

**SUBMISSION TO THE SENATE
COMMITTEE ON FOREIGN RELATIONS
REGARDING NEO-TRUSTEESHIP IN
SOUTH SUDAN**

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Executive Summary

In light of the perceived failure of the South Sudanese state, international commentators have called for the establishment of an international trusteeship in South Sudan. This trusteeship would seek to end the violence, resolve the humanitarian and economic crises, and build democratic institutions.

International trusteeships have long been used to promote the development of peaceful, democratic states. The UN Trusteeship Council was created in 1945 to administer the transition of territories emerging from colonialism into statehood. Through these arrangements, the UN assumed sovereignty over the trust territory, building the territory's institutions before transferring sovereignty to local officials. The Trusteeship Council became inactive following the closure of its final trusteeship in 1994.

However, the UN and the international community have continued to use trusteeships to support states emerging from conflict. These arrangements, known as neo-trusteeships, have involved the transfer of some or all of the state's powers to an international trustee. Such cases include Bosnia and Herzegovina, Kosovo, East Timor, Cambodia, Iraq, and Afghanistan. The neo-trusteeship's mandate, powers, and structure of these arrangements are determined by the state's political context and existing infrastructure, as well as the goal of the trusteeship.

From these instances of state practice, it is possible to draw a number of important lessons to consider when establishing a neo-trusteeship. For instance, while it is possible to impose a neo-trusteeship, they are more effective when they are supported by state officials and the local population. Establishing a timeframe and measurable benchmarks for the return of sovereignty improves local acceptance of the trusteeship. Neo-trusteeships holding significant sovereign power tend to be more effective at building institutions and – importantly – addressing challenges in the state's development. Finally, almost every neo-trusteeship has required a robust peacekeeping or military presence to secure and promote an environment conducive to democratic development.

South Sudanese officials have expressed concerns over any international intervention that might compromise their sovereignty. Further, fracturing of fighting groups, ongoing local conflicts, difficult terrain, and limited infrastructure would make intervention in South Sudan considerably more challenging and costly. These considerations may be factored into the determination of the mandate of the trusteeship, the identification of an acceptable trustee, the

relationship between the neo-trusteeship and local institutions, and the peacekeeping or military force required to stabilize the state.

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Submission to the Senate Committee on Foreign Relations Regarding Neo-Trusteeship in South Sudan

By Dr. Paul R. Williams¹

Introduction

Given the ongoing conflict and perceived state failure in South Sudan, experts and members of the international community have proposed the establishment of an international trusteeship in South Sudan. Princeton Lyman, former American Special Envoy for Sudan and South Sudan, recommended that the United Nations (UN) and the African Union (AU) establish and administer an executive mandate over South Sudan.² Hank Cohen, the former Assistant Secretary of State for Africa, has similarly called for the “intensive UN tutelage” of South Sudan until it is prepared for self-governance.³ Additionally, the former Secretary-General of the Sudan People’s Liberation Movement, Pagan Amum, has advocated for a direct intervention from the international community to prevent South Sudan from “collapsing.”⁴ In light of these recommendations, this paper examines the history of UN trusteeships, provides an overview of neo-trusteeship approaches, and examines the feasibility of and core considerations in creating such a mechanism in South Sudan.

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Dr. Williams co-founded the Public International Law & Policy Group (PILPG) in 1995. PILPG is a global *pro-bono* law firm that provides free legal assistance to states and governments involved in peace negotiations, advises states on drafting post-conflict constitutions, and assists in prosecuting war criminals. PILPG has operated in 25 countries, set up field offices in Georgia, Iraq, Kenya, Kosovo, Nepal, Somaliland, South Sudan, Sri Lanka, Tanzania and Uganda, and has members in nearly two dozen key cities around the globe.

² Princeton Lyman and Kate Almqvist Knopf, *To save South Sudan, put it on life support*, THE FINANCIAL TIMES (Jul. 20, 2016), available at <http://blogs.ft.com/beyond-brics/2016/07/20/to-save-south-sudan-put-it-on-life-support/>.

³ Hank Cohen, *South Sudan should be placed under UN trusteeship to aid development of viable self-government*, AFRICAN ARGUMENTS (Jan. 6, 2014), available at <http://africanarguments.org/2014/01/06/south-sudan-should-be-placed-under-un-trusteeship-to-aid-development-of-viable-self-government-by-hank-cohen/>.

⁴ John Tanza, *Former Leader of S. Sudan’s Ruling Party Seeks International Intervention*, VOICE OF AMERICA (Aug. 2, 2016), available at <http://www.voanews.com/content/former-leader-south-sudan-ruling-party-seeks-international-intervention/3446215.html>.

Although different terms have been used, the current calls for an international administration in South Sudan amount to the establishment of a neo-trusteeship. A neo-trusteeship is a governing arrangement that involves the transfer of some or all sovereign powers to a trustee with the goal of creating institutions capable of administering the state and providing services to citizens. At the end of the trusteehip, powers are returned to the state. Neo-trusteeships have been utilized in a number of post-conflict and transitional settings in the past 25 years, including in Bosnia and Herzegovina (Bosnia), Kosovo, East Timor, Cambodia, Iraq, and Afghanistan. These contemporary examples provide insight into best (and sometimes worst) practices in establishing and implementing neo-trusteeships. In general, neo-trusteeships are more effective when the trustee is provided sufficient power to effectively govern the state, when clear benchmarks are established for the return of powers to the state, and when a robust peacekeeping presence is authorized to establish conditions conducive to institutional development.

A neo-trusteeship could be introduced in South Sudan in three ways: (1) by a UN Security Council Resolution under Chapter VII of the UN Charter; (2) by negotiating a neo-trusteeship as part of the peace process; (3) or as a complimentary effort to a regional peacekeeping force. Establishing a neo-trusteeship in South Sudan requires full and thorough consideration of the conditions necessary to promote government support for the establishment of a neo-trusteeship, the resources required to establish a secure environment in which institutions can be developed, the powers necessary for the trustee to effectively develop these institutions, and the strategy for the return of powers to local officials.

The History of UN Trusteeships

Neo-trusteeships are the contemporary iteration of the UN Trusteeship Council system. The UN Trusteeship Council was created in 1945 to facilitate the transitions of post-colonial territories to self-rule.⁵ The creation of the UN Trusteeship Council was rooted in the desire to further international peace and security; promote economic, social, and political advancement; and enhance respect for human rights.⁶ The Council focused on ensuring that “there [was] a peaceful and orderly means of achieving the difficult transition from backward and

⁵ Tom Parker, *The Ultimate Intervention: Revitalising the UN Trusteeship Council for the 21st Century*, CENTRE FOR EUROPEAN AND ASIAN STUDIES AT NORWEGIAN SCHOOL OF MANAGEMENT, 4 (Apr. 2003), available at http://www.bi.edu/cccFiles/CEAS-Files/03-03The_Ultimate_Intervention.pdf.

⁶ U.N. Charter, art. 76, available at <http://www.un.org/en/sections/un-charter/chapter-xii/index.html>.

subject status to self-government or independence, to political and economic self-reliance.”⁷ In this system, a trustee exercised sovereignty over a territory for a limited period of time for the ultimate benefit of the population of that territory.⁸ Under Article 77 of the UN Charter, the UN Trusteeship Council was empowered to create a trusteeship when: (1) a colonial state voluntarily relinquished its control over a territory; (2) a territory was already under a League of Nations’ mandate; or (3) a territory was taken from a state defeated during World War II.⁹ Following the closure of its final trusteeship in Palau in 1994, the UN Trusteeship Council ceased all activity and remains inactive today.¹⁰

Although the era of the UN Trusteeship Council has come to a close, the international community continues to utilize a variety of contemporary manifestations of that trusteeship system, which fall broadly under the category of “neo-trusteeships.” In contrast to the uniform approach developed under the UN Trusteeship system, no formal framework or practice exists for these modern approaches, which are generally developed *ad hoc*.¹¹

While neo-trusteeships continue to be a method used to create functioning political institutions and to establish the conditions necessary for peace and security, these modern approaches can be highly controversial, particularly given the varying degrees of success experienced. Amid this debate, this paper does not address the validity of neo-trusteeships as a general approach. Rather, this paper is focused on providing an overview of how neo-trusteeships operate, while identifying the factors that have contributed and hampered the ability of neo-trusteeships to achieve their goals.

Contemporary Examples of Neo-Trusteeships

Neo-trusteeships are typically designed with the intent to support the development of democratic institutions based on the unique context in each state.

⁷ A.J.R. Groom, *The Trusteeship Council: A Successful Demise*, THE UNITED NATIONS AT THE MILLENNIUM, THE PRINCIPAL ORGANS 142, 142 (Taylor, Groom, eds. 2000).

⁸ See U.N. Charter, arts. 75-77, available at <http://www.un.org/en/sections/un-charter/chapter-xii/index.html>; Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 387 (2003), available at <http://www.kentlaw.edu/perritt/courses/seminar/ucla-jilfa-published-wl.doc>.

⁹ United Nations Charter, Art. 77 (1945), available at <http://www.un.org/en/sections/un-charter/un-charter-full-text/index.html>.

¹⁰ United Nations, *United Nations and Decolonization*, available at <http://www.un.org/en/decolonization/its.shtml> (last visited Sep. 3, 2016).

¹¹ RICHARD CAPLAN, A NEW TRUSTEESHIP?: THE INTERNATIONAL ADMINISTRATION OF WAR-TORN TERRITORIES 11 (2014).

This has resulted in considerable diversity in their form and structures. As policymakers consider how a potential neo-trusteeship could be structured in South Sudan, lessons can be drawn from the experiences of previous neo-trusteeships as described in this section.

Bosnia & Herzegovina

The Dayton Peace Agreement, which ended the conflict between Bosniaks, Serbs, and Croats in Bosnia & Herzegovina in 1995, established a neo-trusteeship administered by an internationally-appointed High Representative. The High Representative was authorized to oversee and coordinate the efforts of parties working to implement the peace agreement, provide technical assistance to Bosnian efforts to implement the agreement, and resolve disputes among the parties over implementation.¹² Peacekeeping support was first provided by the NATO-led International Force (IFOR) and subsequently by the Stabilization Force (SFOR). Following several years of limited implementation of the peace agreement, the High Representative reinterpreted its powers to play a more direct role in Bosnian governance and to further Bosnia's development.¹³ The result was a broad neo-trusteeship that maintained significant sovereign powers, including promulgation of laws and removal of officials. These increased powers allowed the High Representative to overcome several major political roadblocks in post-conflict governance in Bosnia, but have had limited effect in pressuring Bosnian authorities to fully implement key components of the Dayton Peace Accords, including the passage of a new constitution. The Bosnian neo-trusteeship has operated largely without benchmarks for evaluating Bosnia's progress in assuming governance powers and determining when the neo-trusteeship would end, leading to significant criticism from domestic and international observers.

Kosovo

The United Nations Mission in Kosovo (UNMIK) was established by the UN Security Council in 1999 following a military intervention by the North Atlantic Treaty Organization (NATO) to halt ethnic cleansing of Albanians by

¹² General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz-Croat.-Yugo., ann. 10, art. 2 (Dec. 14, 1995), available at http://www.ohr.int/?page_id=63269.

¹³ The provisions of the Dayton Peace Agreement provided the High Representative with the authority to reinterpret its mandate. See Tim Banning, *The 'Bonn Powers' of the High Representative in Bosnia and Herzegovina: Chasing a Legal Figment*, GOETTINGEN JOURNAL OF INTERNATIONAL LAW, 259, 265 (2014), available at http://www.gojil.eu/issues/62/62_article_banning.pdf.

Serbian militias and the Yugoslav National Army in Kosovo.¹⁴ At the time UNMIK was established, Kosovo was an autonomous province within Serbia. The goal of the neo-trusteeship was to restore order and provide its citizens with institutions capable of self-government and autonomous rule pending a political settlement to the conflict. The NATO-led Kosovo Force (KFOR) provided peace keeping support. The foundational document of UNMIK provided for an interim international administration of Kosovo until the status of Kosovo was determined and self-governing institutions were established.¹⁵ The transfer of power to Kosovo institutions was not subject to a defined timeline, but rather was subject to the fulfillment of certain conditions.¹⁶ Kosovo is frequently recognized as one of the most effective instances of a political trusteeship.¹⁷ It received strong support from the majority Albanian population of Kosovo, which bolstering its legitimacy and increased the capacity for dialogue among the parties to the conflict.¹⁸

East Timor

A neo-trusteeship in East Timor was installed following the outbreak of armed conflict after voters resoundingly supported a referendum on independence from Indonesia. Australian-led peacekeeping troops of the International Force of East Timor (INTERFET) ended the violence and restored basic law and order to the state. The UN Transitional Administration in East Timor (UNTAET) was subsequently established through a UN Security Council resolution with the consent of Indonesian officials. There was no formal consent from East Timorese leaders who were under the governing authority of Indonesia. However, high voter turnout and support for independence in the referendum indicated that most East Timorese supported UN involvement.¹⁹ The purpose of UNTAET was to act as an “integrated, multidimensional peacekeeping operation fully responsible for the

¹⁴ United Nations, *UNMIK Background*, available at <http://www.un.org/en/peacekeeping/missions/unmik/background.shtml> (last visited Sept. 9, 2016).

¹⁵ UN Security Council Resolution 1244, S/Res/1244 art. 10 (Jun. 10, 1999), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244(1999)).

¹⁶ Paul R. Williams and Francesca Jannotti Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self Determination*, 40 STAN J. INT'L L. 1, 12-13 (2004).

¹⁷ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 402 (2003), available at <http://www.kentlaw.edu/perritt/courses/seminar/ucla-jilfa-published-wl.doc>.

¹⁸ United Nations Regional Information Centre for Western Europe, *Kosovo 15 years later: Kouchner hails the success of the UN* (Jul. 3, 2014), available at <http://www.unric.org/en/latest-un-buzz/29305-kosovo-15-years-later-kouchner-hails-the-success-of-the-un>.

¹⁹ Dianne M. Criswell, *Durable Consent and a Strong Transnational Peacekeeping Plan: The Success of UNTAET in Light of Lessons Learned in Cambodia*, 11 PACIFIC RIM L. & POL'Y J. 578, 598-99 (2002).

administration of East Timor during its transition to independence.”²⁰ To achieve this purpose, UNTAET was given a relatively extensive mandate, which included both political administration and peacekeeping.²¹ Under UNTAET’s supervision, local institutions were developed in East Timor, including an elected Constituent Assembly, Council of Ministers, and President.²² UNTAET exercised this UNSC-mandated authority until East Timor’s independence in May 2002. Similar to Kosovo, the intervention in East Timor was largely considered a success by the international community.²³ The powers granted to UNTAET exceeded those granted to many other neo-trusteeships, which provided UNTAET considerable authority in fulfilling its mandate and developing institutions. UNTAET has been criticized, however, for its significant international presence, which is thought to have limited its efforts to build the capacity of local officials.

Cambodia

The United Nations Transitional Authority in Cambodia (UNTAC) implemented the neo-trusteeship in Cambodia. Following the conflict in Cambodia and the subsequent peace settlement, the primary goal of UNTAC was to assume internal administration of the country during its transition to an elected government to create the conditions in which peaceful national elections could be conducted.²⁴ UNTAC’s institution-strengthening efforts included managing foreign affairs, defense, security, finance, and communications.²⁵ In addition, UNTAC-supervised elections resulted in a widely supported government. Although UNTAC’s mandate was far smaller than the robust mandates of UNMIK and UNTAET, its efforts have largely been deemed successful.²⁶ Cambodia’s post-conflict elections were conducted peacefully, and the government that resulted from the elections assumed power over a relatively stable, functioning state.

²⁰ United Nations, *East Timor – UNTAET Background*, available at

<http://www.un.org/en/peacekeeping/missions/past/etimor/UntaetB.htm> (last visited Sept. 8, 2016).

²¹ Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 663 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

²² Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 675 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005).

²³ Michael Smith and Moreen Dee, *Peacekeeping in East Timor*, INTERNATIONAL PEACE ACADEMY OCCASIONAL PAPER SERIES 17 (2003).

²⁴ Gareth Evans, *Peacekeeping in Cambodia: Lessons Learned*, NATO REVIEW (August 1994), available at <http://www.nato.int/docu/review/1994/9404-6.htm>.

²⁵ UNTAC Background, (last accessed Sept. 7, 2016), available at <http://www.un.org/en/peacekeeping/missions/past/untacbackgr1.html>.

²⁶ Gareth Evans, *Peacekeeping in Cambodia: Lessons Learned*, NATO REVIEW (August 1994), available at <http://www.nato.int/docu/review/1994/9404-6.htm>.

Iraq and Afghanistan

Neo-trusteeships have been used to facilitate the development of democratic governments in Afghanistan and Iraq following the removal from power of the Taliban and the regime of Saddam Hussein by U.S.-led military coalitions. In Afghanistan, the Bonn Agreement outlined the role of the United Nations Special Representative of the Secretary General in the Afghani administration, which included: “monitor[ing] and assist[ing] in the implementation of all aspects of [the Bonn] agreement”; “advis[ing] the Interim Authority in establishing a politically neutral environment conducive to the holding of the Emergency Loya Jirga in free and fair conditions”; attending the meetings of transitional authorities; facilitating the resolution of disputes or disagreement among transitional authorities; and investigating human rights violations and recommending corrective actions.²⁷ The UN was supported by a NATO-led International Security Force (ISAF), whose mandate was to maintain security in Kabul and in surrounding regions, while also supporting the free movement of UN personnel and the implementation of the Bonn Agreement.²⁸

In Iraq, the U.S. established the Coalition Provisional Authority in 2003 to administer the state. Through Coalition Provisional Authority Regulation 1, the Authority enumerated its mandate, which include restoring security to the state and facilitating conditions appropriate for the Iraqi people to govern the state through Iraqi-led institutions.²⁹ To do so, the Authority assumed full executive, legislative, and judicial authority over the state. Coalition forces also assumed the power to restore security of the state and assist in carrying out the policies of the Authority.³⁰ As the Authority handed off power to local institutions, the UN assumed many of its roles in supporting the development of Iraqi institutions through the United Nations Assistance Mission for Iraq.

Afghanistan and Iraq are complicated instances of neo-trusteeships. Both required a heavy military component to establish the neo-trusteeship and to maintain an environment that enabled the neo-trusteeship to effectively operate, particularly in Iraq where the neo-trusteeship has been plagued with security

²⁷ Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, Annex II – Role of the United Nations During the Interim Period (Dec. 5, 2001), *available at* <http://www.un.org/News/dh/latest/afghan/afghan-agree.htm>.

²⁸ UN Security Council Resolution 1386, S/Res/1386(2001), (Dec. 20, 2001), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/708/55/PDF/N0170855.pdf?OpenElement>.

²⁹ Coalition Provisional Authority Regulation 1, CPA/Reg/16 May 2003/01, sec. 1 (2003), *available at* http://www.iraqcoalition.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf.

³⁰ Coalition Provisional Authority Regulation 1, CPA/Reg/16 May 2003/01, sec. 1 (2003).

complications.³¹ Nonetheless, these instances of neo-trusteeships provide valuable insight into the challenges that emerge in administering a neo-trusteeship when an extensive and sustained military force is required.

Elements of a Neo-Trusteeship

While there is great diversity in the goals, structure, and powers of neo-trusteeships, several common elements exist among them. These include: (1) the need for a legal basis establishing the neo-trusteeship; (2) selection of the trustee; (3) powers granted to the trustee; (4) accountability mechanisms for the trustee; and (5) a process for terminating the trusteeship and returning powers to the host state.

Legal Basis for Neo-Trusteeships

Neo-trusteeships have been established through peace agreements, declarations, and UN Security Council Resolutions. Regardless of the legal basis, neo-trusteeships typically receive recognition, if not authorization, from the UN Security Council. In Bosnia and Afghanistan, for instance, the neo-trusteeship was formalized and received the consent of state leaders through peace agreements that established the structure of each state's transitional administration. These agreements subsequently received support from the UN Security Council through Security Council Resolutions providing peacekeeping support through member-led military coalitions.

The neo-trusteeship in Iraq was imposed through a declaration following the removal of the regime of Saddam Hussein. When General Franks, as Commander of the Coalition Forces, declared Iraq's liberation, he announced the creation of the Coalition Provisional Authority (CPA). The CPA served, in effect, as the acting government pending the Iraqi people's creation of a new government. General Franks was the initial head of the CPA.³² While the legal framework under which the CPA was initially created is unclear, the declaration that established the CPA

³¹ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 407 (2003), available at <http://www.kentlaw.edu/perritt/courses/seminar/ucla-jilfa-published-wl.doc>.

³² Air Force University, *Lessons Learned: Pre-War Planning for Post-War Iraq*, available at http://www.au.af.mil/au/awc/awcgate/dod/postwar_iraq.htm (last visited Sept. 15, 2016); UN Security Council Resolution 1483, S/RES/1483 (May 22, 2003), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement>.

was subsequently recognized by UN Security Council Resolution 1483.³³ Based on the declaration and Resolution 1483, the US-led CPA issued CPA Regulation 1, which established its powers to administer Iraq.³⁴

Neo-trusteeships authorized by the UN Security Council Resolution have been used to overcome impasses in political negotiations or when the infrastructure of the state has been destroyed by the conflict. In Cambodia, for instance, UNTAC was established by UN Security Council Resolution 745 in agreement with Cambodian officials as a compromise after negotiations on interim power-sharing arrangements failed.³⁵ Similarly, in Kosovo, UNMIK was established through Security Council Resolution 1244 to put an end to the ethnic cleansing in Kosovo and to allow political negotiations between the warring parties to continue.³⁶ In East Timor, UNTAET was established by UN Security Council Resolution to address the critical need to restore East Timor's institutional infrastructure in the aftermath of the conflict. Basic rule of law was restored by INTERFET, which subsequently handed off its operations to UNTAET.³⁷

Selection of the Trustee

The selection of the trustee is critical to the success of the neo-trusteeship. To effectively fulfill the trustee's mandate, the trustee must build and maintain the confidence of the local population in its authority, decision-making processes, and long-term vision for building the state. If the trustee does not have the confidence of the local population, the trustee's decisions are less likely to receive public support, which may negatively impact the trustee's efforts.

Most neo-trusteeships have been administered by a special representative appointed by the United Nations or an international coalition of states supporting

³³ Air Force University, Lessons Learned: Pre-War Planning for Post-War Iraq, *available at* http://www.au.af.mil/au/awc/awcgate/dod/postwar_iraq.htm (last visited Sept. 15, 2016); UN Security Council Resolution 1483, S/RES/1483 (May 22, 2003), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement>; Eyal Benvenisti and Guy Keinan, *The Occupation of Iraq: A Reassessment*, Blue Book Series of the U.S. Naval War College, p. 279 at n. 23 (2010) *available at*: <https://www.usnwc.edu/getattachment/99d03159-fe45-4c61-95f9-a5d5e6eb4da3/The-Occupation-of-Iraq--A-Reassessment.aspx>.

³⁴ Coalition Provisional Authority Regulation 1, CPA/Reg/16 May 2003/01, sec. 1 (2003), *available at* http://www.iraqcoalition.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf.

³⁵ Gareth Evans, *Peacekeeping in Cambodia: Lessons Learned*, NATO REVIEW (August 1994), *available at* <http://www.nato.int/docu/review/1994/9404-6.htm>.

³⁶ UN Security Council Resolution 1244, S/Res/1244 (Jun. 10, 1999), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244(1999)).

³⁷ United Nations Security Council Resolution 1264, S/Res/1264 (Sep. 15, 1999), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/264/81/PDF/N9926481.pdf?OpenElement>.

the implementation of the trusteeship or peace agreement. In states where the trustee has played a positive role in ending the conflict or providing protection to civilians, the trustee has received support from the local population. For instance, when UNMIK assumed the administration of Kosovo, the intervention was welcomed by the public, who had a positive opinion of the UN as result of the UN's role in halting the ethnic cleansing of Kosovar Albanians. This public trust increased the public's respect for UNMIK's decisions among Kosovo's majority Albanian population.

Similarly, the identity of the trustee can be critical to the effectiveness of a neo-trusteeship. For instance, part of the success of UNTAC is attributed to its administrator, Yasushi Akashi, a Japanese diplomat. As a regional actor and diplomat, he understood the cultural norms and how best to pursue consensus among the parties. At the same time, he did not hesitate to push back on the political actors and the UN when needed.³⁸ Based in part on the administrator's popularity, UNTAC was able to forge an alliance with the Cambodian people that enabled it to "overcome the intrigues of their faction leaders and deliver an opportunity to them to break free from the prolonged cycle of fear and coercion."³⁹

Powers Granted to the Neo-Trusteeship

While state practice varies in the scope of powers granted to the trustee, two models emerge: (1) neo-trusteeships in which complete sovereignty is transferred to the trustee; and (2) neo-trusteeships in which only certain powers are transferred to the trustee. In the second model, sovereignty is retained by local institutions, rather than by the trustee. The invitation for assistance may be revoked at any time, and the sovereign is empowered to transfer either part or all of its sovereign powers to another actor. These powers may be transferred either for a set period of time or until certain conditions exist.⁴⁰

These two models have been blended in recent trusteeships, and the results of these blended frameworks have been mixed.⁴¹ These mixed results have led

³⁸ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 111 (1995), available at <http://books.sipri.org/files/RR/SIPRIRR09.pdf>.

³⁹ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 112 (1995).

⁴⁰ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 421 (2003), available at <http://www.kentlaw.edu/perritt/courses/seminar/ucla-jilfa-published-wl.doc>.

⁴¹ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 421 (2003).

some analysts to conclude that in cases where substantial intervention is necessary, the neo-trusteeship's effectiveness may be enhanced by placing full sovereignty clearly with the trustee for a temporary period of time.⁴² For instance, UNMIK's mandate provides for full authority over "basic civilian administrative functions where and as long as required."⁴³ Similarly, UNTAC is judged to be most effective in the areas where it had the greatest degree of independence and control.⁴⁴

Even when broad powers are granted to the neo-trusteeship, however, the administration can benefit from explicit limitations on its power. For instance, UNTAET was "endowed with overall responsibility for the administration of East Timor and [was] empowered to exercise all legislative and executive authority, including the administration of justice."⁴⁵ UNTAET's authority was extensive, exceeding that of other neo-trusteeships, including UNMIK.⁴⁶ While its far-reaching powers allowed UNTAET to promote conditions conducive to East Timor's political development, the extent of these powers also led to suspicion of the UN's motives. Although the public was initially supportive of the intervention, the lack of clarity regarding the limitations of the UN's authority under international law, the UN's obligations to respect human rights, and the conditions upon which the trustee would terminate resulted in significant domestic and international criticism of the trustee.⁴⁷

Neo-trusteeships can assume a range of powers depending on their mandate and the scope of their powers. These powers can range from observation, technical advice, and dispute resolution to more robust powers such as institution building, promulgating legislation, and removing officials. More robust powers provide the trustee with more control over the day-to-day administration of the state.

⁴² Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 421 (2003).

⁴³ UN Security Council Resolution 1244, S/Res/1244 art. 11(b) (Jun. 10, 1999), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244(1999)).

⁴⁴ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 107 (1995), available at <http://books.sipri.org/files/RR/SIPRIRR09.pdf>.

⁴⁵ UN Security Council Resolution 1272 art. 1, S/Res/1272 (Oct. 25, 1999), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/312/77/PDF/N9931277.pdf?OpenElement>.

⁴⁶ Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 663 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

⁴⁷ See Markus Benzing, *Midwifing a New State: The United Nations in East Timor*, 9 YEARBOOK OF UNITED NATIONS LAW 295, 322-24 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_benzing_9_295_372.pdf.

Monitoring Implementation of Peace Agreements

A neo-trusteeship can be empowered to oversee and monitor the implementation of political aspects of peace agreements. For instance, in Bosnia, the High Representative was initially vested with the powers to oversee implementation of the civilian aspects of the Dayton Peace Agreement. These powers included promoting the parties' compliance with the terms of the agreement, coordinating the activities of Bosnia institutions to promote the implementation of the agreement while respecting their autonomy, and facilitating "the resolution of any difficulties arising in connection with civil implementation" of the agreement.⁴⁸

Providing Technical Advice and Assistance

Neo-trusteeships may also be empowered to provide technical assistance to local authorities in the implementation of the peace agreement or in day-to-day governance. For instance, the Bonn Agreement provided that the Special Representative of the Secretary General would advise Afghan transitional authorities in promoting an environment conducive to effective decision making and facilitating disputes that arose among them. Similarly, the High Representative in Bosnia was mandated to advise officials on how best to implement the Dayton Peace Agreement and to resolve disputes arising among officials.

Creating Institutions and Promoting Democracy

In situations where the state's infrastructure has been largely destroyed by the conflict, the neo-trusteeship may also support the creation of institutions of democratic governance. For instance, in East Timor, the UN trusteeship developed local institutions, including an elected Constituent Assembly, Council of Ministers, and President.⁴⁹ Similarly, UNMIK was mandated to provide an interim administration for Kosovo while "establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for peaceful and normal life for all inhabitants of Kosovo."⁵⁰

⁴⁸ General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz-Croat.-Yugo., ann. 10, art. 2 (Dec. 14, 1995), available at http://www.ohr.int/?page_id=63269.

⁴⁹ Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 675 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

⁵⁰ UN Security Council Resolution 1244, S/Res/1244 art. 10 (Jun. 10, 1999), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244(1999)).

In addition, the trusteeship is often simultaneously responsible for promoting democracy through initiatives such as long-term mentoring programs to rebuild civil society and institutional capacity-building measures.⁵¹ Particularly in host states that were previously under repressive regimes that stifled civil society, these parallel efforts are essential in ensuring a functioning democracy.

State practice indicates that neo-trusteeships are most effective in installing democratic institutions when there is a coordinated, actionable, and timely plan for instituting reforms. Swift, coordinated, and transparent action decreases the likelihood that criminal elements or remnants of the previous regime will influence the new system, thereby hindering the development of institutions. For instance, UNTAC in Cambodia is frequently criticized for acting too slowly in assuming control and implementing necessary reforms in key areas of civil administration.⁵² These delays in implementation left UNTAC unable to deal with corruption and the intimidation by political figures.⁵³ Further, UNTAC's administration did not fully consider or address institutions at the provincial level. As a result, UNTAC struggled to provide oversight to sub-national institutions where provincial governors and civil servants proved to be "very independent-minded."⁵⁴

Conducting Democratic Elections

Conducting elections is often an important power of the neo-trusteeship, as it represents the reconstitution of a local government in the wake of a conflict. For that reason, it is often one of the final duties of the trustee. For instance, elections were the cornerstone of the neo-trusteeship in Cambodia.⁵⁵ UNTAC was established for an 18-month period, and it needed to complete elections and transfer power to the newly elected government before the end of that period.⁵⁶ In May 1993, almost the exact date provided for in its initial timetable,⁵⁷ UNTAC supervised Cambodian national elections. Over 4.2 million Cambodians (90% of

⁵¹ Celeste J. Ward, *The Coalition Provisional Authority's Experience with Governance in Iraq: Lessons Learned*, THE UNITED STATES INSTITUTE OF PEACE 11 (2005).

⁵² Gareth Evans, *Peacekeeping in Cambodia: Lessons Learned*, NATO REVIEW (August 1994), available at <http://www.nato.int/docu/review/1994/9404-6.htm>.

⁵³ Gareth Evans, *Peacekeeping in Cambodia: Lessons Learned*, NATO REVIEW (August 1994).

⁵⁴ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 111 (1995), available at <http://books.sipri.org/files/RR/SIPRIRR09.pdf>.

⁵⁵ UNTAC Background, available at <http://www.un.org/en/peacekeeping/missions/past/untacbackgr1.html> (last visited Sept. 7, 2016).

⁵⁶ United Nations Security Council Resolution 745, para. 2 (Feb. 28, 1992), available at http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/transitions/Cambodia_7_UNSC_Resolution_745.pdf

⁵⁷ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 102 (1995), available at <http://books.sipri.org/files/RR/SIPRIRR09.pdf>.

those registered) participated in the UNTAC-supervised elections that were declared to be free and fair.⁵⁸

Incubating the Rule of Law

The powers of several neo-trusteeships have included establishing and promoting rule of law in their mandates. This power is not often specifically outlined within the trustee's mandate, but is instead generally accepted to be a part of the creation of effective governance institutions. For instance, as part of their broader mandate to develop institutions of local self-governance, both UNTAET and UNMIK were charged with establishing institutions to uphold the rule of law, including judicial institutions, police, and prison services.⁵⁹ Similarly, in Bosnia, following a failed attempt at judicial reform, the High Representative instituted a process of judicial vetting through which all sitting judges and prosecutors were asked to resign and reapply for their positions.⁶⁰

Exercising Legislative and Constitutional Authority

A neo-trusteeship can be vested with broad legislative and constitutional powers, including the power to repeal and enact legislation. For instance, UNMIK's mandate provided for full authority to govern Kosovo, including the power to amend or repeal any previously existing laws that were not compatible with the mandate of UNMIK.⁶¹ Similarly, the reinterpreted powers of the High Representative in Bosnia permitted the High Representative to pass, repeal, or amend legislation. These powers have allowed the High Representative to overcome several significant political roadblocks in the implementation of the Dayton Peace Accords, including passing the Law on Citizenship.⁶² Following deadlock in the Bosnian Parliament, this law was signed into force by the High

⁵⁸ UNTAC Background, available at <http://www.un.org/en/peacekeeping/missions/past/untacbackgr1.html>, (last visited Sept. 7, 2016).

⁵⁹ UN Security Council Resolution 1272, S/Res/1272 (October 25, 1999), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/312/77/PDF/N9931277.pdf?OpenElement>; UN Security Council Resolution 1244, S/Res/1244 art. 10 (Jun. 10, 1999), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244(1999)).

⁶⁰ Tim Banning, *The 'Bonn Powers' of the High Representative in Bosnia and Herzegovina: Chasing a Legal Figment*, GOETTINGEN JOURNAL OF INTERNATIONAL LAW, 259, 266-268 (2014), available at http://www.gojil.eu/issues/62/62_article_banning.pdf.

⁶¹ Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 662 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

⁶² Tim Banning, *The 'Bonn Powers' of the High Representative in Bosnia and Herzegovina: Chasing a Legal Figment*, GOETTINGEN JOURNAL OF INTERNATIONAL LAW, 259, 266-268 (2014), available at http://www.gojil.eu/issues/62/62_article_banning.pdf.

Representative.⁶³ The neo-trusteeship in Bosnia also annulled several existing laws, standardized Bosnian legislation with EU standards, and established the Bosnian state courts.⁶⁴

Removing Political Officials

A neo-trusteeship may also be empowered to remove political officials and bar these individuals from seeking future office. Following the reinterpretation of the High Representative's mandate in Bosnia, the High Representative was provided with the ability to exercise power over legislative and executive functions, including the authority to remove local officials under certain circumstances.⁶⁵ While these powers have been exercised on only a limited basis, they provide the High Representative considerable authority to address political spoilers.

Implementing Economic Reforms

Neo-trusteeship can also be empowered to undergo a range of economic reforms, including promoting economic reconstruction and development. For instance, UNTAC was responsible for the rehabilitation of Cambodia's essential infrastructure and the commencement of economic reconstruction and development. However, UNTAC initially paid little attention to the economy or the financial impact of its mission on the country, which led to high inflation rates.⁶⁶ Amid a serious budget deficit, UNTAC belatedly committed to careful monitoring and handling of the economic situation and appointed an Economic Adviser.⁶⁷ Despite this initial hurdle, UNTAC jumpstarted the reconstruction and rehabilitation of Cambodia's infrastructure, approving 51 development projects during its tenure.⁶⁸

⁶³ Tim Banning, *The 'Bonn Powers' of the High Representative in Bosnia and Herzegovina: Chasing a Legal Figment*, GOETTINGEN JOURNAL OF INTERNATIONAL LAW, 259, 266-268 (2014).

⁶⁴ Tim Banning, *The 'Bonn Powers' of the High Representative in Bosnia and Herzegovina: Chasing a Legal Figment*, GOETTINGEN JOURNAL OF INTERNATIONAL LAW, 259, 266-268 (2014).

⁶⁵ David Chandler, *State-Building in Bosnia: The Limits of "Informal Trusteeship,"* 1 INTERNATIONAL JOURNAL OF PEACE STUDIES 17, 27 (2006), available at http://www.gmu.edu/programs/icar/ijps/vol11_1/11n1Chandler.pdf.

⁶⁶ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 68 (1995), available at <http://books.sipri.org/files/RR/SIPRIR09.pdf>.

⁶⁷ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 71 (1995).

⁶⁸ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTION, p. 68 (1995).

Accountability Mechanisms

Even when the trustee is granted full sovereignty over the state, the trustee is a fiduciary that is accountable to the population of the host state.⁶⁹ When exercising its powers, the trustee must therefore be able to justify any changes that it makes to preexisting laws and institutions as benefitting the population.⁷⁰ Judicial review and internal complaint systems are mechanisms that can ensure the accountability of a neo-trusteeship.⁷¹ The trusteeship in Kosovo established an internal complaint and accountability mechanism designed to provide transparency and accountability to Kosovo citizens. To support the implementation of the UNMIK mandate, UNMIK established a Human Rights Advisory Panel to consider complaints from Kosovo citizens related to alleged human rights violations committed by UNMIK.⁷²

Termination of the Trusteeship

A clearly defined exit strategy promotes the likelihood of a successful neo-trusteeship and stronger relationships between the trustee and the host state. An exit strategy may be delineated in the initial trusteeship agreement, which may specify a finite period of time for the neo-trusteeship. This finite period may promote confidence in the host state population that the neo-trusteeship will end, and that power will be handed to host state officials. However, to be effective, such a time period must be reasonable to accomplish the goals of the trusteeship. If the time period is too short, the neo-trusteeship may not bring about the desired result – a sustainable, self-governing host state. Alternatively, the initial trusteeship agreement may establish a series of benchmarks that must be attained before the trusteeship ends and power is handed over to host state officials.⁷³ Such a model may permit the trusteeship to continue if the state is not prepared for self-governance when the trusteeship is anticipated to end. However, state officials

⁶⁹ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 422 (2003), available at <http://www.kentlaw.edu/perritt/courses/seminar/ucla-jilfa-published-wl.doc>.

⁷⁰ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 422 (2003).

⁷¹ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 422 (2003).

⁷² UNMIK, Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, UNMIK/REG/2006/12 (Mar. 23, 2006), available at http://www.unmikonline.org/hrap/Documents%20HighRepresentativeAP/Regulations%20Eng/RE2006_12.pdf.

⁷³ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 469 (2003), available at <http://www.kentlaw.edu/perritt/courses/seminar/ucla-jilfa-published-wl.doc>.

may be less likely to agree to an arrangement that does not have a pre-determined end date out of concern that powers may never be handed over.

For instance, the neo-trusteeship in Bosnia has operated largely without benchmarks for evaluating Bosnia's progress in assuming governance powers and determining when the neo-trusteeship would end. The Dayton Peace Agreement provided no end date for the High Representative's term and listed no benchmarks for handing powers over to Bosnian officials.⁷⁴ As the neo-trusteeship continues into its 21 year, and progress toward full implementation of the Agreement and EU membership for Bosnia has been limited, both domestic and international observers have criticized the High Representative as lacking an effective exit strategy.

Exit benchmarks can address political development, economic development, and security infrastructure development.⁷⁵ Political benchmarks that may be used to assess the appropriateness of transferring sovereignty back to the host state include:

The existence of political parties capable of competing with each other; demonstrated capacity to hold peaceful and fair elections; demonstrated capacity of political institutions, such as an executive, ministries, and an assembly, to make decisions and carry them out; the existence of a rule of law, including functioning courts, reasonable access to those courts, reasonable promptness in making decisions, and the capacity to decide controversies that might paralyze the government or impair its implementation of decisions consistent with basic individual rights in private arrangements; and demonstrated capacity of institutions of a civil society, including a free press, universities, and voluntary associations and legal and accounting professions capable of holding political actors accountable.⁷⁶

In addition, a number of economic indicators may serve as benchmarks for a transition of sovereignty back to the host state. These include the establishment of basic infrastructure such as transportation and telecommunications systems, the existence of dispute resolution mechanisms, the ability to channel investment funds

⁷⁴ General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz-Croat.-Yugo., ann. 10, art. 5 (Dec. 14, 1995), available at http://www.ohr.int/?page_id=63269.

⁷⁵ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 469-70 (2003), available at <http://www.kentlaw.edu/perritt/courses/seminar/ucla-jilfa-published-wl.doc>.

⁷⁶ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 470-71 (2003).

into the state, and the development of a national business strategy.⁷⁷ Finally, benchmarks for security are also necessary to ensure that the crimes perpetrated by former regimes do not reoccur and physical security is provided for all segments of the local population.⁷⁸ These benchmarks may include the establishment of a police or security force trained to uphold the law and respect the rights of all citizens and the establishment of a functional and effective system of criminal justice that will provide accountability for crimes committed.

Peacekeeping Support

To provide a stable environment where the trustee can create the foundation for democracy and related reforms, neo-trusteeships typically require a robust and sustained peacekeeping presence.⁷⁹ Similar to the neo-trusteeship arrangement, a peacekeeping force can maintain a range of powers depending on the political and security context, from peacekeeping to policing to engaging combatants. This presence can be provided by the UN or by a regional organization such as NATO or the AU. For instance, UNTAET's mandate included both civil and peacekeeping authority. The secure environment created by the peacekeeping troops was central to UNTAET being able to achieve its goals, particularly given the extent of the destruction of East Timor's infrastructure resulting from the post-referendum violence.⁸⁰ By contrast, NATO forces led the security presence in Kosovo.⁸¹ A multinational Kosovo Force (KFOR) entered Kosovo following a series of aerial bombardments that put an end to violence occurring in 1999. The 50,000-strong force provided security to the Kosovar population of roughly 2 million inhabitants and created conditions that allowed UNMIK to be established on the ground.⁸² KFOR presence in Kosovo continues today, although its troop presence has significantly diminished, and it has delegated significant police and security powers to Kosovo authorities.⁸³

⁷⁷ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 471 (2003).

⁷⁸ Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 385, 469-70 (2003).

⁷⁹ Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 665 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

⁸⁰ Michael Smith and Moreen Dee, *Peacekeeping in East Timor*, INTERNATIONAL PEACE ACADEMY OCCASIONAL PAPER SERIES 25-26 (2003).

⁸¹ UN Security Council Resolution 1244, S/RES/1244 annex 2, art. 4 (Jun. 10, 1999), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1244(1999)).

⁸² United Nations Interim Administration Mission in Kosovo, UNMIK Background, <http://www.un.org/en/peacekeeping/missions/unmik/background.shtml> (last visited Sep. 3, 2016).

⁸³ NATO, *NATO's Role in Kosovo*, available at http://www.nato.int/cps/en/natolive/topics_48818.htm (last visited Sep. 3, 2016).

In the Democratic Republic of Congo (DRC), the UN, in partnership with the AU, implemented an additional mechanism for addressing instability in the eastern DRC - the Force Intervention Brigade.⁸⁴ The Force Intervention Brigade, which fell under the authority of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), was mandated to work closely with the Congolese army to not only protect civilians, but also to directly address the security challenges facing the eastern DRC, including “neutralizing rebel groups.”⁸⁵ This is the first such initiative by a UN peacekeeping force, one that has been lauded by the members of the international community as reinvigorating the efforts of MONUSCO and the reputation of UN peacekeeping missions.⁸⁶ In fulfilling this mandate, the Force Intervention Brigade worked collaboratively with the DRC army, which allowed the Force Intervention Brigade to fulfill a dual function of combatting rebel groups and strengthening the capacity of the DRC army.⁸⁷ The DRC consented to this collaborative effort as part of its commitment to continued security sector reform.⁸⁸

The Force Intervention Brigade has been credited with making progress in returning key strategic towns to the control of the DRC government and disarming rebel groups such as M23.⁸⁹ However, the expanded mandate of the Force Intervention Brigade was not universally welcomed by UN member states and humanitarian organizations, who expressed concern that the increased mandate of

⁸⁴ U.N. Security Council Resolution 2089, S/RES/2089 art. 9 (Mar. 28, 2013), *available at* <http://www.globalr2p.org/media/files/s-res-2098.pdf>.

⁸⁵ UN Security Council Resolution 2098, S/RES/2098 art. 9 (Mar. 28, 2013), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098(2013)).

⁸⁶ N. Kulish & S. Sengupta, *New UN Brigade's Aggressive Stance in Africa Brings Success, and Risks*, THE NEW YORK TIMES (Nov. 12, 2013), *available at* http://www.nytimes.com/2013/11/13/world/africa/new-un-brigades-aggressive-stance-in-africa-brings-success-and-risks.html?_r=0.

⁸⁷ UN Security Council Resolution 2098, S/RES/2098 art. 12 (Mar. 28, 2013), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098(2013)).

⁸⁸ *See* Peace Security and Cooperation Framework for the Democratic Republic of the Congo and the Region, S/2013/131 (Mar. 5, 2013), *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/131; UN Security Council Resolution 2098 annex B (Mar. 28, 2013), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098(2013)).

⁸⁹ *See* N. Kulish & S. Sengupta, *New UN Brigade's Aggressive Stance in Africa Brings Success, and Risks*, THE NEW YORK TIMES (Nov. 12, 2013), *available at* http://www.nytimes.com/2013/11/13/world/africa/new-un-brigades-aggressive-stance-in-africa-brings-success-and-risks.html?_r=0; Martha Mutisi, *Redefining Peacekeeping: The Force Intervention Brigade in the Democratic Republic of Congo*, THE SOCIAL SCIENCE RESEARCH COUNCIL (Jul. 26, 2015), *available at* <http://forums.ssrc.org/kujenga-amani/2015/07/26/redefining-peacekeeping-the-force-intervention-brigade-in-the-democratic-republic-of-congo/#.V82so5MrJE4>.

UN peacekeeping troops would put their soldiers and employees at greater risk of being targeted by combatants.⁹⁰

Common Traits of Successful Neo-Trusteeships

Several common themes emerge when evaluating the conditions necessary for a successful neo-trusteeship. First, developing a full and thorough understanding of the needs of the host state is critical to ensuring that the neo-trusteeship has the full mandate and supporting powers to administer the state. As the instance of Bosnia demonstrates, if the trustee lacks the mandate to support institutional development in a state where institutions are weak and the political will of officials to reform them is low, the neo-trusteeship is unlikely to make significant progress in strengthening the state. Second, the selection of a trustee should be conducted with due regard for public opinion concerning both the implementing organization and its leadership. If public confidence in the trustee is low, then the trustee's work will become considerably more difficult. Third, the powers transferred to the trustee must be sufficient to allow the trustee to not only administer the state but also to overcome obstacles and challenges to institutional development. The neo-trusteeships in Kosovo and East Timor are typically considered to be successful because each maintained broad powers to govern the state and fulfill their mandate. Fourth, to gain the confidence of the local population and to administer the neo-trusteeship transparently, the trustee should consider its exit strategy and benchmarks for returning power to local authorities. UNTAC's success in Cambodia can be attributed to the clear benchmarks set for its success – which included a democratically elected government – and a measurable timeframe for returning power to the state. By contrast, the lack of measurable benchmarks and an exit strategy resulted in suspicion of the trustee's motives in East Timor and Bosnia. Fifth, transparent, accountable administration of the neo-trusteeship can play a critical role in building public confidence in the trustee's work. In Kosovo, for instance, the Human Rights Advisory Panel provided accountability to UNMIK's work by allowing Kosovo citizens to challenge the trustee's decisions in administering the territory.

Finally, state practice indicates that successful neo-trusteeships require an environment conducive to the creation of new institutions. Two key factors play into this: consent of local officials and the local population to the neo-trusteeship and the presence of a robust peacekeeping force. Consent of local officials to the

⁹⁰ N. Kulish & S. Sengupta, *New UN Brigade's Aggressive Stance in Africa Brings Success, and Risks*, THE NEW YORK TIMES (Nov. 12, 2013), available at http://www.nytimes.com/2013/11/13/world/africa/new-un-brigades-aggressive-stance-in-africa-brings-success-and-risks.html?_r=0.

neo-trusteeship promotes acceptance of the administration and supports a positive public perception of the trustee, facilitating the trustee's work and building public buy-in to the process. Further, almost every contemporary neo-trusteeship has been supported by a peacekeeping or stabilization force that establishes and maintains some basic rule of law. The mandate of this force may differ depending on the needs of the state, from peacekeeping to policing to engaging criminal elements, but should maintain sufficient powers to address obstacles arising from the neo-trusteeship and the stability of the state.

Neo-Trusteeship in South Sudan

Following a period of considerable political and economic instability, experts and members of the international community have called for the establishment of a neo-trusteeship in South Sudan, in one form or another. The current government of South Sudan has failed to develop institutions capable of providing effective services to citizens or of improving the state's economic situation. Further, infighting among South Sudanese officials has resulted in increasing violence, ongoing human rights violations, and a severe humanitarian disaster.

The implementation of a neo-trusteeship in South Sudan could address these failures and fill the current governance gaps. At a minimum, the intervention of a peacekeeping force, such as the one called for by UN Security Council Resolution 2304, could provide the necessary stability to bring peace to the state and improve the economic situation.⁹¹ A neo-trusteeship could act where South Sudan is currently failing to perform, including creating a stable economy, establishing the rule of law, and building political institutions. As the capacity of South Sudanese institutions increases over time, these powers would be transferred back to the state.

However, the establishment of a neo-trusteeship in South Sudan may also face significant challenges. South Sudanese government officials have strongly opposed any effort that might compromise their sovereignty, including the peacekeeping force provided for in Security Council Resolution 2304. Suspicion of UN motives in South Sudan may also limit public acceptance of a neo-trusteeship. In addition, South Sudan's fighting groups have increasingly splintered since Riek Machar's departure, and regional and local conflicts have

⁹¹ UN Security Council Resolution 2304, S/Res/2304 (Aug. 12, 2016), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2304\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2304(2016)).

continued unabated. Combined with limited infrastructure and difficult terrain, these dynamics would make establishing a secure environment outside of Juba difficult and highly costly. Endemic corruption and patronage systems within South Sudan would present further challenges in establishing the rule of law.

Developing the Framework for a Neo-Trusteeship in South Sudan

In considering whether a neo-trusteeship would support the development of a successful South Sudan, policymakers may evaluate a number of core considerations in the implementation of such a mechanism, drawing on lessons learned from previous neo-trusteeship arrangements. Key considerations in developing a framework for how to structure a neo-trusteeship in South Sudan include:

Process for establishing a neo-trusteeship: The process for establishing a neo-trusteeship may determine the degree of legitimacy it receives from officials and members of the public. As discussed above, neo-trusteeships may be established by UN Security Council Resolution, with or without the consent of the host state, or through a negotiated agreement. A Security Council Resolution will establish a clear mandate for the neo-trusteeship, particularly if South Sudan gives its consent to the trusteeship. If the state does not consent to the trusteeship, however, the trustee may face difficulties, if not outright opposition, in assuming power. A negotiated agreement may provide more public legitimacy to the trusteeship as it requires the consent of the officials in power.

Form of the neo-trusteeship: The form of the trusteeship is typically determined by the goal to be accomplished and the needs of the state. Trusteeships that provide the most power to the trustee are typically most effective in states where the governing infrastructure is limited or has been destroyed by the conflict, as was the case in Kosovo and East Timor. Trusteeships that serve a more advisory role are more effective in states where institutions exist, but have not fully developed the capacity to exercise their authority and would benefit from oversight and collaboration with the trustee. Both types of trusteeships may establish benchmarks and a timeframe for the incremental return of powers to the host state government.

Powers delegated to the trustee: Along with consideration of the form of the neo-trusteeship, state practice indicates that careful consideration of the powers delegated to the trustee may be determinative of its success. Decision makers may consider whether a possible neo-trusteeship will be complete, providing all

governance power (legislative and executive) to the trustee, or partial, splitting governance powers between the trustee and local institutions.⁹² A complete delegation of governance power may promote the smooth implementation of institutional reform or formation, as in East Timor. However, a complete delegation of governance power may be difficult to negotiate with a host state that holds some degree of sovereign power over its territory, as it will require sitting officials to transfer their authority to the trustee. In addition, policymakers may consider who would maintain the governance powers of sub-national institutions.

Trustee: The trustee who assumes power over a neo-trusteeship in South Sudan will be of considerable importance to its legitimacy in the eyes of South Sudanese citizens. Public acceptance of the trustee is critical to allowing the trustee to fully and effectively assume power over the host state, as in Kosovo. If the trustee is seen by the public as biased or not able to act in the best interest of the state, then the neo-trusteeship is less likely to have the confidence of the public. At present, there is widespread suspicion of the UN in South Sudan – this may considerably affect the acceptance of a UN-led neo-trusteeship.

Relationship with local institutions: State practice indicates that neo-trusteeships are more effective when institutions are formed before local participation begins.⁹³ As such, decision-makers may benefit from considering whether the installation and development of state institutions under the guidance of the neo-trusteeship will precede popular, local participation in decision-making.⁹⁴

Oversight and accountability mechanism: Transparent oversight and accountability mechanisms can bolster the legitimacy and acceptance of a neo-trusteeship by providing a means of recourse for citizens when they feel their rights have been violated. These mechanisms may be similar to the Human Rights Advisory Panel established by UNMIK in Kosovo, which had the power to receive, investigate, and adjudicate citizen complaints against UNMIK.⁹⁵ While

⁹² Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 673 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

⁹³ Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 651 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005).

⁹⁴ Report of the Panel on UN Peace Operations (The Brahimi Report), para. 81, A/55/305-S/2000/809 (Aug. 21, 2000), available at <http://www.un.org/documents/ga/docs/55/a55305.pdf>; see also Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 651 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

⁹⁵ Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 673 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005), available at http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.

the Joint Monitoring and Evaluation Commission (JMEC) already exists to oversee the implementation of the peace agreement in South Sudan, the mandate of JMEC would need to be expanded to undertake this function related to a neo-trusteeship. The JMEC may also continue to be impeded by the opposition it has experienced to date.

Timeframe and process for returning powers to the state: Decision-makers may also consider the timeframe and process for the eventual transfer of full governance power to local institutions,⁹⁶ including whether this will be a gradual process and whether any specific benchmarks must be met to trigger the transfer of authority. The contemplation of including a mechanism for extending the timeframe or mandate of the neo-trusteeship may also be beneficial.

Funding and available resources: Finally, decision makers must carefully consider whether there are resources available to support a neo-trusteeship prior to onboarding a new neo-trusteeship. In addition to ensuring that there is sufficient funding, a neo-trusteeship would also require a sustained commitment in terms of military support and additional resources.

Steps to Creating a Neo-Trusteeship in South Sudan

In addition to developing a framework for a neo-trusteeship in South Sudan, there are several preparatory steps that could be taken to aid in the development of an effective neo-trusteeship. One of the most important preparatory steps is to undertake efforts to obtain support for such a mechanism. Regardless of the pathway used to create it, support from key players in South Sudan, including the political leadership, would be critical to the trustee's success. These individuals are likely to interpret the formation of a neo-trusteeship as a direct attack on South Sudanese' nascent sovereignty or an admission that they have failed as leaders. Key political stakeholders, the majority of whom were directly involved in the liberation struggles, would need to be convinced that a trustee is appropriate. While a neo-trusteeship does not require the consent of political leaders, consent may make the implementation of a neo-trusteeship less burdensome and costly for the intervening force. This may increase the political will among members of the international community to engage in the process.

⁹⁶ Rüdiger Wolfrun, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 650, 674 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 9 (2005).

In addition to trying to gain the support of key political players, local support for the neo-trusteeship would need to be cultivated. The people of South Sudan are fatigued by the relentless cycle of violence, and there appears to be growing local support for an alternative, including a neo-trusteeship, but it is unclear how far such support would extend, particularly given the typically high political polarization of South Sudan's population and influential diaspora. While it is difficult to predict how readily the people of South Sudan would accept a neo-trusteeship, increased local support would strengthen its effectiveness.

An additional prerequisite to creating a neo-trusteeship in South Sudan is sufficient planning and preparation to address the challenges of implementation in the context of South Sudan. This would include identifying the actors that retain political and military power in South Sudan and developing a strategy for their productive engagement in the system. This could be done through a conflict mapping exercise that analyzes the current in-country dynamics. As it remains unclear that the two political leaders have complete control over their forces operating in support of them, it may be difficult to identify the players that actively maintain power. Notably, without command and control, the removal of key political figures would not guarantee an end to violence. It would be especially important to identify the spoilers who could derail the process. Further, it would be important to determine detailed strategies on how to mollify these spoilers that are operating both in and outside of Juba. This is because if rival factions perceived a potential power vacuum, there could be additional fighting as groups seek to take control of territory within South Sudan.

Based in part on the results of the conflict mapping, another step in creating a neo-trusteeship in South Sudan would be to onboard strong leadership for the trustee that contributes to popular support for the mechanism. Throughout South Sudan's struggle for independence, its political leadership has created political parties and military operations heavily dependent on their leadership and personality. These "cults of personality" have resulted in persistent infighting and detracted from the parties' ability to operate effectively in governance roles. However, the leadership still has the strong support of the South Sudanese public, and even stronger support in South Sudan's highly polarized diaspora. A neo-trusteeship may benefit from the exit of the political leadership, as the trustee could focus on cultivating the next generation of South Sudanese leaders unencumbered by past political dynamics. But convincing the leadership that their exit is in South Sudan's best interest would be difficult. Former Ambassador Princeton Lyman has suggested that they might be offered amnesty from prosecution as an incentive to

step down,⁹⁷ but such amnesty would jeopardize post-conflict accountability efforts, especially in light of the strong interest in a hybrid court.

A neo-trusteeship in South Sudan would also benefit from generating strong international support to sustain a neo-trusteeship. Starting at the onset, this process would require an increased military presence to create an environment where the trusteeship could be created. This is likely to be viewed as a violation of South Sudan's sovereignty, particularly given the current resistance to the regional AU force and the reluctance to commit troops. There continues to be uncertainty as to whether more troops would be provided to support the need for an increased military presence. In addition, if a peacekeeping force with a more robust mandate is installed, it will likely be heavily burdensome on the contributing countries. Policing South Sudan will be no easy feat, and the UN/AU would need to be prepared for the challenge. Moreover, the neo-trusteeship would need to be prepared to address the complex economic crisis in South Sudan, including the backlog in pay to civil servants.

As a neo-trusteeship's success will also rely on the perception of the UN in South Sudan, it would be important to consider how to increase its credibility. While those seeking protection by the UN tend to support the institution, those whose enemies are being protected are more likely to have a negative view of the UN. If not addressed, the divisive perception of the UN could hamper the effectiveness of an AU/UN trusteeship in South Sudan, and potentially fuel more conflict.

Conclusion

Trusteeships provide an opportunity to intervene in a state long enough to enable it to develop politically and economically and to create security. While the dynamics of a trusteeship are complex, if undertaken with forethought to its legitimacy, clear definition, transparent and accountable implementation, and exit strategy, the trusteeship has the potential to be effective in shepherding a state through a conflict setting. Although there are several steps that would be required to create an environment in South Sudan where a neo-trusteeship could be effective, a neo-trusteeship may be a viable means of creating peace and stability in the country.

⁹⁷ Princeton Lyman and Kate Almquist Knopf, *To save South Sudan, put it on life support*, THE FINANCIAL TIMES (Jul. 20, 2016), available at <http://blogs.ft.com/beyond-brics/2016/07/20/to-save-south-sudan-put-it-on-life-support/>.