

A MANDATED SPECTRE: THE PRESENT ANOMALY OF THE UNITED NATIONS INTERNATIONAL TRUSTEESHIP SYSTEM

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This paper examines the relevance and legacy of the International Trusteeship System of the United Nations within a decolonised international legal context. The paper contributes to the existing literature on the abolition and/or reform of the Trusteeship System, however consideration is also given to the specific contributing factors in the decline of the System. It is argued that by recontextualising the legal and historical understanding of the System, valuable insight may be gained from any attempt to reform or alter the System. To this end, a case study of the Trusteeship Agreement for the Territory of Somaliland under Italian Administration is undertaken to demonstrate the varied and complex legal issues confronted by the System in its formative years, and the effect this has had on the trajectory of the System since. This paper finds that the obscurity of the Trusteeship System cannot solely be attributed to its limited scope within the Charter of the United Nations, but also its failure to adequately respond to a rapidly decolonised world post-1960, both conceptually and in practice.

I INTRODUCTION

It has been argued that since at least 1994, the International Trustee System (ITS) has become almost entirely defunct.¹ Since its inception, the ITS has existed at the nexus of several competing forces, namely the pacification of formally colonial peoples, European imperialist sentiments, and post-War geopolitical tensions.² While the effects of these factors have waned over time, they are still visible in the language of the ITS as contained in the Charter of the United Nations (*Charter*), and in the administrative and procedural functions of the Trusteeship Council.³ Historically, the ITS derived its

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¹ By this point, the last Trust Territory of Pacific Islands (Palau) became fully self-governing. See *Report of the Trusteeship Council to the Security Council on the Trust Territory of The Pacific Islands, 19 January – 1 November 1994*, UN TCOR, 61st sess, UN Doc S/1994/1400-Special Supp No 1 (1 January 1994), 16; Matz Nele, 'The Civilization and the Mandate System under the League of Nations as Origin of Trusteeship' (2005) 9 *Max Planck Yearbook of United Nations Law Online* 48.

² See, eg, Ramendra Nath Chowdhuri, *International Mandates and Trusteeship Systems: A Comparative Study* (Martinus Nijhoff Publishers, 1955); Abdi Fatah Ismail Hassan, *Colonial Discourses/Imperial Tensions: Revisiting the Italian Somaliland Trusteeship Agreement* (Honours Thesis, The University of Western Australia, 2016); George Thullen, *Problems of The Trusteeship System: A Study of Political Behaviour in The United Nations* (Librairie Dorz, 1964).

³ *Charter of the United Nations* arts (23), (86), (87).

purpose from the subsisting reality of colonialism proper, and the resulting detachment of enemy territories in the post-War process.⁴ Together, these two developments comprised the vast majority of territories to eventually be brought into the ITS, and by now have been completely exhausted as possible sources under article 77 of the *Charter*.⁵ Therefore, and particularly since the 1970s, the rationale for the ITS has become increasingly difficult to sustain. If not as a matter of fact, then certainly as a matter of politics, the likelihood of any new territory being placed under the purview of the ITS has greatly diminished, as this would require a territory to be ‘voluntarily placed under the system by states responsible for their administration.’⁶ Consequently, the limited scope available to the Trusteeship Council to operate within the *Charter* has led to calls for its abolition.⁷

This paper positions the ITS as an anomaly in the framework of public international law as a result of its failure to develop a coherent response to issues of self-determination and decolonisation. This approach to the ITS takes account of its colonialist origins, attempted refashioning as a decolonial structure, and decline in relevance since the late 20th century. The ITS’s failure to adequately respond to the needs and interests of the inhabitants of the Territory placed within its purview delegitimised the rationale for its function. Coupled with the decline in the possibility of new Trust Territories, any reform or abolition of the ITS should first confront this history for such an attempt to be successful.

II LEGAL PERSONALITY AND HISTORICAL CONTEXT

The ITS is established by Chapters XII–XIII of the *Charter*. The Trusteeship Council, one of six principal organs of the United Nations (UN), facilitates the ITS.⁸ The Council’s responsibilities may be distilled to a supervisory role, alongside an appointed Administering Authority, in ensuring the furtherance of international peace, human rights, and centrally, to ‘promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government.’⁹ In the latter objective, it has been argued that the ITS found its greatest success.¹⁰

⁴ *Ibid* art 77.

⁵ *Ibid*.

⁶ *Ibid*.

⁷ *Report of the Secretary General: In Larger Freedom: Towards Development, Security and Human Rights for All*, UN GAOR, 59th sess, UN Doc A/59/2005 (21 March 2005), 52. See also, Nele, above n 1; William Bain, ‘The Political Theory of Trusteeship and the Twilight of International Equality’ (2003) 17(1) *International Relations* 59–77.

⁸ *Charter of the United Nations* arts (86), (87).

⁹ *Ibid* art 76(b).

¹⁰ Though it must be stated that this is quite relative in the context of the mid-20th century. See, Norman Bentwich, ‘Colonial Mandates and Trusteeships’ (1946) 32 *Transactions of the Grotius Society (Problems of Public and Private International Law)* 121–134; David A. Kay, ‘The Politics of Decolonization: The New Nations and the United Nations Political Process’ (1967) 21(4) *International Organization* 786–811.

Underpinning the ITS is the concept of ‘trusteeship’, which has exhibited an unstable and often contradictory nature. The advent of ‘trusteeship’ as a nebulous international public law concept is often attributed to a ‘coalescing of revolutionary liberalism, a resurgent natural law jurisprudence, and the need to justify colonial rule in the late 17th and 18th centuries.’¹¹ However, the origins of the concept may be traced as far back as the 16th century.¹² The legacies of this history have manifested in numerous ways throughout the fifty-year operation of the ITS.¹³ Therefore, trusteeship cannot be adequately understood without a consideration of this history, and its bearing on the development of the ITS through to the end of the 20th century.

The intimate relationship between ‘trusteeship’ and late-European colonialism, particularly that of the British variant, can be seen in the rationalisation of colonial occupation in the context of trade.¹⁴ Mellor makes note of the gradual moralisation of a ‘sense of duty’ owed by white Europeans, first towards ‘Asiatics’, then to slaves, and finally ‘backward races’.¹⁵ Over time, the idea of a ‘trust’ of administration held by a colonising power on behalf of local populations became subsumed more generally into a liberal European foreign policy.¹⁶ These sentiments would subsequently inform the creation of the Mandate system (a prototype of the ITS) in the inter-war period.¹⁷ As early as 1953, it was suggested that the incorporation of ‘trusteeship’ into the international legal maintenance of dependant and non-self-governing territories was ‘a new form of compromise between clashing imperial powers who sought to remove one source of friction by recourse to “internationalization”’.¹⁸ In time, this ‘friction’ would become part of the ITS more generally, and manifest itself in the various Trusteeship Agreements negotiated for the roughly dozen territories brought before the Trusteeship Council. The system of mandates, as developed by the League, and its reliance on the concept of ‘trusteeship’ has been considered by the literature as ‘analogous to the concept of tutelage or guardianship known from private law.’¹⁹ Indeed, the League expressly defined the Mandate system as giving effect to the ‘tutelage of such peoples... entrusted to advanced nations who by reason of their resources, their experience or their

¹¹ Hassan, above n 2, 27.

¹² *Ibid.*

¹³ See Kay, above n 10, 788-790.

¹⁴ George Mellor, *British Imperial Trusteeship*, (Faber and Faber Limited, 1951) 22-23.

¹⁵ *Ibid.*

¹⁶ *Indians in Kenya: A Memorandum* (the Devonshire Paper White) quoted in Robert M. Maxton, *The Struggle for Kenya: The Loss and Reassertion of Imperial Initiative, 1912-1923*, (Associated University Press, 1993) 276; See especially, Raymond Joseph Smyke, *Problems of Political Representation in Kenya* (Thesis, Boston University, 1957) 28-30; Walter Russell Crocker, *On Governing Colonies: Being an Outline of the Real Issues and a Comparison of the British, French and Belgian Approach to Them*, (George Allen and Unwin, 1947) 67.

¹⁷ See, Charmian Edwards Toussaint, *The Trusteeship System of the United Nations* (Stevens and Sons Limited, 1956) 4; Duncan Hall, *Mandates, Dependencies and Trusteeship* (Stevens and Sons Limited, 1948) 97.

¹⁸ Ernst B. Haas, ‘The Attempt to Terminate Colonialism: Acceptance of the United Nations Trusteeship System’ (1953) 7(1) *International Organization* 1.

¹⁹ Nele, above n 1, 50; Rüdiger Wolfrum and Christiane Philipp, *United Nations: Law, Policies and Practice* (Martinus Nijhoff Publishers, 1995) 871.

geographical position can best undertake this responsibility.²⁰ The *Charter* carried this imperialist projection of international law into the ITS.²¹

The relationship discussed above between the imperialist origins of ‘trusteeship’ and the formation of the ITS as a vessel of public international law is best demonstrated in the Trusteeship Agreements negotiated for individual territories through the mid-20th century. In total, 11 Trusteeship Agreements would be reached under the ITS, with the relevant territory being entrusted to a Member State of the UN as the Administering Authority.²² In most cases, the Administering Authority was also the initial colonising power. Generally, each Agreement featured a set of provisions aimed at supervising and supporting the Administering Authority in ‘preparing’ a territory and its peoples for the attainment of self-governance and development.²³ In the process of creating these individual Agreements, the Trusteeship Council was confronted with the especially difficult task of mediating between ‘the older and baser motives of empire’ and the principles of self-determination espoused in Chapters XII–XIII. However, it cannot be said that the Trusteeship Council was either apt or particularly successful at this task. For example, Kay notes that the General Assembly would often take the Council ‘to task for its timidity in dealing with the colonial powers.’²⁴ This may in part be attributed to the composition of the Council itself, which featured a strong representation of states in charge of large colonial holdings.²⁵ The significance of these facts with respect to the relevance of the ITS is discussed below.

III TRUSTEESHIP IN THE FORMER ITALIAN SOMALILAND

The *Trusteeship Agreement for the Territory of Somaliland under Italian Administration (Agreement)* serves as a valuable exposition of the numerous legal issues posed to the Council, and the methods by which it attempted to resolve them. The *Agreement* itself was the subject of a referral from the Council of Foreign Ministers; thus from the outset there was great pressure on the Trusteeship Council to satisfactorily address the trusteeship requirements of the former Italian Somaliland.²⁶ However, despite many unprecedented features, and much to the disappointment of the inhabitants

²⁰ *The Covenant of the League of Nations*, opened for signatures 28 June 1919, (entered into force 10 January 1920) art 22.

²¹ *The Declaration Regarding Non-Self-Governing Territories* (contained under Chapter XI of the *Charter*, and closely related to the ITS and Trusteeship Council) explicitly refers to the notional idea of a “sacred trust” under Article 73, which itself is the basis of ‘trusteeship’; *Charter of the United Nations* art 73.

²² With the exception of Italy and the former territory of Italian Somaliland, which was entrusted to Italy 5 years before it became a Member State of the UN.

²³ *Charter of the United Nations* art 76(b); see also Trusteeship Council, *Verbatim Record of the Third Meeting*, UN TCOR, 6th sess, 3rd mtg, UN Doc T/PV.205 (23 January 1950) 23–24; *Draft Trusteeship Agreement for the Territory of Somaliland under Italian Administration*, UN GAOR, 5th sess, Supp No 10, UN Doc A/1294(SUPP) (27 January 1950) para 1.

²⁴ Kay, above n 10, 788–790.

²⁵ Hassan, above n 2, 33; Chowdhuri, above n 2, 135.

²⁶ The Council of Foreign Ministers was composed of the Foreign Ministers of the principal Allied powers as China.

of the Territory, the contents of the *Agreement* resembled more of an outlet of imperialist interests than the promises of decolonisation heralded by the *Charter* and its architects.²⁷

A Historical Context

The *Agreement* was largely the result of a concerted international attempt to resolve the remaining issues of sovereignty following the detachment of colonial territories from Italy via the *Treaty of Peace with Italy*.²⁸ Italy's begrudging renunciation of all rights and title in relation to the former Italian Somaliland caused a vacuum of authority to which it was not immediately clear who would fill.²⁹ For most of the 1940s, Britain had exercised a military occupation over the territory, though there was no intention that this would continue indefinitely.³⁰ Up until late-1948, the principal Allied powers collectively referred to as the *Four Powers* – United States, Union of Soviet Socialist Republics, United Kingdom, and France – sought to reach an arrangement for the former Italian territories as between themselves.³¹ Much has been written about the multiple competing interests that arose from the negotiations between the *Four Powers*, and a failure to compromise between these interests would eventually result in the appointment of the UN as the final arbitrating power.³²

Before discussing the case of the former Italian Somaliland as it reached the Trusteeship Council, there are several salient factors that must be considered. First, in the time that the *Four Powers* dealt with the Territory, a Commission of Investigation was appointed to examine the current state of the Territory, and produced recommendations as to the appropriate disposal of the Territory.³³ In this endeavour, the purported aim of the *Four Powers* was to ascertain 'the wishes and welfare of the inhabitants and the interests of peace and security.'³⁴ Although the means and methods by which the Commission conducted its affairs were at times questionable, its findings indicated a

²⁷ Hassan, above n 2, 50; Trusteeship Council, *Verbatim Record of the Third Meeting*, UN TCOR, 6th sess, 3rd mtg, UN Doc T/PV.205 (23 January 1950) 1-50.

²⁸ *Treaty of Peace with Italy*, opened for signature 10 February 1947, 49 UNTS 747, (entered into force 15 September 1947), art 23 ('*Treaty of Peace*').

²⁹ Notably, however unsurprising, the British did not consider it a possibility to leave the administration of the Territory to its inhabitants. Without diminishing the effects of the repressive fascist Italian regime, whereby political mobilisation was entirely suppressed, the most prominent local political movement – the Somali Youth League – all but confirmed an acquiescence to British policy towards the late 1940s. See especially, Estelle Sylvia Pankhurst, *Ex-Italian Somaliland* (Watts & Co., 1951) 180.

³⁰ Pankhurst, above n 28, 148-175; Rennell Rodd, *British Military Administration of Occupied Territories in Africa: During the Years 1941-1947* (His Majesty's Stationery Office, 1948) 157-158, 333.

³¹ As set out in Annex XI of the *Treaty*, the *Four Powers* gave themselves a year from the ratification of the *Treaty* to reach an agreement as to the territories concerned; *Treaty of Peace* annex XI ('*Joint declaration by the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France concerning Italian territorial possessions in Africa*').

³² Bureau of Public Affairs, *Foreign Relations of the United States 1948* (United States Government Printing Office, 1974) vol 3, 943, 951-952; Benjamin Rivlin, *The United Nations and The Italian Colonies* (Carnegie Endowment for International Peace, 1950) 25-27.

³³ *Treaty of Peace* annex XI(4).

³⁴ *Ibid* XI(2).

general aversion towards a return of an Italian presence in the Territory.³⁵ These findings would later acquire an additional significance in light of the steps taken by the General Assembly and Trusteeship Council in resolving the issues presented by the Territory. Second, the uniqueness of the Territory raised several procedural issues for the Council to confront, including the composition of the Council and drafting Committee, the hearing of local inhabitants, and the arrangement for the transition of administration. Third, the burgeoning anti-colonial sentiment across the Global South which was felt by the Council as it dealt with the Territory. Each of these factors influenced in some way the responses of the Council and the eventual *Agreement*, of which a detailed examination reveals many of the internal inconsistencies of the Council and ITS.

B Construction of the Trusteeship Agreement

1 Drafting of the Trusteeship Agreement

For several interrelated reasons, in addressing the issue of the Territory, the UN dealt exclusively with the nature and form of trusteeship to be applied to the Territory, rather than the principle of trusteeship itself.³⁶ With this as a starting point, a number of sub-committees examined the possible options for trusteeship in Italian Somaliland during the second portion of the Third Session of the General Assembly.³⁷ While the specificities of individual draft resolutions and proposals by participating Member States varied, the general purpose of each attempt at constructing a trusteeship for the Territory hinged on a colonial/anti-colonial nexus.³⁸ Later in the Session, a *Draft Resolution* of Sub-Committee 15 of the First Committee (peace, security, and disarmament) was presented to the General Assembly in plenary session.³⁹ The *Resolution* adopted by the Committee would have allowed for a return of Italy to the Territory.⁴⁰ The Assembly rejected this proposal primarily because it appeared to negate the ‘wishes of the inhabitants’ in favour of other considerations.⁴¹ The issue would not be discussed again until the Fourth Session.

³⁵ For a discussion of the discursive implications and consequences of the *Commissions’* activities in Italian Somaliland, see Hassan, above n 2, 50-58; Four Power Commission of Investigation for the Former Italian Colonies, *Report on Italian Somaliland* (Council of Foreign Ministers, 1948) vol 2, 119.

³⁶ Four Power Commission of Investigation for the Former Italian Colonies (‘Four Powers Commission’), *Report on Italian Somaliland*, vol 2 (1948) app 2 s 2 ch 4(A) 3.

³⁷ *Report of Sub-Committee 15 to the First Committee*, 1st Comm, 3rd sess, Agenda Item 13(66), UN Doc A/C.1/466 (11 May 1949) [26].

³⁸ *Proposals — Union of Soviet Socialist Republic*, 1st Comm, 3rd sess, Agenda Item 13(66), UN Doc A/C.1/433 (9 April 1949); *Draft Resolution — United Kingdom*, 1st Comm, 3rd sess, Agenda Item 13(66), UN Doc A/C.1/446 (3 May 1949); *Draft Resolution — India*, 1st Comm, 3rd sess, Agenda Item 13(66), UN Doc A/C.1/448, Corr 1 (4 May 1949); *Draft Resolution — Iraq*, 1st Comm, 3rd sess, Agenda Item 13(66), UN Doc A/C.1/456 (9 May 1949); Rivlin, above n 31, 20-22.

³⁹ *Report of Sub-Committee 15 to the First Committee*, 1st Comm, 3rd sess, Agenda Item 13(66), UN Doc A/C.1/466 (11 May 1949) [26].

⁴⁰ *Ibid.*

⁴¹ *Question of The Disposal of The Former Italian Colonies*, UN GAOR, 3rd sess, 216th plen mtg, UN Doc A/PV.217 (17 May 1949) [533]; *Question of The Disposal of The Former Italian Colonies*, UN GAOR, 3rd sess, 218th plen mtg, UN Doc A/PV.218 (17 May 1949) [593].

Negotiations by the First Committee continued through to late 1949, by which point the obstacles to the construction of trusteeship had been greatly reduced.⁴² In the resulting *Resolution* of the Committee, the application of trusteeship to the Territory with Italy as the Administering Authority remained largely intact, with a few exceptions.⁴³ These exceptions included a *Declaration of Constitutional Principles* to be annexed to the *Agreement*, and a fixing of the duration of trusteeship (without the possibility of extension by the General Assembly).⁴⁴ The content of the Committee's proposal was later approved by the Assembly in *Resolution 289(IV)*, allowing for an interim transition of occupation to Italy while the final *Agreement* was drafted by the Trusteeship Council.⁴⁵ Throughout this process, and as suggested by Rivlin, there were substantial attempts to reduce the 'pro-Italian features' of any trusteeship proposal by the UN.⁴⁶ This was done with a view to garnering support, at the very least, for Italian trusteeship more generally. It appears that many of the *Four Powers* and similarly aligned States were conscious of the overwhelming rejection of a return of Italian rule by the inhabitants of the Territory as outlined in the report of the Commission of Investigation.⁴⁷ However, contrary to these efforts, the rationale for Italian-administered Somaliland remained unconvincing when examining the records of the Fourth Session.⁴⁸

The dynamics that persisted at the Assembly in the negotiations of a trusteeship for the Territory similarly pervaded those of the Trusteeship Council at its Sixth Session. The primary drafting of the *Agreement* took place in January 1950 and was delegated to a Drafting Committee comprised of six Member States.⁴⁹ The content of that draft was then put to the Council where amendments were raised and voted on by all participating States. The most significant areas of contention involved the rights and powers exercisable by the General Assembly, Trusteeship Council, Advisory Council (as created by the *Agreement*), and the protections afforded to the inhabitants of the

⁴² Hassan, above n 2, 25.

⁴³ *Report of Sub-Committee 17 to the First Committee*, 1st Comm, 4th sess, Agenda Item 19, UN Doc A/C.1/522 (1 November 1949) [29]–[30].

⁴⁴ *Ibid*; Lawrence S. Finkelstein, *Somaliland Under Italian Administration: A Case Study in United Nations Trusteeship* (Woodrow Wilson Foundation, 1955) 3–4.

⁴⁵ *Question on the Disposal of the Former Italian Colonies: Report of the First Committee (A/1089) and Report of the Fifth Committee (A/1109) (Concluded)*, GA Res 289 (IV), UN GAOR, 4th sess, 250th plen mtg, Agenda Item 19, UN Doc A/Res/289(IV)A (adopted 21 November 1949) paras [5], [8].

⁴⁶ Rivlin, above n 31, 42.

⁴⁷ Hassan, above n 2, 24–25.

⁴⁸ *Question of The Disposal of The Former Italian Colonies (Continued)*, UN GAOR, 4th sess, 279th plen mtg, UN Doc A/C.1/SR.273–340 (1 October 1949) [26]–[27]; Walter Bowring, 'Great Britain, The United States, and The Disposition of Italian East Africa' (1992) 20(1) *Journal of Imperial and Commonwealth History* 101–102.

⁴⁹ The Drafting Committee was made up of representatives of the Dominican Republic, France, Iraq, the Philippines, the United Kingdom, and the United States; *Special Report of the Trusteeship Council*, UN GAOR, 5th sess, Supp No 10, UN Doc A/1294(SUPP) (27 January 1950) para 3.

Territory. These areas relate to the following draft provisions:⁵⁰

1. The provision on the right of members of the Advisory Council to make reports to the Trusteeship Council.
2. The provision on the educational annex.
3. The provision on the protection of the rights of the indigenous population over land and other natural resources.
4. The *Declaration of Constitutional Principles* forming an annex to the Agreement.

While debated at the Council, the objections raised by certain Member States as to the content of the draft *Agreement* further highlight the difficulties encountered by the Council, and indeed the ITS itself, to reconcile the aspirations of formerly colonial peoples and the interests of then colonial States. The amendments proposed in respect of article 5 by Pierre Ryckmans, the Belgian delegate and former Governor-General of the Congo, may be considered as an example.⁵¹ The original text of the article provided that the ‘Council may, in agreement with the Administering Authority, conduct special investigations or enquiries when it considers that conditions in a Trust Territory make such action desirable.’⁵² Ryckmans questioned the necessity of the provision, as it did not appear in any other Agreement and was not expressly allowed for in the *Charter*.⁵³ In response, the Rapporteur of the Committee suggested that the non-Member status of the Administering Authority required more exceptional provisions so that ‘the authority of the Council to conduct special investigations or enquiries may [not] be questioned.’⁵⁴ Impliedly, this was also a provision introduced by the ‘anti-colonial bloc’ to further protect the interests of the inhabitants of the Territory. Despite this justification, upon voting, an amendment by Ryckmans was successful in reducing the effect of article 5 to that of a purely supervisory one.⁵⁵

In substance, the approach taken by the Council in drafting the *Agreement* was also informed by the lack of representation of inhabitants of the Territory. This was despite the fact that the Council had attempted to make allowances for ‘representatives of local opinion, such as representatives of political parties and other organizations in Somaliland to express their views before it if they so desired.’⁵⁶ However, when taking account of the treatment of such opinions earlier in the Third and Fourth Sessions of

⁵⁰ As adapted from the remarks of the Chinese Delegation to the Trusteeship Council; Trusteeship Council, *Verbatim Record of the Third Meeting*, UN TCOR, 6th sess, 3rd mtg, UN Doc T/PV.205 (23 January 1950) 4.

⁵¹ *Ibid* 27.

⁵² *Ibid* 29.

⁵³ However, Ryckmans did concede that Article 86(d) of the *Charter* impliedly allowed for the inclusion of such a provision; *Ibid* 29-30.

⁵⁴ *Ibid* 29.

⁵⁵ *Ibid* 31.

⁵⁶ *Special Report of the Trusteeship Council*, UN GAOR, 5th sess, Supp No 10, UN Doc A/1294(SUPP) (27 January 1950) para 3.

the Assembly, and even before the Commission of Investigation, the likelihood that any such opinions would have been considered with the appropriate level of respect remains low. This view was echoed by the Somali Youth League (SYL), the most prominent political movement in the Territory at the time:

Against the clearly expressed wishes and welfare of the overwhelming majority of our people, the General Assembly of the United Nations during the last session approved the unjust imperialist claims of Italy for restoration of her oppressive rule in Somaliland. By so doing the Assembly not only disregarded the wishes and welfare of the Somali people, but also violated the fundamental principle embodied in the United Nations Charter, namely, the right of self-determination.⁵⁷

Similarly, Rivlin has suggested that *Resolution 289(IV)*, which empowered the Council to begin the drafting process, was itself negligent of the sentiments of the local population:

In calling for the return to Italy of Italian Somaliland and Tripolitania, the resolution flew in the face of the findings of the Four Powers Commission of Investigation: the native inhabitants of the colonies were overwhelmingly opposed to a return to Italian rule. It disregarded Italy's record of helplessness and stagnation so far as the native populations were concerned, let alone the record of oppression under fascism.⁵⁸

But perhaps most indicative of the Council's approach to such issues as political representation was the involvement of Enrico Cerulli, the representative of the Italian delegation, in the debate and drafting of the *Agreement*. Cerulli had previously served as Governor of Ethiopia in 1937, during which time he was alleged to have committed war crimes as part of the Fascist Italian conquest of Africa Orientale Italiana (AOI), and was involved in the practice of forced labour in the Territory.⁵⁹ Thus, this raises several concerns in terms of the procedural fairness of the Council's drafting process and consequences of this for the ITS's ability to give full effect to the requirements of the *Charter*.

2 Powers of the Administering Authority

The *Agreement* included a number of expansive and significant powers granted to the Administering Authority. Article 7 of the *Agreement* conferred unto the Authority 'full

⁵⁷ Letter Dated 9 November 1950 From Representatives of The Somali Youth League and The Hamar Youth Club to the Secretary-General, UN GAOR, 5th sess, Agenda Items 21, UN Docs A/C.4/183 (15 November 1950).

⁵⁸ Benjamin Rivlin, 'The Italian Colonies and the General Assembly', (1949) 3(3) *International Organization* 469.

⁵⁹ The AOI consisted of Italy's main colonial territories in East Africa after consolidation in 1936 (Italian Somaliland, Ethiopia, Eritrea, and later, the British Somaliland Protectorate). See Richard Pankhurst, 'Italian Fascist War Crimes in Ethiopia: A History of Their Discussion, from the League of Nations to the United Nations (1936–1949)', (1999) 6(1–2) *Northeast African Studies* 127–128; Pankhurst, above n 28, 264.

powers of legislation, administration and jurisdiction in the Territory.⁶⁰ At all times, the exercise of these powers was to be subject to conformity with the *Charter*, other terms of the *Agreement*, and the annexed *Declaration*.⁶¹ A second source of power under article 7 allowed for the Authority ‘to apply to the Territory, temporarily and with such modifications as are considered necessary, such Italian laws as are appropriate to the conditions and needs of the Territory and as are not incompatible with the attainment of its independence.’⁶² In respect of the law relating to land use and sale, article 14 further constrained the powers of the Authority to take due consideration of the ‘customs of the indigenous population and respect their rights and safeguard their interests, both present and future.’⁶³ This article itself was the subject of contention during the drafting of the *Agreement* as certain Member States objected to the limitation of the Authority’s powers in this area.⁶⁴ It must also be noted that article 14 itself contained two ‘escape clauses’ by which the Authority could circumvent these constraints by alienating land, not by fee simple conveyance, but by ‘lease or grant of concession for a period to be determined by law.’⁶⁵ Presumably, this would be Italian law applied to the Territory via article 7. Secondly, the protections of article 14 did not apply to the municipality of Muqdisho, by far the most populous and urbanised area at the time.⁶⁶

C Evaluation of Trusteeship as an Indicator of the ITS

Most assessments of the experiment of trusteeship in Somaliland conclude that it was largely unsuccessful in producing a model, independent, and viable State.⁶⁷ This literature points to several possible reasons for this outcome, ranging from the limited time allowed for trusteeship to the inadequacy of the Administering Authority.⁶⁸ However, this literature strangely overlooks some of the more fundamental flaws of the *Agreement* process — chiefly, the almost complete lack of engagement, consultation, or approval of the local inhabitants to a return of Italian administration. Del Boca alludes to this in his assessment of the Authority’s performance:

[A]n absolutely plethoric bureaucratic-administrative organization was created in Somalia, which moreover reproduced all the defects of the metropolitan [Italian] organization

⁶⁰ *Draft Trusteeship Agreement for the Territory of Somaliland under Italian Administration*, UN GAOR, 5th sess, Supp No 10, UN Doc A/1294(SUPP) (27 January 1950) art 7.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid* art 14.

⁶⁴ Trusteeship Council, *Verbatim Record of the Fifth Meeting*, UN TCOR, 6th sess, 5th mtg, UN Doc T/PV.207 (25 January 1950) 25-39.

⁶⁵ *Draft Trusteeship Agreement for the Territory of Somaliland under Italian Administration*, UN GAOR, 5th sess, Supp No 10, UN Doc A/1294(SUPP) (27 January 1950) art 14.

⁶⁶ *Ibid.*

⁶⁷ Paolo Tripodi, ‘Back to The Horn: Italian Administration and Somalia’s Troubled Independence’ *International Journal of African Historical Studies* (1999) 32(2–3) 359-380; M. Reviglio Della Veneria, *The United Nations, Italy and Somalia: A ‘sui generis’ Relation 1948-1969* (Master’s Thesis, Utrecht Universiteit, 2014); Paolo Tripodi, *The Colonial Legacy in Somalia* (Macmillan Press, 1999).

⁶⁸ *Ibid.*

and included *completely outmoded institutes and systems, which were, above all, disconnected from the Somali reality*.⁶⁹

Such an assessment holds great significance for the ITS as the role of the Council in creating and supervising trusteeship in the former Italian Somaliland was unprecedented up to that point. Castagno notes that of all the Trust Territories under the purview of the Council, no ‘other trust territory has been watched over so jealously by its international guardian as has Somalia, which has long been viewed as the special ward of the United Nations.’⁷⁰ It is for this reason that the response of the ITS to this issue in the former Italian Somaliland is so valuable in understanding the flaws of the System itself. If the interests of the inhabitants of such a closely watched Territory could be so easily compromised with those of then colonial States, much of the self-determinative foundations of chs XII–XIII of the *Charter* become almost irrelevant in the procedural functions of the Council and ITS. It can be further deduced that the Council was only ever as supportive of the process of decolonisation as allowed by its composition, or the General Assembly itself.⁷¹ But perhaps the clearest indication of the failure of trusteeship in the former Italian Somaliland was the eventual dissolution of the democratic Somali Republic in 1969, just 9 years after the end of the *Agreement*, by way of the dictatorship of Mohamed Siad Barre. From the historical record, it is difficult to determine exactly how the *Agreement* would have differed had a greater emphasis been placed on local interests, though it may at least be understood that the inhabitants would likely have been more receptive to trusteeship in the alternative.

IV CONCLUSION

For the better part of two decades, the ITS has been defunct without any Trust Territory to supervise or monitor. Any possibility of revival remains distant and, in the ensuing period, there have been a number of calls to reform or altogether abandon the project of trusteeship at an international level. However, these proposals often lack a historical orientation and too readily overlook the development of trusteeship as an international public law concept. Similarly, the close and uncomfortable relationship between trusteeship and European imperialism is still largely underexplored by the literature. By using the Trust Territory of Italian Somaliland as an example, this paper has demonstrated how the response of the Trusteeship Council was very much influenced by several competing, and often contradictory, factors that ultimately displaced the interests of the inhabitants of the Territory. The problems of the ITS can therefore

⁶⁹ Angelo Del Boca, ‘The Myths, Suppressions, Denials and Defaults of Italian Colonialism’ in Patrizia Palumbo (ed), *A Place in The Sun: Africa in Italian Colonial Culture from Post-Unification to The Present* (University of California Press, 2003) 31 (emphasis added).

⁷⁰ Alphonso A. Castagno, ‘Somali Republic’ in James Smoot Coleman and Carl G. Rosberg, Jr. (eds), *Political Parties and National Integration in Tropical Africa*, Berkeley, (University of California Press, 1964) 512.

⁷¹ This is suggested by the findings of Kay; Kay, above n 24.

be viewed as one of continual compromise, by which the Council rarely developed a coherent response to the process of decolonisation as it was consistently preoccupied with the difficulty of bridging the chasm between colonial and anti-colonial Member States. Consequently, any attempt at reforming or abolishing the ITS must adequately grapple with this history first.