Whose Brother's Keeper? International Trusteeship as a Tool for Creating Peace

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The idea that state sovereignty is paramount has been a major theme in much of the international relations scholarship since World War II. Less universally accepted, but still important, is the idea that the state, regardless of its level of development or internal conflict, is the highest organized unit in the international system. During this same post-war period, however, different and divergent trends have also emerged, largely driven by the challenges occurring in the Third World[1], much of which underwent decolonization relatively recently. These trends include the recognition of human rights and the international obligation to protect these rights even at the cost of infringing on a state's sovereignty and widespread underdevelopment in postcolonial Third World states which produces claims directed toward richer countries for humanitarian and development assistance.[2] Many of the international institutions and their accompanying body of formalized norms, or international law, are concerned with the implementation of these

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[1] The terminology to describe states that are less developed than others is problematic, since the term 'Third World' arose in the context of Cold War political differentiation and terms like 'developing countries' or 'the South' are ambiguous and sometimes misleading. I use 'Third World' because, although it no longer retains its definition as the set of states that belong neither to the industrialized West nor the Communist bloc, it is generally understood to mean the mostly postcolonial states which are less developed economically and politically, and which are found in Africa, much of Asia, and Latin America. In this paper, the term will refer to all states but Western Europe, the United States, Canada, Japan, Australia, New Zealand, China, and Russia.

[2] Siba N'Zatioula Grovogui argues that Third World (and particularly African) underdevelopment is largely a function of Western influence and manipulation through international law and norms that perpetuate Western interests and hegemony. This argument claims that Western powers granted nominal independence without transforming colonial domination structures in order to maintain hegemony. Grovogui, *Sovereigns, Quasi Sovereigns, and Africans* (Minneapolis: University of Minnesota Press, 1996). For more on the tension between sovereignty and humanitarian values, see Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999) and J.L. Holzgrefe, "The Humanitarian Intervention Debate," in J.L. Holzgrefe & Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003)

last two ideas, and with negotiating the tension between sovereignty and protection of international norms that this entails.[3]

With the growth of international institutions and the strengthening of international laws have emerged a number of models through which developed countries, the United Nations, or other institutions intervene in an attempt to protect human rights, stability, good governance, and other interests, norms, and values. International trusteeship has received renewed attention over the past decade as one such model. In an international trusteeship, a foreign power or international institution takes responsibility for administering a newly created or post-conflict state or territory during a time of incubation while the capacity of the local elites are ostensibly being developed to be able to govern the new state responsibly. This approach has been lauded as beneficial for its potential to provide time for an embryonic or post-conflict state to develop and grow, shielded from the destabilizing effects of the security dilemma. The approach, however, has also been derided as simply another paternalistic form of colonialism which encourages dependency on outside powers and overturns the principle of sovereignty. This paper will examine the role of great powers and the international community at large in helping to resolve protracted conflict in weak, fragile, war-torn, and post-conflict territories through international trusteeship, and it will deal with when, if, and how such interventions should take place, both from a practical and theoretical/moral perspective. I will propose criteria for judging when a particular case of international trusteeship should be considered to be useful and legitimate. These characterizations, in turn, inform

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[3] See Mark W. Zacher, "The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance" and Oran R. Young, "The Effectiveness of International Institutions: Hard Cases and Critical Variables," in James N. Rosenau & Ernst-Otto Czempiel, eds., *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992)

policy debates over whether to employ trusteeship in a particular territory. Finally, I will

consider whether an international trusteeship can be a sensible policy that leads to

sustainable state-building, evaluating its potential application to a resolution of the Israel-

Palestine conflict.[4]

International Trusteeship: Neoliberalism or Neocolonialism?

The international trusteeship model has been put into practice in a number of

failed or defeated rogue states since the end of the Cold War. The term is sometimes

conflated with other international intervention mechanisms like peacekeeping operations,

humanitarian assistance, and even colonialism or imperialism, thus it is important to

define what exactly is meant by 'international trusteeship'.[5] James Fearon and David

Laitin contrast the concept, which they refer to as neotrusteeship, to more classical

imperialism, providing a useful topography of the term:

> The [term refers] to the complicated mixes of international and domestic
> governance structures that are evolving in Bosnia, Kosovo, East Timor, Sierra
> Leone, Afghanistan and, possibly in the long run, Iraq. Similar to classical
> imperialism, these efforts involve a remarkable degree of control over domestic
> political authority and basic economic functions by foreign countries… In
> contrast to classical imperialism but in line with concepts of trusteeship, the
> parties to these complex interventions typically seek an international legal
> mandate for their rule. Finally, whereas classical imperialists conceived of their
> empires as indefinite in time, the agents of neotrusteeship want to exit as quickly
> as possible, after intervening to reconstruct or reconfigure states so as to reduce

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[4] International trusteeships (in the contemporary sense of the word that has emerged since the dissolution of the U.N. Trusteeship Council) have existed in a few instances throughout the 1990s, but the long-term results from these cases are still ambiguous.

[5] The widely divergent vocabulary used to describe international trusteeship is a testament to the relative dearth of coherent, comprehensive, and theoretical treatments of this model as a branch of neoliberal international action. The terms used to refer to this model, some of which have loaded connotations, include: international territorial administration (ITA), protectorate, conservatorship, neotrusteeship, post-imperialism, guardianship, and international transitional governance, among other labels. This semantic diversity is a cause for concern, since it inevitably leads to the conflation and confusion of various ideas that may or may not mean the same thing, depending on the author using them and his or her personal preferences.

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threats arising from either state collapse or rogue regimes empowered by weapons of mass destruction (WMD).[6]

The number of cases that these authors cite as examples of international trusteeship shows the breadth of the term and its evolving and flexible nature. For the purposes of this paper, international trusteeship will refer to any territory in which many or most of the state functions and apparatuses of governmental control are administered (on a temporary basis) by a disinterested foreign entity—including multilateral institutions, foreign states, or ad hoc coalitions of states—acting under international recognition or mandate.[7] This is generally justified as being for the purpose of incubating self-sufficient local state institutions through a time of crisis.

Historical Evolution of the Trusteeship Model

Although international trusteeship has received renewed attention over the past decade as it is applied in various cases around the world, the idea is actually a continuation of a rather old practice. Before the twentieth century, it was generally understood that colonies existed chiefly for the benefit of their home country, which used them to exploit resources, provide room for population expansion, and create a stable and dedicated market for exports. The idealist framework of Woodrow Wilson and others, however, helped to solidify the international norm that colonies, mandates, and trusteeships should exist for the purpose of helping the indigenous populations to develop

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[6] James D. Fearon & David D. Laitin, "Neotrusteeship and the Problem of Weak States," *International Security*. *International Security,* Vol.28, No.4 (Spring 2004), p. 7

[7] The word 'disinterested' may be an imperfect and controversial characterization of trustees, since there is generally some stake or interest that the trustee has in the fate of the territory being administered. It is important to make a distinction, however, from territories that are administered by the same occupying powers that have invaded unilaterally and which derive some direct benefit from the territory, such as colonial powers or revisionist states. International recognition or mandate refers to some evidence, such as a UN resolution, that a trusteeship is accepted by a substantial portion of the international community, which demands some level of accountability for the actions of the trustee.

and improve themselves. The mandate system that emerged following the First World

War, in which the Allied Powers divided up the supervision of the former territories of

the German and Ottoman Empires, was supervised by the League of Nations and was

ostensibly designed to ensure that populations "not yet able to stand by themselves under

the strenuous conditions of the modern world" were afforded the opportunity to develop

into strong states, which was "a sacred trust of civilization."[8] In practice, however,

mandates seemed more often created to reward the victors of war and divide the spoils

into spheres of influence than to emphasize a process of sustainable local institution-

building and development within the territories.

At the end of World War II, a new system emerged with the rise of the United

Nations: trusteeship, which was overseen by the Trusteeship Council, a body of the UN.

Trusteeship was a more flexible system than the League of Nations mandates, and it was

designed to be applied more broadly. Under this framework, weak, post-colonial, post-

conflict, or fractured states could be administered under the aegis of the UN, a great

power state, or a group of states. In practice, post-World War II trusteeship took place

primarily in territories where a colonial power still exercised control over its colonies, as

opposed to being applied to a state that already exercised legal sovereignty over its

territory. This version of trusteeship was used to bridge the gap between decolonization

and independence. Michael Matheson has argued that "the UN role with respect to such

territories was prescribed by agreement with the states involved, and typically amounted

only to very general supervision, as actual governance was carried out by the state

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[8] *Covenant of the League of Nations*, Article 22; Quoted in Francis B. Sayre, "Legal Problems Arising from the United Nations Trusteeship System," *The American Journal of International Law*, Vol. 42, No. 2 (April, 1948), p. 264

granted the trusteeship."[9] Trustee states, which were subject to international

accountability, were expected to administer these territories of 'dependent peoples' with

the well-being of the population as the chief goal. The preparation of these trusteeship

territories for self-government was one of the important tasks that were taken on by the

states that administered them, although this expectation became more widely held as

international opinion grew stronger in favor of universal self-determination.

For several decades, the trend ran decidedly against trusteeship, as the reaction

against European Great Power imperialism and the emergence of the international

organization regime solidified the role of sovereign states as the primary actors on the

global stage, regardless of their capabilities or development. The UN Trusteeship

Council formally suspended operations in 1994, and international trusteeships in the

1990s were negotiated on an ad hoc basis through multilateral institutions. Following the

end of the Cold War, however, the world saw a spate of international peacekeeping

interventions, a few of which took the form of the new version of the old trusteeship idea,

as defined at the beginning of this paper. These include Cambodia, Kosovo, and East

Timor.[10] In order to illuminate some of the common features, as well as the diversity, of

trusteeships, I will briefly sketch these cases.

The international trusteeship arrangement (UNTAC by its United Nations

acronym) that was set up in Cambodia in 1992 in accordance with the peace agreement

ending the civil war in that country was the most ambitious territorial administration

taken on by the UN up to that point, and the first time in decades that the UN had taken

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[9] Michael J. Matheson, "United Nations Governance of Postconflict Societies," *The American Journal of International Law*, Vol. 95, No. 1 (January, 2001), p. 76

[10] It is tempting to apply the term international trusteeship to other forms of territorial administration, such as those exercised by the United States in Afghanistan and Iraq, but I will discuss later in the paper why such occupations do not constitute international trusteeships.

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on administrative responsibilities for a formerly sovereign state. In practice, UNTAC acted more as a supervising power to ensure the compliance of the four Cambodian factions and to help with state-building, particularly in the areas of defense, foreign affairs, information, security, and finance.[11]

The UN Interim Administration Mission in Kosovo (UNMIK) was established by UN Security Council Resolution 1244 in 1999. It sought to create a transitional trusteeship arrangement to administer Kosovo in the wake of the NATO bombing campaign that resulted in an administrative vacuum when the Serbian government officials vacated the area and chaos ensued. The Special Representative in charge of UNMIK, a diplomat empowered by the United Nations, was given full executive authority over the province (differing in this respect from Cambodia), although he immediately formed a consultative body of local elites. In addition to its unprecedented scope and degree of authority, UNMIK was also unique in that the implementation of the functions of governance was shared among a variety of other states and international institutions. NATO forces took the lead in providing security, the UN was in charge of civil administration, the Organization for Security and Cooperation in Europe (OSCE) was responsible for democratic institution-building and elections, the UN High Commissioner for Refugees disbursed humanitarian assistance, and the European Union was tasked with economic reconstruction and infrastructure.[12] Although UNMIK is still an ongoing operation, many policymakers have pointed to its encouraging progress as a positive model of an effective trusteeship arrangement. The proof of this, of course, will

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[11] See Richard Caplan, "A New Trusteeship? The International Administration of War-torn Territories," *International Institute for Strategic Studies Adelphi Paper 341* (Oxford: Oxford University Press, 2002)
[12] Michael J. Matheson, "United Nations Governance of Postconflict Societies"

be the final outcome once a resolution has been reached between the Kosovar Albanians and the Serbs.

The international trusteeship arrangement in East Timor was similar to Kosovo in that it exercised broad authority during the interim administration period and was established by UN Security Council Resolution 1272. One difference was that the very question of changing the territorial status quo was decided after a 'popular consultation' conducted by the UN, in which a 78.5% vote rejected mere autonomy and favored independence from Indonesia. This sparked a reactionary wave of violence by militia groups, which decimated much physical and political infrastructure, creating the need for the intervention. The UN trustee administration was aided by Australian-led security forces. After a transitional period, this trusteeship has now given way to the independent, self-governed state of East Timor, which was recognized in 2002. The international trusteeships that emerged in Kosovo, East Timor, and elsewhere showed that the old idea of trusteeship has not died, it has simply evolved.

The administration of Iraq, which was set up unilaterally following the invasion of that country by the coalition of predominantly U.S. and British forces, was very different than the other cases mentioned above. In this situation, the United Nations was not centrally involved in the decision to invade, occupy, or exercise executive authority over Iraq by a particular state, the United States. This calls into question the accountability of the United States to the international community for its actions, a key ingredient in an international trusteeship. Similar to previous interventions, the U.S. transitional administration created a consultative body of representative local elites, but the concept of consent, either through an East Timor-style popular consultation or at least

through the added legitimacy of a UN Security Council Resolution (or both), was conspicuously absent. The fact that the trustee administration was composed of representatives of the same power (the U.S.) that invaded the country and deposed the local regime in the first place greatly degraded its ability to present itself as a neutral caretaker, rather than an occupying power. It is at this historical juncture, in which the trusteeship model seems to be in danger of regaining the distinctively colonial and imperial tenor of its past due to the broad application of the trusteeship label to a wide variety of territorial administrations, that we must now evaluate its effectiveness and legitimacy and consider what limitations should be placed on its use.

The Normative Debate: Is International Trusteeship Acceptable?

With the proliferation of peacekeeping operations in the 1990s came a plethora of scholarship to analyze and help to explain and understand this trend. Following in the wake of UN Secretary-General Boutros Boutros-Ghali's *An Agenda for Peace*, which proposed a realignment of the United Nations to better address post-conflict peacebuilding, Gerald Helman and Steven Ratner, in a 1992 *Foreign Policy* article, called for the use of international intervention in the form of 'conservatorships' for failed states.[13] Their article was an important recognition of the idea that, especially in cases of extremely weak, conflict-ridden, or failed states, the norm of sovereignty may need to be considered with some degree of flexibility in order to protect human rights, or even to facilitate the long-term viability of the sovereign state in question.

The obvious question when considering a trusteeship for a particular territory is whether the local population would be unable to govern itself and whether it is

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[13] Gerald B. Helman & Steven R. Ratner, "Saving Failed States," *Foreign Policy*, No. 89 (Winter, 1992-93), pp. 3-20

appropriate, and legitimate for a foreign trustee to do so instead. On the one hand a failed state or post-conflict territory is likely to have very little capacity for effective governance, probably suffers from internal distrust that would make it very difficult to establish a consensual authority structure through peaceful means, and humanitarian crises like waves of displaced persons, mass killing, or terrorist insurgencies are likely to compound the gravity of the situation, highlighting a potential need for international intervention, perhaps in the form of a transitional trusteeship. On the other hand, trusteeship involves handing over sovereignty to an outside power, and especially in situations in which one or more significant factions do not consent to the arrangement, this can exacerbate the problem by undermining both the effectiveness of the interim government and the basic norm of sovereignty and nonintervention which often provides the only external security that a Third World state possesses.

It is tempting to apply the international trusteeship model broadly as a shortcut to state building and development. Just as a parent (or a foster parent) teaches a child how to take care of herself during the first two decades of her life before allowing her to take responsibility for herself in the world, a trusteeship would supposedly allow a Third World state the safe space to develop its institutions and governance capabilities in order to create a stable infrastructure that can provide for the security and social needs of its population in the harsh global environment, or so one argument runs. This idea, however, elevates the principle of good governance (assuming that accountability to the international community would result in the trustee's good governance of the territory) above the principle of the sovereignty and order of the states in the international system, upon which most of existing international law is based. At least as importantly, it

undermines the self-determination of the local population in the short term, although it may enhance the ability of the population to govern itself freely in the long term by creating pluralistic political institutions and infrastructure.   Overturning sovereignty for humanitarian reasons (or any other reason) in the form of trusteeships creates a precedent that states, coalitions of states, or international institutions can dictate the inner workings of other states based on subjective judgments of these other states' merit and fitness for effectively administering their own territory. This is a step whose consequences should be considered carefully.

The model of international trusteeship must necessarily be evaluated by first recognizing the colonial context in which it first took shape. Under foreign rulers, the colonial territories were kept in a state of dependence and underdevelopment, which in many cases inhibited their development of indigenous governance capabilities and infrastructure to protect the security and well-being of the population through a mature and legitimate government. After World War II, international norms solidified around the idea of self-determination and sovereign states, which put pressure on the Great Powers to transfer sovereignty of the territories under their control to local actors as part of the 'decolonization process' that was to result in the freedom of these new states. William Bain makes the moral claim that international trusteeship violates the spirit in which it is intended exactly because of this colonial ancestry:

> The idea of trusteeship, no matter how enlightened and well intentioned, cannot escape its imperial past because it belongs to a mode of conduct that is imperial by its nature… But as a mode of conduct, trusteeship of the future will be, like its imperial antecedent, grounded in practices of alien rule that are fundamentally irreconcilable with a universal society of sovereign states ordered according to the principle of universal equality.[14]

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[14] William Bain, "The Political Theory of Trusteeship and the Twilight of International Equality," *International Relations*, Vol. 17, No. 1 (2003), p. 75. For the opposing viewpoint, that "The best hope of

Advocates of trusteeship, however, have noted that during decolonization there tended to be a rapid transfer of juridical sovereignty to local governments with very little time for sustainable institution to be built before local actors were on their own. These new states, crippled by the economic and political immaturity that were the lingering vestiges of colonialism, were saddled with the daunting task of administering territories riddled by competing claims of authority. This often resulted in an inability or unwillingness of the regime to protect its own population from threats to security or well-being, and sometimes the government itself contributed actively to the oppression of the population in an effort to maximize the security or power of the regime. In this sense, then, the new states were still not necessarily 'free', and a former colonial power that stood idly by in the face of disaster propagated by a failed state might be accused of abrogating its responsibility to finish the liberation process it began in order to rectify the situation of dependency and underdevelopment to which it was a contributing factor. According to this argument, trusteeship might be justified as a response to crisis in post-colonial states.[15]

Robert Jackson has examined the role of weak or unstable 'quasi-states' in the Third World which, though guaranteed sovereignty by international norms, lack the capacity to exercise 'positive sovereignty' to enforce their claim to rule themselves; in other words, Jackson claims, the existence of these states is subsidized by international

grappling with failed states lies in institutionalizing this mix of U.S. leadership and international legitimacy," explicitly recognizing the value of post-imperial U.S.-led intervention under the international legitimacy of UN approval, see Sebastian Mallaby, "The Reluctant Imperialist: Terrorism, Failed States, and the Case for American Empire," *Foreign Affairs* (March/April, 2002), p.2.

[15] Siba Grovogui takes this a step further, claiming not that former colonial powers are at fault for being negligent in their transition policies, but that rapid decolonization without sufficient guidance, support and institution-building was an intentional attempt to maintain dominance over former colonies and to maintain an international status quo order that favors the interests of the Western Great Powers at the expense of the decolonized Third World; Grovogui, *Sovereigns, Quasi Sovereigns, and Africans*, op cit.

norms which prevent the violation or invasion of sovereign states by other states. Quasi-states "are often deficient in the political will, institutional authority, and organized power to protect human rights or provide socioeconomic welfare."[16] Quasi-states that have been immersed in protracted and violent internal conflict are among the most likely potential recipients of international peacekeeping intervention, and at the most extreme end of the scale, of some sort of transitional international trusteeship arrangement.

In a more recent book, *The Global Covenant*, Jackson argues that intervening in the internal affairs of a failed state by creating a trusteeship is unacceptable because of the dominance of state sovereignty over human rights concerns as the core value of the international system. He claims that, "Having a good cause, in this case the cause of democracy and human rights, which are now generally accepted standards of domestic governance in the West, and having the power to impose those standards by armed force relatively free of military risk on any remaining failed states or abusive states in Europe, is not a justification for trespassing on state sovereignty in that region or anywhere else."[17] Despite a thoughtful treatment of the sovereignty vs. human rights dilemma, Jackson's conclusion is unsatisfying. His argument that trusteeship is wrong because of the claim that the international system places more value on sovereignty than human rights fails to answer adequately the question of why exactly this *should* be the overriding value in an interdependent world.

In a paper evaluating the practicality of trusteeship, Richard Caplan proposes a continuum for thinking about trusteeship-type international interventions, which he calls

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[16] Robert H. Jackson, *Quasi-states: Sovereignty, International Relations, and the Third World* (Cambridge: Cambridge University Press, 1990)
[17] Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), p. 315

'international administration'. On one side of the continuum is a situation in which the

UN or other intervening power exercises a relatively limited role, relying more on

consensual governance and monitoring the activities of local factions than on governance

by fiat. The UN Transitional Authority in Cambodia (UNTAC) in 1992 exemplified this

approach. The other side of the continuum is direct administration of the territory by the

intervening power, in which the 'trustee' exercises complete governing control for a

transitional period. During this time, decisions regarding security, justice, relief, revenue

collection, and all other necessary authorities are exercised by the international

administration. The UN Transitional Authorities in Kosovo and East Timor fell closer to

this end of the scale. Between the two extremes of the continuum lie a number of

intermediary models, usually designed on an ad hoc basis depending on the local

situation, in which the international administration exercises more or less power in the

conflict-ridden territory, often sharing some of this power with existing local institutions

or a transitional consultative body of local representatives.[18]

It is important to note that, over the past decade or two, all of these trusteeship

arrangements have operated with the authority of the UN Security Council and with the

consent of the parties.[19] These interventions have taken place under several different

'trustees', including different combinations of NATO, UN Special Representatives, and

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[18] Richard Caplan, "A New Trusteeship? The International Administration of War-torn Territories,"
[19] The importance of consent was shown in Cambodia when the uncooperative behavior of the existing Hun Sen government contributed to a modification of the mission. Originally, the international administration had been authorized to administer directly five key areas, including defense, finance, and foreign affairs; after facing a number of difficulties, including the Hun Sen government's reluctance to cooperate fully, however, the international administration moved to a less intrusive model that put it on the supervision side of the continuum.

particular Great Power states, but they all had the legitimacy of Security Council resolutions to back them up.[20]
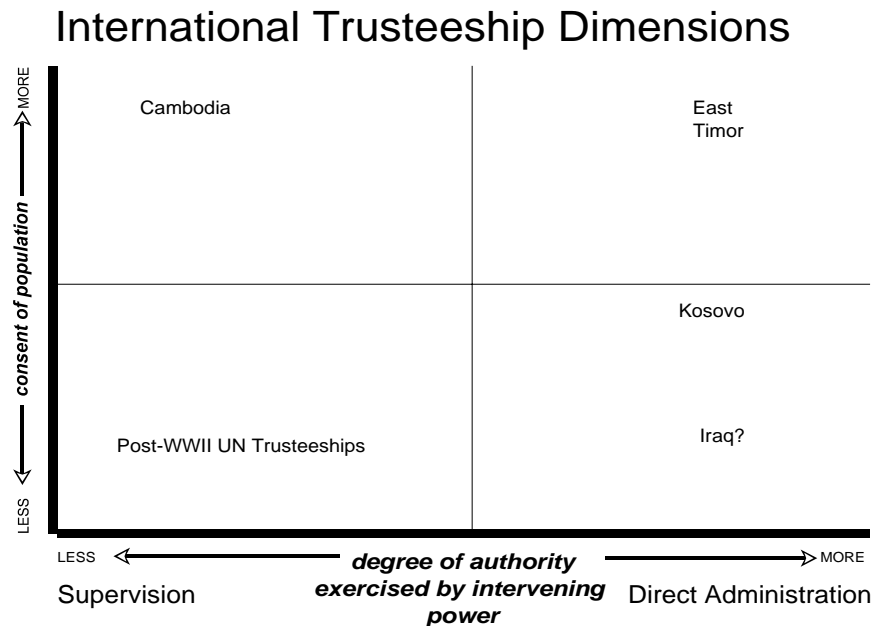
The 2003 occupation of Iraq and the subsequent establishment of an international administration under the leadership of U.S. proconsul Paul Bremer was a dramatic departure from this norm. Authority has now been transferred to an interim Iraqi government, but it remains to be seen whether the questionable legitimacy of the occupation and U.S. transitional administration will affect the long-term viability of a stable Iraqi regime and a constructive process of state-building. The lack of international accountability to the arrangement, the relatively extensive degree of authority exercised by Paul Bremer's administration, and the serious doubts about the effectiveness of the territorial administration in this case in creating security and engaging in constructive state-building all support the exclusion of the Iraq intervention from being characterized as a trusteeship. This case also suggests that local consent is an important component in the effectiveness and legitimacy of trusteeships.

The importance of consent was shown in Cambodia when the uncooperative behavior and lack of consent of the existing Hun Sen government contributed to a modification of the mission. Originally, the international administration had been authorized to administer directly five key areas, including defense, finance, and foreign affairs. After facing a number of difficulties, however, including the Hun Sen government's reluctance to cooperate fully, the international administration moved to a less intrusive model that put it on the supervision side of the continuum. Conversely, East Timor seems to be emerging as a positive example of a successful trusteeship which

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[20] Richard Caplan, "A New Trusteeship?"; Michael J. Matheson, "United Nations Governance of Postconflict Societies"

enjoyed support from the local population and which has now led to the creation of an independent state. In this case, the U.N. did not take on the role of trustee until after its 'popular consultation' indicated overwhelming support for independence from Indonesia and the subsequent wave of violence made clear the need for some sort of intervention. In order to highlight the importance of consent for trusteeships, I propose a modified categorization which includes Caplan's dimension of authority exercised by the trusteeship as well as a consent dimension which delineates the degree to which the conflicting parties have agreed to the implementation of the trusteeship (see Figure 1). I have attempted to place some of the historical examples of the international trusteeship model roughly within this framework as a reference.

Figure 1

International Trusteeship Dimensions

Robert Keohane, among others, has discussed the issue of trusteeships by suggesting that the all-or-nothing concept of sovereignty be 'unbundled', providing for a staged or segmented approach to trusteeship in failed states, with increasing levels of responsibility—and therefore more sovereignty—being transferred gradually to the

governed state as its capacity is developed. Under this type of system, the arrangement would evolve from a pure trusteeship in which the intervening power would have full control, to nominal sovereignty, in which the trustee would still exercise domestic authority, but the country would regain international legal authority (and a seat in the UN). This would be followed by limited sovereignty, where local actors control most of the functions of governance, but the trustee would retain some supervisory and veto power. The final step of this process would be integrated sovereignty, in which full control is returned to a central government composed of local actors, although the actions of this government would be constrained by a written constitution guaranteeing certain individual rights.[21]

The discussion to this point suggests that trusteeship is a flexible tool that can be used to address very different situations that threaten the stability of the international order or that present humanitarian crises due to internal collapse. The label of international trusteeship is often misapplied to other types of interventions, territorial administrations, or occupations, which may not involve actual territorial administration or which may suffer from a lack of international accountability or local consent. It seems clear, however, especially to those who believe that sovereignty claims must sometimes be trumped by human rights interests, that international trusteeship can be a legitimate instrument used to reconstruct and incubate local governance capacities in the wake of internal conflict.

Because trusteeships are made possible by states and the supra-institutions that they create and fund, all of which have individual interests, limiting criteria must be

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[21] Robert O. Keohane, "Political Authority After Intervention," in J.L. Holzgrefe & Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, op. cit., pp. 296-297

applied to sort out in which situations a trusteeship would be legitimate and effective. [22]

International trusteeship according to these standards would only take place in situations where massive internal violence results in the disappearance of any feasible governing authority in a territory, or following a U.N.-legitimated military operation to intervene in a situation of mass killing of people by their own governing regime.[23] Trusteeship should also be undertaken only with the consent of the population who will be governed.[24] Under these criteria, Kosovo and East Timor, but not Iraq, would be judged as legitimate and potentially feasible candidates for trusteeship.

Even in post-conflict situations that do meet the criteria for international trusteeship, this model should be considered a fairly extreme tool of last resort. As discussed above, the disruption of a population's self-determination and sovereignty by a foreign entity, albeit temporarily, under international accountability, and for the purpose of developing sustainable institutions of self-governance, must not be taken lightly. Alternatives to trusteeship, such as sanctions, embargoes, or 'Group of Friends' diplomatic consultations, should be carefully weighed for their potential effectiveness against the urgency and intractability of the situation.

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[22] From a practical perspective, states are unlikely to contribute troops, resources, or money to international trusteeship efforts unless they have some particular interest in the situation. If no international norms exist to set criteria for the applicability of trusteeships, the danger exists that particular states may use humanitarian intervention and trusteeship administration to further their own interests in the Third World.

[23] This, of course, raises questions of timing—it is important to recognize that trusteeship is not designed to be a military instrument. It is most useful as a *post*-conflict political mechanism for creating sustainable institutions that form the foundation of rebuilding a state's political infrastructure. As such, trusteeship would only be applied in a genocide or mass killing situation *after* a U.N.-sponsored military operation to stop the killing from taking place.

[24] Admittedly, it would be difficult to determine consent beforehand in situations where the governing regime is the problem, engaging in mass killing of its own population, since the regime would not likely consent to intervention, and the population would not be able to express itself freely. In this situation, particular care would have to be exercised to hold some sort of popular consultation on whether to implement a trusteeship (not just the identity of the interim governing authorities), and to incorporate local actors into whatever interim governing structure was created in the post-conflict situation.

In the context of the practical and normative considerations discussed above, we will now apply these criteria to the applicability, appropriateness, and feasibility of the trusteeship model in the Palestinian case. This is one of the most intractable and long-standing conflicts in the world, with ethnic hostilities, a high symbolic charge in the middle of the Arab world, and rampant distrust between the parties. For this reason, the Israel-Palestine conflict is an interesting case to consider analytically with respect to a potential international trusteeship.

Palestinian Trusteeship?

The Middle East has long been a contentious region profoundly influenced both by cultural internal strife and by outside intervention and domination. Through centuries of rule under the Ottoman empire, followed by partition into British and French mandates following World War I and the carving out of Jewish Israel in Palestine following World War II, and including a number of border shifts, regional conflict, and heavy great power political involvement, this region has felt the effects both of foreign pressure from without and fractionalization from within. Its strategic location between Europe and Asia, and more recently, its vast oil wealth, has made the Middle East an area of strategic interest to the Great Powers, while conflicts among Christians, Jews, and Muslims and the various tribal and ethnic groups have created an environment of intense conflict and simmering unrest.[25]

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[25] For in-depth treatments of the roots and dynamics of the Middle East conflict, see David Newman, "Real Spaces, Symbolic Spaces: Interrelated Notions of Territory in the Arab-Israeli Conflict," in Paul F. Diehl, ed., *A Road Map to War: Territorial Dimensions of International Conflict* (Nashville: Vanderbilt University Press, 1999); Steve Niva, "Contested Sovereignties and Postcolonial Insecurities in the Middle East," in Jutta Weldes, et. al, eds., *Cultures of Insecurity: States, Communities, and the Production of Danger* (Minneapolis: University of Minnesota Press, 1999)

In this context, the conflict between Israel and the Palestinian peoples, particularly in the West Bank and the Gaza Strip, has festered violently for decades. The last major peace initiative, the 2000 Camp David talks with Bill Clinton acting as mediator, ended in failure, and subsequent attempts to reach a negotiated peace have been sporadic and half-hearted. A number of factors have emerged recently, however, that could help to spur a renewed dialogue.

In situations of hurting stalemate, in which "the parties find themselves locked in a conflict from which they cannot escalate to [unilateral] victory and this deadlock is painful to both of them (although not necessarily in equal degrees or for the same reasons),"[26] a number of factors can contribute to breaking the cycle of violence and creating opportunities to reengage in a peacemaking process. First, conflict scholars have identified 'ripeness' as necessary—the conflict is ripe for negotiation when the hurting stalemate has dragged on for long enough that both sides see that it would be advantageous to get out of the fight. In addition to this idea of ripeness, some sort of external or internal shock is usually needed to cause the parties to reevaluate their expectations or their position vis a vis the other party. Such shocks could include among many possibilities leadership changes or major shifts in world conditions and balance of power, and they force both sides to reexamine their positions and consider other possible policy options.

Karen Rasler argues that these shocks in the context of a ripe moment for negotiation are more likely to lead to a productive peace dialogue if they are connected with three additional factors: "policy entrepreneurs who have sufficient control to

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[26] I. William Zartman, "Ripeness: The Hurting Stalemate and Beyond," In Paul C. Stern and Daniel Druckman, eds. *International Conflict Resolution After the Cold War* (Washington DC: National Academy Press, 2000), p. 228

overcome internal commitments to older strategies, external third-party pressure, and reciprocity."[27] She supports this hypothesis with empirical data, in which she tests the effects of shocks, third-party pressure, policy entrepreneurs, and reciprocity on the amount of agreement produced between the Israeli and Palestinian sides over a 20-year period using event data collected from the Middle East KEDS data project. Based on this analysis, she concludes that all of these factors are positively correlated with heightened agreement over the long term (although the correlation is not statistically significant in the short term). Furthermore, she concludes that policy entrepreneurship and internal/ external shocks affect agreement more quickly, becoming useful for shorter-term initial agreements, while reciprocity and external pressure take longer to produce significant agreement outcomes, meaning they should be more useful in later stages of a negotiation process.[28]

Discussions of a solution to the Israel-Palestine conflict, including variants of an international trusteeship, have been ongoing for decades. A recent and high-profile addition to this discussion came from Martin Indyk, the former U.S. ambassador to Israel, who proposed a U.S.-led international trusteeship for Palestine in a 2003 article in *Foreign Affairs*. Noting that the alternatives seemed to be a unilateral withdrawal of Israel from the Palestinian territories (which would likely result in a power vacuum and a failed state) or a continued attempt at reciprocity in a situation where continued Israeli settler activity and Palestinian terrorism would undermine the incentives to progress, Indyk proposed instead that Israel withdraw from Gaza and most of the West Bank while a U.S.-led international force established security and an interim civil administration until

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[27] Karen Rasler, "Shocks, Expectancy Revision, and the De-Escalation of Protracted Conflicts: The Israeli-Palestinian Case," *Journal of Peace Research*, Vol. 37, No. 6 (November 2000), p. 701
[28] Ibid., p. 715

final-status negotiations were completed and power could be given to a capable

Palestinian government.[29]

The key to the success of any intervention like this would be the authority, capability, and political will of the U.S. intervention force and trustee administration to put itself in harm's way in order to disarm Palestinian terrorists that threaten security in the territories, a necessary task to convince Israel to stay out during an interim state-building period. The intervening force would have to have the authority and will to pursue any military attacks from spoiler agents, and messy issues would arise trying to prevent Israel from reengaging if terrorists were successful in hitting Israeli targets across the borders of the zone. U.S. leadership of any intervention in the occupied territories would be essential, however, because Israel would not trust any other state or entity (including the United Nations, whose credibility was significantly eroded by its peacekeepers' past ineffectiveness in protecting Israelis on the Egyptian border and in Lebanon). Setting up a U.S. trusteeship in the Palestinian areas would probably provoke a significant insurgency from radical factions like Hamas and Islamic Jihad, especially given the anti-American context of the U.S. quagmire in Iraq. The success of the enterprise would depend largely on the ability of the trustee administration to equip Palestinian security forces to maintain an effective presence and of Palestinians to reign in radical factions and withdraw public support from the use of terrorism during the trusteeship period.

There are a number of reasons why Ambassador Indyk's proposal might be compelling as a policy prescription for the Palestinian territories. The parties to the conflict have shown a persistent unwillingness or inability to transcend their differences

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[29] Martin Indyk, "A Trusteeship for Palestine?" *Foreign Affairs*, (May/June, 2003), p. 51.

and reconcile dramatically distinct, and often contradictory, expectations. The fact that this protracted conflict persists and has great symbolic effect for many in the Middle East contributes to potential instability in the region which could threaten the interests of other states; this creates an incentive for neighbors and Great Powers to apply pressure on the parties to reach a resolution. It is also worth considering that geopolitical factors may contribute to the possibility of a successful trusteeship in the Palestinian population area. The Gaza strip and the West Bank are quite a bit smaller than other territories that have used the trusteeship model, meaning that it may be easier to administer a government in these areas than in, for example, Afghanistan.

Rasler's notion of third party pressure as a contributing effect to peacemaking in situations of negotiation 'ripeness' indicates that the security needed to break out of the cycle of mutual distrust might come from the presence of an international trustee. Furthermore, parties on both the Israeli and Palestinian sides have expressed at least some interest in the idea. Palestinians have generally favored "as much internationalization as possible," while Uzi Arad, a policy advisor to hardliner Israeli foreign minister Binyamin Netanyahu says that a U.S.-led trusteeship "with a force to eradicate the Palestinian terrorist infrastructure, as tried in Afghanistan, might be an option to be considered."[30]

The timing may be right for a renewal of peacemaking engagement as well. Yasser Arafat's death has removed one of the excuses that Israelis had used to avoid negotiating with the Palestinians. A change in Palestinian leadership may also provide a new opportunity for progress on the Palestinian side. Ariel Sharon's initiative to withdraw from the Gaza Strip has introduced one of Rasler's 'shocks', which could be used as a stepping stone to a more productive engagement. In addition, the rapid rate of

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[30] Quoted in Isabel Kershner, "Lessons from Kosovo," *The Jerusalem Post* (December 2, 2002), p. 26

population growth among Palestinians in the occupied territories provide even right-wing

Israelis with an incentive to come to some sort of an agreement, since an Arab majority is

projected by 2010.[31] Finally, the re-election of George W. Bush to the American

presidency, along with his public statements that he will devote more time to this Mid-

East conflict, could mean that he will be more willing to invest 'political capital' on the

peace process, and that the United States will be more willing to play a meaningful role.

The Case Against Trusteeship for Palestine

Most of the considerations raised above in favor of a Palestinian trusteeship are

really conditions that favor a peaceful resolution of whatever type. The problem is

mostly an issue of getting the sides to agree to work together to engage in a joint peace

process (most of the work is done before the decision to implement an agreement).

International intervention in this context could be a traditional diplomatic mission,

possibly supplemented by a more traditional multilateral peacekeeping operation if

needed to guarantee security during an interim period of implementation. The criteria

from the first section of this paper argue that international trusteeship is most useful in

post-conflict power vacuums in which there are no feasible governing structures that can

be used to implement the agreement.

The Palestinians, by contrast, already have a number of governing institutions,

although their cohesiveness and democratic nature is limited. There is a governing

authority (the Palestinian Authority) with some degree of autonomy, and some

Palestinian organizations have experience with administration of effective social welfare

programs. The population has some experience with elections, having used them to

decide a number of political posts over the past years. These existing institutions, rather

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[31] Kershner, "Lessons from Kosovo"

than an imposed trustee administration, must form the core of any interim arrangement leading to Palestinian autonomy. An attempt to shunt aside these existing, albeit fragile and imperfect, institutions in favor of an international trustee administration by an outside state or institution would be inappropriate, unlikely to succeed, and would unnecessarily overturn the principle of self-rule. It will be difficult for Palestinian leaders to manage the divergent claims and goals of the Palestinian factions in order to reach a viable agreement with Israel and protect against spoilers[32], but the international community can aid in this respect with traditional peacekeeping that stops short of trusteeship.

In addition to these normative concerns, practical arguments against the application of the trusteeship model to the Palestinian territories are plentiful. A trusteeship intervention has the potential to reduce the incentive for Palestinian leaders to negotiate in good faith or to take responsibility for dismantling terrorist organizations, since they would enjoy some degree of internationally-guaranteed autonomy without having to bear the direct costs of their actions. On the other hand, this type of operation would require extensive resources and political will on the part of the Americans, who are already resented in the Arab world and overstretched militarily, with extensive deployments in Afghanistan and Iraq and little domestic political appetite for further international adventures. It would also require the willingness to endure casualties in the process of countering a probable terrorist insurgency and committing to a multi-year territorial administration. Furthermore, it is not clear how a trusteeship designed to ensure security in the West Bank and Gaza and to develop democratic Palestinian institutions to take over governance functions will help in overcoming traditional points

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[32] For a thorough treatment of the role of spoilers, and the strategies needed to counteract them in the context of an international peacemaking intervention, see Stephen John Stedman, "Spoiler Problems in Peace Processes," *International Security*, Vol. 22, No. 2 (Autumn, 1997) pp. 5-53.

of impasse like the fate of settlements, right of refugee return[33], Jerusalem, division of territory, and so forth. By applying the criteria we set out in the first section, and by considering the additional concerns raised above, it becomes clear that the trusteeship model, while tempting, is not appropriate for the Palestinian situation.

The possibility of real U.S. and international commitment to the Middle East peace process, building on the framework of the 'road map' proposed in 2003, shows that there is some potential for effective international intervention in the form of diplomacy or even a peacekeeping operation. As discussed above, however, trusteeship is not the appropriate mechanism for addressing this situation. The political will of the United States, while sufficient to engage meaningfully in helping the two parties toward resolution, is probably not sufficient to support the long-term responsibility that taking on a trusteeship would entail. Furthermore, it is not at all clear that an international trusteeship could be effective in resolving the Israel-Palestine conflict, even if the U.S. were willing to take it on. Finally, the normative arguments against trusteeship in Palestine make a strong case that even if it *could* be accomplished, it *should* not be.

Conclusions

The trusteeship model should never be applied without careful consideration and multilateral deliberation of its appropriateness in a given case and extensive long-term planning to prepare for an effective return of sovereignty to the state, but the preceding discussion and the emerging successful cases of international trusteeship in East Timor, and perhaps Kosovo and Afghanistan, show that it can be an effective tool in the repertoire of peacemakers dealing with failed and post-conflict states in the Third World.

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[33] See *Palestinian Refugees and the Politics of Peacemaking*, International Crisis Group Middle East Report No. 22, Brussels (Feb. 5, 2004)

An international trusteeship in the Palestinian case presents an appealing policy option in that it might have the potential to be a positive stepping stone to a sustainable two-state solution, but its success would ultimately depend on the political will of the United States and the international community to accept the costs and the long-term commitment of these actors and the parties in conflict to see through its implementation, all of which are very questionable. Furthermore, the Palestinian case fails to meet the normative criteria for applying the trusteeship model to a particular situation, since there are existing, if weak and imperfect, local institutions of governance that can be built upon rather than demolished in favor of foreign trusteeship. It is unclear that the consent criteria would easily be met, since many Palestinians, and particularly those close to the more extreme factions like Hamas and Islamic Jihad, would be reluctant to exchange one form of foreign rule for another, especially since this type of arrangement would likely stretch for several years, given the difficulties of dealing with spoilers and the negotiation of final-status details. For practical as well as normative reasons, international trusteeship is wrong for Palestine at this time.

The Palestinian case shows that international trusteeship is not, and must not be treated as, a cure for every ill in failed or post-conflict states. Nonetheless, Kosovo and East Timor demonstrate that, in situations in which governing structures have collapsed and mass violence has prevented their reemergence, and in which the local population generally consents to the intervention of foreign actors in helping to create interim institutions, international trusteeship can be a useful and legitimate mechanism for reducing insecurity and instability in order to create sustainable and solid structures of governance, even at the temporary expense of traditional national sovereignty.

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