Mezei Attila[1]

The Trusteeship Council and State Failure – Trusteeship Systems and the Forgotten UN Organ in the 21st Century[2]

This paper shows the historical path of the different types of trusteeship systems. It describes the evolution of the League of Nations' Mandate System, the United Nations' Trusteeship Council and their application to different regions. The paper identifies the problems facing the creation of a trusteeship system nowadays and tries to offer possible answers to them as well. The United Nations Trusteeship System supervised the relationships between non-self-governing territories and their colonial masters. The purpose of the organisation was purely the implementation of decolonisation measures. That is the reason why the Council suspended its activities in 1994. Thanks to the globalisation, the Negative Spillover Effects (NSEs) of the 21st century may make the trusteeship systems desirable once again. Security problems like state failure demand a more effective response from the international community. The cases of Somalia, East Timor and Kosovo show that the UN Security Council was ready to create missions tasked with similar responsibilities as a trusteeship in the past. During the discussion about the war-torn Syria, creation of a "safe zone" was mentioned as well. The ultimate solution for these chaotic places could be a new type of trusteeship system. The paper argues in favour of the Trusteeship Council to be revitalized as the main organ responsible for the management of these problems.

1. Introduction

The international system today was built on the assumption that there are no terra nullius territories, all corners of the world belong to a state. First, the League of Nations then the United Nations meant to be a global forum for problem management. Many countries especially former colonies have problems to govern their territories, because the self-identification of the people can differ from each other in a given state. We can find some of the reasons behind today's state failure in the structure of today's world. A rigid non-intervention thought is present now. However, what was the ways of dealing with failed states throughout history?

In my paper, I try to show how the international community handled state failure throughout history. I will try to identify the problems of the different trusteeship systems and try to examine the question whether a trusteeship with the revitalization of the UN Trusteeship Council can

[1] PhD Student, International Relations Multidisciplinary Doctoral School, Institute of International Relations, Corvinus University of Budapest

be the solution for state failure in the 21st century. In order to achieve this, I will try to offer solutions how the international community could change the course of failed state management.

There were failed states throughout history, but the globalisation and the technological advances arrived in the late 20th century to show a failed state is often more dangerous than a fully functioning one. Before the 20th century many states failed, and the majority of them were in a constantly fragile status. The most advanced ones, could achieve fairly good control of their territories. And a lot of proto states were only able to effectively control a few percentage of their total area. Even major powers struggled sometimes to get a good hold of their territories. The Habsburg empire is a good example for that. Numerous revolutions and freedom fights were carried out against the Habsburg rulers throughout Europe.

2. History of the Failed States

People can work in groups and can create social structures instinctively. Even the most primitive tribes could have a stable social system with the functions of legislative, executive and judicial powers. These tribes can even fit into some broad state definitions such as the 1933 Montevideo Convention on the Rights and Duties of States:

"Article 1
The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states." [oas.org, 2016]

There are fragile, failing, failed and collapsed states as well. In the 21st century not the fragile states are the main problems but the failed or collapsed ones. [Rotberg, 2002]

"State failure thus occurs when an Internationally Recognised Government (IRG) is unable to prevent the emergence of Negative Spillover Effects (NSEs) – negative external security consequences – from its territory." (Marton, 2008: 88)

NSEs can be identified as an international terrorist organisation, or even a disease. The globalisation makes NSEs more transportable. That is why failed states cause more problems today than in the past.

The League of Nations' Mandate System was successful in transforming the traditional international ways of governing territories. There were different types of governments before the 20th century, with different levels of dependence. The United Nations Charter created the Trusteeship Council which was an improved version of the Mandate System. The only problem with the council is the Article 78 that reads as follows:

"Article 78
The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality."
[Charter of the United Nations, 1945]

The Trusteeship Council was created in a time when major countries still had colonies. The thinking behind the trusteeship system was a sort of tutelage for territories where the native population was not ready to build a functioning state.

In spite of all the flaws of the Mandate System, one new development was achieved: the Permanent Mandates Commission provided international oversight. The Commission was proposed by the British and made sure that annual reports have to be drafted to assist the Council of the League of Nations in order to supervise Mandatory Administrations. And this way international accountability was born. This was the first true progress even if it just worked in principle. [Groom, 2000; 145-146]

The second progress worth mentioning is connected to the concept of territorial internationalisation. This concept is hard to define but international territories are territories that are directly qualified by:

"Territorial entities which are under the jurisdiction of an international authority and are disconnected from any territorial sovereign enjoy an independent international status." [Stahn, 2008: 540]

Internationalisation of territories meant a kind of power sharing for a definite or indefinite amount of time. Usually cities such as Cracow or Shanghai were the subjects of this kind of international administration. The novelty of the Mandate System is that an international organisation was tasked by the administration in certain areas instead of one or more states. Several territories, came under the umbrella of the League of Nations such as the Saar Basin for definite 15-year mandate and Danzig for indefinite period. These areas could be placed under a supervision of a Commission or a single High Commissioner. [Stahn, 2008]

3. The Trusteeship System and Its Key Principles

The Council is viewed as a tool of an era which meant to promote statehood for indigenous people around the globe that live under the rule of a colonial power. The number of states acknowledged by the UN indicates that this job was successful. Unfortunately, the Western-type state centric view tends to admire and overestimate the capabilities of a given state. Strong states with inhabitants of common cultural heritage could be hard to find in places such as the former colonial territories. The borders of states in Africa, or around the world are mainly the result of European rivalries. They did not evolved organically following ethnic, or cultural divides. As we know, a lot of conflict arises from these problems. [Hensel, Allison, Khanani, 2009)

One of the major questions of the 20th century was, how to promote statehood for colonial territories when one of their existential attributes, their borders could not be altered. The choice of rigid borderlines foreshadowed potential conflicts in the future.

The question is, whether the Trusteeship System developed enough to be capable of correcting the faults of the Mandate System. As the United Nations is a more developed organisation than the League of Nations, a different approach should be identified from the Trusteeship Council as well. The League based its methods on customary international law. In a lot of cases, vague guidelines where provided, how the states should act towards the mandate territories. The Trusteeship System based on more obligations, than the Mandate System. In addition the Article

87 of the UN Charter defining the functions and powers of the Trusteeship Council is more de-tailed than the Mandate System was. First of all, creating a separate organ under the umbrella of the United Nations was an important step. In the case of the Mandate System, an annual report making obligation was barely introduced. The Trusteeship Council accepts petitions from the administrated territories and provides periodic visits to those areas as well. [Charter of the Uni-ted Nations, 1945; 16-17]

These are important steps to make sure that the Trust Territories are not handled as colonial territories. Some may argue that the legacy of the Mandate System was not the emphasis on the development of the inhabitants, but the slow process of turning the colonial system into somet-hing new, which made self-governance of certain territories possible in the not so distant future. [Pedersen, 2016]

We have to consider that the Trust territories have different ways of achieving sovereignty. One could think that only independence can be the desired way, but there are other ways as well which are often overlooked. Local autonomy within a larger association or a larger State can be a viable option as well. The level of development sufficient achieving independence or local auto-nomy within a State is different from each other. As we can see, the time when the administrative period should end is different from the different desires of the territories. The introduction of time limit solves these problems as well. At the end of each period, a given international organi-sation would make an assessment of the stage of development of the Trust Territory and compare it to the criteria of a desired outcome, and determine whether the given Trust Territory reached it or not. If not, an extension can be easily introduced. Prevention of systematic abuse is important in order to legitimize any international administrative body. [Parker, 2003; 24]

A new type of trusteeship system or a revitalized Trusteeship Council should include the time period method of winning international goodwill from states around the globe. It could be a good start if we emphasize the positive sides of the Trusteeship Council, such as how effective it was, considering that lot of young nations can thank their sovereignty to the work of this organ.

3.1 Consent and Eligibility

It is important to examine the eligibility of the territories to become a trusteeship. The UN Char-ter Article 77 identified three different ways to become a Trust Territory. First, former Mandate Territories could become trusteeships, the second option: the territories controlled by the defea-ted powers of Second World War. This point only considers the detached territories, not the core ones. Lastly, the third option: states administering a given territory can place it voluntarily under the system. [Charter of the United Nations, 1945]

The legal basis is given as we see for future Trust Territories. Until the end of the Second World War, the victor always had the option to place a conquered territory under this system voluntarily. It could solve a lot of problems, connected to failed states, but this option is not in use by any state nowadays.

Because the Trusteeship Council is inactive, a new kind of thinking and approach should be adopted if we would like to see the Council in action. In the future, the revitalization of the Trus-teeship Council could be desirable, if we would like to have a choice when administration of a given territory is hard to achieve by a single state and the international community is threatened by the local NSEs as well. Unfortunately, good examples in the 21st century are not hard to find.

The USA could have used this method if the Trusteeship Council would have been active in a lot of cases. The legitimization of troops presence could have been much more solid in the case of Iraq for example. No matter how we approach this question, one thing is evident. If two states go to war against each other, and after the decisive victory, the victorious state leaves its troops in the area without international supervision, the local population will always view them as enemies. It is a natural reaction from a society. The United Nations is an organisation that could make these situations much more easier for everyone. For the victorious state, it can provide operational assistance, how to handle the situation and it can provide legitimacy as well. A professional organisation could be much more prepared than a state when it comes to the question of conquered territories without annexation. [Ryser, 2013]

The United Nations has the necessary qualifications to be the organisation these territories need, and we could use it for our purposes. For the losing party of the conflict the international oversight would mean a much more stronger safeguard of human rights and better prospects for the future. A foreign power might commit atrocities to maintain order, and the hostilities between the parties are much more justified, because they were in a war against each other not much time before. Thanks to the propaganda, the local population, might see the previous war propaganda messages becoming true connected to the former enemy. The perception of the population is important because after a defeat, the humiliation mixed with atrocities can add up, and turn the local population towards radicalisation. The possible result of radicalisation can amplify hostile activities, guerrilla warfare or create a terrorist organisation. And here comes the international community as another party. The interstate conflict has its consequences not just on the two belligerents, but on other states as well. The international community is a stakeholder in the conflict as well. The deterioration of security can also have dire consequences for far away states. As was previously mentioned the radicalisation of locals can increase terrorism and threaten territories outside of the two states in conflict. That is why it is important to rethink the internationalisation of territories under the umbrella of the Trusteeship Council.

Article 79 of the UN Charter describes that consent is required from states directly concerned for each territory. This can make things harder because an agreement is needed to place a territory under international supervision. If we want to interpret this section of the UN Charter, we have to be more flexible in the 21st century. The international community as a whole is a stakeholder in every possible scenario when a territory is considered to become an internationally supervised one or not. This approach should be adopted and the direct agreement from the states concerned should be a flexible one. The international security can deteriorate tremendously thanks to an interstate or an intrastate conflict. The United Nations cannot sit idly. [Charter of the United Nations, 1945]

3.2 Accountability

One of the key issues connected to any international supervisory or administrative organ is the accountability. In a sense, the Trusteeship System is not as hard to held accountable as a normal state. In the case of states, the government has to be checked by institutions such as independent judiciary or other agencies which jobs are to hold the state accountable.

In the case of the Trusteeship System, there are three potential parties. First, there is the Trust Territory, with its local inhabitants. Second, there is the Administrative Power or Powers

that are in charge of administering the given territory. Third, there is the UN itself, which is the organisation responsible for the development of the Trust Territories, as it is declared in the UN Charter. The Trusteeship System made sure that it uses more effective tools when it comes to the question of supervision than any similar system before. Administering Powers and Non-Administering Powers make up the Trusteeship Council equally. It is a safeguard against exploitation, because potentially the Non-Administering Powers have no economic incentive in exploiting a territory. They are there to make sure the legitimacy of the Trusteeship Council is not endangered by imperialistic tendencies. Annual reports are sent to this Council, and petitions from the Trust Territories are directly sent to the Council instead of the Administrative Authority as well.

Today, there is not a single forum which could provide more legitimacy than the General Assembly. There are almost 200 states present in the General Assembly which provides an incredibly effective forum for public international humiliation, if the Administrative Authority would like to commit any atrocities or if it wanted to exploit the Trust Territories. Obviously, minor abuses of power cannot be eliminated altogether, but Article 88 makes sure the scope of these actions are limited.

A single state or a group of states can make up the Administrative Authority. The UN can be the Supervisory and the Administrative Authority at the same time as well. This would be as strong oversight as in the normal state-administered case as Article 81 describes. [Charter of the United Nations, 1945]

3.3 Contemporary Non-Violent Independence Movements: Scotland and Catalonia

The description and the wording of the Mandate System and the Charter of the United Nations made sure that only the underdeveloped regions should receive an international tutelage status. However, there are a lot of turmoil, in other places where economic growth is not in trouble. Contemporary, 21st century examples can be brought from Europe to identify some territories that does not think they are self-governing themselves.

The Scottish people have their own parliament and enjoy relatively large autonomy compared to other minorities, but Scotland sought independence from the United Kingdom via referendum in 2014. The UK handled the Scottish problem successfully, but in other places such independence movements could turn towards violence.

The Catalans seek independence from Spain for a long time. Some Catalan people feel themselves under „foreign" Spanish rule since centuries. The central government in Madrid has been taken every opportunity to make sure that Catalonia does not reach independent state status since the territory is governed by the Spanish Crown. Catalonia was never a colony, it has been always an integral part of the Spanish Domain, therefore it has never received a mandate or a trusteeship status. However, since there have been elections in Spain after the death of General Francisco Franco in 1975, the Catalan independence movement has reborn. The Catalan public voted for an „autonomy statute" in 1979 and received 88% popular support. [Ryser, 2012]

After this, the Catalan independence began to start a slow gradual state-building project. Defining Catalan people as a nation and maintaining strong autonomy from the central government is one thing that the Catalans achieved. Another important achievement was their

economic growth. 25% of the economic output of the Iberian Peninsula comes from Catalonia. [Ryser, 2013: 106]

It means two things for the central government. On the one hand the Spanish economy would be seriously damaged if Catalonia received a sovereign state status. On the other hand, the Catalan people have a huge incentive, why it would be advisable to achieve full statehood: the Spanish economy only drags them down. This case was present in Scotland as well. The North Sea oil reserves played an important role in the life of the independence movement. It is not different in this case. The counterargument which the better together campaigns can usually bring is that huge portions of trade is conducted with near territories. [theguardian.com, 2012]

The presence of the EU is another incentive for the independence movement. The borderless EU guarantees the free flow of labour, capital, services and goods. There is no place for old school mercantilist policies in the „weapons arsenal" of currently governing states. Only the threat of excluding these territories and actively denying the accession procedure of Scotland or Catalonia into the EU can be regarded as an actual risk worth considering.

Although the referendum of Scotland did not achieve its original goal, that does not mean that Catalonia leaving Spain is not a threat either. The connection between these seceding territories and the Trusteeship Council is not so evident. The main goal of the Trusteeship Council is to achieve nations reach full sovereign status. There should be a debate about whether the self-governing principle of each nation is stronger or the preservation of the status quo. The Charter of the United Nations regarding the territories eligible for Trusteeship Status did not mean to include territories like Catalonia. However, with the revitalization of this UN organ, its position worth considering on nations that lives under a states umbrella, but would like to achieve self-government and sovereign state status.

3.4 The Role of Trusteeship Council in Elevating Indigenous Population

Formerly, only external colonies were part of the scope of the Trusteeship Council. The inclusion of „inland" territories would mean that the struggle between the state and the native population (which is a different ethnicity than the majority in that given state) got a third party. The indigenous people would get an international organ to deal with their case. It would reduce the chance of an armed conflict between the indigenous people and the ruling authority. If the goal is to elevate the underdeveloped nations, then the states could consider including the Trusteeship System in their future plans.

The question is whether the states would like to include a third party in their home affairs. There are certain incentives for doing that. First of all, the above mentioned neutralization of the conflict is a huge incentive. No government wishes to have an armed conflict and civil war in their territory. Since the Trusteeship System is a forum where the native inhabitants could make sure that the oppression of the administrating authority does not violate their rights and make efforts to develop the political and economic situation in the given territory.

Second, there are states with huge chunks of minorities from neighbouring countries. It is easy to think about the peace agreements of the 20th century, to get an idea how much the ethnic lines differ from the actual border lines even in Europe. Not to mention the artificially created borders of Africa. This system would essentially be a tool for states to ensure that their nation

under foreign rule gets the highest level of autonomy. It would again mean a reduced tension, and reduced chance of outbreak of an interstate armed conflict.

A third important reason for the Trusteeship Council is the fact that a lot of states are in trouble administering their territories. The Trusteeship Council could provide technical assistance for them, because the know-how of state building would be in the possession of the international organ. Even internationally recognized governments struggle sometimes to maintain their rule over a given territory. It is especially the case after an armed conflict happened in their territory. We could point out Ukraine for example. The rhetoric of the Russian Federation regarding Ukraine: it is suppressing the Russian minority living in the Eastern part of the country. In that case, the Trusteeship Council could make a report of the situation and discredit any false allegation towards the incumbent Ukrainian government. Or if the allegations are true, it could provide a certain road map towards a mutually more preferred modus vivendi between the government and the local Russian minority.

Another good example for the possible usage of the Trusteeship Council is the Libyan conflict. After the death of Gaddafi, the situation of Libya became uncertain, it shows the symptoms of a failed states. This means that its inhabitants may not possess the economic and political tools of making a stable state out of the situation. The legitimate, internationally recognized government could turn towards the Trusteeship Council for guidance regarding the state's administration.

4. Trusteeship Council vs. Security Council in the 1990's

4.1 State Failure

One of the most outstanding example for state failure in the post-Cold War world is the case of Somalia. The government of Somalia virtually exist but the qualifications for statehood set out in the *Montevideo Convention* of 1933 [oas.org, 2016] are not met. It does not possess neither an effective government nor the capacity to enter into effective relations with other States. Despite these facts, the international community remained engaged with the Somali government. Somalia fits the failed states category because the central government cannot govern its territory for decades now.

The United Nations tried to solve the problem with Security Council Resolution 751 in April 1992. The UNOSOM was created. [UN Resolution 751, 1992] This peacekeeping mission had only a limited impact and it seemed as the UN mission became a humanitarian catastrophe. [Parsons, 1995: 199]

The UN made a mistake in the case of Somalia. It missed out the opportunity to involve the Trusteeship Council as a sole United Nations organ tasked with basically state building. Instead of the Transitional National Council, Somalia should have given a Trust Territory status, because it was clearly a problematic area, and a failed state. The Trusteeship Council had the know-how to manage these situations since previously numerous territories were under its scope with weak state institutions. The UN was involved in Somalia anyway, and funds were allocated to deal with the extremely poor country. The question is whether the Trusteeship Council as a leader of state building could have done a better job than the UNOSOM, UNITAF and UNOSOM II missions.

At the time when the problems of Somalia was on the agenda (in 1992, and 1993) the Trusteeship Council was operational in theory. It only suspended its operations in 1994. [UN.org, 1994]

The main difference between the UNOSOM II and a Trust Territory was that UNOSOM II only had a mandate to assist and not to impose measures when carrying out its tasks. This kind of soft approach does not reach its goal when a fractioned state has multiple warlords who are ready to seize power with military means. Another important difference between the UNITAF and the UNOSOM II mission was the number of troops deployed. The troops delegated by numerous nations went down from 37 000 to 28 000. Furthermore, the nations involved increased from seven to thirty one. [Shawcross, 2000: 98-103]

The reduction of the troops and the transitional period from UNITAF to UNOSOM II opened a window of opportunity for the warlords to gain more power. The increased number of nations involved could be seen as a more legitimate UN resolution, but in practice it only meant to increase the administrative burdens of the UNOSOM II mission. The main difference between UNOSOM II and the Trusteeship Council is that the former concentrated on security issues and the latter concentrates on governance. [Parker, 2003: 33]

Concentrating on security is important, but it is the governance which is the ultimate goal of state building. Security imposed by foreign actors in a situation where different warlords compete for power can only mean that the status quo remain. Active military operations are needed to eliminate the local militias. It could mean an actual war within the given state. It would compromise the security emphasis, because foreign troops either bring bloodshed, ending the conflict via war, or just standing, doing nothing, but intimidating the foes not to attack each other. The latter is a solution just for a short run, it cannot achieve peace ultimately. The Trusteeship Council would concentrate on governance which could have a broader scope, and eventually security should be a "by-product" of its activity. Instead of military solutions, the political ones should also play a role in the state building procedure which was not so evident in the UNOSOM II mission. [Chopra, 1996: 521]

4.1 Disintegrating States

The case of disintegrating states is different from state failure, because effective control is achieved on the territory, but it may be disputed by internal actors like in the case of Kosovo. The former Yugoslavia integrated multiple ethnicities for a long time, but the death of Tito and the end of the Cold War made harder for the country to hold together its territories. Kosovo is inhabited mostly by Kosovar Albans, the Serbs are in minority there. The territory only enjoyed a relative autonomous status between 1974 and 1989. [Seidel, 2002: 209]

At the time of the Kosovo conflict, the Trusteeship Council has already declared its suspension, the Kosovo mission could have been easily a good opportunity for the UN organ to show its usefulness. Instead of the Trusteeship Council, the NATO, the UN Resolution 1244 and later the KFOR was tasked to solve the problem. The UN Resolution 1244 created the United Nations Interim Administration Mission in Kosovo (UNMIK). The UNMIK was an interesting creation, instead of involving the Trusteeship Council tasked by administering the territory of Kosovo, the UN Secretary General's Special Representative assumed all legislative and executive authority with respect to Kosovo. To make this Representative look less omnipotent, the military

component of the mission, the KFOR was not under the authority of the Representative [UN Resolution 1244, 1999].

Instead of establishing a Trust Territory, the UNMIK created a mixed mission including several international organisations. The United Nations High Commission for Refugees (UNHCR) supervised the return of refugees and co-ordinated humanitarian aid efforts. The Organisation for Security and Co-operation in Europe (OSCE) tried to led the territory towards democratic governance and the European Union (EU) tried to help reconstruct the damaged villages and towns. [Matheson, 2001: 79-81]

Some may argue that the Resolution 1244 represents *de facto* a trusteeship status for Kosovo because four aims of a trusteeship all forming part of the UN Resolution. Peace and security, promotion of self-government, promotion of human rights and equal treatment. Although it is important to note that the UN Resolution 1244 was created for giving Kosovo broader autonomy *within* the former state structure and not to create a new state. [UN Resolution 1244, 1999].

It may be a key finding that the UNMIK was only tasked to secure more autonomy instead of full statehood. The inclusion of the Trusteeship Council would have meant a wish for a new state as an end goal, because the history and the creation of the Trusteeship Council has always had this intention. Interestingly, the Kosovar Albans wanted to achieve full statehood status, but it seemed the UN had its own reasons not to work for it in 1999. Destabilization of the region was taken into account, because the Balkan has numerous minorities that could give an incentive to them to challenge the status quo by enabling full statehood status for Kosovo. Plus some states simply supported their ally, Serbia. [Seidel, 2002] The UN Charter Article 1(2) was violated and the *Friendly Relations Declarations* of 1970 as well, because the right to secession was not an option in the original mission. [UN General Assembly Resolution 2625, 1970]

4.2 Disputed Territory

A different scenario than Kosovo can be found in the recent history of UN Security Council's state building. The case of East Timor is stunning in its aspect that the Security Council mandated a Trusteeship Administration similar to a Trusteeship Territory. [Bothe and Marauhn, 2002]

East Timor was a Portuguese colony until 1975. After that, Indonesia tried to annex the territory, even with military means. Indonesia did not care about the intentions of the local people, whether they would like to form a new state or would like to be part of Indonesia. After serious diplomatic negotiations the UN Secretary General was tasked to conduct a referendum in East Timor in 1999. This plebiscite asked the question from the people of East Timor, whether they would like self-governance in a new state or whether they would like to see themselves as an autonomous region within Indonesia, almost two and a half decades after Indonesia seized the territory. [Matheson, 2001: 81]

It is important to note that the Trusteeship Council was left out again from the procedure, even though it has the historical background of settle these kind of disputes. East Timor was a former colony, its status, and its people's intentions were questioned. The Security Council did the right thing when established the United Nations Mission in East Timor (UNAMET) for securing the plebiscite although the Trusteeship Council should have been involved. [Zimmermann and Stahn, 2001: 434)

The only problem with UNAMET was the afterlife of the mission. The Security Council sho-

uld not have interfered with the affairs of East Timor with the UNAMET after the plebiscite was held. 78.5% of the registered voters wanted independence instead of autonomy within Indonesia. [Zimmermann and Stahn, 2001: 434]

After the referendum was held, the UNAMET mission should have ended, and the Trusteeship Council should have been tasked with the mission of establishing the necessary means for full sovereign state status of East Timor. Instead of this, the Security Council passed Resolution 1272 to establish the United Nations Transitional Administration in East Timor (UNTAET) to exercise all legislative and executive power in the territory of East Timor. The scope of UNTAET was broader than UNMIK in Kosovo, because here the UNTAET was actually tasked with developing civil and social services in addition to capacity-building for self-government in order to achieve full state status. [UN Resolution 1272, 1999]

The UNTAET was successful, because on 20th May 2002 East Timor reached full state status and now, it is part of the United Nations. The UNTAET had full authority in East Timor over legislative, executive powers, could appoint and remove judges. It also had authority over military affairs as well, unlike UNMIK. [Zimmermann and Stahn, 2001] The only problem is that the Security Council should not be the organ tasked with state building question. It should have been the task of the Trusteeship Council to take care of the situation. The legal obstacles of the Trusteeship Council was described before, but these above mentioned cases such as, Kosovo or East Timor show the examples that the Trusteeship Council is needed even today. The UN may not delegate cases to the Council, but as we could see the scope of the UNTAET is basically the same as an Administrative Authority over a Trust Territory.

5. Obstacles of the Trusteeship System in the 21st Century

There are at least 5 obstacles against the Trusteeship System in the 21st century. Some of them are legal, such as the famous Charter of the United Nations Article 2(1) and Article 78. The text of the Charter makes it impossible to impose a Trusteeship System on a Member State of the United Nations. The thinking behind of this Article 78 is to make impossible for states to violate one another's sovereignty by imposing a tutelage by a group of states on another. This problem could be bypassed by using the UN to declare a territory a Trust Territory. Although the provision is still there, the UN as a whole has enough legitimacy to be an Administrative Authority. If not the Trusteeship Council is tasked by this work, then the Security Council just creates a mission.

The second noteworthy obstacle against the Trusteeship System is the principle of sovereign equality. Sovereignty implies the recognition of a state having right of jurisdiction over particular people and territory. However this approach may be outdated. According to some experts sovereignty should not be used when we talk about states, instead independence should be used, because this word describes the concept better. [Shaw, 1997: 149-153]; [Gordon, 1995: 311-317]; [Malanczuk, 1997: 17-18]

Maybe the most evident example of the erosion of traditional sovereignty is the UN with its binding solutions. The cases of Somalia, East Timor and Kosovo show that the UN Security Council was ready to create missions tasked with similar responsibilities as a trusteeship in the past. During the contemporary discussion about war-torn Syria, creation of a "safe zone" was mentioned as well. The ultimate solution for these chaotic places could be a new type of trusteeship system. In my opinion the UN Trusteeship Council can be the main organ responsible for

the management of these problems. The third obstacle is the question of state extinction. *"There exist no fixed criteria of State extinction"* [Marek, 1968: 9] The fourth is the internal and external self-determination. The external self-determination is the right of people to be free from foreign domination and the internal self-determination is the right of people to assert their will against their own government. [Rosas, 1993: 227] The Trusteeship System has always been a transitional tool for the international community through which self-determination can be achieved. The involvement of the international community in similar cases are still in practice even without the Trusteeship Council. It is enough to think about the Somali, Kosovar or East Timorese cases. All three of them received some kind of international oversight, and their self-determination was violated or lifted for a given time, but that was a better option for them than anarchy.

The last obstacle which is hindering the re-emergence of a trusteeship system nowadays is the course of discussion connected to the failed states question. The international community let the Trusteeship Council be forgotten.

6. Possible Legal Frameworks for the Trusteeship System v2.0

The sovereign states that are part of the UN are clearly excluded from the scope of the Trusteeship Council, but that could change, if we would like to see the Trusteeship Council working again.

There can be a place for the Trusteeship Council in the 21st century. The globalisation caused interdependencies are more relevant than before, and problems such as state failures are perfect examples there is a need for a functioning international organisation working on state building problems. [Kraxberger, 2012]

There are already signs for violating the principle of sovereign equality of a state. It is enough to think about the discussion about Syria. Turkey proposed the creation of a safe zone within Syria to prevent Negative Spillover Effects such as the flow of refugees into Turkey or to make it easier to monitor the Turkish-Syrian border. [Theguardian.com, 2016] Although the creation of a safe zone did not happen, it was placed on the table as a possible solution. A solution for some problems, but not for making the whole territory of Syria safe again.

One of the key problems with the Trusteeship System is how to legitimize the intervention in the domestic affairs of a given territory. The UN Charter Article 78 specifically curtails the possible candidates for Trust Territories, It is high time to consider Article 78 an obsolete idea, instead of the whole Trusteeship Council. The article should be changed and with this the revitalization of the Trusteeship Council could take a step towards becoming a reality. The need for this council is relevant since there are aspects of the international system which crave a capable body that could be used in times of state failure.

Another approach could be focusing on the individual states and obtaining consent from them to impose an outsider Administrative Authority on them. Although the states usually eager to maintain their sovereignty, there are numerous examples that the exercise of one state's sovereignty is shared with an organisation. The best example for that is the European Union. 28 states share very important parts of their sovereignty and exercise them together voluntarily. There is no obstacle in law for a state to relinquish all control over its internal and external affairs and vest its authority in the United Nations besides Article 78. That means theoretically, that a state can turn to the United Nations and ask for the help of the Trusteeship Council, overriding the provisions of the Article 78.

Furthermore, there are examples for union of states and for federations when a state renounce its own sovereignty willingly and loses its international personality. [Gordon, 1995: 324]

Why could not a state place itself under the provisions of the United Nations? It would be a good option for a state in turmoil, to use the assistance of the Trusteeship Council temporarily until its affairs are no longer in danger. There is an example for this case when a failing or disintegrating state asked the help of the United Nations as the experiences of the Paris Agreements in Cambodia showed [Helman and Ratner, 1992:. 14-15]

Nowadays, this could be a possible solution in the case of failing states, when there is an internationally recognised government of a state. The cases of Afghanistan, Iraq, Syria etc. shows that these governments are not providing the basic services for their citizens in all corners of their countries. These states usually face armed uprisings or they are engaged in conflict with certain groups of people. The best example for giving consent to the United Nations to place a state under the supervision of the Trusteeship Council would have been Syria. The Assad regime is recognised as the legitimate government of Syria and the President faces different interest groups that oppose his rule. The fight for control over the territory of Syria could be solved by introducing a Temporary Administrative Authority. This Authority led by the Trusteeship Council could have make serious security improvements since one of the main reasons why certain group of fighters fight is Assad himself. [Donaghy, 2015]

6.1 Acknowledging State Failure and Withdrawal of Recognition

The problems section of this paper tries to identify certain obstacles including the problems of state failure. One of the most important problem of this phenomena is that the continuity of a state is not regulated. There is a recognition needed to be accepted into the international community by other states, but there are no defined criteria when this recognition should be withdrawn and when should we no longer talk about the state as the sole sovereign authority over a territory.

There should be a clear process how the international community could determine a state to be a failed one. It would be easier to impose a Trusteeship System on it to rebuild the state structure including economic, social, political and other aspects that ensures the people to live in a more favourable situation than in time of state failure. The aim of the Trusteeship System has always been the promotion of a better life for the indigenous people including self-determination as well.

There can be different approaches towards withdrawal of recognition of a state. The best option would be a General Assembly Resolution (with the votes of the permanent members of the Security Council) which would define the criteria of different stages of state failure and at what point can the United Nations interfere.

The other case is when a state is hostile towards its subjects on purpose. It is important to note that cases like this already happened for example in Rwanda or Yugoslavia. In such cases a new resolution could solve the problems, but as we know the Responsibility to Protect has already overridden the UN Resolution 1541 in terms of scope. We only has to combine the two approach to get to a new one. In other words, the Responsibility to Protect only acknowledges that a State does not do its job protecting its citizens inside the territory of the country. The Resolution 1541 declares non-self-governing territories (NSGTs) in faraway lands. [UN General Assembly

Resolution 1541, 1960] If the United Nations are certain that a state violates the rights of certain national or ethnic minorities then the Responsibility to Protect can be used, but the international community can take one step further and declare those territories where the minorities resign NSGTs. And the next natural step would be the revitalization of the Trusteeship Council administering those territories, because NSGTs were potential subjects for the Council before.

In this way recognition could be withdrawn from certain states as a whole, or at least NSGTs could emerge more easily. With these steps state failure would be easier to handle.

7. Conclusion

A possible solution for the problems of state failure can be the revitalization of the UN Trusteeship Council. The historical path of the evolution of different types of tutelage systems helps us understand where we stand today. The paper describes the reasons behind the idleness of the UN Trusteeship Council. A sudden revitalization is not feasible, because there are numerous obstacles against the utilization of the Council as was described above.

There are problematic areas of the world like Somalia where the use of failed UN Security Council mandated missions show the problems of the ad hoc solutions. Thanks to the globalisation, Negative Spillover Effects of fragile or failed states mean serious security problems to the outside world. The case of Syria and the rise of the ISIS show the incredible amount of threat failed states pose in the 21st century. These NSEs could serve as incentives to reconsider the Trusteeship Council with a new type of neo-trusteeship system as a viable option to solve these problems. The UN organ could offer effective solutions for chaotic places with sufficient international oversight and consensus thanks to the development of the international law.

Bibliography

Online references were accessed: 20.04.2016

Primary Sources

United Nations (1945): *Charter of the United Nations.* https://treaties.un.org/doc/publication/ ctc/uncharter.pdf. Accessed: 20.04.2016
Oas.org (2016): *Montevideo Convention on the Rights and Duties of States.* http://www.oas.org/ juridico/english/treaties/a-40.html Accessed: 20.04.2016
UN.org (1994): *Trusteeship Council Status.* http://www.un.org/en/mainbodies/trusteeship/ Accessed: 20.04.2016
UN Resolution 1244 (1999): https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/ PDF/N9917289.pdf?OpenElement Accessed: 20.04.2016
UN Resolution 1272 (1999): http://www.un.org/en/peacekeeping/missions/past/etimor/ docs/9931277E.htm Accessed: 20.04.2016
UN General Assembly Resolution 1514 (XV) (1960): http://www.un.org/en/decolonization/declaration.shtml Accessed: 20.04.2016

UN General Assembly Resolution 1541 (XV) (1960): http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1541%28XV%29 Accessed: 20.04.2016

UN General Assembly Resolution 2625 (XXV) (1970): https://www.ilsa.org/jessup/jessup15/DeclarationonFriendlyRelations.pdf Accessed: 20.04.2016

UN General Assembly Resolution 2758 (1971): https://documents-dds-ny.un.org/doc/RESO-LUTION/GEN/NR0/327/74/IMG/NR032774.pdf?OpenElement Accessed: 20.04.2016

UN Security Council Resolution 751 (1992): http://www.sipri.org/databases/embargoes/eu_arms_embargoes/somalia/un-security-council-resolution-751-1992 Accessed: 20.04.2016

Secondary Sources

Baty, T. (1934): "Can an Anarchy be a State?" *American Journal of International Law* 28(3): 444-455.

Bothe, M. and Marauhn, T. (2002): "UN Administration of Kosovo and East Timor: Concept, Legality and Limitations of Security Council-Mandated Trusteeship Administration" in: C. Tomuschat (ed): *Kosovo and the International Community,* The Hague, London

Budapest Memorandums (1994): *Budapest Memorandums on Security Assurances, 1994* http://www.cfr.org/nonproliferation-arms-control-and-disarmament/budapest-memorandums-security-assurances-1994/p32484. Accessed: 20.04.2016

Cenciotti, D. (2015): *Turkey has shot down a Russian Sukhoi SU-24 near the border of Syria.* http://theaviationist.com/2015/11/24/ruaf-su-24-shot-down-by-turkey/ Accessed: 20.04.2016

Chopra, J: (1996): "Achilles' Heel in Somalia: Learning from a Conceptual Failure" *Texas International Law Journal* 31: 500.

Chowdhuri (1955): *International Mandates and Trusteeship Systems: A Comparative Study.* Martinus Nijhoff, Leiden

Donaghy, R.(2015): *FSA: Syrian rebel groups must unite to defeat Assad* http://www.middleeasteye.net/news/syrian-opposition-gather-riyadh-seek-unity-fight-against-assad-1931032235. Accessed: 20.04.2016

Gordon, R. (1995): "Some Legal Problems with Trusteeship" *Cornell International Law Journal* 28: 301.

Grant, T. (1999): "Extending Decolonisation: How the United Nations Might Have Addressed Kosovo" *Georgia Journal of International and Comparative Law* 28: 9.

Groom A. J. R. (2000): "The Trusteeship Council: A Successful Demise" in Taylor, P. and Groom, A. (ed): *The United Nations at the Millennium: The Principal Organs.* A&C Black, London

Helman, G. B., & Ratner, S. R. (1992): "Saving failed states" *Foreign policy* (89): 3-20.

Hensel, Paul R.; Allison, Michael E.; Khanani, Ahmed (2009): *Colonial Legacies and Territorial Claims.* http://www.paulhensel.org/Research/colleg.pdf. Accessed: 20.04.2016

Horváth J., Paragi B., Csicsmann L. (2013): *A nemzetközi kapcsolatok története 1945-1991.* Antall József Tudásközpont, Budapest

Kraxberger, B. (2012): *Failed States: Realities, Risks, and Responses.* CreateSpace Independent Publishing Platform

Malanczuk, P. (1997): *Akehurst's Modern Introduction to International Law.* http://jpkc.fudan.edu.cn/picture/article/460/b5/d0/c17942674e1f8832344e9e0ec9fc/f7ad336c-8294-46f8-a94e-e863ccb9094f.pdf Accessed: 20.04.2016

Marek, K. (1968): *Identity and Continuity of States in Public International Law.* https://books.google.hu/books?id=QaF7mnj9igkC&printsec=frontcover&hl=hu&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false. Accessed: 20.04.2016

Marton, P. (2008): "Global Governance vs. State Failure" *New Perspectives* 16(1)

Matheson, M. J. (2001): "United Nations governance of postconflict societies" *American Journal of International Law* 95(1): 76-85.

McCauley, M. (1995): *The Khrushchev era, 1953-1964.* New York: Longman, London

Nationsonline.org (2016): *Outline of German History* http://www.nationsonline.org/oneworld/History/Germany-history.htm

Parker, T. (2003): *The Ultimate Intervention: Revitalising the UN Trusteeship Council for the 21st Century Centre for European and Asian Studies at Norwegian School of Management.* http://www.bi.edu/cccFiles/CEAS-Files/03-03The_Ultimate_Intervention.pdf. Accessed: 20.04.2016

Parsons, A. (1995): *From Cold War to Hot Peace: UN Interventions 1947-1994.* Penguin Books, London

Pedersen, S. (2016): *The Meaning of the Mandates System: An Argument.* https://aiscibhistory.wikispaces.com/file/view/meaningmandates.pdf Accessed: 20.04.2016

Petry, Carl F. (1998): *The Cambridge History of Egypt Volume 1: 640-1517.* Cambridge University Press, Cambridge

Rosas, A. (1993): "Internal Self-Determination" in: Tomuschat, C.(ed): *Modern Law of Self-Determination.* Martinus Nijhoff, Leiden

Rotberg, R. I. (2002): "The new nature of nation-state failure" *Washington quarterly* 25(3): 83-96.

Ryser, R. C. (2012): *Indigenous Nations and Modern States:* Routledge, Abingdon

Ryser, R. C. (2013): "International trusteeships, the unfinished responsibility" *Fourth World Journal* 12(1): 99.

Seidel, G. (2002): "A New Dimension of the Right of Self-Determination in Kosovo?" in C. Tomuschat, C. (ed): *Kosovo and the International Community.* Martinus Nijhoff, Leiden

Shaw, M. (1997): *International Law.* Cambridge University Press

Shawcross, W. (2000): *Deliver Us from Evil: Warlords and Peacekeepers in a World of Endless Conflict.* Bloomsbury, London

Stahn, C. (2008): *The Law and Practice of International Territorial Administration – Versailles to Iraq and Beyond, Cambridge Studies in International and Comparative Law.* Cambridge University Press, Cambridge

Szakacs G. (2014): *Europe 'shot itself in foot' with Russia sanctions: Hungary PM* http://reuters.com/article/idUSKBN0GF0ES20140815. Accessed: 20.04.2016

Theguardian.com (2012): *The economics of Catalan independence don't add up* http://www.theguardian.com/commentisfree/2012/nov/22/economics-catalan-independence-dont-add-up. Accessed: 20.04.2016

Theguardian.com (2016): *Turkey revives plan for safe zone in Syria to stem flow of refugees* http://www.theguardian.com/world/2016/feb/16/turkey-safe-zone-syria-refugees-russian-airstrikes. Accessed: 20.04.2016

Zimmermann, A., & Stahn, C. (2001): "Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the current and future legal status of Kosovo" *Nordic Journal of International Law* 70(4): 423-460.