relate to self-fulfillment in that how one evaluates oneself is often related to how one sees oneself: as a parent, spouse, citizen, and co-worker. Or on the institutional level: as a legislator, a member of an independent judiciary, or an executive charged with seeing to the laws being faithfully executed. For the Articles or other multinational treaties to create a platform for a national institutional identity to arise required more than just the states or nations finding a common purpose; it also required that they find affirmation in the satisfaction of those purposes through their reliance on shared and effective institutional structures.

In the Articles of Confederation, the states agreed to a specific order that in large part affirmed their individual identities, both to themselves and to each other as independent national actors. It did not provide a basis for states to identify with the central government; rather, it required the Congress to identify with the states by seeking their approval for its actions. Much of what was agreed to by the states focused on preserving their individual sovereignty. For example, in the Preamble, the Delegates of the United States of America clearly stated their agreement "to certain Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia . . ." Several things in this statement stand out immediately. The first is the use of the word "confederation." "A confederation is an association of sovereign member states that, by treaty, have delegated certain of their competences (or powers) to common institutions, in order to coordinate their policies in a number of areas, without constituting a new state on top of the member states." This definition seems to have been in the minds of the delegates when they used such phrases as "agree to certain Articles of Confederation and perpetual Union between the States." This implies that an

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80. See David Levinson, Ethnic Groups Worldwide: A Ready Reference Handbook 3 (1998) ("an ethnic group (or ethnicity) is a group of people whose members identify with each other, through a common heritage, often consisting of a common language, a common culture (often including a shared religion) and/or an ideology that stresses common ancestry or endogamy.");

81. See id.

82. For example, if one identifies with being in a positive growth enriching relationship, self-fulfillment is certainly enhanced. This is one argument for same-sex marriage. See Vincent J. Samar, Privacy and Same-Sex Marriage: The Case for Treating Same-Sex Marriage as a Human Right, 68 Mont. L. Rev. 335, 334–47 (2007).

83. See Articles of Confederation of 1781, pmbl. para. 2.

important value in the creation of the national Congress was that the states were creating it for the purpose of exerting governance over a very limited set of functions. In other words, the national Congress had no identity of its own; all powers and prerogatives outside the very limited purposes for which the national government would operate remained with the states.

Article II made very clear that the purposes and method of functioning of the national government would be limited. There it was provided that “[e]ach state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.”85 Moreover, to ensure that the Articles would be understood as a delegation of powers by the several states, Article III states, “The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare...”86 Here phrases like “league of friendship,” “severally enter,” and “common defense” ensure that the authority of “the Congress assembled” arises from the states individually, and not collectively as if they were already a single society.

Very few things were agreed to that placed any real limits on the sovereignty of the states. One limitation found in Article VI provides that, “Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other state.”87 Article VI also provides that the states agree to return any person fleeing a felony charge in any state, upon demand of the Governor or executive power of that state.88 Other limitations upon state sovereignty include a provision in Article VI that “No State, without the consent of the united states in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince, or State...”89 One cannot help but note that the phrase “united states” in this article is not capitalized, but “State” is capitalized, both when referring to the states making up the confederation and to foreign nations.90 Surely this was not accidental, but reflected an assertion not just of state sovereignty but of the drafter’s belief that the states making up the confederation would operate as quasi-independent governments after the Articles went into effect. The article also prohibits the states from keeping vessels of war during times of peace, except as “deemed necessary by the united States in Congress assembled.”91 And “No State shall engage in any war without the consent of the united States in congress assembled, unless such State be actually invaded by enemies.”92 This was likely to secure the individual states from falling into

85. ARTICLES OF CONFEDERATION of 1781, art. II.
86. Id. at art. III.
87. Id. at art. IV, para. 3.
88. Id. at art. IV, para. 2.
89. Id. at art. VI, para. 1.
90. See, e.g., Id.
91. Id. at art. VI, para. 4.
92. Id. at art. VI, para. 5.
situations they could not handle where they might be forced to seek the assistance of their sister states. The states also pledged in Article XII to stand behind all debts contracted by congress prior to entry into this confederation and, in Article XIII to abide by “the determination of the united States in congress assembled on all questions which by this confederation are submitted to them.” This too had a self-interested direction, since no state could have expected its credit to be given foreign recognition if the confederation that brought the states into existence had defaulted on its debts.

These limitations on state sovereignty might have seemed considerable. But the Articles failed to provide for an executive to effectively ensure that the states complied with the terms of the agreement. It is important to distinguish the powers allocated by the Articles, especially those limiting state sovereignties, from the ability of the Congress under the Articles to enforce its decisions. The Articles were not particularly generous on either account. Indeed, to the extent the Articles created any executive power at all, it was allocated to the “united States in congress assembled.” However, given that the Articles also very much limited the powers of the Congress, the failure to provide an effective executive meant that, even on matters in which some states would be seriously concerned, the Congress was too weak—unless all the states agreed—to even be able to ensure attendance at a meeting of the states, as with ratification of the Treaty of Paris. No doubt these defects in the power of Congress to be able to enforce some sanction against the states for nonattendance reflects the Articles’ framers’ fear of creating an overarching executive, reminiscent of the way King George of England had previously tried to regulate the affairs of the colonies. Only in very few instances, where the interests of either all the states coincided or where a dispute arose between states that they could not settle peacefully on their own, was the Congress given power to resolve the matter.

These grants of limited power to the Congress is most clearly shown in Article IX, which provides that:

The united States in congress assembled, shall have the sole and exclusive right and power of determining on peace and war. . . . shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States . . . [including] [a]ll controversies concerning the private right of soil claimed under different grants of two or more States. The United States in Congress assembled [here all capitalized] shall also have the sole and exclusive

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93. Id. at art. XII.
94. Id. at art. XIII.
97. ARTICLES OF CONFEDERATION art. IX.
right and power of regulating the alloy and value of coin . . . fixing the standards of weights and measures throughout the United States. . . [and] to appoint ‘A Committee of States’ . . . to ascertain the necessary sums of money to be raised for the service of the United States . . . to borrow money . . . to build and equip a navy . . . [But] never [is the congress] to engage in war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaty or alliances, nor coin money . . . nor borrow money on credit of the United states, nor agree upon the number of vessels of war . . . or the number of land or sea forces to be raised, nor appoint a commander in chief of the army and navy, unless nine States assent to the same . . . .

The first two allocations of federal power identify a specific place in the social structure of the new society where it was thought the congress would be able to operate, but it is a very limited place. The third allocation of power is a reservation to the states for final approval of many powers seemingly assigned to the congress, thus keeping the congress not only in a kind of check by the states but essentially beholden to the states as to the source of its power, presumably to avoid excessive assertions of its own authority. As a result of this combined allocation/reservation approach, the powers assigned to the congress were very weak.

This intent is further displayed by the Articles' failure to afford the congress the power to enforce its own decrees by, for example, allowing it to raise an army of the United States, or to create an executive branch of government to ensure that the laws of the United States would be faithfully executed. Additionally, being contingent upon nine states for approval, the effective use of even the powers granted to Congress to resolve national controversies would prove too tentative to be sustained in the years following the Articles' approval. Such excessive limitations on the power of Congress no doubt resulted from the framers' fear of the new government overstepping itself. But the limitations may also explain why the new government was often unable to achieve many of its purposes.

The Articles, however, were not completely unsuccessful. Under the Articles, Congress was able to settle certain state claims to western lands and pass the Northwest Ordinance. Perhaps this was because the states involved found little reason to object and thought the extension of territory might come to serve their own interests. The result of congressional action on these matters provided the United States its first territory north and west of the Ohio River, south of the Great

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98. Id.
99. See id. at art. VI.
100. See id. at art. IX (granting only limited powers to the Congress of the United States assembled without any provision for the creation of an executive to see to it that the laws be faithfully enforced).
Lakes, and east of the Mississippi.\textsuperscript{103} It may also have planted a seed for a future national identity in which the nation as a whole might come to be seen as greater than its parts. Perhaps even more importantly, the Articles afforded the new nation its first instruction in national self-governance.\textsuperscript{104} The fact that the states would be able to assemble under a set of rules and discuss matters of mutual concern, notwithstanding all the frustrations associated with the rules, should not be understated. In this, the Articles' greatest contribution was to make vivid its own weakness, thus paving the way for eventual adoption of the Constitution of 1787, which would become that of the United States of today.\textsuperscript{105} Perhaps an analogy can be drawn between the way the United States was governed under the Articles and the loose form of international governance operating in the world today and in the future.

III. THE INTERNATIONAL ORDER

The power of the United Nations and other international governmental organizations to enforce their decrees is not much greater than comparable powers of the Congress under the Articles of Confederation. One difference, however, is the number of different governmental bodies operating in the international realm. At the international level, several organizations operate in addition to the 192 individual nation state members of the UN, which would make it appear that international governance should be more difficult to manage than governance under the Articles, where the Congress operated in conjunction with only thirteen states. One could infer that it would have been easier to control state dissension. But, as indicated above, this was not true. At the international level the large number of seemingly subordinate governmental bodies creates an impression of the United Nations as being at the apex of the institutional pyramid, although this is probably confined only to matters of peace and security.\textsuperscript{106} On other matters, concerning international trade and the economy, other international organizations, such as the International Monetary Fund and the World Trade Organization hold sway.\textsuperscript{107} Indeed, today, a number of different governmental and nongovernmental organizations (NGOs) make up a kind of loose international order, somewhat analogous to the United States government under the Articles.

Principal among the governmental organizations engaged in crisis resolution between nation states are the United Nations and its many agencies; the UN is as

\begin{itemize}
\item \textsuperscript{103} Id.
\item \textsuperscript{104} Id.
\item \textsuperscript{105} Id.
\item \textsuperscript{106} See Gareth Evans, \textit{Why the UN Matters}, \textsc{Personal Website of Gareth Evans}, http://www.gevans.org/speeches/speech426.html (last visited on Nov. 12, 2011).
\end{itemize}
influential in international affairs as was its predecessor, the League of Nations.108 Other organizations that are important in international dispute resolution are the International Court of Justice (ICJ), as was its predecessor the Permanent Court of International Justice (PCIJ), along with the various international criminal courts that have been created to address specific issues. To handle other kinds of crises, there exists the World Health Organization (WHO), the World Bank, the World Trade Organization (WTO), and the International Monetary Fund (IMF). Although some of the problems these organizations may attend to109 will result from conflicts between nations or civil wars, the mission of some organizations may also extend to natural disasters, as in the case of the WHO110, and global economic issues as with the WTO111 and World Bank.112

Recent years have witnessed a rise in the number of regional organizations with significant authority such as the European Union (EU), the Organization of American States (OAS), the Organization of African Unity (OAU), the Organization of Eastern Caribbean States (OECS), and the Organization of Petroleum Exporting Countries (OPEC). These institutional bodies are worth taking note of because they operate somewhat like legislatures in promulgating rules alleged to be binding on their member states. However, because the power of these organizations to enforce their own rules varies, even when the member states have initially agreed to support their rule-making authority, the organization’s actual authority to carry out its directives will often depend on the acquiescence of member states. This is akin to the way the congress enforced decrees under the Articles. Even with these varied regional bodies, particularly important to international governance is the United Nations, where resolutions adopted by the

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109. For example, getting food, medical assistance, and safe havens for refugees.

110. WHO is the directing and coordinating authority for health within the United Nations system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends. About WHO, WORLD HEALTH ORGANIZATION, http://www.who.int/about/en (last visited Nov. 12, 2011).


Our mission is to help developing countries and their people reach the goals by working with our partners to alleviate poverty. We address global challenges in ways that advance an inclusive and sustainable globalization—that overcome poverty, enhance growth with care for the environment, and create individual opportunity and hope and development. The WTO also provides a legal and institutional framework for the implementation.

Id.
A PREFACE TO WORLD GOVERNMENT: A COMPARISON

General Assembly and, more significantly, by the Security Council often concern regional peace and security.¹¹³

There appears to be an evolution in the way nations perceive the UN: Many nations afford it a more expansive role at least with regard to matters of peace and security, than appears to have been the case with either its predecessor, the League of Nations,¹¹⁴ or by the states comprising the Congress under the Articles.¹¹⁵ One perceives this conflict between apparent power and actual power principally in the role UN has played in resolving recent conflicts among states,¹¹⁶ as well as its role in making international law.¹¹⁷

What we take today as positive public international law arises principally out of treaties between states and, to a lesser extent, Declarations and Resolutions of bodies such as the United Nations.¹¹⁸ The body of current International law also

¹¹³. For example, S.C. Res. 242, U.N. Doc. 5/RES/242 (Nov. 22, 1968) available at http://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_242, has been accepted in principle by the Israel government, but has never been fully implemented as there continues to be much concern over the status of Palestine refugees, as well as security inside the state of Israel, Jewish settlements on the West Bank, and whether Palestinians should be provided a state of their own as a homeland.

¹¹⁴. The change in world perception from the what it was toward the League of Nations to what it is today toward the United Nations is expressed in the following statement:

Professor David Kennedy suggests that the League was a unique moment when international affairs were "institutionalized", as opposed to the pre-First World War methods of law and politics. The principal Allies in the Second World War (the UK, the USSR, France, the US, and Republic of China) became permanent members of the UN Security Council. Decisions of the Security Council are binding on all members of the UN; however, unanimous decisions are not required, unlike in the League Council. Permanent members of the Security Council are also given a veto shield to protect their vital interests.

Like its predecessor, the UN does not have its own standing armed forces, but calls on its members to contribute to armed interventions, such as during the Korean War and the peacekeeping mission in the former Yugoslavia. The UN also has more member nations than the League.


¹¹⁶. A basis for the changed perceptions from the Articles of Confederation to the Constitution of 1787 arose out of the Shay's rebellion.

Shay's Rebellion was a revolt by farmers in debt in Massachusetts in 1786 and 1787. The revolt was part of a widespread discontent among farmers and small property owners. The rebellion was named for Daniel Shays. A Revolutionary War soldier and politician, he had sympathized with the debtors. Shay's Rebellion aroused fear nationally. It provided proof to some that the Article of Confederation did not provide for a strong enough federal government. It is one of the reasons why the Article was replaced by our current constitution.


¹¹⁹. See, e.g., Statute of the International Court of Justice art. 38(1)(a). In general, declarations and resolutions passed by the United Nations, except when the Security Council is exercising the compulsory powers granted it under Article VII of the United Nations Charter, are only recommendations to the member nations.
includes customary international law, which consists of various practices nations have adopted to regulate their relations with one another.\textsuperscript{119} It also includes principles of equity that international courts are bound to follow.\textsuperscript{120} These include certain peremptory norms, or jus cogens principles,\textsuperscript{121} which, though few in number, are generally thought to be binding on all nations.\textsuperscript{122} In addition, international law also affords regard to learned treatises on the subjects of international law.\textsuperscript{123} Interestingly, the United Nations has very little power to create new statutes, let alone the power to act on its own on the world stage, except for what is compulsorily mandated for the Security Council by the UN Charter.

In this sense, the United Nations and other major international organizations stand in much the same way as the American Congress under the Articles of Confederation. Many tasks are assigned to these organizations, but little power is actually given to effectively resolve the problem at hand. This is a result of the nations of the world assigning these international bodies only limited powers, similar to the way the states under the Articles assigned limited powers to the national congress.\textsuperscript{124} Even with this caveat in mind, what is occurring by way of international governance is a vast improvement compared to what existed even as recently as under the League of Nations. Nor do the similarities between current international governance and the governance of the United States under the Articles only surface in the limited powers assigned to the institutions. They also surface in the deference given by member nations to the decisions of these international bodies.\textsuperscript{125}

While it was desired under the Articles for the states to act cooperatively, doing so was not mandatory. Similarly, not every nation is a member of the United Nations, and nations can, and often do, decide not to adopt General Assembly resolutions, usually with little or no repercussions.\textsuperscript{126} As will be explained below, if one takes a close look at the United Nations Charter, though the language is

\begin{footnotesize}
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\item[119.] Id. at art. 38(1)(b).
\item[120.] See generally LORI F. DAMROSCH ET AL., supra note 38.
\item[121.] "Latin meaning “compelling law.” This “higher law” must be followed by all countries.” \textit{Jus Cogens Law & Legal Definition}, USLegal, http://definitions.uslegal.com/jus-cogens/ (last visited Nov. 12, 2011).
\item[122.] Statute of the International Court of Justice art. 38(1)(c).
\item[123.] Id. at art. 38 (1)(d).
\item[124.] See \textit{ARTICLES OF CONFEDERATION}.
\item[125.] Under Article 2(1) of the U.N. Charter, “All Members, in order to insure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” U.N. Charter art. 2. Under Article 25 “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.” Id. at art 25. Finally, under Article 36 of the Statute of the International Court of Justice, the Court’s jurisdiction “comprises all cases which the parties refer to it and all matters specifically provided for in the Charter of the United Nations or in treaties or conventions in force.” Statute of the International Court of Justice art. 36.
\item[126.] Following the unanimous adoption of United Nations Security Council Resolution 1441, adopted November 8, 2002, stating that Iraq was in material breach of the ceasefire terms under Resolution 687 and authorizing inspectors of the Atomic Energy Commission to search for possible weapons of mass destruction, France declared that it would veto any further resolution that would “automatically lead to war.” S.C. Res. 1441, ¶ 3, U.N. Doc. S/RES/1441 (Sep. 18, 2011).
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somewhat different from that of the Articles of Confederation, the parallels that explain these limitations are quite striking; although perhaps not as striking as that between the earlier Covenant of the League of Nations and the Articles.

An important difference in the language used in the Charter of the United Nations from that previously used in establishing the League of Nations appears in the Preamble. The Charter begins with the words: "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED . . . ." The earlier Covenant of the League of Nations began much like the Articles of Confederation in referencing "The High Contracting Parties." Although one should not take too much from differences in phrasings and emphasis, the language in the United Nations Charter, like the American Constitution of 1787, begins "We the People," or "Peoples" in the case of the United Nations. These phrasings suggest a more direct relationship to the people of the world and not just between the nation states that covenanted to bring the UN into existence. In this sense, both documents exhibit an aspiration to govern that derives its legitimacy directly from the people. Both documents attest to the difficulty of developing a common identity and serving a greater whole while simultaneously preserving the individual autonomy of their members. However, once one goes beyond the Preambles, the actual form of governance set by the Charter falls between the Articles of Confederation and the U.S. Constitution.

While the Charter does provide for an executive function in the Office of the Secretariat, it places those rights and responsibilities in Chapter 15, the chapter following the establishment of the International Court of Justice, eleven chapters removed from the establishment of the General Assembly, and ten chapters removed from the establishment of the Security Council. While some of the intervening chapters relating to economic and social concerns (including cultural, educational, health, and human rights), and trusteeships, including the Councils that would oversee these functions, might be thought to be more related to the quasi-legislative functions of the General Assembly, the organization of these chapters suggests that the pertinent Councils derive their power directly from the Charter, and not from an authorization by the General Assembly operating on behalf of the Peoples of the World. This is not to say that the General Assembly has not authorized additional agencies—it has. At least in terms of their creation, these Councils appear on the same footing with the General Assembly.

By itself, this should not be a problem, especially since the General Assembly appoints the members to these councils and the councils report their studies and recommendations to the General Assembly. However, it does remove at least some of the operations and functions of these councils from direct authorization by the General Assembly. It also suggests that a lot of research is done for, and

127. See generally U.N. Charter.
128. See U.N. Charter arts. 75–85.
recommendations are presented between, institutional bodies in which no one has the power to then effectuate change. The ideas recommended will no doubt stir change in the long run, but this sort of change tends to be more aspirational than concrete in the short run.

More critical is Article 13, which says, “The General Assembly shall initiate studies and make recommendations . . . .”130 Nowhere is the General Assembly given the power to create an international statute. The General Assembly does have broad power to discuss and make recommendations as to “any questions relating to matters of International peace and security”131 However, without some power to raise an army or effect the wealth of the various nations,132 the assembly is left open to becoming little more than a place for disgruntled nations to pitch their points of view before the eyes of the world.

In contrast to the General Assembly, the Security Council is charged with the specific responsibility of maintaining “international peace and security,”133 and has the power to negotiate between the parties, inquire into the facts giving rise to the dispute, mediate between the parties, offer conciliation or arbitration, or make use of a judicial settlement, or regional agencies for the peaceful settlement of disputes, with the stipulation that every state maintains the right to its own self-defense.134 The Security Council can also make recommendations including authorizing the use of arms and blockades where pacific settlement of disputes is unavailing.135 However, here too, the Council can only pass a resolution. Although, under Article 25, “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council,”136 the Council, lacking the authority to maintain a standing army, does not wield enforcement power to ensure that its resolutions are carried out.137 Moreover, the five permanent members of the Council—China, France, Russia, the United Kingdom, and the United States—can at any time veto an action proposed by the Council if it is not to their liking.138 Thus, the Security Council has only limited power to contravene the wishes of those permanent member states that hold the veto, even though on its face it has seemingly more authority than the General Assembly.139 Of course, other factors140

131. Id.
134. Id. art. 34, 51.
135. Id. art. 41, 42.
136. Id. at art. 25.
137. Id.
138. Id. art. 23.
139. Compare Article 11 of the U.N. Charter (“The General Assembly...except as provided in Article 12 [where the Security Council is actually considering a matter of peace and security] may make recommendations with regard to any such questions to the state or states concerned or to the Security
may play a role in supporting Security Council actions, such as political considerations at home or abroad that might affect whether the veto power would actually be exercised.

The Secretariat supplies essentially the executive function of the United Nations. It recognizes a Secretary-General appointed by the General Assembly upon the recommendation of the Security Council, who essentially operates in the capacity of "the chief administrative officer of the Organization." The Secretary-General takes some of his or her functions from the General Assembly and Councils and reports to the Security Council on matters that "may threaten international peace and security." The Secretary-General, however, is not the Commander in Chief of any Armed Force since the United Nations has no permanent army. In fact, when the Security Council authorizes force, it must be provided by the member states. It is also by agreement that a Commander in Chief of the armed force is appointed. The fact that the Secretary-General has no enforcement arm under his control is the reason the United Nations remains weak on the international stage. It also explains why international governance in the twenty-first century can be seen to be on a par with the national governance of the United States in 1778.

Although there are a number of additional international organizations, it is sufficient to have noted them and to suggest that they also have, to varying degrees, uncertain abilities to enforce their decisions. This brings us to the International Court of Justice (ICJ) and the various international criminal courts authorized to handle particular problem areas. Article 92 of the UN Charter creates the ICJ to operate as the judicial organ of the United Nations. The members are elected for nine-year terms and may be reelected by the General Assembly and the Security Council with due regard for national diversity.

Article 36 of the Statute of the ICJ limits the court's jurisdiction to matters "specifically provided for in the Charter of the United Nations or in treaties and conventions in force." It also provides for jurisdiction on any matter of treaty interpretation or question of international law, or for the determination of the existence of a fact, which would constitute a breach of an international obligation,

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Council or to both) with U.N. Charter chapters VI, VII, VIII, and XII (specifying the specific powers granted to the Security Council for the discharge of its duties.

141. U.N. Charter art. 97.
142. Id. art. 98.
143. Id. art. 99.
144. Id. art. 42.
145. This can be a sticky affair if, as in the United States, the constitutional authority to commit the armed forces rests with the President as Commander in Chief, or concurrently with the President and Congress, which has the power to declare war. See U.S. CONST. art. I, § 8 (Congress’s power to declare war); Id. at art. II, § 2 (President as Commander in Chief).
146. U.N. Charter art. 92(1).
147. I.C.J. art. 36(1).
148. Id. at art. 36(1).
and the nature and extent of reparations for such breach.\textsuperscript{149} And while the court works very well when the parties agree to submit their controversy to it, like the UN, it cannot force nations to use its auspices nor seek enforcement for a decision with which a party might disagree.

If the picture painted here sounds bleak, it need not be treated so. Certainly the world is safer today because the United Nations exists than it would be if there were not an international institution seeking to promote peace and security on a global level. Indeed, since its founding, the UN has peacefully negotiated 172 settlements of regional conflicts.\textsuperscript{150} It authorized international coalitions to fight in the Korean War (1950-53)\textsuperscript{151} and the Persian Gulf War (1991).\textsuperscript{152} It provided a podium for the United States to challenge the placement of nuclear missiles in Cuba in 1962, leading to the eventual dismantlement and removal of those weapons.\textsuperscript{153} Military forces provided by member states have served as UN peacekeepers, providing security and reducing armed conflict in over 35 missions throughout the world.\textsuperscript{154} Beginning with the General Assembly’s adoption of the Universal Declaration of Human Rights in 1948, the United Nations has sought to raise the consciousness of the world toward protecting human rights.\textsuperscript{155} The UN has also participated in promoting democracy through aiding free and fair elections by investigating abuses and providing technical election support in certain regions of the world.\textsuperscript{156} It has also investigated and reported on human rights and humanitarian abuses including those arising from the prior policy of apartheid in South Africa,\textsuperscript{157} as well as making reports on genocide in Rwanda,\textsuperscript{158} refugees

\textsuperscript{149} Id. at art. 36(2)(a–d).
\textsuperscript{151} It has been explained that:

[i]n 1950 the Soviet Union missed one important opportunity to exercise its veto power. The Soviet government had adopted an “empty chair” policy at the Security Council from January 1950, owing to its discontent over the UN’s refusal to recognize the People’s Republic of China’s representatives as the legitimate representatives of China, and with the hope of preventing any future decisions by the Council on substantive matters. Despite the wording of the Charter (which makes no provisions for passing resolutions with the abstention or absence of a veto-bearing member), this was treated as a non-blocking abstention. This had in fact already become Council practice by that time, the Council having already adopted numerous draft resolutions despite the lack of an affirmative vote by each of its permanent members. The result of the Soviet Union’s absence from the Security Council was that it was not in a position to veto the UN Security Council resolutions 83 (27 June 1950) and 84 (7 July 1950) authorizing the US-led military coalition in Korea, which assisted South Korea in repelling the North Korean attack.

\textsuperscript{152} See Student Handout: Background of the United Nations, supra note 150.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{158} See id.
fleeing war-blighted areas of Somalia\textsuperscript{159} and the war torn areas of the Sudan,\textsuperscript{160} and the effects of famine in various other areas of the world.\textsuperscript{161} Through the WHO and other affiliated organizations, small pox has been eliminated and the WHO is "actively pursuing the battle against AIDS, tuberculosis, and malaria around the world."\textsuperscript{162} The United Nations Children’s Fund (UNICEF) has benefits over 3 million children each year worldwide.\textsuperscript{163} And through the World Bank and the IMF, the UN has improved agricultural techniques in Africa, Asia, and South America, and has "promoted cooperation on monetary issues and stable exchange rates among nations."\textsuperscript{164} Additionally, the International Court of Justice (ICJ) has been involved in the settling of "numerous international disputes involving territorial issues,"\textsuperscript{165} hostage-taking,\textsuperscript{166} and economic rights,\textsuperscript{167} while the international criminal courts have prosecuted a number of national officials from several countries responsible for genocide, war crimes, and crimes against humanity.\textsuperscript{168}

IV. IS WORLD GOVERNMENT THE FUTURE?

Is it likely that the current forms of international governance will eventually coalesce, either by their own evolution or by some formal agreement, into a more traditional centralized governmental form? Certain benchmarks appear when comparing the current state of international governance to the evolution of governance in the United States. Though not without its shortcomings,\textsuperscript{169} the above examples illustrate many UN successes in maintaining world peace and stability. They also highlight the importance of having the most powerful nations of the world operating under the same umbrella.


\textsuperscript{161} See Student Handout: Background of the United Nations, supra note 150.

\textsuperscript{162} Id.

\textsuperscript{163} Id.

\textsuperscript{164} Id.


\textsuperscript{168} E.g., Prosecutor v. Milutinovic, Case No. IT-05-87-T Decision Granting Prosecution's Reviewed Second Motion for Admission of Evidence Pursuant to Rule 92 Bis (Int'l Crim. Trib. For the Former Yugoslavia Oct. 30, 2006); See also, A United Nation Priority, supra note 156; Prosecutions, INT’L CRIM. CT., http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Prosecutions (last visited Nov. 12, 2011).

\textsuperscript{169} For example, it was too late getting involved with peacekeeping troops to stop the genocides in Bosnia and the Sudan.
The United States never joined the League of Nations and the League was unsuccessful in preventing several small-scale crises. The League also failed to intervene to stop Italy’s bombardment of the Greek Island of Corfu and was also criticized for fining Greece for starting the incident. The more important crises the League was unsuccessful in halting include the Japanese invasion of Manchuria in 1931, Italy’s invasion of Abyssinia in 1935, the Spanish civil war, Japan’s resumption of attacks on China in 1937, and preventing “Hitler’s re-militarization of the Rhineland, occupation of the Sudetenland and Anschluss of Austria, which had been forbidden by the Treaty of Versailles.” These failures ultimately caused the League to collapse.

These examples illustrate the endemic weakness of the League of Nations to enforce its decrees. Unfortunately, some of that weakness exists today in the United Nations. Nations cannot be forced to follow UN resolutions, even when adopted by the Security Council. Key differences between the United Nations and the League include the United States presence as a permanent member of the UN and a seemingly greater national willingness by many countries to work through an international organization to address important world concerns. Indeed, this later willingness to work through international organizations not just to resolve disputes, but to collectively address economic, environmental, and cross-border problems also finds expression in a wide range of regional pacts that have evolved since the UN was founded.

One factor that seems to be driving this change from a strictly national identity toward a more regional, if not global, identity is a growing awareness that the economies of the world and changes to the natural environment are two of the many international problems that are no longer manageable solely on a national basis. The world has become so interconnected that individual nations will not be

170. *League of Nations Failures*, HISTORY LEARNING SITE, http://www.historylearningsite.co.uk/league-nations-failures.html (last visited Nov. 12, 2011) (Including its failure to intervene in an Italian nationalist attack on the port city of Fiume, then under Yugoslavia’s control, Poland’s seizing of city of Vilna from Lithuania and also its incursion into Russia in 1920, France and Belgium’s invading of the Ruhr in 1923 after Germany was late in reparation payments for causing World War I, even though this violated League rules.).

171. Id.

172. Id.


176. Id. at 270.


178. *See generally* NORTHEGDE, supra note 175, at 222–25.

179. U.N. Charter art. 25 (provides no provision for forcing a UN member to obey a Security Council resolution).

180. For example, the Organization of American States, the Organization of African Unity, the Organization of Eastern Caribbean States, and the Organization of Petroleum Exporting Countries.
able to respond to all the problems that affect their borders unless they are able to coordinate their actions with other countries in at least a regional, if not global, effort. What happens, for example, on the London, New York, or Tokyo stock exchanges today will affect markets elsewhere in the world tomorrow.\textsuperscript{181} In essence, the forces that are bringing the world together—economic, environmental, and technological—are similar to some of the forces that no doubt motivated the American founders in trying to unite under a strong central government.

Some indicators that the world is moving in this direction are already present and may have been spurred on by changes to the way ideas and information get communicated across national boundaries via the Internet.\textsuperscript{182} This has already had an untold effect in changing the ways people in various countries of the Arab Middle East have responded to totalitarian regimes.\textsuperscript{183} It may also have spurred the Palestine Authority to seek state recognition in the UN rather than continue to hope for positive negotiations with Israel that may finally result in a two state solution to the Palestine-Israeli conflict.\textsuperscript{184} One glimmer of hope was the Obama Administration’s decision, prior to Muammar Gaddafi’s death, to limit the American military involvement in Libya to curbing Gaddafi’s ability to attack his own people, even though official State Department policy was to seek his removal from office.\textsuperscript{185} The decision by the American Administration seems to have reflected a willingness to limit military actions to what the UN Resolution authorizing the use of force “makes clear that regime change is not part of the international effort.”\textsuperscript{186}

\section*{Conclusion}

While the future direction of world governance is not clear, the above suggests a movement toward affording greater centralization of decision-making in international organizations. This centralization could take the form of a world constitutional convention analogous to what occurred in Philadelphia in 1787 or could develop through incremental steps, in which governments afford increasing deference to international decision-making bodies. Either way, the end result may require...
not be all that different. The current structure of the United Nations, unlike the earlier Congress of the United States under the Articles, already contains the structures for effective legislative, executive, and judicial functions. It fails, however, to contain the international will to carry out United Nation decrees. But as economic and environmental conditions drive the world toward common goals, even the lack of a standing army may be less important than the willingness to develop an international identity. At the point where such an identity manifests itself world government is born.