REFORMING INTERNATIONAL ORGANIZATIONS

Trusteeship, Suspended Sovereignty, and Enforcement of UN Membership Duties: Governance in Times of Peril[1]

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The paper promotes the reform of the UN trusteeship system as a legitimate and an ultimate response to acute circumstances of the "failed and fragile state syndrome" and a means to comply with the duty of the Responsibility to Protect (R2P) in extremely severe cases. It advances three arguments. First, UN membership represents an explicit commitment by the member state to abide by the charter. Failure to comply due to state incapacitation triggering the R2P and causing a threat to international peace and stability represents a de facto *condition of suspended sovereignty. Second, since UN membership depends on sovereignty, such situation entails consequences regarding membership provisions. Consensual placement under the trusteeship system is an effective and efficient remedial approach to facilitating the state's resumption of full and active UN membership. Third, incorporating UN International Transitional Administration arrangements applicable to such cases within the trusteeship system will significantly improve these peace operations.*

Introduction

With natural disasters, climate change, pandemics, anthropogenic catastrophes, and political strife taking their toll, almost no month passes without some existential alarm. And whilst the reasons for the jitteriness are being debated, consensus has nevertheless transpired about the need for better measures of control. The heightened sense of insecurity has set in motion a persistent chorus lamenting the shortcomings of contemporaneous international governance in coping with present challenges or meeting those ahead, attributed especially to both international institutions and law (Arbuckle 2009, Berman 2008, Brahimi Report 2000, Murphy 2010, Weiss 2008, Agenda for Peace 1992). It is perhaps best articulated in the Brahimi Report as follows:

> The UN was founded, in the words of its Charter, in order "to save succeeding generations from the scourge of war." Meeting this challenge is the most important function of the Organization, and, to a very significant degree, the yardstick by which it is judged by the peoples it exists to serve. Over the last decade, the UN has repeatedly failed to meet the challenge; and it can do no better today (Brahimi Report).

Two narratives are standing out in this discourse. One is normative and transformative, cultivating the bourgeoning idea of the Responsibility to Protect (R2P) (ICISS Report 2001, World Summit Outcome 2005). The other is political and practice-oriented and identifies certain conditions under which a state may be diagnosed as befalling to the "failed or fragile state syndrome" (FFSS) (OECD 2011, OECD 2006, A More Secure World 2004, Carment and Yiagadeesen 2010, Mortimer 2004).[2] According to the ICISS: "The substance of the responsibility to protect is the provision of life-supporting protection and assistance to populations at risk" (2001).[3] The FFSS has eschewed definition (eDiscussion 2006)[4] and is best described as a condition "where governance institutions have faced a crisis point. . . . due to internal crisis, divisions within the country . . . where there are nonexistent institutions in heavily poor countries, [and] where governance institutions . . . have no capacity to exercise a monopoly of legitimate force over the territory" (Chesterman 2005). The two concepts have been ringing the UN alarm bells prompting questions concerning repair. At this backdrop, I argue that the UN trusteeship system offers an adequate international governance approach to address medium- and long-term threats to peace and security arising in the intersection of R2P and FFSS. The failure to protect due to a state's incapacity to comply with UN Charter obligations of an R2P nature exerts a detrimental effect on the organization's ability to fulfill its objectives. Therefore, the matter is fit to be dealt with at the organizational level by addressing the state's membership status and activating the trusteeship regime. Such an approach is both legitimate and necessary in order to resuscitate the handicapped while simultaneously safeguarding world peace and security.

The contemplated reform of Charter Chapters XII and XIII is not so much a matter of normative innovation; rather, it reflects a normative historical circulation complemented by forward looking adjustments. In the contemporary multi-polar world, a pluralistic prudent reinterpretation and reconfiguration of the trusteeship regime is not unthinkable (Caplan 2002, Indyk 2003, Jenkins 2006a, Wilde 2007, Luck 2007, Gal-Or 2008a, and 2008b).

The paper comprises of three parts. Part I opens by addressing the what and why questions. A brief description of the world political situation leads to the explanation of why reform of the UN trusteeship system is needed, followed by a discussion of the shifting meaning of the idea and legitimacy of international trusteeship, and concluding with a description and analysis of the pertinent charter provisions. Part II focuses on the legal reconceptualization

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2. There is, of course, an important difference (as has been pointed out by the OECD and others) between a failed state (Somalia) and a fragile state (Somaliland)–otherwise only one of the terms would have been used. While a failed state denotes a decisive condition, fragility ranges across a spectrum. FFSS used here refers to fragility when in a heightened degree, on the brink of failed.

3. Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has three-fold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; . . . they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security (ICISS 2001). The UN General Assembly (UNGA) endorsed a narrower version of the duty, applying to four international crimes only: genocide, war crimes, ethnic cleansing, and crimes against humanity, as stipulated in Paragraph 139 of the World Summit Outcome. For relevant literature see Gal-Or 2011. For lack of space and to avoid redundancy with existing literature, I will not discuss R2P in more detail here.

4. Profound disagreement persists in academic, government and NGO circles worldwide over how to define these terms resulting in a loose consensus "on some causes and symptoms of fragility (acute and chronic poverty, loss of territorial control, widespread insecurity, deterioration of public services, human rights violations) and on the identification of a number of failed or fragile states (eDiscussion 2006). FFSS euphemisms include, for instance, the World Bank epithet of "Low-Income Countries under Stress" and Stephen Krasner's "troubled societies" (Jenkins 2006b). For lack of space and to avoid redundancy, I will not discuss the SSFS in more detail here.

of the trusteeship system and discusses the how question. Following a brief observation on legitimacy, I develop a three-legged test to assess the current international trusteeship system's suitability for twenty-first century circumstances. The test comprises of (i) the concept of suspended sovereignty, (ii) the essence of UN membership and the importance of commensurate obligations, and (iii) a comparison of International Transitional Administration (ITA) and trusteeship. Rather than concluding, the paper wraps up with a discussion of outstanding issues that require further detailed discussion and development in order to solidify the proposal for UN trusteeship reform.

The Meaning and Need for Reform of the UN Trusteeship System
As in 1945, so today, "We the peoples of the United Nations," (Preamble, Charter) are joint in the determination "to save succeeding generations from the scourge of war" and "to ensure by, the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international *machinery* for the promotion of the economic and social advancement of all people" (emphasis added). The trusteeship system represents a unique enforcement method within this machinery.

Throughout the UN's life span, new communities and actors had joined the original "peoples" in the pursuit of its objectives (Weiss 2008). The ensuing kaleidoscope of new views and expectations is in itself cause to reappraise three-generation-old organizational structures and processes and contemplate the suitability of reform. More concrete reasons include the contemporary nature of modern society (Murphy 2010) characterized by growing instability, chaos, and disorientation. Phenomena such as displaced persons originating in intrastate conflict (Human Security 2005, Human Security 2010, Mak 2009/2010, Mak 2005), malfunction typical in quasi-states (Jackson 1990), and natural disasters, have exposed the UN's governance limitations. The demise of the bipolar world order and the subsequent collapse of regional systems (the Balkans, across Africa, Central and East Asia, and recently the Arab Crescent), brought on in part by the incompetence of sovereign states in maintaining the Rule of Law (domestic and international), generated a cascading accumulation of cases demanding UN's immediate attention.[5] Developments in international terrorism, notably since 11 September 2001, and the consequent American-led Global War on Terrorism, have once again heaped new tasks on the UN agenda while simultaneously pushing the envelope of international law guiding its peace operations (Delivering as One 2006). This had prompted an unprecedented assertiveness on the part of the Security Council (UNSC), which has been transforming into a self-appointed international legislative organ (Chesterman, Franck and Malone, Wilde 2007). By contrast, in 1994, the TC's successful accomplishment of its mission brought upon itself its own suspension (Press Release 2004). Nevertheless, elements of the trusteeship regime have survived and transpired through the UN ITA operations.

The Shifting Meaning and Legitimacy of International Trusteeship
Although close in hermeneutics, trusteeship and tutelage are not identical. Often a source of confusion, trust and trustee have been commonly used to describe both the function of holding

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5. Somalia and Lebanon feature as a poster case (Somalia 2010 and Gal-Or 2008b, respectively).

or managing property and the status of the person entrusted with that function. While the trust is of a contractual nature, grounded in mutual and free consent and designed for the benefit of the parties or a third party,[6] tutelage educes the idea of protective guardianship.[7] In the charter trusteeship French version, the word *tutelle*[8] is used, importing dependence, hence the inequality aspect of the relationship. Understandably, this became a source of ambiguity concerning the meaning of UN international (and multinational) [9] trusteeship.

Further to the linguistic confusion, the trusteeship has been suffering from a historic gap between its *de facto* existence and *de jure* interpretation.[10] The concept of trust obligation, determined according to specific contexts, transitioned from benevolent imperial rule, through the League of Nations' mandate system, and up to the UN international trusteeship (Bain 2003), where it has been bogged down to the present. Both the bipolar pursuit of world hegemony and the aftermath of decolonisation generated a sense of betrayal of trust (exploitation, oppression, hypocrisy) prompting to discredit the idea. As the right to self-determination was thriving, trusteeship became voided of its foundational core rendering the idea of inequality of parties untenable.

In UN rhetoric, the idea was experiencing diminishing support as well. The trusteeship reform proposed by Malta in 1995 (Repertory I) represents the latest, and isolated, attempt at reconstructing a UN regime adaptable to changing global circumstances. Largely perceived as a move to de-politicize trusteeship, it advocated a shift of focus away from guardianship and trusteeship and toward self-government to protect "the common heritage of mankind" in environmental matters (Repertory I, Renewing the UN 1997).

The Charter Provisions

As mentioned above, the fact that the trusteeship system's objectives have weathered the passage of time[11] transpires from the ITA arrangements implemented across the world. It is only reasonable to expect the concept to once again mutate according to the changing times. In this vein, my argument is based on the English contractual concept of trusteeship that envisions trust as an obligation subject to certain background conditions (Gilbert 2008). Misconceptions on the part of the one putting trust in the trustee will not relieve the consenting trustee of commitment to the trust assumption (Gilbert 2008). In reality, time and again, trust relationships were built on shaky foundations—either the facts or the correlate legal implications

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6. "One who is entrusted, or to whom something is entrusted" and by extension," [o]ne who is held responsible for the preservation and administration of anything 1655 [sic.]" (Oxford Dictionary 1968).

7. Trust and guardianship are frequently linked; but guardianship does not necessarily require trust, whereas a trust arrangement originates in, and is conditional on, trust.

8. It means also [é]tat de dépendance d'une personne soumise à une surveillance gênante (Petit Robert, 1970).

9. Rather than bilateral as in the context of imperialism and colonialism wherein trusteeship ordinarily represented a relationship of dependency between the colonial empire and the colonised polity.

10. Which "has never been clear and has given rise to a number of conflicting theories" (Mugerwa, 1968).

11. "The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be: to further international peace and security; to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement; to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and to ensure equal treatment in social, economic, and commercial matters for all Members of the UN and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80" (UN Charter, Chapter XII, Article 76).

were unknown to one or more parties, misrepresented, or simply misunderstood. Frequently, a party would find itself betrayed; indeed, throughout history various forms of international trust relationship have suffered from this deficiency. One need only look at the history of indigenous people to acknowledge this fact.[12] To be sure, this has become a formidable barrier to the revival of international trusteeship.

UN Charter Article 7.1, Chapter III: Organs, lists the Trusteeship Council (UNTC) as one of the six main UN organs (Gal-Or 2011). This is of special significance for unlike the numerous special agencies, commissions, and other bodies tasked with peace and development and established time and again by the main UN organs (including the ITA missions), the UNTC—as the UNSC, UNGA, Secretary-General (UNSG), International Court of Justice (ICJ), and Economic and Social Council (ECOSOC)—is a permanent and constitutional UN body. The 1994 TC vote to amend its Rules of Procedure (UNTC Suspension)—a technical, not substantive decision—resulted in its effective suspension,[13] and does not foreclose its future reconvening. It should be noted that due to the extremely rare application of the system (eleven trustee territories of which seven in Africa and four in Oceania all having graduated to independence), which speaks to its successful performance, the system cannot reasonably be found accountable for UN current (and past) problems. Consequently, the need to reconfigure the UN trusteeship arises from factors extraneous to it.

It is not by chance the short Chapter XI on non-self-governing territories precedes the trusteeship chapters. It serves to juxtapose trust territories with non-self-governing territories, which are less subject to UN supervision and generally not candidates for independence (sixteen such territories remain) (Chesterman et al. 2008). While Article 73 reflects this UN-limited control by referring to the idea of trust as "a sacred trust," to stress the obligation assumed by the territory administering state (a remnant of the nineteenth century colonial legacy), the trusteeship chapters charter a twentieth-century progressive conceptualization of international trusteeship. This transpires from the catalogue of basic objectives listed in Article 76 Chapter XII, which remains as relevant today as it was in 1945. The first objective—the furtherance of international peace and security (Article 76.a)—figures prominently in both the UN narrow R2P version (the four international crimes), and in the wide ICISS (human

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12. The history of Aboriginal international institutional advocacy begun in 1923, and was marked by the denial to an aboriginal leader to speak to the League of Nations. Since the 1950s, indigenous people achieved a first and second breakthrough with the International Labour Organisation (ILO) adoption of two conventions (Indigenous Convention 1957, Indigenous Convention 1989). Nevertheless, Article 1.3 of the latter specifies that "The use of the term **peoples** in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law" [original double emphasis].

In the 2006, following more than two decades of negotiations concerning the rights of native people to protect their lands and resources, and maintain their cultures and traditions the General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples, which sets out the individual and collective rights of the world's 370 million native peoples, calls for the maintenance and strengthening of their cultural identities, and emphasizes their right to pursue development in keeping with their own needs and aspirations. A non-binding text, the Declaration states that native peoples have the right "to the recognition, observance and enforcement of treaties" concluded with states or their successors. It also prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them (GA/10612, 2007).

A catalyst paving the way for further empowerment of indigenous people, the Human Rights Council's efforts resulted in the creation of three bodies—expert mechanism on the rights of indigenous peoples, special rapporteur on the situation of human rights and fundamental freedoms of the indigenous people, and a permanent forum on indigenous issues (HRC Resolution 2007, Guidelines 2008). Nevertheless, the *status quo* characterisation concerning recognition of self-identification (not determination) of indigenous people, established in the ILO Convention over forty years ago, has remained unaltered (ILA Report 2008).

13. By a resolution adopted on 25 May 1994, which followed the October 1994 independence of Palau, the last remaining United Nations trust territory, the TC amended its rules of procedure to drop the obligation to meet annually. It agreed to meet as occasion required subject to its decision or the decision of its President, or in response to the request of a majority of its members or the UNGA or the UNSC (UNTC Suspension). The de facto suspension represents a 'default' procedure given that an amendment of the Charter—either to "clearing away the dead wood in the Charter" (Schrijver 2006), either for the purpose of doing away with the UNTC altogether, or to substantively change it, is currently an unrealistic option.

security) one (Gal-Or 2011). The second objective—the promotion of "political, economic, social, and educational advancement of the inhabitants of the trust territories" (Article 76.b) has been intrinsic to the conflict prevention, peace-building, and development agendas of the UN, which potentially lead to "self-governance or independence." Self-governance differs from independence because it offers the dependent pre-state several voluntary alternatives. These include integration within the administering state, union with another independent state, association with independent states, or any other form of governance, a choice to be determined on a case-by-case basis and subject to "the terms of each trusteeship agreement."

The third trusteeship objective reiterates the universality of human rights and fundamental freedoms, recognizing "the *interdependence* of the peoples of the world" (emphasis added) (Article 76.c). It foretells the tripartite institutional arrangements built into the UNTC (discussed below). The fourth and last basic objective stresses the equality of UN members and their nationals, subject to Article 80. The safeguard provision strikes a balance between imperial and self-determination interests, as at the time of drafting,[14] for "nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the UN may respectively be parties." Articles 82 contributes a *Realpolitik* "twist"—concurrently reinforcing yet also qualifying Article 80, and distinguishing between strategic and nonstrategic trust territories: "There may be designated, in any trusteeship agreement, a strategic area or areas which *may include part or all of the trust territory* to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43" (emphasis added).[15] Articles 83, 84, and 85, which establish the UN labour division in matters international trusteeship, allocate responsibilities between the UNSC and the UNGA corresponding to the strategic versus nonstrategic trust differentiation, respectively. Although constitutionally an independent organ, the UNTC is entrusted with assisting the UNSC and UNGA in a principally subordinate capacity. According to this partnership format, each trusteeship agreement represents an individualised pact in which three UN organs carry with shared responsibility.

Articles 77, 78, and 79 determine the characteristics of territories candidate for a trusteeship arrangement. According to Article 77, they include "a. territories now held under mandate,"[16] "b. territories which may be detached from enemy states as a result of the Second World War; and c. territories *voluntarily* placed under the system by states responsible for their administration" (emphasis added).[17] Article 78 stipulates that UN members are barred from coming under the trusteeship system. Article 79 requires the consent of the administering or responsible authorities[18] to the trusteeship terms and their eventual modification.

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14. In a contemporary reading, the safeguard may apply to states which achieved independence after the establishment of the UN, and which are bi-or multi-national, and are parties to relevant international instruments. Read together with Article 82, these provisions apply to contemporary peace operations cases and the involved states.

15. Article 43 of Chapter VII empowers the UNSC to authorise the use of force.

16. Some Mandate territories which gained independence directly and did not pass through the trusteeship system include Syria (1946), Lebanon (in a protracted process between 1941–43, the French Mandate ending in 1946), Jordan (1946), and Israel (1948).

17. The voluntary option has never been exercised hence remains hypothetical (Chesterman et al. 2008).

18. The qualification of administering or responsible authorities here is distinct from the Article 81 defined term of "administering authority," which refers to the authority established under any specific trusteeship agreement.

Chapter XIII: The Trusteeship Council[19] lays out the composition, functions and powers, voting, and procedure of the UNTC. Article 86 on composition stipulates a UN-all-inclusive UNTC membership: It must include those administering the trust, the UNSC-5, and "as many other members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not." (Article 86.1.c) For the purpose of UNTC functions and powers, this organ is subordinate to the authority of the UNGA (Article 87), a provision which further emphasises the labour division regarding strategic and nonstrategic territories. UNTC voting is by simple majority (Article 89), determining the rules of procedure is a UNTC prerogative (Article 90), and it is free to seek the assistance of the ECOSOC and other specialized agencies (Article 91).

In conclusion, while Chapter XIII offers a simple but flexible structural and procedural framework—not unlike the ITAT interagency approach—Chapter XII contains several historical era-specific provisions that are politically, legally, and normatively obsolete. Indeed, this is one of the principal challenges to adjusting the trusteeship regime to twenty-first century circumstances. In order to position the UNTC as an organ tasked with discharging part of the R2P duty in extreme FFSS circumstances, Article 78 on membership, Article 77.1.c on the voluntary submission to the trusteeship regime, and Article 82 distinguishing strategic and nonstrategic areas must be reconstrued and reconceptualised. An inclusive and transparent approach oriented toward a systematic and consistent overhaul of the trusteeship system must be devised in order to reinvigorate the UNTC. This will be discussed in the next section.

A Legal Reconceptualization of the UN Trusteeship System

The renewed interest in the trusteeship system was stimulated by international law's difficulties in keeping in check a world which has been transforming at an accelerating pace and where power relations have become increasingly indeterminate: "Toward the end of the twentieth century, [the] configuration of three worlds has vanished: There is no Second World, therefore no Third World. But surely we are no one world. The political system is fluid and its configuration difficult to describe and to characterize" (Henkin 1995). The deficiencies of international institutional routine standard procedures in maintaining peace and security have been commensurate.[20] The impact of FFSS government incapacity marred UN competence; the flaring up of a fourth generation state versus non-state actor armed conflict, notably the revival of piracy, and the assent of transnational terrorism, have been bedevilling an intergovernmental organisation founded on the principle of state sovereignty. These in themselves suffice to justify an interpretative adaptation of Article 82.

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19. This is the title in the UN print version (1976) of "Chapter XIII: The Trusteeship Council". It differs from the online version at http://www.un.org/en/documents/charter/chapter13.shtml, retrieved 31 May 2010.

20. While the focus of this paper is on security and UN reform, the interconnectedness of security, the transforming world economic order, and the reemergence of identity politics must not be overlooked. This has been recognised in various UN seminal documents (Brahimi Report, Our Global Neighborhood 1995). Most recently, the interdependence has been exemplified in the "Arab Spring" rebellions and revolutions. UNSC resolution 1973 (2011) authorising the establishment of a no-fly zone over Libya and "to take all necessary measures" (Paragraphs 4 and 8), and the consequent Libya "mission creep," have demonstrated, one again, the many lacunae in the UN approach to R2P (not FFSS, in this case). Consequently, both the wider context of security and the Libyan case are relevant also to Chapters XII and XIII. For instance, potential negotiations to end the civil war may produce transitional administrations in parts of the country (Abiew and Gal-Or 2011).

A Brief Observation on Legitimacy

In this section, I advance an argument for the adaptation of the trusteeship system, grounded in the legal obligation of the state under the UN Charter.[21] I employ a three-legged test to measure the implications for the trusteeship system of the contemporary circumstances. First, the concept of suspended sovereignty and the implication for UN membership including membership obligations are examined, but this requires an introductory brief contextualization. Soon following the adoption of the charter, as a bipolar hegemonic world constellation solidified, and a normative transformation engulfed an assertive newcomer Third Word, the UN international trusteeship regime was dispensed of. Then, as still today, trusteeship was chastised:

> Significantly, . . . decolonization abolished the distinction upon which the idea of trusteeship depended. There were no more child-like peoples that required guidance in becoming adult peoples . . . it no longer made sense to speak of a hierarchical world order in which a measure of development or a test of fitness determined membership in the society of states. . . . Whereas membership in international society prior to decolonization admitted the conditional reasoning of trusteeship, post-colonial international society excluded all considerations of efficacy, utility, and ability (Bain 2003)

In fact, the normative supremacy of the right to independence, partly driven by the promise of sovereignty, and buttressed by the legal shield (and sword) of sovereign immunity, compensated for a converse reality in which newly independent UN members were kept under the check of bipolar supervision. Indeed, this international *modus vivendi* represented a unique albeit often ineffective form of tutelage. Equipped with some of the trusteeship characteristic—the requirements of fitness/competence, responsibility,[22] and inequality of parties, the super powers' interest in expanding their spheres of influence sharply contrasted with the universal "sacred duty" of supervision (Jackson 1990). [23] The upshot was a series of notable disastrous consequences,[24] and the real condition of many bloc members (whether communist or capitalist) fell short of concealing the fallacy of the independence rhetoric. With the demise of the bipolar world order, old and new conflicts were beginning to re-flare, and the degree of dependence of some sovereign states became acutely exposed. Soon, the term "quasi-state" (Jackson 1990) was coined to describe the condition where a mantel of formal sovereignty was cloaking a state's inability to attend to its sovereign duties both domestically and in foreign affairs. Eventually, this gave rise to the nomenclature of FFSS and to the independence rhetoric competitor idea of R2P.

It is at this juncture the criticism faulting trusteeship as contradictory to sovereignty must be qualified. After all, trusteeship doesn't have an issue with sovereignty. Once the misled denial by the critics of the ontological separation of legal sovereignty from the factual condition of state incompetence is acknowledged, the weakness of trusteeship's delegitimization unfolds. The criticism ignores the double essence of sovereignty mistaking

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21. The prevailing literature is largely concerned with the important questions of the legitimacy and accountability of the international actors administering territories (the UN or regional organisations and their agents), and the clarification of the legal framework within which they operate (Cameron and Everly 2010).

22. While not selfless, nevertheless of an ideological commitment to either communism or capitalism meshed with Realpolitik interests.

23. The "sacred duty" of supervision is the fourth characteristic.

24. For instance, the Korean War (1950–54), the crisis in the Republic of Congo immediately following independence (1960–61), Viet Nam (mainly 1950–76), and Afghanistan (1979–88), to mention a few.

external for internal sovereignty, on the one hand; and fails to consider the inequality of the parties caused by a defect in the performance of internal sovereignty by the weaker party, on the other hand.

Trusteeship does not vitiate sovereignty for two interconnected reasons: one concerning the essence of sovereignty, the other being UN membership. While Article 3 Chapter II: Membership, specifies that "The original Members of the UN shall be the states," Article 4.1. Chapter II qualifies that "membership in the UN is open to all other peace-loving states." Put differently, sovereignty must be exercised by the applicant state in a certain manner in order to be eligible for admission into the organization. Because this postulates that membership depends on sovereignty, I turn first to discuss the concept of sovereignty in its dual quality,[25] by examining the role of internal and external sovereignty in regards to peace.

Suspended Sovereignty

Internal sovereignty applies in relation to the population within a state's territory. Where the condition of a state has unmistakably degenerated into political and legal decay (Huntington 1968), and its government been incapacitated to the extent of noncompliance with all or part of its duty of care owed to its population (whether by commission or omission, articulated in R2P), then that state might be diagnosed as inflicted by FFSS (Frazer 2007). In such condition, a state is no longer peaceful, hence, at least partly, also reneging on the promise made upon accession to the UN to comply with duties listed in the Charter's Preamble,[26] Chapter I: Purposes and Principles, and the pertinent UN legal *acquis*. Concurrently, external sovereignty, which applies to a state's relations to other states, becomes engaged where the breach of the state's R2P duty amounts to a threat to international peace and security—a core objective of the charter provided in Article 1.1 Chapter I: "The Purposes of the UN are: To maintain international peace and security." Indeed, this represents the focus of the Brahimi Report and the ICISS Report, a current concern amply justified given the acute situations in Somalia, Sudan, Democratic Republic of the Congo, Lebanon, Pakistan, and Afghanistan—to name a few cases where the threat has materialised into international insecurity. Consequently, a state suffering from critical FFSS is in a political circumstance where internal sovereignty (and jurisdiction), for all intents and purposes, is lacking practical (operational) significance. I refer to this as a de facto condition of suspended sovereignty.[27]

I must be plainly clear that suspended sovereignty means namely a state's factual incapacitation is to fulfill its basic duties as a sovereign. For some states, this is a chronic situ-

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25. Krasner understands sovereignty to be of a three-fold character: "There are three central elements or aspects of sovereignty: international legal sovereignty, Westphalian-cum-Vattelian sovereignty, and domestic sovereignty. The basic rule of international legal sovereignty is that juridically independent territorial entities merit recognition and with it such rights and privileges as membership in international organizations, possible access (if needed) to the resources of international financial institutions, the ability to sign contracts or treaties with other states and entities, and diplomatic immunity for their representatives. The basic rule of Westphalian-cum-Vattelian sovereignty is that each state has the right to determine its own authority structures, which implies that states should avoid intervening in each other's internal affairs. Finally, domestic sovereignty refers not to a rule but rather to the authority structures within a given state and to their actual capacity" (Krasner 2005). I collapse international legal and Westphalian-cum-Vattelian sovereignties into one external characteristic. Shaw maintains that: "The state . . . lies upon the foundation of sovereignty, which expresses internally the supremacy of the governmental institutions and externally the supremacy of the use of the state as a legal person" (Shaw 2008).

26. "[T]o reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and . . . to promote social progress and better standards of life in larger freedom" (Charter 1945).

27. This is to be distinguished from Article 5 Chapter III: Membership stipulating conditions for suspension of UN membership. A state does not lose its legal personality even if its capacities are circumscribed.

ation (as the recurring instability in the Democratic Republic of the Congo or in Somalia/ Somaliland has shown); for others it is a mere passing condition (i.e., Bosnia). From a legal angle, the sovereign state survives the factual pitfall, for state recognition is immune to positive revocation by the international community and its members.[28] It is important to distinguish this use of the term from other uses of the same expression in order to unequivocally understand the argument of this paper. Suspended sovereignty is a pre-condition for invoking noncompliance with UN membership provisions which entails certain consequences for such non-deliberate defiance. In contrast, a cursory survey shows that suspended sovereignty has been (i) used elsewhere to denote other conditions, and/or (ii) been confounded with qualifications of legal sovereignty. Proposals to place limits on sovereignty, or "suspended animation" (Yannis 2002), coined during the interwar period as expectations of the League of Nations were frustrated, and "suspended statehood" (Yannis 2002) following the establishment of the UN were contemplated as the gap between the legal fiction of sovereignty and material facts were interpreted as voiding the fiction of any meaningful application. Suspended sovereignty has also been used to describe cases of foreign occupation although without extinguishing external from internal sovereignty, as in the classical case of the foreign occupation of Germany by the Second World War four principal Allied forces (Brownlie 2003). In these instances, the suspended sovereignty was intended as a conceptual device to secure the rule of law and the stability of the international system where internal sovereignty has been trumped by belligerent foreign occupation (Yannis 2002). Yet another term, "sovereignty in abeyance," (Yannis 2002) was coined by Judge MacNair in a separate opinion in the advisory opinion on Namibia (ICJ 1950) to describe the League of Nations mandate and UN trusteeship systems as temporary conditions preceding independence.

More recently, other propositions circumscribing the ambit of sovereignty have been offered. They include the "conditioning of sovereignty on state behavior" and asserting that the combination of misuse/abuse of sovereignty and affront to international peace and security result in "conditional sovereignty" (Slaughter 2005), or the idea of "divisible sovereignty" (Schwartz and Juestersonke 2005, Ladwig and Rudolf 2010).

Proposals to address the FFSS by way of a revival of the trusteeship system have entertained the notion of suspended sovereignty as a function of the moral imperative (evolving into R2P), often employing liberal notions of democracy as a standard of measurement. A discussion concerning legal responsibilities of the institutional trustee has recently been sprouting (Cameron and Everly 2010) and complementing this discourse and is poised to further deepen following the recent adoption by the International Law Commission of the Responsibility of International Organizations (2010).

For example, Somalia stands out as a prime case of a fragile state on the brink of failure.[29] It represents a state that stands to benefit from a revival of the UN trusteeship system designed to reinvigorate the state faculties necessary for compliance with its international

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28. A state may of course fall into demise or its identity may change due to various legal causes (cession, secession, dismemberment, union) (Cameron and Everly 2010).

29. Ranking "extreme" (Marshall and Cole 2009). A recent general description of the situation in Somalia, which I consider a failed state, reads as follows: "The growing internal schisms and factionalism within Somalia's Islamist movement risk plunging the country even deeper into violence and bloodshed, with dangerous implications for the wider region and beyond. These divisions are also aggravating the political crisis by polarising groups further along ideological, theological and clan lines" (Somalia's Divided Islamists, 2010).

legal duties. In contrast, where a competent state government deliberately chooses international legal transgression, other charter provisions apply, notably as in Afghanistan for which UN Assistance Mission in Afghanistan (UNAMA) was established (2002). Nevertheless, the possibility a Chapter VII-triggered operation might prompt also some form of trusteeship or tutelage should not be ruled out.[30] The cases of Kosovo, East Timor, and Eastern Slavonia, where ITAT peace operations were established in specific, limited regions within a state as a means of diffusing hotspots susceptible to violent flare ups, validate this proposition (Stahn 2001, Gal-Or 2008b).[31] In other words, the extent of government incapacitation ranges on a scale of fragile to failed state, with a wide spectrum of geographical and other nuances, hence demands a corresponding trigger. In some cases,[32] as argued later herein, pseudo-trusteeship had proved the most appropriate match.

Contemporary candidates for becoming trust territories are independent (sovereign) states. Consequently, Article 77.1.c stipulation that "1.The trusteeship system shall apply to . . . c. territories voluntarily placed under the system by states responsible for their administration," which were the foreign colonial powers, is largely hollow today. Au contraire, a state responsible for the territory's administration is essentially identical with the sovereign state that is voluntarily consenting to be placed (in part or in whole) under the trusteeship system.[33] I turn now to discuss the relationship between suspended sovereignty and the membership exclusion stipulation of the trusteeship system.

UN Membership

While suspended sovereignty represents a political material fact, it does entail legal consequences. As a matter of legal fact, all sovereign states had consented to comply with the UN Charter upon their accession to the organization. UN membership presumes and establishes the state's correlate responsibility in Article 2, Chapter I.[34] Rather than discard it as "little more than legal fiction" (Bain 2003), the sanctioning of a noncompliant member dictates consequences commensurate with the failure to conduct oneself responsibly. UNSC resolution 1973 on Libya is the latest example. However, noncompliance should not be confused with the prerogative of a state "not to exercise its constitutional right to participate in the work of the community organs."[35] Equally, refraining from participation does not equate obstruction. Yet, where a state's sovereignty is suspended due to FFSS circumstances, and it is lacking effective representation in the work of the organization, its UN membership is practically frozen.

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30. In fact, this is implicit in the various analyses of the ITA peace operations as described, for instance, in Cameron and Everly (2010).

31. See especially, Gal-Or 2008a where international leasehold is discussed as a potentially promising tool in implementing trusteeship to diffuse the Shab's Farms dispute between Lebanon and Israel.

32. For instance, in the UN Transitional Administration in East Timor (UNTAET) (1996) mission for East Timor, the territory's lack of independence played a pivotal role: The UN recognized East Timor as a non-self-governing territory denying Indonesia's claim to sovereignty over that part of the island. UNTAET thus represents a typical (classic), not post-Cold War (first in the twenty-first century), instance of trusteeship leading towards independence, and a minority example at that.

33. The argument has been made that the ITA cases suggest that the UN, acting on behalf of its membership, has assumed the role of trustee, a supervising authority for the benefit of the population under the trust agreement (Chesterman et al. 2008). Accordingly, the responsibility bearing on the trustee has come to be shared by all independent states via the fiduciary character of the UN, a matter surely to be debated in the discourse on the draft articles of Responsibility of International Organizations (2011). Importantly, being a non-state actor, the UN does not acquire title to, nor does it become owner of the administered territory and the administered territory (or polity) does not lose its sovereignty. (Chesterman et al. 2008) In other words, there cannot be a trusteeship agreement without the free consent of all parties concerned.

34. Generally reiterated and expounded on in the Draft Articles on International Responsibility of States (2001).

35. Which is interpreted as an aspect of a contractual relationship between the member state and the UN (according to Fassbender 1998).

And because incapacity, not culpability, is what informs the legal consequences of failure to comply with its UN membership obligations, trusteeship reform must be reconceptualized as a corresponding remedial—not punitive—international treatment.

Furthermore, even an obstruction of UN work, including UN R2P related operations, must not be construed as triggering an automatic legal deferment of UN membership (Chapter II, Article 5), or expulsion (Chapter II, Article 6). To be sure, such an outcome would be anathema to the very purpose of R2P, namely protecting a population in danger via state rehabilitation (Wheeler 2008).[36] Restricting membership privileges on a case-by-case basis, or qualifying UN membership, is more equitable and also offers a technical way around Article 78, Chapter XII (barring members from application of the trusteeship system) provided that trusteeship present itself as the best restorative alternative in point. Accordingly, a state may be incapacitated in "the exercise of *certain rights* of membership" (Fassbender 1998, emphasis added) but will not forfeit its UN membership per se.[37]

As previously observed, the provisions of Chapter XII encourage a partnership among the various organs of the UN. While the UNGA is the competent organ with final say in matters pertaining to membership, UNSC determinations under Article 39 Chapter VII and Article 82 Chapter XII (and subject to Article 43) apply where strategic areas are concerned; and if needed, the ICJ (as in Namibia) may also be called upon to provide an advisory opinion (ICJ 1971). The details concerning how to systematize, streamline, and assign the tasks associated with the qualification of membership conditions for states suffering of FFSS (determining the provisional duration of the membership sanctions, periodical evaluations, and so on) is beyond the scope of this paper.

To be sure, the image of the political child, presumably underlying the idea of trusteeship, is no longer germane. Instead, the objective criterion of adult compliance applies. In joining an intergovernmental organization, the sovereign state is voluntarily entering an agreement and consenting to limit its liberty for its own benefit. Because suspended sovereignty represents a condition originating from within the state, hence attaching in the first place to its internal—not external[38]—sovereignty, the situation of suspended sovereignty serves as a comparative criterion to distinguish two political statuses in which sovereign states may find themselves: Those with effective internal sovereign performance versus those where sovereign performance is being self-suspended. Certainly, the condition of inequality meets the inequality criterion underlying the concept of trusteeship. While not altering the formal and legal sovereignty of the state, this material difference is hardly a secret: Ample UN efforts have been directed toward addressing state deficiencies under the label of "development." Thus,

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36. Whether and how membership qualifications in the UN would affect the state's membership in other organisations (UN family, regional, and others) is beyond the scope of this paper.

37. Just as a state cannot evade its obligations under the constitution of the international community, it cannot be expelled from the constitutional community as such. This membership in the international community has to be distinguished from a state's participation in the work of the community organs. A temporary suspension from the exercise of the rights and privileges of membership, as provided for in Article 5 of the Charter, is acceptable from a constitutional point of view" (Fassbender 1998).

38. To reiterate, unlike the argument here, the ICISS considers the suspension of sovereignty as external. "Intervention suspends sovereignty claims to the extent that good governance, as well as peace and stability, cannot be promoted or restored unless the intervener has authority over a territory. But the suspension of the exercise of sovereignty is only de facto for the period of the intervention and follow up, and not de jure" (2001). Similarly, Michael Doyle's conceptualization of "ad hoc semi-sovereignty mechanisms," referring to the political nature of ITA, not to that of the FFSS (quoted in Chesterman 2007), envisions suspension of sovereignty as externally effected; and Chesterman discusses UN sanctioned transitional administration as a project "undergirded by the realist foundation of military occupation" (2007).

the objectives of the trusteeship regime, designed to promote self-governing or independence capacities in competence-lacking territories, are not essentially different from development goals (OECD 2011, OECD 2008). Obviously, how a condition of extreme fragility or failure of a state is to be ascertained by which procedure, under which provisions, by whom, and how the anticipated time frame for a state's recovery is determined are crucial questions. They require concerted, rigorous, and systematic debate within the UN. In fact, this is one more reason to revive the UNTC, a subject briefly addressed below.

Trusteeship and ITA

The third part of the argument in support of the revival of international trusteeship builds on the similarity between trusteeship and ITA (Mortimer 2004, Harland 2004, Cameron and Everly 2010). It maintains efficiency and effectiveness benefits will accrue from integrating the ITA missions under one organizational roof, and the trusteeship regime is the most appropriate organ to house them.[39]

The Brahimi Report (2000) describes UN experience with ITA arrangements as a process shaping almost accidentally, picking up speed and scope only since summer 1999.[40] Observers following the maturation of the ITA approach portray it as eclectic: "not a formal practice or institution in the way that UN trusteeship, or even UN peacekeeping is" (Caplan 2002),[41] not embedded in any organizational strategy nor in any overarching legal approach. Dictated by contemporary triggering events and linked to the cascading collapses of state institutions, the ITA decidedly differs from previously planned disengagements by colonial empires from dependent colonies. And as the current crises typical to the FFSS condition have habitually consisted of a combination of international and non-international armed conflict, with the added factor of transnational terrorism, hence posing a collective concern as a public good interest of the entire family of nations, the ITA perspective needed to expand. Accordingly, it was designed in view of reaching beyond nominal military peacekeeping and humanitarian assistance, and has included also support to the affected societies in resurrecting law and order via re-building state institutions, especially the police and the judiciary, as well as providing technical and development assistance to sustain the security efforts. At times, the scope of responsibilities was approximating those of government:

> 77. These operations face challenges and responsibilities that are unique among UN field operations. No other operations must set and enforce the law, establish customs services and regulations, set and collect business and personal taxes, attract foreign investment,

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39. This arises out of observers' conclusions maintaining that the ad hoc nature of the ITA missions is also the source of their operational weaknesses and the resultant 'reluctant' legitimisation. As Mortimer observes: "In short, international administration, though unforeseen in the UN Charter and in principle little wanted by most members of the UN, seems likely to be with us for some time. Up to now it has been improvised, as a series of pragmatic responses to particular crises. It is not the subject of any official doctrine or any general, thematic resolution of either the general Assembly or the Security Council. There is no department dedicated to it in the UN Secretariat. Instead, it is handled by the Department of Peace Keeping Operations, itself the product of an earlier set of improvised pragmatic responses not foreseen in the charter. . . . One obvious approach would be to revive and reform the Trusteeship Council, using it as a mechanism through which the community of nations could effectively exercise its tutelage and responsibility for the interests of those unfortunate peoples who may from time to time find themselves in need of international protection; that would surely be true to the spirit of the UN Charter" (2004). See Mortimer (2004) also concerning the demand and supply aspects of ITA which are poised to grow.

40. Since the end of the Cold war, the UNSC authorised sixty-nine peace missions, implemented by the UN Department of Political Affairs or the UN Department of Peacekeeping Operations along with a variety of additional actors (Franke and Warnecke 2009).

41. "Peacekeeping operations have not come a long way since their modern inception in the aftermath of the Second World War, nor have they come very far since their supposed renaissance in the aftermath of the Cold War"(Arbuckle 2009, last emphasis added).

adjudicate property disputes and liabilities for war damage, reconstruct and operate all public utilities, create a banking system, run schools and pay teachers and collect the garbage—in a war-damaged society, using voluntary contributions, because the assessed mission budget, even for such transitional administration missions, does not fund local administration itself. In addition to such tasks, these missions must also try to rebuild civil society and promote respect for human rights, in places where grievance is widespread and grudges run deep (Brahimi Report 2000).

ITA missions can be visualized as spreading across a continuum stretching from supervision to direct (ITA) governing (including a host of practical tasks), and as such representing varying scales of control (Caplan 2002). For instance, in the case of the UN Transitional Authority in Cambodia (UNTAC) (2002, Caplan 2002), the UN mission consisted of supervision, exerting indirect control, and contending with oversight, inspection, and monitoring functions. Placed somewhere along the continuum is the international administration in Bosnia and Herzegovina, characterised by the unique position of the Office of the High Representative created by the Dayton Agreement (And not accorded a formal name). At the other end of the spectrum, the international administration involving direct governance, comprising of legislative and executive power, is exemplified in the cases of the UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmirum (UNTAES 1996), the UN Interim Administration in Kosovo (UNMIK 1999), and the UN Transitional Administration in East Timor (UNTAET 1999). To be sure, the variety of ITAs transpires from the different epithets the system has attracted whether transitional administration, stabilization or support missions, and the like. In the literature, the operations drew various monikers including "virtual trusteeship" (Chesterman et al. 2008), "UN protectorate" (Jenkins 2006a), "pre-constitutional monarch in a sovereign kingdom," "a ward of the international community" (Jarat Chopra quoted in Bain 2003), or "neotrusteeship" (Stobe Talbott quoted in Bain 2003, Fearon and Laitin 2004), to name a few. Disagreement among experts assessing the extent of governing power of the international administration in each particular case it reflects this indecisiveness.

Arguably, the weakness of what proved an attractive approach is explained by the very complex organizational schemes developed for ITA missions.[42] First, ITA embraces a broad spectrum of aims and activities that, as already mentioned, include both military operations and extensive civilian responsibilities; "[n]o international field operation has been vested with as much executive, legislative and judicial authority" (Caplan 2002). Second, because to accommodate the enormous array of concerns, and determine the associate tasks required complex organizational and procedural models, ITA missions were faced with considerable manageability challenges, inevitably leading to a multiplicity of actors involved in each instance of planning and implementation. This meant every case demanded a new determination of the mission's aims, translation of objectives into operations on the ground, interactor relations, accountability, funding, and policy coherence, to name a few. Indeed, each ITA operation represented an ad hoc enterprise with its unique shape and particular consortium of actors resourced with members ranging from UN bodies and agencies partnering with other organizations such

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42. Frequently, ITAs represented extremely complex peacekeeping operations, with "lines of authority, allocation of responsibilities and design of coordinating mechanisms [which] are still far too often subject to conflicting claims and historic prejudice, as well as to the immaturity of the organizations and of the practitioners"(Arbuckle 2009).

as the North Atlantic Treaty Organization, EU, African Union, the Organization for Security and Cooperation in Europe, and others, as the case may be, or as in Iraq, a U.S. led enterprise.

Regardless, ITAs have come to mirror trusteeship practices implemented in circumstances barring formal trusteeship: A trusteeship-like arrangement without being one. In the absence of an organizational permanent home for ITA operations [43] and seen from an institutional perspective, their ad hoc mobilisation has been akin to a band aid plus treatment proving successful in partially assuaging *Realpolitik* interests, and at times rebuilding peace and stability. It was also instrumental in repelling—albeit with inconclusive results (Arbuckle 2009)—mounting R2P type international human security threats and humanitarian disasters. Arguably, given the nature of the challenge, this is where the ITA's major strength resides: Even where moderately effective, it frequently was instrumental in alleviated further suffering and harm.

It is in this context, of reconciling the real and the ideal, that reform of the trusteeship system must be understood. Consequently, although legitimacy issues regarding the ITA approach and operations have figured as an added and persistent burden,[44] ITA has not been discarded altogether. To the contrary, legitimization has been accruing hence suggesting that the approach must be central to any attempt of reforming the trusteeship system. Acknowledging the UN is the only credible actor capable, at least rhetorically, of "reestablishing the rule of law domestically and reintegrating a once-failed state into the international community" (Arbuckle 2009, Jenkins 2006b),[45] deserves careful attention. And state *re-building* rather than state-building (and much less so nation-building), which by force of historical development (as earlier noted) has featured as the focus of ITA missions (Chesterman et al. 2008), will also have to be the linchpin of a reformed trusteeship system. In this context, attending to the corresponding tasks of establishing structures conducive to the stabilization of peace has proven as a legitimacy mobilizer albeit challenged by the often associated foreign intervention[46] which remains controversial as always (Chesterman et al 2008, Stahn 2001).

It transpires from the ITA history that, in principle, the approach reproduces arrangements similar to those envisaged in the successful UN trusteeship regime. That the ITA approach could be transplanted into the trusteeship system is facilitated by the fact that it features a multilateral ruling arrangement with foreigners who embrace little if any (at least not direct (Harland 2004, Mortimer 2004)) imperialistic agenda, and is of limited duration (Fearon and Laitin 2004). In addition, ITA missions are ad hoc, and have their measures tailor made, on a case-by-case basis, hence are adjustable. By incorporating this quality of knowledge and practice within the trusteeship system, the negative effects of improvisation may be offset. And while undeniably, consent—cardinal to mission success—will remain a challenge, a system-

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43. This was the case prior to the establishment of the Peace-building Commission, which was designed to accomplish that goal (UNGA resolutions 60/180 (2005), UNSC 1645 (2005), and UNSC 1646 (2005)).

44. It "has not met with universal acclaim" (Jenkins 2006b). Criticism has been common especially to the humanitarian and development assistance discourses, yet faulted for "coupling trusteeship and simplification" (Bebbington 2010). By compartmentalizing technical issues, and segregating them away from their historical, political, and economic universe, those critics are being blamed for deconstructing peace operations (Arbuckle 2009) and development projects, and painting an often distorted portrayal of the actual ITA work.

45. According to Harland: "it is the singular weakness of the UN that is also its greatest strength in international administration. Constrained by the compromises of its huge membership, needing to accommodate a broad spectrum of views and constituencies, it is the least illegitimate of all possible outside actors. It may not represent the will of the people administered, but it derives some legitimacy from the breadth of international support"(2004).

46. The literature on foreign military and/or humanitarian intervention is abundant hence a familiar subject that need not be addressed here.

atized, principled, more transparent, and accountable institutionalization within a UN standing organ will be more appropriately placed to successfully meet it.

In Lieu of Conclusion

A list (incomplete) of issues to be addressed by the UN (the international institutional trust supervisor or trustee) includes the following: Setting up a mechanism to diagnose ITA (or trusteeship) triggering circumstances; using the UNTC and it offices as a permanent organizational headquarter to avoid redundancy and to solidify travelling practices (Bebbington 2010, Arbuckle 2010); ensuring the smooth functioning of the trilateral partnership between UNSC, UNGA, and UNTC, thereby seeking to establish a focus of accountability and responsibility; and building a repository of all the data concerning the ITA missions and operations as a resource library and organizational historical memory. Centralizing the public relations function in one organ responsible for transparency and accountability (including an Ombudsperson function) (Caplan 2003), and mediating between the missions and world public opinion, would go a long way toward demystifying uninformed perceptions on ITA in R2P and acute FFSS situations. Reaching out was already recognized as a function of the UNTC in Article 87 Chapter XII and is invaluable for organizational performance assessment and future planning and development. All the above is vital for efficient, effective, and consistent performance of the UNTC functions, and indeed, matches the fitness and supervision characteristics of trusteeship.

In conclusion, here is the paper's argument. There is, on the one hand, a UNTC: A permanent and constitutional organ of the UN, available for service but demonstrably under-used. On the other hand, a UN member state is succumbing to a FFSS condition, its sovereignty being de facto suspended to the extent of invoking an acute case of R2P. The state is unable to comply with the initial commitment it had made upon joining the UN as an equal sovereign member of the family of nations. While an approach to manage and diffuse such cases is under development,[47] it is inferior when compared to what the UNTC has to offer—a hub to streamline and institutionalize ITA operations in the special circumstance mentioned above. To be sure, as amply manifested in the experience of other UN organs and commonly acknowledged, "the UN has no vested interest in the status quo" (Ralph Bunche quoted in Urquhart 2003). There is no reason for the trusteeship regime to remain an exception, frozen in time. There is no justification to refrain from attempting a reformative reconceptualization of Chapters XII and III and adapting them to early twenty-first century circumstances.

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47. Comprising of the peace-building commission which partly is overlapping with the UN Department of Political Affairs and Department of Peacekeeping Operations. Delineating their statuses and associated labour division will have to be part of the reform of the trusteeship system, a subject beyond the scope of this paper.

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