

## **THE LEAGUE OF NATIONS COVENANT AND THE UNITED NATIONS CHARTER:**

An Analysis of Two International Constitutions

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This paper uses the principles of constitutional economics to analyze the evolution of two international constitutions, the League of Nations Covenant and the United Nations Charter. A graphical model is used to illustrate the formation and success of the international organizations created by these documents. This paper concludes that there were two factors that resulted in the failure of the League. They were the redistribution of power in favor of the smaller nations and the free-rider problem caused by the non-binding nature of the League's decisions. Amendments were proposed to the League's Covenant which may have fixed these problems, but they were never ratified. The reasons for the failure of the League had a strong influence on the wording of the U.N. Charter. The analysis in this paper is an extension of the tools provided by constitutional economics, which have mostly been applied to national constitutions.

JEL classification: F02, H11, N40.

### **Introduction**

The Charter of the United Nations serves not only as the document that created the United Nations Organization itself, but also as an international constitution. The direct predecessor to the United Nations was the League of Nations, and it too had a similar document called the Covenant. This paper discusses these documents using the principles of constitutional economics in order to provide possible explanations for the existence, success, and particular provisions of these documents. These two documents establish a set of principles and laws intended to promote orderly conduct among nations. They determine the powers and duties of the international organization while attempting to guarantee certain rights to the member nations. These rights are extended through restrictions on the actions of the international organization and of other nations. Their purpose is to contractually bind a set of nations to rules that enhance the well-being of all nations and to provide for the enforcement of these rules.

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Viewed in a contractarian framework, the League of Nations Covenant and the Charter of the United Nations are international constitutions.<sup>1</sup>

### I. A Developmental Model of International Constitutions

At the national level, there has been much work on how governments and social contracts might be produced naturally from a state of anarchy based upon the seminal contributions of James Buchanan (1975, 1990) and Robert Nozick (1974). The governments created by these social contracts will attempt to fulfil the demands of their constituencies and/or their leaders, whether those demands be for the provision of public goods or the aggressive taking of property from other nations. In a world characterized by this type of international anarchy, resources may be further freed for productive purposes if the constituencies of these many nations can form agreements which allow them to limit the possibility of international aggression. Article 8, Section 1 of the League of Nations Covenant states: "The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations." Article 26 of the U.N. Charter makes this point much more explicitly: "In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources. . . ." These passages, especially the one from the U.N. Charter, seem to closely parallel the social contractarian model.

An extension of the graphical model of the constitutional process developed in Holcombe (1994) can help to illustrate the gains from the formation of an international social contract. Point *A* in Figure 1 represents the hypothetical utility levels of two representative agents, one in a Great Power nation and the other in a Small Power nation under international anarchy. The alternative levels of utility to be attained through the formation of an international organization are represented by the utility possibilities frontier in Figure 1, with the arc *GH* representing those points which are Pareto-superior to point *A*. This set of points corresponds to different distributions of the gains from the formation of the international organization. The distribution of these gains among the member nations is the

<sup>1</sup> Frey and Gygi (1991) discuss the constitutional rules that would be favored by self-interested delegates and those that would be favored by national citizens.

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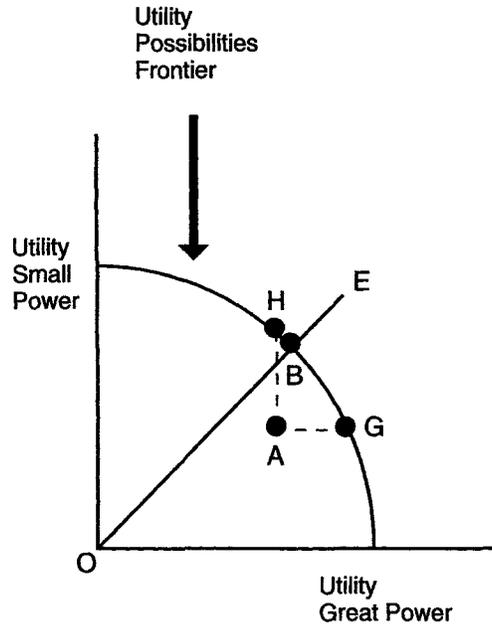


Figure 1. Formation of the League of Nations

result of a bargaining process between the nations during the formation stage and is based upon the expected future success (i.e., expected utility possibilities frontier) of the organization. It will then be reflected in the constitution of the organization through such things as voting rules and restrictions on who is eligible to vote in the main decision-making organs. Through these rules, individuals in a nation will have more utility to the extent that their government can influence the organization's decisions, and control the use of the organization's military might. Thus, the distribution of these gains is a reflection of what is generally considered to be the distribution of power within the organization.

This is included in Figure 1 as the ray  $OE$  extending from the origin. At every point along the ray  $OE$ , the ratio of utility between the two groups is identical. If this distribution was desired, point  $B$  could be chosen by the organization. A distribution of power that was more favorable to the Great Powers would give them a larger share of the utility gains from the formation of the organization and would be shown graphically by a lowering (or clockwise rotation) of the ray  $OE$ . Similarly, a raising (or

counter-clockwise rotation) would result from changing the distribution of power more in favor of the Small Powers.<sup>2</sup>

Under the right structure established by any world constitution, the constituencies of each nation have an incentive to behave opportunistically, even though all would be better off if every nation adhered to the contract. Because of this prisoners' dilemma, the actual Utility Possibilities Frontier made possible by the creation of the organization will depend upon how successfully the provisions of the contract can be enforced. The gains realized from an organization that fails to enforce the provisions of the contract will be lower than were expected. Working within constitutional rules also conveys legitimacy to organizations, and by so doing generates support that helps it to maintain its position in the face of potential competitors.<sup>3</sup> The following quotation clearly shows the loss experienced by the League after its failure in Manchuria, which was the first step in the League's downfall.

The League Covenant, can apparently be ignored with impunity. Japan has ignored it by invading Manchuria; the nations represented on the League Council have ignored it by refusing to insist on the withdrawal of Japanese troops . . . The Covenant has failed to save China from aggression . . . and the Great Powers . . . have to their great shame not even seriously protested against, let alone resisted, such a state of affairs (*The Manchester Guardian*, 8 December 1931, from Scott 1973: 218–19).

The following sections contain a more in-depth analysis of the League's failure and how it influenced the United Nations Charter.

## II. A Brief History of the League of Nations

The peace treaty ending World War I, the Treaty of Versailles, contained provisions for a League of Nations, and any nation ratifying the Treaty also pledged themselves to observe the terms of the Covenant. The drafting

<sup>2</sup> The power of the international organization and the associated utility gains will, however, not be independent of the distribution of power among the member nations. An organization characterized by one nation controlling almost all of the decisions will not be as successful nor considered as legitimate as an organization with a more equal distribution of power. A more equal distribution of power will generate a larger membership and will foster more compliance with the organization's decisions and thus give the organization more power. The concave shape of the utility possibilities frontier is a result of this larger power held by an organization that has a more equal distribution of power among its members.

<sup>3</sup> See Holcombe (1994), especially chapter 8, for a more complete discussion of this concept.

committee was composed entirely of Allied powers, and originally weighted heavily in favor of the five larger powers, the United States, France, Italy, Japan, and the British Commonwealth. Each of these countries was given two spokesmen while five other countries, Belgium, Brazil, China, Portugal, and Serbia, were allowed only one. After much protest by the smaller powers four more countries, Greece, Poland, Czechoslovakia, and Romania were given single representatives. The nations who remained neutral during the war were only informally consulted later. The nations who were defeated were given no say. This structure led the League to be called by Germany a victors' club (Northedge 1986, Scott 1973). Buchanan, Rawls, and Nozick all argue that it is the process by which the social contract is formed which determines its fairness (Gordon 1976). The legitimacy and fairness of the social contract stem from the voluntary nature of the agreement. Thus, Germany's later claims of being unfairly treated under the League, which it was forced to join through its signature on the Treaty of Versailles, seem justified based upon this procedural theory of fairness.

While the Covenant showed the first signs of the hope for a universal international social contract, the Versailles Treaty was twice rejected by the U.S. Senate because of the Covenant's inclusion. Even though the United States never became a member, over 63 nations of the world did. Throughout the 1920s the League was successful in maintaining peace through its International Court of Justice and it gained support.<sup>4</sup> The fall of the League began with the failure in its handling of the 1931 Japanese invasion of Manchuria. By 1933 Germany had withdrawn from the League under Hitler's leadership, and began to ignore the guidelines set forth in the Treaty of Versailles. Rather than working to stop Hitler, the League tried to persuade Hitler to re-join the League. The final blow to the League was Italy's 1935 invasion of Ethiopia. The League's response of limited and ill-timed economic sanctions was not successful, and Italy swiftly conquered Ethiopia. Italy pulled out of the League in 1937. By 1939 the League had lost most of its influence and revived briefly to expel the USSR for its attack on Finland. During the period directly preceding the outbreak of World War II, the League was not even consulted by the

4 For example, the League successfully handled territorial disputes between Sweden and Finland, Czechoslovakia and Poland, Iraq and Turkey, Germany and Poland, Greece and Italy, Bulgaria and Greece, Hungary and Romania, and Bolivia and Paraguay. For a more detailed account of these and other matters handled by the League during the 1920s, see Myers (1930).

member nations. The League was formally dismantled on April 18, 1946, when it was succeeded by the newly organized United Nations. Within the contractarian framework, the formation of the United Nations Organization can be viewed as a renegotiation of the international social contract.

In a speech made by Jonkheer Beelaerts van Blokland, the Netherlands representative to the League, during its last assembly (League 1946), he summarized several fundamental reasons for the failure of the League; its lack of power, lack of universality, lack of solidarity (or cooperation) between members, and the exaggerated equality between the great and small powers, caused by the increase in the number of non-permanent members on the Council. The following sections of this paper will explore these possible reasons for the League's failure within the social contractarian framework.

### III. Changes in the League's Distribution of Power

The main change in the distribution of power in the League of Nations occurred through the increases in the number of non-permanent seats on the League's Council. Article 4, section 2 of the Covenant allowed the membership of the council, both permanent and non-permanent, to be altered with the approval of the majority of the Assembly and the entire Council. The League Council was originally composed of nine seats, five permanent and four non-permanent. The five permanent seats were reserved for the Great Powers and the four non-permanent seats were for the Small Powers. In 1922 two additional non-permanent seats were created and in 1926 the Council's membership was again expanded when Germany was given a permanent seat and three additional non-permanent seats were created. Both of these increases in the number of non-permanent seats were done by unanimity of the Council and thus the new distribution of power must have been a Pareto-superior move for the Great Powers.

Returning to the model, the point *B* along the ray *OE* in Figure 2 depicted the distribution of power that was set out in the original Covenant. During the 1920s the League was performing better than expected. This is illustrated by the outward shift in the utility possibilities frontier. With this outward shift in the utility possibilities frontier, a new set of Pareto-superior points along the arc *IJ* was obtainable. The changes in the composition of the League Council led to a counter-clockwise rotation in the distribution

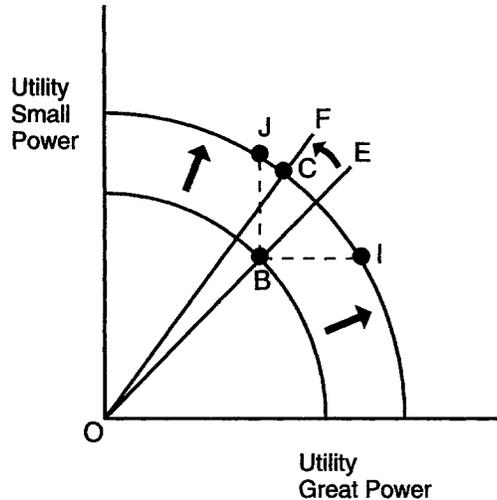


Figure 2. Change in the League's Distribution of Power

of power ray, from  $OE$  to  $OF$ , moving the members to point  $C$ .<sup>5</sup> While this alone would not have caused the League's failure, in combination with the later reduction in the League's power it can be shown to have contributed to it. The fact that the power was redistributed back in favor of the Great Powers during the formation of the United Nations (i.e., the renegotiation) is evidence that it was an important factor in the League's downfall.

#### IV. The Free-Rider Problem in the League

The model presented earlier can be used to illustrate how a free-rider problem in the League coupled with the increase in the number of non-permanent members of the Council caused the eventual abandonment of the League. During the successful years of the 1920s, disputes were mainly handled by the League's International Court of Justice. During the 1930s more severe disputes arose which led to the first tests of the League's ability to use sanctions and military force. The League suffered failures in the Japanese invasion of Manchuria, the German defiance of the Versailles Treaty, and the Italian invasion of Ethiopia. These failures were mainly

<sup>5</sup> This is consistent with Holcombe (1994) who explains that right structures are likely to be more equal under a social contract that creates larger gains.

due to the free-rider problem caused by the noncompulsory nature of the League Council's decisions.

Under the Covenant, it was up to the individual members to decide when a breach of the Covenant had been committed. The Council was only in a position to recommend. Article 16, Sections 1 and 2 read:

Should any Member of the League resort to war . . . it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations. . . It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

Despite the seemingly severe intent of this article, in practice the League never used force to interfere in an aggression, and had tremendous trouble obtaining agreement to impose effective economic sanctions. The Council was only in a position to *recommend* sanctions and military action not to *require* them. In the 1936 Italian invasion of Ethiopia, the League faced much debate and had trouble imposing even limited sanctions against Italy. The League was never able to agree to fully impose the sanctions by including an oil embargo, which was the most important Italian import, because of the national interests involved and the fear of Italian retaliation on members who voluntarily participated with the sanctions.<sup>6</sup> This lack of compulsory compliance created the free-rider problem and was the cause of the League's failure to prevent Ethiopia being taken over by Italy. This, however, was not the first failure of the League to stop acts of aggression because of the free-rider problem. The League's failure in the 1931 Japanese invasion of Manchuria was caused by the same lack of uniformly imposed sanctions and effective action.

Returning to the model, Figure 3 illustrates the inward shift in the utility possibilities frontier created by the free-rider problem. With the new distribution of power along the ray *OF*, the League members moved to point *D*. Knowing that the Great Powers abandoned the League during the years directly preceding World War II and that they found it in their best interest to create a totally new document after the end of the war, it is possible to conclude that they were moved to a point which was no

<sup>6</sup> See Kaempfer and Lowenberg (1992) for a discussion of how national special interests interfere in the sanctioning process. They conclude that this special interest influence causes sanctions to be relatively ineffective.

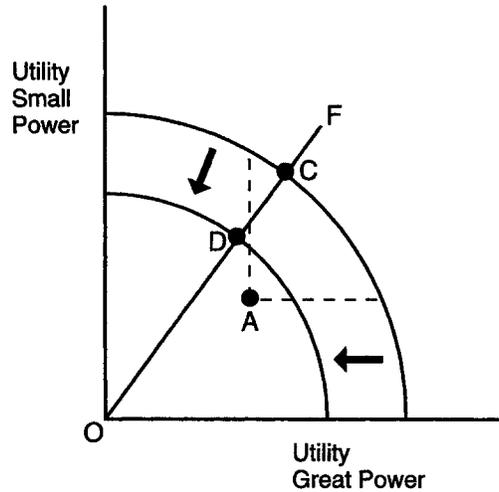


Figure 3. Failure of the League of Nations

longer Pareto-superior to the existing anarchistic situation. Going into World War II, the Great Power nations found themselves better off attempting to influence international events individually than within the League and thus never even consulted it during the critical years directly preceding the war.

The inability of the Covenant to overcome the free-rider problem was not without the League's notice. In 1921, the Second Assembly of the League attempted to amend Article 16 by adding the following paragraphs:

It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council, the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted.

The Council will notify to all Members of the League the date which it recommends for the application of the economic pressure under this article.

This amendment was never ratified, however. There were other attempts to go even further and make the compliance with sanctions compulsory. Two documents, the Draft Treaty and the Geneva Protocol, were proposed to strengthen the League. These two documents not only made sanctions compulsory, but also provided a method of defining when an act of aggression had occurred. These proposals also provided for a compulsory military

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response by the members. Perhaps the strongest proposal was contained in the version of the Draft Treaty of Mutual Guarantee prepared by Lord Robert Cecil. The following are excerpts from Articles 12 through 16 of the Draft Treaty:

It shall be the duty of the Council of the League, within four days at most from the date on which the Secretary-General receives such information, by not less than three-fourths majority, to decide which of the States so engaged in hostilities has been the aggressor.

The High Contracting Parties undertake to participate not only in measures undertaken for the defense of the Party attacked, but also in the offensive measures required to reduce the aggressor State to submission.

The High Contracting Parties agree immediately to apply a complete economic and financial blockade, in accordance with Article 16 of the Covenant, against any State which the Council has decided to have committed an act of aggression.

Each of the High Contracting Parties agrees to maintain at the disposal of such military command an agreed proportion, not being less than one-quarter of its naval and air forces.

The High Contracting Parties agree to furnish further military help in addition to the naval and air forces . . . if they are requested by the Council to do so.

This treaty was proposed in 1923 but was defeated by British blockage. Their objection was much the same as the reason for non-U.S. participation, the fear of becoming a policeman to the world. The proposed 1924 Protocol for the Pacific Settlement of International Disputes, later called the Geneva Protocol, was also defeated by British objections.<sup>7</sup> Excerpts from Articles 11 through 13 of the Geneva Protocol are, from Article 11:

As soon as the Council has called upon the signatory States to apply sanctions . . . the obligations of the said States . . . will immediately become operative in order that such sanctions may forthwith be employed against the aggressor.

Those obligations shall be interpreted as obliging each of the signatory States to co-operate loyally and effectively in support of the Covenant of the League of Nations.

From Article 13:

In view of the contingent military, naval and air sanctions provided for by Article 16 of the Covenant and by Article 11 of the present Protocol,

<sup>7</sup> For a more detailed discussion of the Geneva Protocol and the Draft Treaty see Baker (1925). Northedge (1986) provides a detailed discussion of the British objections to both.

the Council shall be entitled to receive undertakings from States determining in advance the . . . forces which they would be able to bring into action immediately to ensure the fulfillment of the obligations in regard to sanctions which result from the Covenant and the present Protocol.

While the Geneva Protocol was not as forcefully worded as the Draft Treaty, it still would have provided for the compulsory use of sanctions and military action by member nations. It also would have allowed the Council to determine when aggression has happened and who is the aggressor nation.

This analysis suggests that there were two reasons for the failure of the League, the free-rider problem associated with the lack of requirements for member countries to simultaneously cooperate with the sanctions (and military action) and the redistribution in the League's power in favor of the Small Powers. Given the situation depicted in Figure 3, however, the only ways to save the League from abandonment by the Great Powers were to either solve the free-rider problem or redistribute power back in their favor. If either the Draft Treaty or the Geneva Protocol had been ratified, solving the free-rider problem, it is very possible that it would have increased the utility possibilities frontier enough that the resulting outcome could still have been Pareto-superior to point A, in which case the Great Powers would have found it more beneficial to work within the League than outside it during World War II. Another alternative would be to redistribute power back in favor of the Great Powers. A movement such as this is, however, not a Pareto-superior move from the existing point.<sup>8</sup>

#### **V. How Important was the Non-participation of the United States?**

The non-universality of the League's membership, in particular the non-participation of the United States, is frequently blamed as one of the

<sup>8</sup> While this movement would have not been a welfare-enhancing move for the Small Powers from the existing point, it still would have been more preferable to them than the anarchistic "reversion" point that occurred when the Great Powers abandoned the League. This raises the issue of why the Great Powers did not threaten withdrawal from the League unless power was redistributed in their favor. Perhaps this was just politically impossible as it would have involved removing some Great Powers from the Council, or that the Great Powers just believed that their long-term position would be better if they held out for complete renegotiation of the social contract (i.e., formation of a new organization). Even with a redistribution of power, however, there remained only small gains within the League to the Great Powers. Given this, another possibility is that the Great Powers may have felt that setting up a temporary "organization" composed only of Great Powers (i.e., the Allied

reasons for its demise. There are two fundamental points to be made in rebutting these claims. First, in regard to the non-universality, the aggressions that caused the League's fall were between *member* nations. At the time when Japan invaded China, and when Italy invaded Ethiopia, all were members of the League. It was not hostilities between non-members that hurt the League, but the ones between members. Along these same lines, the U.S. Constitution does not need the signature of the Canadians, or other nations, to be an effective document for promoting national rights preservation and the collective security of the states. NATO did not need the signatures of the Warsaw Pact nations to be an effective deterrent of war.

Secondly, the only benefit of U.S. participation would have been greater military and economic sanction resources available to the League. However, given the free-riding of the other Great Powers in the League there is no reason to believe that the United States would have complied. In fact, it was Great Britain who defeated the proposals that might have solved the free-rider problem. This is even further justified because of the American reluctance to become policeman to the world. The atmosphere in the United States after World War I was one of isolationism and nationalistic sentiments. Thus, there is no reason to believe that the United States would have somehow overcome the other League members' problem of unwillingness to apply sanctions and take military action.

While the United States refused to join the League for fears of losing sovereignty and becoming a policeman to the world, they are the United Nation's biggest contributor. In fact, the U.N. Charter is more imposing upon the U.S.'s military might than the Covenant. Since the inception of the United Nations, the United States has been a policeman in many situations, for example, Korea, Vietnam, and Iraq. There is little doubt that the U.S.'s role as a world policeman is much greater in the United Nations than it would have been in the League. Thus, one must conclude that it is the change in American attitudes that has enabled their participation in the more demanding U.N. body.

## **VI. The Unanimity Rule and the Failure of the League**

Another constitutional reason for the failure of the League was its inability to take action in disputes involving aggression by one of the Great Powers.

forces) provided them with more benefits than they could have received under the League even if power had been redistributed back in their favor.

Because of the unanimity rule, action in these situations can be blocked by the veto power of the aggressor nation. Because of the League's lack of power in this type of situation, many Great Powers found themselves to be better off dealing with another Great Power's aggression outside the League.

There are two basic public choice principles that yield insight into the reasons for a unanimity rule among the Great Powers on the Council. The first reason is the superior bargaining position of the Great Powers when the organizations were formed. Holcombe (1994: chap. 2) stresses the notion that nations will only receive the rights for which they can bargain and thus, nations in superior bargaining positions will be able to appropriate more of the gains from trade when forming a constitution. Ellickson (1987) also notes that gains from Pareto-superior improvements are not always distributed equally. Following this line of reasoning, we should expect the Great Powers to be able to control more of the power of the organization by having the right to veto on important matters.

Buchanan and Tullock (1962) provide a theory of the optimal voting rule depending upon the external and decisionmaking costs involved. Decisions involving the use of member nations' military forces will impose higher costs upon the Great Power countries because they will bear a larger share of the burden than the Small Powers. These external costs are higher for the Great Powers than for the Small Powers. Using the Buchanan and Tullock methodology, the decision rule for military action should have to require a larger degree of consensus among the Great Powers. In other decisions that do not impose such a high external cost, a less stringent rule is optimal. For example, the Great Powers are not given veto rights in the General Assembly of the United Nations.

Thus, it is easy to see how a unanimity requirement among the Great Powers is a likely constitutional voting rule for military action because of the higher external costs and the superior bargaining position of the Great Powers. The drawback of such a stringent rule is that a Great Power may veto actions against themselves if they are the aggressor nation. For example, during Japan's invasion of Manchuria they were able to successfully defeat measures proposed in the League Council that would have brought an end to the conflict.

In the actual Covenant, exclusion of the interested party's vote is mentioned in the use of Articles 15 and 16, but it is not mentioned in the use of Articles 10, 11, 13, and 19. The League, in practice, excluded the votes of the interested parties when acting in a judicial capacity, but did not in

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matters that were primarily political. On at least two important occasions the League allowed the vote of an interested party to block the Council's actions. The first time was in the 1928 dispute between Lithuania and Poland concerning the expulsion of Polish nationals. The Council's proposed resolution was defeated solely by the Lithuanian vote. In 1931 the lone Japanese vote was able to block a Council resolution that called for the immediate withdrawal of Japanese troops from Manchuria. While the Covenant excludes the vote of the interested party in some situations and not in others, members of the League's Commission, which drew up the Covenant, testified in 1930 that there "was no doubt that . . . it had simply been by an oversight that it had not been said that the votes of the interested parties should not figure in calculating unanimity" (from Koo 1947: 104).

This oversight was known by the League's members. Both the Draft Treaty and the Geneva Protocol contained stronger provisions for the exclusion of the aggressor nation's vote. Perhaps the strongest clarification of the rule is given in Article 18 of the Geneva Protocol, which reads:

Wherever mention is made in Article 10, or in any other provision of the present Protocol, of a decision of the Council, this shall be understood in the sense of Article 15 of the Covenant, namely that the votes of the representatives of the parties to the dispute shall not be counted when reckoning the unanimity or the necessary majority.

Because of the problem associated with the unanimity rule for determining which nation was the aggressor, the Draft Treaty proposed to replace it with a three-fourths majority rule.

In the League Council, all important decisions had to be made by unanimity. While the previous discussion concentrated on the ability of a Great Power to veto actions against themselves, a non-permanent member also had this power. This veto power in cases of aggression compounded with the free-rider problem to decrease the League's power even further. This lack of actual power in the League, especially in situations of Great Power aggression, was another reason why the League was not even consulted to prevent World War II.

### VII. Influences on the U.N. Charter

The failures of the League, and the shortcomings of its Covenant, drastically influenced the wording of the United Nations Charter. In drafting the U.N. Charter, specific provisions were included with the intent of avoiding some

of the problems that occurred in the League.<sup>9</sup> In regards to altering the size of the Security Council, Article 23, section 1 of the U.N. Charter directly states the exact number of permanent and non-permanent members of the Security Council and also lists the permanent members by name. In the United Nations, changes in the composition of the Security Council require an amendment to the Charter, while in the League it required approval by a unanimity of the Council and a majority of the General Assembly. This constraint is not much stronger than in the League and in fact the U.N. Charter was amended in the 1965 to expand the number of non-permanent seats to ten. Perhaps the most major step taken to avoid the redistribution of power on the Security Council is that its decisions require unanimity only among the Great Powers, while the League Council required unanimity among all members. Under the original number of seats in the Security Council, passage required the unanimous consent of all five Great Powers and any two of the non-permanent members. When the United Nations expanded the number of non-permanent seats to ten, they only increased this requirement to needing four of the non-permanent members' votes. This is another way in which the United Nations has tried to prevent the over-equalization of power that occurred in the League. This redistribution of power will only be a problem to the United Nations if the utility possibilities frontier declines in the future because of a loss in the power of the U.N. organization.

With regard to the free-rider problem, the U.N. Charter contains clauses which have allowed the United Nations to avoid this problem. The following U.N. Charter provisions for these issues were clearly influenced by the Draft Treaty and the Geneva Protocol. Article 41 of the U.N. Charter states:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.

Article 42:

Should the Security Council consider that measures provide for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea or land forces of Members of the United Nations.

<sup>9</sup> Holcombe (1991) discusses the similarities between the Articles of Confederation, the U.S. Constitution, and the Confederate Constitution in an evolutionary framework.

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### Article 43:

All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

### Article 45:

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air force contingents for combined international enforcement action.

The U.N. Security Council has the power to decide when aggression has happened and they may *require* sanctions and military enforcement. The League's lack of these powers was the main reason for its failure in handling the Japanese invasion of Manchuria, the Italian invasion of Ethiopia, and it fostered the lack of legitimacy that led to the complete failure of the league to prevent World War II.

While the Charter contains provisions which solve many of the League's problems, the Great Power veto in cases of aggression may still occur. This problem was present in both the Council and Assembly of the League and it is perhaps an even greater problem in the United Nations Security Council. Both the Charter and the Covenant contain provisions that allow the organization to suspend the voting rights of a Great Power aggressor nation. The League, however, was never bold enough to follow this course of action and it is doubtful that the United Nations would be any bolder. Even at the time of the U.N.'s formation a public survey by the National Opinion Research Center at the University of Denver indicated that only 36 percent of the survey participants thought that the United Nations had a good chance at preventing a war between the more powerful nations of the world. In contrast, 57 percent of the respondents thought that the United Nations had a good chance at preventing a war between smaller nations.

The Charter's policy on abstention is given in Article 27, section 3, which reads, ". . . in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting." If a permanent member, however, denies the existence of the dispute, or denies that they are a party to the dispute, this rule does not apply until the Security Council finds that they are a party to the dispute and that the dispute exists. This ruling, however, must be done with the inclusion of the aggressor's vote,

and is subject to their veto. Another problem is that the rule does not apply to decisions about sanctions, military actions, or preventative measures taken under Articles 39 through 51 in Chapter VII. Thus a Great Power is not prohibited from voting on the enforcement measures taken by the Security Council, and may use its veto power to block such actions.<sup>10</sup>

It remains to be seen whether this same problem will hurt the credibility of the United Nations. Amendments to the Charter that would eliminate the Great Power veto in the Security Council have been proposed many times but have never been ratified. The fact that these amendments have been proposed shows that it is viewed as a weakness in the original Charter by at least some of the member nations.

### VIII. Proposed Amendments to the U.N. Charter

Those who want to revise the Charter would like to turn the United Nations Organization not into an effective instrument for the defense of peace . . . but into an instrument of an aggressive policy which, in itself, constitutes a threat to the peace. It is not to secure peace, therefore, but to threaten, to endanger and to subvert peace (Andrei Y. Vyshinsky, U.S.S.R., Opening Plenary Meeting of the Eighth General Assembly, September 1953, from Logue 1955: 28).

There have been many proposed amendments to the U.N. Charter. They have ranged from giving the U.N. a complete monopoly on force in the world to enabling them to use force to ensure compliance with disarmament proposals. There have only been a few, however, that were taken seriously. These include a proposal to eliminate the veto power in the Security Council, a proposed elimination of the permanent seats on the Security Council, a proposal to increase the number of non-permanent seats on the Security Council, a proposal to insist upon free elections of the delegates to the United Nations, and a proposal to give the United Nations the power of force for the purpose of international income redistribution (see Logue 1955). Of these proposed amendments, only the increase in the number of non-permanent seats was ratified. Most of these proposals, made during the 1950s, revolve around equalizing the power distribution in the United Nations, which is a direct result of the mass of newly independent lesser-developed nations who have more recently joined. In the context of the

<sup>10</sup> For a more complete discussion of the Great Power veto in these types of situations, see Bentwich and Martin (1950), and Koo (1947).

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model, these changes would shift the distribution of power line counter-clockwise, much like in Figure 2. The process required for amending the Charter, however, has enabled the Great Powers to block most of these efforts. Article 108 of the Charter reads:

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

This is very similar to the amendment requirements under the Covenant of the League. Article 26, Section 1 states:

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and a majority of the Members of the League whose Representatives compose the Assembly.

The most serious amendments revolve around making a more equal distribution of power among the nations and enabling the United Nations to redistribute wealth to the lesser-developed nations. These amendments, if accepted, could lead to the same troubles for the United Nations that were experienced in the League. However, not all of the Small Powers agree with the idea of revising the distribution of power.

Sweden, as well as many other small Powers, regards the great Powers' right of veto on decisions concerning, for instance, military action as a guarantee that our countries will not be bound, as the result of the majority of the Security Council, to take part in military action in cases where the great Powers stand very much divided (Oesten Unden, Sweden, Opening Plenary Meeting of the Eighth General Assembly, September 1953, from Logue 1955: 30).

Thus, while he may not be aware of the Buchanan and Tullock (1962) voting model, he is surely aware that the decisions of the Security Council have great external costs and thus should be made with a more stringent voting rule.

It is yet to be seen if there will be further substantive changes made to the United Nations Charter besides the 1965 expansion in the number of non-permanent seats on the Security Council. It is clear that the wording and content of the Charter have been influenced by the failures of the League and that it represents a much improved document for overcoming

the free-rider problem and preventing a redistribution of power. Serious problems still remain, however, in the area of Great Power aggression. Because of the requirements of the amendment process, this problem will probably never be fixed. Because of the Great Powers' superior bargaining position after World War II, they were able to insist that the new constitution have provisions preventing the loss in power that they experienced in the League. While their influence has led to the formation of a more successful organization, the United Nation's ability to prevent another war between the Great Powers has yet to be tested.

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