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**The United Nations Trusteeship Council and The Trusteeship System: Justifications for
Revival and Legal Obstacles**

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ABSTRACT

The Trusteeship Council as a principle organ of the United Nations has its functions to supervise territories in the United Nations Trusteeship system. However, since 1994, the Trusteeship Council had been inactive. This does not heed to its history, where the Council had helped 11 trust territories in gaining independence. Interestingly, a handful of the territories that had been assisted by the Council had in recent years encountered problems especially in its own governance systems. Those States had lost its capacity to govern itself, not able to withstand internal and external pressures of the modern world. Aside from former trust territories, there had been many instances of other States experiencing instability, that could be forwarded as to be included in the job description of the Trusteeship Council. A revival seems to befit the Council, taking into account recent development. Nonetheless, a litany legal and political hurdles must be passed before the Council could rise once again.

Keywords: Dewan Perwalian, Fragile/Failed States, Revival, UN Reformation.

**Dewan Perwalian Perserikatan Bangsa-Bangsa dan Sistem Perwalian: Justifikasi untuk
Pengembalian dan Rintangan Hukum**

ABSTRAK

Dewan Perwalian Perwakilan Bangsa-Bangsa sebagai suatu lembaga internasional memiliki fungsi untuk mengawasi wilayah-wilayah dalam suatu sistem perwakilan. Akan tetapi, pada tahun 1994, DP PBB telah menghentikan kewajibannya. Padahal pada sejarahnya, Dewan Perwalian telah turut membantu 11 wilayah dalam meraih kemerdekaannya. Menariknya, pada wilayah-wilayah yang dahulu diawasi oleh Dewan tersebut masih terlihat banyaknya masalah yang terjadi, terutama mengenai sistem pemerintahannya sendiri-sendiri. Negara-negara tersebut kehilangan kapasitas untuk mengatur dirinya sendiri dan berimplikasi tidak mampu untuk berada dalam tekanan-tekanan pada dunia modern. Selain pada wilayah yang dahulunya berada dalam perwalian Dewan Perwalian, dewasa ini banyak sekali kejadian dimana negara kehilangan kapasitas untuk mengatur wilayahnya sendiri, suatu hal yang dapat juga dimasukkan ke dalam deskripsi tugas Dewan Perwalian. Penghidupan kembali tampaknya sangat cocok untuk dilakukan terhadap Dewan mempertimbangkan perkembangan dunia modern. Terlepas dari hal tersebut, banyak rintangan hukum maupun politik yang harus dilewati sebelum Dewan Perwalian dapat kembali berfungsi kembali.

Kata Kunci: Dewan Perwalian, Negara Rapuh/Gagal, Pengembalian, Reformasi PBB.

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A. INTRODUCTION

An international organization is an organization that has States as members and is established by an international agreement. World War II, a landmark in international law, left the international community exhausted and longing for everlasting peace.² Then in June of 1945, the United Nations ("UN") came was established, with an international agreement that underlines States member's commitments to keep future generations far from the "scourges of war" that had haunted and wounded their own generation.³ The UN, as an organization, has an understanding where international security and stability highly depend on that its regional stability and security.⁴

The UN Trusteeship Council ("The Council") is one of the United Nations principal organs.⁵ It is the main executor of the international trusteeship system, a system designed for the UN to enable premature territories to self-govern and ultimately become its member States, promoting social progress within the populous of the trust territories and progressive development towards those people's independence and self-governance.⁶ This system had affected fifteen million people that reside within ten trust territories. The Council had halted its operations on 01 November, 1994, exactly one month after the independence of Palau as the last trust territory administered by the Council. Before the said event, the Council amended its Rules of Procedure to remove its obligation to

hold an annual meeting and relegation such meeting based on necessity only.

The trust territories of the UN themselves are the successors of the remaining mandated territories of the League of Nations, a continued effort since the dissolution of the League in 1946. These territories are meant to be guided by the Council to gain their own independence, solidifying them as sovereign States in their own rite. Objectively speaking, the Council had helped a total of eleven trust territories in gaining independence. However, presently, there seems to be numerous problems arising within the boundaries of these former UN trust territories and even problems pertaining to their own concept of independence and sovereignty. These territories, now States, seemingly had lost their capacity to govern themselves; a result of the pressures of the modern international community. Seeing that they are now sovereign states, it is deemed legally impossible for them to be within the trusteeship system when referring to Article 76 of the UN Charter.

Moreover, this problem is not limited to the former trust territories, States ravaged by war, piracy, and conflicting tribal interest are also at risk or have already become failed States. Along this line, there seems to be a renewed urgency for the guidance that was meant to be delivered by the Council to States that are experiencing this problem. This article aims to review the efficacy of the Council in its active lifetime, the issues pertaining to trust territories and the concept of trusteeship within the Charter of the

² Esha Shah, "Manifesting Utopia: History and Philosophy of UN Debates on Science and Technology for Sustainable Development", *Economic & Social Research Council*, November 2009, pp. 1-23, p. 7

³ *Preamble* Charter of the United Nations, 24 October 1945, 1 U.N.T.S. 16, Preambule, Piagam Perserikatan Bangsa-Bangsa 1945 (entered into force in 24 October 1945) [UN Charter].

⁴ Richard Jolly, *UN Contribution to Development Thinking and Practice*, Indianapolis: Indiana University Press, 2004, p. 23.

⁵ United Nations, Fact Sheet: This is the United Nations – The Six Main Organs, Microsoft Word - FS_This is the UN_2013.doc

⁶ Article 76, UN Charter.

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United Nations, as well as delivering recommendations based on the renewed function of the Council.

B. REGULATIONS PERTAINING TO THE COUNCIL AND ITS COMPARISON TO THE MANDATE SYSTEM OF THE LEAGUE

1. Regulations regarding Trusteeship within the Charter of the United Nations

Regulations regarding the trusteeship system and the functions of the Council span three chapters within the Charter, specifically Chapters XI through XIII. Although Chapter XI does not explicitly prescribe regulations regarding the Council and the trusteeship system, Article 73 there is ruling pertaining to non-self-governing territories that have the same spirit and goals as trusteeship. The terminology used is “*sacred trust*”, a term very closely related to the Mandate System found in Article 22 of the Covenant of the League of Nations.⁷ Explicitly, said article reaffirms the commitment of State members towards the welfare and development of societies that are ‘not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.’⁸

2. Chapter XI of the Charter: International Peace through Regional Stability

Consisting of eleven articles, this chapter explains the trusteeship system made by the UN. It is explained that the trusteeship system was made based on the individual agreements to create trust territories in order to ensure progressive development and international security, promote the political, economic, social, and educational progress of the peoples of the territories concerned, as well as slowly enabling them to be independent and self-governing. Furthermore, it was made to promote respect towards human rights and other fundamental rights without discrimination.⁹

These goals are what is blatantly stated within Article 76 of the Charter. These goals reflect the zeal of the UN to achieve international peace through regional stability. If compared to its predecessor, the League, never had there been a more progressive and holistic approach attempted in the field of international territorial management.¹⁰ Article 76 of the Charter bravely prescribed that citizens of trust territories is supposed to be guided to their own independence.¹¹

The trusteeship system is also affirmed to apply towards those territories that were within the purview of mandates (implicitly referring to historical facts of League Mandated territories) that were assigned to World War II Axis Powers and to those territories assigned to be within the trust of a certain State

⁷ Article 22, Covenant of the League of Nations, 28 April 1919 (entered into force in 28 April 1919).

⁸ *ibid.*

⁹ Article 76 (c), UN Charter.

¹⁰ Francis Sayre, "Legal Problems Arising from the United Nations Trusteeship System", *American Journal of International Law*, Vol. 42, No. 02, 1948, pp. 263-298, p. 279.

¹¹ *ibid.*

(usually one that had matured).¹² All amendments regarding trusteeship agreements must be resolved by those countries concerned with all of those agreements containing the prescription of assignment to the administering authority that can consist of one or more States or the UN itself. A number of jurists confirm that by placing former mandated territories under trust, the trusteeship system shaped by the UN is a successor in the historical sense, not in the legal sense, of the mandate system shaped by the League.¹³

What has been said above is widely different with state-building as defined by the League, since the UN also differs from the said organization by nature. The League is a multilateral organization that is highly focused on European imperialist ideals.¹⁴ In Article 22 of the Covenant of the League, territories that are supposed to be placed under the mandate system is divided in a progression categories that reflect the already existing capacity of those territories to self-govern.¹⁵ The mandate system is highly dependent

on what is advantageous towards the League's member states due to its similar nature to colonialism. This is evident in the fact that "A" Mandates, the category reflecting the highest capacity of self-government, is still obliged to be within a purview of a League member. Regardless of the words of President Woodrow Wilson,¹⁶ this system does not prove to be advantageous to the inhabitants of the concerned territory such as that of the trusteeship system, bearing a slight air of neo-colonialism.¹⁷

Areas that are to be given special attention are also a common clause to be found within trusteeship agreements. Said areas are divided into strategic areas, where the functions of the UN are to be delivered by the Security Council, and other areas where the functions of the UN are to be delivered by the General Assembly.¹⁸ Exceptions to the trusteeship system applies towards States that are already member States to the UN on the basis of the

¹² James Crawford, *the Creation of States in International Law*, Oxford: Oxford University Press, 2013, p. 3.

¹³ Charmian Edwards, *the Trusteeship System of the United Nations*, New York: Greenwood Press, 1956, p. 31.

¹⁴ David Stone, "Imperialism and Sovereignty: The League of Nations' Drive to Control the Global Arms Trade", *Journal of Contemporary History*, Vol. 35, No. 02, 2000, pp. 213-230, p. 214.

¹⁵ "A" Mandates consist of territories formerly within the auspices of the Ottoman Empire that had reached a level of self-governance similar to that of an independent State, nonetheless they are "subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone." "B" Mandates consist of territories formerly within the auspices of Germany in Central Africa that have yet to prepare its own form of self-governance and have burdened mandatories to supervise and dispatch the administration within that territory. Article 22 of the Covenant then decides that Mandatories have to ensure "the guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, , the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or

military and naval bases and of military training of the natives for other than police purposes and the defence of territory. This article also ensures he equal opportunities for all league members to engage in trade and commerce - "The Open Door" of the Mandate System. "C" Mandates are territories in South West Africa as well as island territories formerly under the auspices of Germany. They are administered "under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population."

¹⁶ President Woodrow Wilson, in his speech on the 11th of February, 1918, proclaims that "Peoples are not to be handed about from one sovereignty to another by an international conference or an understanding between rivals and antagonists. ... every territorial settlement involved in this war must be made in the interest and for the benefit of the populations concerned, and not as a part of any mere adjustment or compromise of claims amongst rival states."

¹⁷ Ruth Gordon, "Saving Failed States: Sometimes a Neocolonialist Notion", *American University International Law Review*, Vol. 12, No. 01, 1997, pp. 903-974, p. 910.

¹⁸ Article 15 and 82, UN Charter.

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international law principle of sovereign equality.

The trusteeship system wields a consent-based approach; a major breakthrough of the legal aspect of State building at that time.¹⁹ Highly contrasting with the laws of the Mandate system that leaves all authority of administering mandate territories at the disposal of the administering State. Naturally, this system results in the use of said authority only to be advantageous towards the administering States. Despite the Charter being very clear in steering away from the results of the Mandate System of the League, in the following chapters there will be more discussions regarding the events where the administering States of trust territories had abused the authority vested to them.

3. The Council as an Organization and Organ

Chapter XIII of the Charter prescribes rules regarding the Council as an organization and organ to the UN. It is prescribed that the Council consists of members to the UN which are simultaneously administering States, members to the UN Security Council, and States that had been chosen by the UN General Assembly for a three-year term in the Council.²⁰ The Security Council and the General Assembly each have the authority to request reports to the administering authorities, also having the right to request for consultations to administering States and visiting trust territories whenever the need is present.²¹ Obligations of an administering State could then be reaffirmed by referring to the rules set

out in a trusteeship agreement, differing widely from the system of the League. This is due to the trusteeship system having deliberate mechanisms to supervise administering States, preventing unlawful acts and abuses of authority.²²

The council had adopted the same 'one State, one vote' voting system as the General Assembly. Tallies are resolved by a majority vote. The Council is also endowed with the authority to adopt its own rules pertaining to being an organization, such as the technicalities of its meetings, the election of its president, and other matters. As what had been mentioned above, the rules that had been adopted by the Council pertaining to its organization is the 'Rules of Procedure' that shall be discussed further below. Furthermore, the Council may also request consultations and assistance from the UN Economic and Social Council in dispatching their functions.²³

4. Other related international law instruments

The legal instruments that are to be reviewed within this article has deep ties to the methods of the Council. The RoP of the Council is an internal legal instrument regulating the internal technicalities of the Council. It encapsulates the matter of meeting sessions and agendas that had been emended in 1995 due to the independence of the last trust territory of Palau. It goes further into detail in regards to the representative of each State and the credential needed; the rules set out in the RoP being significantly similar towards those rules governing the internal

¹⁹ Francis Sayre, *loc. cit.*

²⁰ Article 86, UN Charter.

²¹ Article 87, UN Charter.

²² Ruth Gordon, "Some Legal Problems with Trusteeship", *Cornell International Law Journal*, Vol. 28, No. 01, 1995, pp. 301-347, p. 308.

²³ Article 88-91, UN Charter.

technicalities of the Security Council, General Assembly, and ECOSOC.²⁴ The President and Vice-President of the Council has a term of five years at most, they both are considered to be one entity in the organization.²⁵ The Secretary-General, on the other hand, has the capacity to discharge all things meeting sessions, such as preparatory work, minutes of the meeting, publications, and its adjustments to the Council's working language.²⁶

The voting system, as aforementioned, adopts a 'one State, One Vote' concept for the decision-making and recommendation-giving function of the Council. Contrasting with the other principle organs of the UN, if there were to be a stalemate in a voting session, a brief recess should be taken; giving a chance for member States to reconsider and perform caucuses before returning to the meeting session and restarting the vote.²⁷ All meeting sessions that involve decision-making are to be made public, upholding the principle of accountability. Exceptions may be held if a subsidiary body or the Council itself had determined otherwise to communicate the decision to close the meeting from the public and its rationale to the UN Secretary-General.²⁸ After all meetings, the minutes of all meeting sessions of the Council shall be accounted for textually and can be amended.²⁹

The ROP suggests that the Council, apart from being a principal organ of the UN that can dispatch executive functions, also has a significant

deliberative function that even outweighs the former.³⁰ This could be clearly seen in the articles prescribing the quorum to each meeting with much weight given to the President or their representative.³¹ Adjacent to that, it is further reflected that the Council is a union of experts where regulations permit the Council to form special committees and even hire Special Rapporteurs.³² The executive function can also be directed to assist in its deliberative ones; Questionnaires given to the administering State of a trust territory through the UN Secretary-General could also be made with the assistance of the ECOSOC.³³

This does not mean that the Council is an essentially deliberative body and given hints of executive powers. It is reaffirmed that visitations could be done at the whim of the Council (*proprio motu*) or based on reports from territory inhabitants regarding any violations that might occur.³⁴ The reports or petitions accepted by the Council could weigh in on the Council's considerations in any of its meeting sessions. All that has been said above is an exponential leap forward compared to the mandate system of the League, where a yearly reporting obligation is non-existent.³⁵ Petitions and reports given by trust territory inhabitants could also be considered as an important step in ensuring that these territories are not treated as colonies.

The mandate system has given precedent that, following the nature of the League itself, it results in little to no capacity-building in self-governance

²⁴ Article 9-10, Rules of Procedure of the Trusteeship Council (as amended up to and during its 61st session), 25 May 1994 (entered into force in November 1995) [The Council RoP].

²⁵ Article 17, The Council RoP.

²⁶ Article 27, The Council RoP.

²⁷ Article 34-37, The Council RoP.

²⁸ Article 47, The Council RoP.

²⁹ Article 49, The Council RoP.

³⁰ Article 62, The Council RoP.

³¹ Article 49, The Council RoP.

³² Article 64-65, The Council RoP.

³³ Article 66-69, The Council RoP.

³⁴ Article 91-96, The Council RoP.

³⁵ Article 72-73, The Council RoP.

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since emphasis was not given to inhabitant development. Not that absolute self-governance is the only mark of a good trusteeship, the designation of trust and its supervision could result in being made an autonomous regions of the administering State if the inhabitants chooses. Naturally, said decision has to be made with assessments done by the Council by way of reports or visitations to gauge the progress of each local government.³⁶ In practice, all mechanisms in the state-building process is ultimately limited by a certain time frame; a clause in trusteeship agreements limits the time frame of a trusteeship being undefined, preventing administering States from abusing their powers as well as giving them and the Council legitimacy as an international administrative body according to Parker.³⁷

C. THE COUNCIL'S RAPPORTEUR

Aforementioned above, the Council is no longer functioning as all trust territories are now independent States. This inactivity is caused by the conclusion of all eleven trusteeships. The following are the details the former trusteeships that had fallen out of grace adding to this articles assertion that the Council should be revived.

1. Rwanda-Urundi

Rwanda-Urundi is a territory near the African Great Lakes. This territory was formerly a Class B Mandate of the League entrusted unto Belgium. After the dissolution of the League, this area became a trust territory on the basis a

renewed agreement. The resulting agreement holistically reflects the spirit of the council. However, imbalanced capacity building and representation in legislative bodies had uncovered many long-standing problems within its borders. These problems, rooted in tribal ideals, took shape in the form of anti-colonial nationalist movements that rendered Belgium impotent in its control of the territory. Continued by a landmark event in history, the separation of a State, to the Republic of Rwanda and the Kingdom of Burundi caused by tribal tension of the Hutu and the Tutsi. This separation was done in a hurry, where lines were drawn based on traditional ethnic boundaries.

The political reformation that was recommended by the Council in this instance took shape in the form of General Assembly Resolutions A/RES/323(IV) and A/RES/400(V) that was an effort in creating legislature mirroring ombudsman functions as to stop racial and tribal discrimination in social services and government.³⁸ Nonetheless, considerations based on skin color do not weigh as heavily as considerations based on ethnic and tribal backgrounds; a wound left by the reckless border drawing Germany as a colonial power.

Both States that were a result of the independence of Rwanda-Urundi can be considered very far from stable. In 1933 to 1944, the Kingdom of Burundi was ridden with internal struggles based upon increasing tribal tensions which had escalated into a full out civil war. Political instability had also occurred in the democratic regression that is a president with an indefinite

³⁶ Article 93, The Council RoP.

³⁷ Travis Parker, "The Ultimate Intervention: Revitalizing the UN Trusteeship Council for the 21st Century", *Centre for European and Asian Studies*, 2003, p. 23.

³⁸ UN GA, *Financing of Economic Development of Under-Developed Countries*, 1950, A/Res/400 (V).

term. A hand full of political experts had protested the Kingdom of Burundi's transgressions towards freedom of speech and democracy by means of an unfair press code. Full of controversy, a genocide in 1994 had decimated the State's macro economy with seldom neighboring states willing to cooperate with or invest within the country.³⁹

Many foreign ministries had issued travel precautions towards their citizens planning to visit Rwanda.⁴⁰ These precautions revolve around the violent incursions that usually take place between Rwanda and its western neighbor, the Democratic Republic of the Congo. Not to mention that the two former trusteeships' relationship remains very stiff. Violence and crime had also been a huge factor in these travel warnings. Overall, in accordance to the 2021 survey of state fragility, Rwanda has ranked 39th whilst Burundi ranked 16th, categorizing as high warning and alert countries respectively.⁴¹

2. Togoland

The trust territory of Togoland was also a former League Mandate to the United Kingdom and France in the end of World War I, divided into French and British Togoland respectively. In 1948, the Ewe Tribe, the indigenous tribe of Togoland, send a representative to the UN Headquarters pleading a case for his people. He stated that immediate

full independence is unfavorable, and that a plebiscite should be held on deciding whether or not both Togolands were to be governed by a French/British government, a joint government resulting in a condominium, or by a neutral government by a Commission of the Council.⁴²

French Togoland remained part of the French Colonial Union with the added status of being a trust territory. Following a progressive recommendation given by the Council, a statute was adopted by French legislatures making French Togoland as an autonomous territory of France in 1955. With regular visits and recommendations by the Council, France had gradually given greater authority to the inhabitants represented by the Adult Suffrage Community in legislative matters of the autonomy.⁴³ With these steps taken, a smooth and peaceful transition of regimes occurred, finalized in 1960 by means of an independent general election.⁴⁴

The Council then urged British Togoland to hold a plebiscite in 1955. Executed in the following year, the plebiscite was opted as the last choice for formal independence as it was blocked by tribal tensions. Nonetheless, in 1957, a plebiscite that was held showed a majority vote to integrate with neighboring Ghana. Following this, in the same year, the

³⁹ Villia Jefremovas, "Acts of Human Kindness: Tutsi, Hutu and the Genocide", *A Journal of Opinion*, Vol. 23, No. 02, 1995, p. 29.

⁴⁰ United States Department of State, "Rwanda Travel Advisory", 7 March 2022, Bureau of Consular Affairs, Rwanda Travel Advisory (state.gov); United Kingdom Government, "Foreign travel advice: Rwanda", GOV.UK, Safety and security - Rwanda travel advice - GOV.UK (www.gov.uk); Australian Government, "Rwanda: Exercise a high degree of caution", smartraveller, 7 March 2022, Rwanda Travel Advice & Safety | Smartraveller.

⁴¹ Patricia Taft Nasri, et. al., *Fragile States Index*, Washington: Fund for Peace, 2021, p. 6.

⁴² British Institute of International and Comparative Law, "The Trust Territory of Togoland: An International Precedent", *International Law Quarterly*, Vol. 2, No. 2, 1948, p. 259.

⁴³ Amenumey, "German Administration in Southern Togo", *the Journal of African History*, Vol. 10, No. 04, 1969, pp. 623-639, p. 624.

⁴⁴ *Ibid.*

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United Kingdom notified the UN Secretary-General regarding this matter.

Nowadays, no two States stemming from the same League mandate were given more contrasting fates. French Togoland, now known as Togo, has constant power struggles and political instability within its borders caused by a scarcity of natural resources. As opposed to its older brother, British Togoland, now known as Ghana, had been given the title of one of the most stable economies in the African Continent.⁴⁵ A plentiful array of natural resources with equally plentiful reserves for each resource leaves much room for economic growth and relations.

3. Italian Somaliland

The history of Italian Somaliland that will be reviewed within this paper refers to the beginning of the trusteeship term. Beginning in 1950, after the United Kingdom had given Italy trusteeship of said territory with a more detailed agreement.⁴⁶ Taking account lessons learned in 1947, added clauses obliging the Italian government to treat equally the inhabitants of Somaliland in dispatching its functions. The General Assembly added a clause allowing the Italian government to manipulate the internal markets as to create a monopoly that is to be inherited by a new government. This was in the effort to create a self-sustaining new government. The Italians are also persistent in widening the influence of the Catholic Church, added the clause allowing the free movement of catholic leaders and

preacher whilst providing them ease to construct places of worship.⁴⁷

The Council had contributed by recommending legislature concerning the abolishment of slavery, trade in narcotics, and child marriages. Followed by the construction of schools and hospitals as superstructures of independence. The administering State had tightly supervised political reformation with many political factions created by the younger inhabitants. The United States Congress had opined that Italian Influence left a good mark in the territory as they actively tried to reverse the negative effects of British Colonial Rule. In 1960, independence was reached crowning Mogadishu as the capital city of Somalia.

Modern-day Somalia had been an anomaly in the track record of the Council. Since 1990, Somalia had been given the status of Failed State by the Security Council, reaffirms by many political and legal experts. This failure by the inability of the central government to fully dispatch its functions and sovereignty of its constituents. Following many horrendous events, the Security Council adopted resolution 733 and Resolution 746 that catalyzed the formation of the United Nations Operations in Somalia to assist the Central Somali government in humanitarian matters.

⁴⁵ African Development Board, "African Economic Outlook 2012", Ghana - African Economic Outlook (afdb.org).

⁴⁶ Trusteeship Agreement for the Territory of Italian Somaliland, 13 December 1950, Document T/11.

⁴⁷ Article 6, Trusteeship Agreement for the Territory of Italian Somaliland, 13 December 1950, Document T/11.

D. THE COUNCIL'S RELEVANCE TOWARDS CONTEMPORARY ISSUES IN THE INTERNATIONAL COMMUNITY

1. Failed States

Failed States are States in a condition where their central government is no longer capable to discharge its authority. The existence of authority is borne out of internal and external sovereignty. Traditionally, the elements of statehood in the Montevideo Convention of 1933 is not fulfilled yet there is still a central government. In cases of State failure, the government cannot be considered as negligent due to it no longer capable to establish order.⁴⁸ The effects of State failure could be observed in modern-day Somalia and Libya in Muammar Gadhafi's regime, resulted in internal conflicts based upon religion, ethnicities, and political affiliations.⁴⁹

The causes to State failure are difficult to determine. However, its symptoms can be observed in its effects. Variations of causes had prompted mixed resolutions by the UN that are reactive in nature.⁵⁰ The Council is said to have authority in problems regarding the reconstruction of a State following its nature as a State-building entity of the UN. Mezei Atilla opines that there were many opportunities where the Security Council had failed

to consult and coordinate with experts of the Council when facing a failing or failed State. The skill set of the Council, is viewed with high regard within these situations.⁵¹

To many experts, Somalia had been the first example of a failed State. This judgment is align with the qualitative and quantitative methods of determining State failure and fragility. Ulrich Schneckener had defined the qualitative method where a State is deemed to have failed when the central government no longer has the legitimacy nor the capability to enforce the rule of law and exert a "monopoly of violence".⁵² With that being said, to know a failed State, one must know "successful" States. Not that the archetype for failed States stories always come from successful States. Clearly, most failed States today were never successful ones,⁵³ they who control defined territories and self-regenerating populations, capable in relating diplomatically with other states, monopolize legitimate violence, and able to provide adequate social good to their populations.⁵⁴

Failed States must be differentiated, however, from their counterparts: weak or fragile States. These kinds of States still have a monopoly on legitimate violence in their territory, however without strong governance structures paired with substantial regional influence and wealth -

⁴⁸ Stuart Eizenstat, et. al., "Rebuilding Weak States", *Foreign Affairs*, Vol. 13, No. 2, 2005, p. 329.

⁴⁹ Robert I. Rotberg, *When States Fail; Causes and Consequences*, New Jersey: Princeton University Press, 2004, p. 13.

⁵⁰ Jonathan Di John, "Conceptualizing the Causes and Consequences of Failed States: A Critical Review of the Literature", *Working Paper No. 23 Development as State-Making Crisis States Reseach Centre*, 2008, p. 3.

⁵¹ Mezei Atilla, "The Trusteeship Council and State Failure Trusteeship Systems and the Forgotten UN Organ in the 21st Century", *Koz-gazdasag* Vol. 14 No.1, 2019, pp. 87-102, p.94.

⁵² Ulrich Schneckener, "States at Risk – zur Analyse fragiler Staatlichkeit. Welcome back – Staatszerfall als Problem der internationalen Politik", in Ulrich Schneckener, *States at Risk. Fragile Staaten als Sicherheits- und Entwicklungsproblem*, Berlin: SWP Studie, 2004, p. 291.

⁵³ Rosa Ehrenreich Brooks, "Failed States, or the State as Failure", *University of Chicago Law Review*, Vol. 72, No. 4, 2005, p. 1159.

⁵⁴ H.H. Gerth & C.W. Mills, *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), p. 77-78.

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Indonesia, Pakistan, and Colombia - those mentioned straddle between collapse and stability.⁵⁵

2. The Perils of Neo-Trusteeships

Neo-trusteeships is an academic term, describing a new form of trusteeship imbued with imperialist ideals. This includes the annexation of a sovereign State's territory that had been considered a failed or failing State in order to amend the ruling regime. This is done by States who adopt a realist approach towards international relations and could be considered as a violation of Article 7 of the Charter regarding the prohibition of the use of force.⁵⁶

It is used in international politics and relations to describe situations where developed countries invade other smaller countries for its own gain and the spread of its influence. A prominent case that riled the attention of all actors in the international community was that of the initiation of the Iraq War by the President of the United States in 2000,⁵⁷ George Bush. Iraq showing symptoms of a failing State was made as justification by the United States to invade, along with the concept of "preemptive self-defense"; adopted due to fear towards terrorism in the early 2000s. It gained controversial status where the United States created the terrorist conspiracy theory as to justify its exploitation of the regions plentiful oil reserves. A motivation that violates Article 76 of

the Charter that stresses upon the development of inhabitants.

E. BRIEF INTRODUCTION TO THE DOCTRINES OF INTERNATIONAL POLITICS AND THE JUSTIFICATION OF REVIVAL

Firstly, realism in this context is a school of thought of international relations where the most significant power and authority is apportioned to the "super powers" of the international community (i.e. the United States and China).⁵⁸ This thought process is reflected within the largest of our multilateral organizations, such as the UN having the veto vote apportioned to only 6 out of the 15 members of the Security Council. Most experts determine power via this doctrine is through military prowess and domination.⁵⁹

Afterwards, internationalism exclusively specifies international law study to its relationship with international relations. Followers of this doctrine see the international community as a simple community in which all of its members are bounded by and are meant to follow international law.⁶⁰ Expressly, international organizations could be said as the expression of regulations that the international community had chosen to regulate its members.

Lastly, universalism denies any legitimacy to the concept of statehood. Authors to this doctrine view that the

⁵⁵ Robert Cooper, *The Breaking of Nations: Order and Chaos in the Twenty-first Century* (New York: Grove Press, 2004), p. 16-18.

⁵⁶ Chapter VII UN Charter.

⁵⁷ Rajeesh Kumar, "Iraq War 2003 and the Issue of Pre-emptive and Preventive Self-defence: Implications for the United Nations", *Indian Quarterly: A Journal of International Affairs* Vol. 70 No.2, 2014, pp. 123-147, p. 127.

⁵⁸ W. Julian Korab-Karpowics, *the Stanforn Eyclopedia of Philosophy*, Stanford: The Metaphysics Research Lab, 2017, p. 1.

⁵⁹ David P. Fidler, "The Security Council in Philophysical Conundrum", *Michigan Journal of International Law* Vol. 17 No. 41, 1996, pp. 411-453, p. 415.

⁶⁰ J. Schumaker, *From Ideologies to Public Philosophies: An Introduction to Political Theory*, Oxford: Blackwell, 2008, p. 1.

international law and relations system centralized upon the concept of States is not sustainable. Opting to put forth individuals as the main subject of international law. It explains that international organizations are eroding the sovereignty of States which they view as a positive effect. Effecting them is the very same multilateral treaties that States have agreed upon when creating these international organizations.⁶¹

The responsibility that is given to an administering State in each case is complex, whereas the Council as an organization that protects the interests of the indigenous inhabitants from the abuse of power by the administering State; something of an internationalist concept that protects the interests of the people whilst being universalist by nature as well. Visits done by the Council are far from the standard when discussing the two problems above. Therefore, two questions had arose (1) is it better to surrender a part of a State's sovereignty to the Council or (2) surrender a State's complete sovereignty to another State without any supervision?

Naturally, students of international law will opt for the former. Agreements that are executed under the purview of the Council, objectively, had succeeded with only a few exceptions. However, obstacles to the trusteeship system being applied in these contemporary problems can be seen in Article 78 of the Charter that prohibits the prescription of trusteeship to members of the UN. From a practical standpoint, a problem with the

possibility of the Council's forces being spread too thin also may arise.

Therefore, steps should be taken for the UN to give the Council new purpose. For example, in the 1990s, a neo-functionalist view of international organizations had prevailed when the International Monetary Fund was given new functions after failing its old ones.⁶² This is said to be a natural instinct of any international organization geared for survival which can be applied to the Council. Slight variation might be needed, considering that the Council had been "working for its death". Reform must be made within the trusteeship system itself, specifically to include failed States as an eligible territory to be made a trust territory within the Charter. Adjacent to that, Article 78 of the Charter has to be amended in a way where already members of the UN can be included as trust territories, whilst paying homage to the two aforementioned problems.⁶³

All this said, it is worth to ponder on the possibility of the Council being revived to answer these problems. It has been heavily contextualized within this paper that State failure and fragility creates volumes of obstacles for the international community. These obstacles can be in humanitarian form since disease, violence and refugee flows are common themes. It could also concern international security since failed States without government control and with ease in doing illegal activity could be a breeding ground for extremism and terrorist groups.⁶⁴ Failed States also

⁶¹ Beth Simmons, *Handbook of International Relations: International Law*, London: Sage Publication, 2012, p. 354.

⁶² Article 78 UN Charter

⁶³ Nisreen Mansour, "Neofunctionalism and European Integration: Is it Still a Case of Spillover", *E-International*

Relations Queen Mary University of London Vol. 1 No. 1, 2011, p. 3. Accessed on the 2nd of May 2021, at Neofunctionalism and European Integration: Is it Still a Case of Spillover? (e-ir.info).

⁶⁴ Jessica Stern, *Terror in the Name of God: Why Religious Militants Kill* (New York: Ecco Press, 2004), p. 238.

The United Nations Trusteeship Council and The Trusteeship System:
Justifications For Revival and Legal Obstacles

pose a problem concerning the new multilateralistic way of the international community as they often cannot abide to treaties or enforce their own laws that protect their citizens or aliens within their territory.⁶⁵

Weighing in the relevant doctrines of international politics with the *status quo* of the international community today, it only makes sense if the spirit of internationalism is imbued within the revived Council. This reasoning stems from the Author's view that Realism only puts forth new waves of neo-colonialism which is already an issue and that universalism is too far of a concept to reach for. For the latter, one can argue that maybe these States failed because the system of nation-States is a dud.⁶⁶ Regardless, a majority of the international community are nation-states and have proven that this system works. Revival is also an increasingly better option when we account the fact that regionalism had failed many times⁶⁷ and is a smaller version of universalism.

F. LEGAL OBSTACLES AND WHAT TO ADD

Francis Sayre had put into light certain unsolved question regarding sovereignty and title, contentious territorial issues, liquidation of the mandates system of the League of Nations.⁶⁸ Firstly there needs to be a legal mechanism in which UN States members are able to declare one of its member States as a failed State. This mechanism will align with the need to add to the UN Charter, to include State failure to be a justification in deciding

whether or not to encapsulate a member State in the trusteeship council. This means also that Article 78 is a legal obstacle, a formidable one, as put forth by Ruth Gordon, to be amended beforehand.⁶⁹ Along the line there needs to be a consolidation of experts in the concept of State failure to determine the regulations necessary for deciding when a State has entered into the Hobbesian realm of *bellum omnium contra omnes* using methods such as the:

1. Quantitative Approaches

The quantitative approach to deciding State failure or fragility is most aptly forwarded by the Fund for Peace ("FFP"). The FFP had devised the States Fragility Index ("SFI") which is a practical tool to determine the fragility of States leading up to its failure.⁷⁰ Of course, before a States apparent demise, interventions must be executed by means of economic and social aid in the effort of stabilizing those States. Nonetheless, with a detailed dive of the SFI, we can see that it serves two purposes. First, as a warning system where governments are annually put in a position of objective scrutiny to further better its practices. Second, as a useful tool for determining which States are unable to conduct its functions for the sake of its populous.

From here cherry-picking the prerequisites of State failure is important in order to dichotomize which symptoms need light to moderate intervention by means of aid or consultation, all the way to

⁶⁵ Rotberg I. Rotberg, "The New Nature of Nation-State Failure", *Washington Quarterly*, Vol. 25, No. 3, 2002, p. 85-87.

⁶⁶ Lewis Snyder, *Varieties of Nationalism: A Comparative Study* (Berlin: Dryden, 1976), p. 90-94.

⁶⁷ Maria J. Debre, "The Dark Side of Regionalism: How Regional Organizations Help Authoritarian Regimes to

Boost Survival", *Journal of Democratization*, Vol. 28, No. 4, p. 402.

⁶⁸ Francis Sayre, *op.cit.*, p. 268.

⁶⁹ Ruth Gordon, *Op. Cit.*, p. 345.

⁷⁰ Mohammad Zahidul Islam Khan, "The Fallacy of State Fragility Indices: Is there a 'Fragility Trap'?", Submission for BIIS Monograph, 2017, p. 24.

symptoms that the State concerned cannot recover from prompting the need for heavy intervention or even the constitution of a new trusteeship agreement. The quantitative approach has twelve points which are rounded down to three categories; social, economic, and political or military indicators.⁷¹ This certain index had been widely cited as to define State fragility determining negative aspects of a States development (e.g. loss of legitimacy, erosion of physical control of territory, etc.).⁷² Based upon a very understandable format using Conflict Assessment System Tools towards the majority of UN member States.⁷³

Nonetheless, a mix of quantitative approaches using several indices could be made, such as World Governance Indicators, an even larger index than that of the SFI. This index gauges the governing capacity of each State by means of selection, monitoring, replacement, policy formulation and implementation, and citizen attitude towards its government.⁷⁴

2. Qualitative Approaches

Ulrich Schneckener provides the qualitative measures determining State failure. This approach relies heavily in proving that a State had lost its monopoly of violence or use of force, a government's legitimacy, and the breakdown of the rule of law. Schneckener explains that the essence of a government's legitimacy is in its monopoly of violence, either its

capability (*de facto*) or its execution (*de jure*).⁷⁵

The Bertelsmann Transformation Index ("BTI") is also a useful tool to gauge State stability. This index categorizes states best on a scale of 1, being the worst, to 10 being the based determining categorization successful transformations, both politically and socially. It also gauges on the heavily relied upon metric of 'securing monopoly on the use of force'.⁷⁶ These approaches could be mixed together to provide an even more detailed prerequisite to State failure before enabling the Council to perform its functions.

3. Crystallizing the Law

Both kinds of approaches above gives us a crash course on the stages of State failure. Robert Rotberg has opined that there is a chronological chain of events, each contributing to the next, in the failing of States.⁷⁷ This follows that both types of approaches could be mixed together in a lone convention made under the auspices of the UN. However, a further dive ought to be conducted by means of the International Law Commission as the codifying actor of customary international law. At the very least, determining the failure of States could be categorized as a seed of a custom.

⁷¹ Fund for Peace, "Fragile States Index 2015", Washington D.C.: The Fund for Peace, 2015, p. 16.

⁷² Mohammad Zahidul Islam Khan, *op. cit.*, p. 25.

⁷³ *Ibid.*

⁷⁴ Kaufmann, Daniel., Kraay, Aart., and Mastruzzi, Massimo., (2010)., The Worldwide Governance Indicators, Methodology and Analytical Issues., Policy Research Working Paper 5430, The World Bank, Development Research Group, Macroeconomics and Growth Team, September 2010.

⁷⁵ Ulrich Schneckener, *loc. cit.*

⁷⁶ Cojanu, Valentin and Popescu, Alina Irina, "Analysis of Failed States: Some Problems of Definition and Measurement", The Romanian Economic Journal, Vol. X, No. 25, January 2007, 113-132. <https://core.ac.uk/download/pdf/6320833.pdf>. Accessed on the 01st of May, 2021.

⁷⁷ Rotberg, Robert I. (2004). "The Failure and Collapse of Nation-States: Break-down, Prevention, and Repair". In Rotberg, Robert I. (ed.). *When States Fail: Causes and Consequences*. Princeton: Princeton University Press, 2004.

G. CONCLUSION

It is clear that the advent of neo-colonialism and failing States have predicated the need for the revival of the Council. Thoughts under the internationalist school of thought in international politics and relations provides justification for the Council to be revived under the condition that the law surrounding the trusteeship system be amended. This encapsulates the amendment of Article 78 of the UN Charter as to allow already member States to be placed under a trusteeship. Of course, this amendment needs further reconsideration regarding the sovereign equality principle embedded in the Charter second article. Furthermore, as a safeguard there needs to be a precise mechanism to which the council can declare a member State to be defunct. Prompting the need to make room for a standalone agreement illustrating such conditions, providing further insurance that measures are to be taken depending the severity of the case in question. As an organization that had found its own demise in the complete success of the execution of its duties. It will be a complete waste to see the Council defunct in an era of great instability.

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