

## Road to Stockholm+50 (2022) and Beyond

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# The Repurposed UN Trusteeship Council for the Future<sup>+</sup>

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**Abstract.** The idea of the revival and repurpose for the United Nations Trusteeship Council (UNTC) is pragmatic one to meet the needs of the changed times. Such repurpose entails entrustment of a new mandate to the revived UNTC that constitutes evolution of the *trust* in the global domain. It will be crucial restructuring and evolution of the UN with an understanding that there are places, territories, and areas known as ‘global commons’ that require special and careful nurturing for our better future. In a new *avatar* (form), the TC would in essence reflect the ‘sacred trust’ with a ‘new mandate.’ From a scholarly perspective, such a move eminently makes sense since it could bring to life an entity within the UN and provide a big push to make the UN relevant for the needs of the present and future generations. It will essentially serve as a guardian of the global ‘common concerns’, ‘common heritage of mankind’ and the global environment. In the changed context, the UNTC need to serve as a trustee for betterment of the humankind and for the survival of the planet earth. The new mandate for the environment and the global commons could strengthen the UN and vindicate one of the core purposes for which the ‘United Nations’ came together in 1945 with a solemn resolve “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”.

**Keywords:** United Nations, Trusteeship Council, sacred trust, revival and repurpose, global environment, new mandate, common concerns, global commons.

## 1. Introduction

In 2021, the United Nations (UN) Secretary-General (SG) António Guterres suggested in his report *Our Common Agenda* that the UN Trusteeship Council (UNTC) be *repurposed* as a deliberative forum on behalf of succeeding generations:

The activities of the Trusteeship Council have been suspended since 1994. Previous commissions and secretaries-general, along with some Member States, have proposed a repurposing of the Council to enhance the governance of the global commons. Building on these ideas, and as part of the follow-up to Our Common Agenda, I invite States to consider making the Council available as a multi-stakeholder body to tackle emerging challenges and, especially, to serve as a deliberative forum to act on behalf of succeeding generations. Among other tasks, it could issue advice and guidance with respect to long-term governance of the global commons, delivery of global public goods and managing global public risks.<sup>1</sup>

This suggestion of the UNSG, within the limits of his office, has been for the ‘consideration’ of the UN member states. They need to take a call on this idea, whose time has come. It hitherto remained a taboo for the scholars, sovereign states, other institutional actors and the civil society groups.

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1 UN (2021), *Our Common Agenda: Report of the Secretary-General* (UN: New York.) at Chapter V, para 125, p.77; available at: [Common\\_Agenda\\_Report.English.pdf](https://www.un.org/News/Press/docs/2021/09/210901.unsg.commonagenda.en.pdf) (un.org) (accessed on 27 May 2022).

The suggestion of the UNSG came to be endorsed in another report *Our Common Agenda and the Road to 2023* in order to “improve governance of the global commons, including the high seas, Antarctica, the atmosphere, and outer space” that required to go beyond the reconfigured body’s proposed “advice and guidance” role.<sup>2</sup>

The UNSG report has provided a fresh impetus to the long pending demand for revival<sup>3</sup> of the Trusteeship Council. It came at a momentous time when the world was getting ready to celebrate the 50th anniversary of the 1972 UN Conference on the Human Environment (UNCHE).<sup>4</sup> The UN General Assembly adopted the *enabling* resolution 75/280 of 24 May 2021 and the *modalities* resolution 75/326 of 10 September 2021<sup>5</sup> that set the stage for convening of the Stockholm+50 Conference (2-3 June 2022).

Now it is an opportune time to think aloud and ahead as regards the new legal instruments and new institutions required to meet the needs of the changed times. The UNSG’s 2021 report has brought into focus the scholarly quest for the revival and ‘repurpose’ of the TC as one of the principal UN organs that lies dormant since 1994. How can the UNTC be ‘repurposed’ in the new context and with a new mandate?

## 2. Original Mandate of the UNTC

The TC was established under Chapter XIII of the UN Charter.<sup>6</sup> The International Trusteeship System (ITS), under Chapter XII of the UN Charter, was designed for the supervision of the trust territories placed under the individual agreements with the administering states. The main objective of the ITS system was to ensure the development of the trust territories through the *modus vivendi* of self-government and self-determination.

The TC is one of the main UN organs that has been inactive since 1994. As per Article 86,<sup>7</sup> the TC was to supervise the administration of the trust territories. The TC comprises the five permanent members of the Security Council and some non-trust administering states (as mentioned in Articles 23 and 86). As a corollary, Articles 87 and 88 elaborate the functions and powers of the TC.<sup>8</sup> The TC was authorized to examine and discuss the reports on the trust territories in consultation with the administering authority of the trusteeship system.

The main task of the TC was to supervise the administration of the trust territories to ensure that the administering powers took adequate measures to prepare the territories to be able to stand on their own feet. As

2 Madeleine Albright and Ibrahim Gambari “Our Common Agenda and the Road to 2023” (21 October 2021); available at: [Our Common Agenda and the Road to 2023 by Madeleine Albright & Ibrahim Gambari - Project Syndicate \(project-syndicate.org\)](https://www.project-syndicate.org)

3 Bharat H. Desai (2021), *Our Earth Matters: Pathways to a Better Common Environmental Future* (IOS Press, Amsterdam), Chapter 19, pp.189-202; Bharat H. Desai (2021), “A New Mandate for the Revived UN Trusteeship Council”, *Environmental Policy & Law*, vol. 51, no.1-2, 2021, pp.97-109; Bharat H. Desai (2000), “Revitalizing International Environmental Institutions: The UN Task Force Report and Beyond”, *Indian Journal of International Law*, vol.40, no.3, 2000, pp.456-504 at 498-503.

4 UN (1972), *Report of the United Nations Conference on the Human Environment*, 5-16 June 1972, Stockholm; NL730005.pdf (un.org) (accessed on 18 May 2022).

5 UN (2021), The General Assembly resolution 75/280 of 24 May 2021 *Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity*; N2112937.pdf (un.org); General Assembly modalities resolution 75/326 of 10 September 2021; N2125071.pdf (un.org); Resolutions of the 75th Session - UN General Assembly. Also see: Stockholm+50

6 UN (1945), *Charter of the United Nations*; uncharter.pdf; Trusteeship Council | United Nations (accessed on 29 May 2022).

7 Article 86 of the UN Charter provides: “1. The Trusteeship Council shall consist of the following Members of the United Nations: a. those Members administering trust territories; b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not. 2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein”; see UN (1945), n.6.

8 Article 87 provides: “The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may a. consider reports submitted by the administering authority; b. accept petitions and examine them in consultation with the administering authority; c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and d. take these and other actions in conformity with the terms of the trusteeship agreements. Article 88 provides: ‘The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire’; see UN (1945), n.6.

a result of the work of the TC, within a period of fifty years (1945-1994), all of the trust territories achieved their independence or attained self-government either as a separate state or by merging with the administering states.

The TC suspended its operation on 10 November 1994<sup>9</sup> after the independence of the last trust territory of Palau. On the basis of the UNTC resolution 2199 (LXI) of 25 May 1994, the UNSC adopted resolution S/RES/956 (1994).<sup>10</sup> The tasks of the TC were to supervise the dependent territories and the concept of ‘sacred trust’,<sup>11</sup> remained the cardinal principle, for the exercise of hand-holding and care for the chosen territories.

In view of completion of its mandated task, the UNTC amended its rules of procedure by a resolution on 25 May 1994, to drop the obligation to meet annually. It has agreed to meet as occasion required. It could be by its decision or the decision of its President, or at the request of a majority of its members or the General Assembly or the Security Council. As a reflection of continuity, the 73rd session of the TC on 7 December 2021, elected Nathalie Broadhurst Estival of France as its President and James Kariuki of the United Kingdom as its Vice-President. It is expected to meet again in December 2023.<sup>12</sup>

### 3. UNTC in the New Context

Thus, as indicated above, the TC can start functioning again by amending its rules and procedures. How to reorient and repurpose the *sacred trust* of the UNTC in the new context? What needs to constitute the *new mandate* for the TC? From a scholarly perspective, such a move eminently makes sense to bring to life the dormant UN organ in the new context in the new age for the larger interests of the *peoples* of the UN.

The UNTC could be entrusted with the task of supervising the scattered legal regimes for environmental protection as well as the global commons. In fact, it could share the tasks of the other two overburdened principal UN organs — the General Assembly and the Economic and Social Council. It will serve as the UN system’s in-house global supervisory organ for environment, commons and sustainable development. It will also obviate the need for new funding demands and creation of a *de novo* institutional structure. Notwithstanding all the pious declarations, international instruments and institutional maze, the global environment is sliding into a perilous state even as we move into the period beyond the Stockholm+50 (2022). It calls for radical overhaul of the UN’s environmental architecture.

The issue for revival of the TC was referred by then UNSG Kofi Annan in 1998 to the Task Force,<sup>13</sup> Chaired by Klaus Töpfer. At the time, it did not cause any consternation within the UN system. It almost seemed to be a

9 UN, “Trusteeship Council”; available at: Trusteeship Council | United Nations (accessed on 29 May 2022).

10 UN, Security Council resolution 956 (1994), *Termination of the status of Palau as a Trust Territory*, 10 November 1994, S/RES/956 (1994); available at: Refworld | Security Council resolution 956 (1994) [Termination of the status of Palau as a Trust Territory] (accessed on 29 May 2022): “Satisfied that the people of Palau have freely exercised their right to self-determination in approving the new status agreement in a plebiscite observed by a visiting mission of the Trusteeship Council and that, in addition to this plebiscite, the duly constituted legislature of Palau has adopted a resolution approving the new status agreement, 2/ thereby freely expressing their wish to terminate the status of Palau as a Trust Territory; Taking note of resolution 2199 (LXI) of the Trusteeship Council of 25 May 1994; Determines, in the light of the entry into force on 1 October 1994 of the new status agreement for Palau, that the objectives of the Trusteeship Agreement have been fully attained, and that the applicability of the Trusteeship Agreement has terminated with respect to Palau”.

11 Hayden, Sherman S., “The Trusteeship Council: Its First Three Years” (1951) 66(2) *Pol Sc Q* 226.

12 UN (2021), Trusteeship Council, 73rd session, 1718th meeting, TR/2435, 7 December 2021; available at: <https://www.un.org/press/en/2021/tr2435.doc.htm>

13 UN (1998), “Secretary-General Announces Members of Environmental and Human Settlements Task Force”; Press Release SG/A/677 of 26 March 1998; available at: SECRETARY-GENERAL ANNOUNCES MEMBERS OF ENVIRONMENTAL AND HUMAN SETTLEMENTS TASK FORCE | Meetings Coverage and Press Releases (accessed on 28 May 2022). For a full report of the task force as an annex to the *Report of the Secretary-General Environment and Human Settlements*, see UNGA Doc A/53/463 of 6 October 1998 at 11; available at: Environment and human settlements : (un.org) (accessed on 28 May 2022). For a detailed analysis of the Task Force report see, generally, Bharat H. Desai (2000), ‘Revitalizing International Environmental Institutions: The UN Task Force Report and Beyond’ (2000) 40(3) *Indian J Intl L* 455; Bharat H. Desai (2006), “UNEP: A Global Environmental Authority? *Environmental Policy & Law*, vol.36, no.4-5, pp.137-157; Bharat H. Desai (2012), “The Quest for a United Nations Specialized Agency for the Environment”, *The Round Table: The Commonwealth Journal of International Affairs*, 101 : 2, 167-179; Bharat H. Desai (2014), *International Environment Governance: Towards UNEPO*, Boston: Brill Nijhoff.

logical step towards reviving the TC, even as the larger task of other UN reforms has been proceeding at a snail's pace.

The Töpfer Task Force was expected to examine the suggestion made by the secretary-general on this issue in his report as well as in his note to the UNGA.<sup>14</sup> The idea of trusteeship was put forward by the UNSG to address the issue of integrity of the global environment and the global commons (such as oceans, atmosphere, Antarctica and outer space). At the basis of the notion of holding these entities in 'trust' lies the view that they are a common repository of the humankind. Edith Brown Weiss has articulated the concept of intergenerational equity that considers members of the present generation hold the earth in 'trust' for future generations.<sup>15</sup> It has been felt that they need to be taken beyond the control of the nation-states. It is somewhat akin to the idea that is inherent in the international trusteeship system under Chapters XII and XIII of the UN Charter (Article 75), the supervision of which was assigned to the UNGA and, under its authority, to the TC. Since all of the eleven original trust territories attained self-government or independence, the TC—as one of the six principal organs of the UN—was left without any business after the last trust territory of Palau became independent and became 185th UN member on 15 December 1994. Therefore, it makes eminent sense now in the Anthropocene epoch<sup>16</sup> that the TC may be revived and repurposed with a new mandate for the global environment and the global commons.

The nature of the mandate for such a revived TC would depend upon the level of ambition of the UN member states. The question of the global supervision of various environmental regimes is at the centre of the current debate concerning international environmental governance (IEG).<sup>17</sup> It also comprises issues of inter-linkages, synergies, and the coordination of the tasks of the principal multilateral environmental agreements (MEAs).<sup>18</sup> Apart from this debate, the issue of having a UN 'specialized agency' for the environment, instead of a *de novo* entity, by upgrading the existing United Nations Environment Program (UNEP) has long been debated by scholars and in different processes within the UN system.<sup>19</sup>

The revived TC would be the best in-house UN principal organ to put into place different pieces of the jigsaw puzzle in order to ensure an effective architecture for the supervision of the global environment and the global commons. Since it has been amply discussed elsewhere and is not within the scope of this article,<sup>20</sup> this study will not attempt to explain and justify such scholarly quest for a UN 'specialized agency' for the environment, as well as the need, for placing the protection of the environment under the supervision of the TC.

With respect to the TC's role in the care of the 'global commons,' it was first proposed in the 1994 report entitled *Our Global Neighborhood* by the Commission on Global Governance. This commission was co-chaired by Swedish Prime Minister Ingvar Carlsson and former Secretary General of the Commonwealth Sridath Ramphal of Guyana.<sup>21</sup> The UN adopted the report in 1995 and did suggest that the "Trusteeship Council should be given a

14 UN (1997), *Renewing the United Nations: A Program for Reform*; UN Doc A/51/950 (14 July 1997), para 84–5; available at: A/51/950 (undocs.org); N9718979.pdf (un.org) (accessed on 28 May 2022). He made a further reference to it in his note "A New Concept of Trusteeship", UN Doc A/52/849 of 31 March 1998, paras 1–3; A-51-950\_Renewing\_the\_UN-ODS-English.pdf (unicef.org).

15 For details see, generally, Edith Brown Weiss (1990), "Our Rights and Obligations to Future Generations for the Environment" (1990) 84 *AJIL* 198; see also *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (Tokyo: UNU and Transnational, 1989).

16 The Anthropocene Working Group at its meeting on 21 May 2019 decided to accept the unmistakable imprint of human activities on the planet Earth and recognized 'Anthropocene' as the new geological epoch; available at: <http://quaternary.stratigraphy.org/working-groups/anthropocene/> (accessed on 02 March 2021).

17 For detailed discussion on international environmental governance, see Bharat H. Desai (2014), *International Environmental Governance: Towards UNEPO*, Boston: Brill Nijhoff.

18 Bharat H. Desai (2010, 2013), *Multilateral Environment Agreements: Legal Status of the Secretariats*, New York: Cambridge University Press. Also see, Desai, Bharat H. (2006), *Multilateral Environmental Agreements & Human Security*, *InterSecTions* No.4/2006, Bonn: UNU & IHDP.

19 Bharat H. Desai (2006), "UNEP: A Global Environment Authority?" (2006) 34(3–4), *Environment Policy and Law*; Also see, Bharat H Desai (2012), "The Quest for a UN 'Specialized Agency' for the Environment" (2012) 101(60) *The Round Table* 167.

20 Desai, n.17, 18 and 19.

21 Paula Magalhães, Will Steffen and Klaus Bosselmann (2016), *The Safe Operating Space Treaty: A New Approach to Managing Our Use of the Earth System* (2016) at 263.

new mandate over the global commons in the context of concern for the security of the planet”.<sup>22</sup> As a follow-up, UN Secretary-General Kofi Annan also mooted a proposal for the same in 1997.<sup>23</sup> Unfortunately, the proposal did not get much support. In fact, it led the General Assembly resolution 60/1 on *World Summit Outcome* even to suggest for the deletion of the chapter on the TC from the UN Charter: “Considering that the Trusteeship Council no longer meets and has no remaining functions, we should delete Chapter XIII of the UN Charter and references to the Council in Chapter XII”.<sup>24</sup>

Initially, there was too much complexity in understanding the concept of the ‘global commons’ and the issue of the TC dealing with a matter that was beyond national jurisdiction. Still, there has remained a simmering quest to place the ‘global commons’ under the supervision of the TC as part of the larger process for the UN reforms.<sup>25</sup>

#### 4. The Global Commons

The ‘global commons’ refers to those resource domains that are outside the political reach of any state. It is generally accepted that modern international law has anointed four major areas under the rubric of ‘global commons’—that is, the high seas, the atmosphere, Antarctica, and outer space. These areas have been guided by the principle that they are not to be subjected to any sovereign appropriation.<sup>26</sup> However, application of this ‘hands-off’ approach has been observed with varied degrees in all of the four global commons areas due to the hard-headed national interests of the powerful states. Notwithstanding this, the areas of global commons hold great value because of the natural resources they possess. They need to be preserved, and any access to them for the exploitation of natural resources should be permissible only within the limits of the law, as per applicable regulatory regimes.

Ironically, the quest for resources of pristine areas of the global commons by some of the technologically advanced countries has been detrimental to the well-being of these regimes. A severe resource crunch and growing human greed has brought the global commons under immense pressure over the years to explore, exploit and appropriate their natural resources.

Hence, the main concerns remain environmental protection as well as sustainable use and conservation of resources of the global commons. It has been identified that the governance of the global commons forms a significant part of the challenge of International Environmental Governance (IEG).<sup>27</sup> A growing sense of exasperation has led to innovative proposals to improve the complex system of IEG by rethinking and revitalizing the existing structures in the UN system. It is now felt that there is an urgent need to strengthen the UN’s

22 Commission on Global Governance (1995), *Our Global Neighborhood*, UN Doc A/50/79S/1995/106 (1995); available at: <http://www.un.org/documents/ga/docs/50/plenary/a50-79.htm>; *Our Global Neighborhood - Commission On Global Governance | PDF | Global Governance | Governance* (scribd.com) (accessed on 28 May 2022). It states: ‘The Trusteeship Council should be given a new mandate over the global commons in the context of concern for the security of the planet.’

23 The UN Secretary General (Kofi A Annan) opined in the report of the UN Secretary-General (1997), *A New Concept of Trusteeship*: “The Secretary General proposes, therefore, that it be reconstituted as the forum through which Member States exercise their collective trusteeship for the integrity of the global environment and common areas such as oceans, atmospheres and outer space. At the same time, it should be served to link the United Nations and civil society in addressing these areas of global concern which require the active contribution of public, private and voluntary sectors”; see UN Doc A/51/950 of 14 July 1997, paras 84–5; available at: [A-51-950\\_Renewing\\_the\\_UN-ODS-English.pdf](https://www.unicef.org/a-51-950_Renewing_the_UN-ODS-English.pdf) (unicef.org)

24 UN Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc A/59/2005 (21 March 2005); available at: [Microsoft Word - 0527078e.doc](https://www.un.org/News/Press/docs/2005/0527078e.doc) (securitycouncilreport.org) (accessed on 28 May 2022). Also see, UN General Assembly resolution 60/1 of 16 September 2005; see UN Doc A/RES/60/1 (24 October 2005) 38, para 176; 60th Session (2005-2006) - UN General Assembly - Quick Links - Research Guides at United Nations Dag Hammarskjöld Library; UNITED:

25 Desai (2000), p. 498, n.3 and Desai (2014), Chapter 7, p. 168, n.17.

26 The idea of the ‘commons,’ in essence, reflects what has been prevalent in different civilizations and cultures for a long time. For instance, Elinor Ostrom has sought to address ‘one of the most enduring and contentious questions of positive political economy, whether and how the exploration of common-pool resources can be organized in a way that avoids both excessive consumption and administrative cost.’ For a detailed exposition of the idea, see Ostrom, Elinor (1990), *Governing the Commons: The Evolution of Institutions for Common Action*, Cambridge University Press.

27 For a detailed study on IEG see, generally, Desai (2000), p.498, n.3 and Desai (2014), Chapter 7, p.168, n. 17; UN (2013), *Global Governance and Governance of the Global Commons in the Global Partnership for Development beyond 2015*, UN System Task Team on Post-2015 UN Development Agenda; available at: [24\\_thinkpiece\\_global\\_governance.pdf](https://www.un.org/News/Press/docs/2015/150424_thinkpiece_global_governance.pdf) (un.org) (accessed on 29 May 2022).

environmental institutions and governance framework.<sup>28</sup> Thus, in view of this simmering global environmental challenge, it makes great sense to entrust the TC with the overall supervision of the ‘global commons’ and global environmental protection.<sup>29</sup> What areas would come under the ‘global commons’? This assumes significance since sovereign states have tried to make inroads into this cherished domain. The following brief discussion encapsulates this discourse.

(i) *The Area*

It is generally accepted that the area beyond the limits of national jurisdiction (ABNJ), as mentioned in Part VII and XI of the 1982 United Nations Convention on Law of the Sea (UNCLOS),<sup>30</sup> is a core area of the global commons. In recent years, there has been greater awareness of the importance of the marine ecosystem beyond the national jurisdiction of any state. Under UNCLOS, it is addressed as the ‘high seas’ and ‘the Area.’<sup>31</sup> This area does not come under “the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.”<sup>32</sup> Article 1 of UNCLOS has clarified the meaning of the ‘area,’ the ‘authority,’ the activities in the area,’ ‘pollution of the marine environment,’ ‘dumping,’ and so on.<sup>33</sup> These terms are connected with the ABNJ in the sea. The importance of the ‘high sea’ and ‘the area’ has been identified according to socio-economic, environmental, scientific and technological, and legal aspects.<sup>34</sup>

Marine ecosystem and biodiversity including ABNJ provide a source of livelihood to millions of people and have critical functions in the natural cycle of the earth. The 2005 Millennium Ecosystem Assessment (MEA), the 2000 Millennium Development Goals (MDGs), the 2015 Sustainable Development Goals (SDGs), and the reports of the secretary-general have all reported that marine areas are affected by human activities.<sup>35</sup> Growing demand for seafood and marine resources, the unregulated use of marine resources (for example, fishing), increasing pollutants from different sources, climate change, and growing commercial and scientific interests are imposing huge pressure on the marine ecosystem and hampering marine biodiversity. As a consequence, such pressure on the ABNJ will affect not only the marine environment but also human beings.

UNCLOS provides a legal framework for these activities as well as the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. UNCLOS is supplemented by two implementing agreements—that is, the 1994 Agreement Relating to the Implementation of Part XI of UN Convention of the Law of the Sea and the 1995 Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.<sup>36</sup> There are some other international instruments, such as the regulations of the International Seabed Authority, the 1992 Convention on Biological Diversity, instruments adopted by the Food and Agriculture Organization (FAO), the World Trade Organization (WTO), and the World Intellectual Property Organization

28 Desai (2012), n.19, p.171.

29 Desai (2000), p. 498, n.3 and Desai (2014), Chapter 7, p. 168, n.17.

30 United Nations Convention on the Law of the Sea, 1982, 21 *ILM* 1261 (1982).

31 *Ibid*, Part VII, Articles 86–120; Part XI, Articles 133–91.

32 *Ibid*, Article 86 provides: “*Application of the provisions of this Part*: The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.”

33 *Ibid*, Part I, Article 1 provides: “(1) “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction”.

34 UN, *Ocean and Law of the Sea* (2017); available at: Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (un.org) (accessed on 29 May 2022).

35 For marine biological diversity beyond areas of national jurisdiction and environmental, scientific and technological aspects, see *Reports of the Secretary General*, Docs A/60/63/Add.1, A/62/66/Add.2, A/64/66/Add.2 and A/66/70, A/60/63/Add.1, A/62/66/Add.2, A/64/66/Add.2 and A/66/70; available at: Marine biological diversity beyond areas of national jurisdiction (un.org) (accessed on 21 February 2021); see also ‘Marine Biological Diversity beyond Areas of National Jurisdiction Economic and Socio-Economic Aspects,’ *Reports of the Secretary General*; available at: Marine biological diversity beyond areas of national jurisdiction (un.org) (accessed on 29 May 2022).

36 UN, *Agreement Relating to the Implementation of Part XI of UN Convention of the Law of the Sea*, 1994, 1836 *UNTS* 3; *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, 1995, 2167 *UNTS* 88.

(WIPO).<sup>37</sup> There are also some soft international instruments for the sustainable use and conservation of marine ecosystems and biodiversity—for example, UNGA resolutions, decisions and declarations of environmental conferences, the 2030 SDGs, reports of the secretary-general.<sup>38</sup>

(ii) *The Atmosphere*

The atmosphere seems to be openly accessible and appropriated by all. It functions as a sink for carbon dioxide and other greenhouse gases (GHGs).<sup>39</sup> The oceans, forests, and other ecosystems are closely connected to the atmospheric sink. It provides services by absorbing carbon dioxide emissions; however, the sink capacity of the atmosphere has been under growing pressure. Some have viewed the atmosphere is not as a ‘commons’ but as *res nullius* or open access for all to deposit carbons or other GHGs. Hence, the atmosphere of the earth can be saved and managed by declaring it to be the common repository of humankind. In fact, climate change has already been recognized as a ‘common concern of mankind.’<sup>40</sup> This led to the adoption of two parallel regimes comprising the 1992 UN Framework Convention on Climate Change (UNFCCC) and its related instruments (the 1997 Kyoto Protocol and the 2015 Paris Agreement) as well as the 1985 Vienna Convention for the Protection of the Ozone Layer and its related instruments (the 1987 Montreal Protocol on Substances That Deplete the Ozone Layer with its amendments and adjustments).<sup>41</sup> As such, there is a strong view that the atmosphere should be regulated as a part of the global commons.<sup>42</sup> The fact that two strong regimes have sought to legally constrain the behaviour of the sovereign states, from causing atmospheric harm and the depletion of the ozone layer that harms the well-being of humans and the natural world, speaks volumes about this quest to regulate the atmosphere as a common concern and a repository of the humankind.

(iii) *Antarctica*

It has been generally regarded that “international law identifies” Antarctica as one of the ‘global commons.’<sup>43</sup> However, there are contestations by the countries that maintain territorial claims (frozen by the 1959 Antarctic Treaty) as well as by some developing countries that “reject the idea that what they regard as the common heritage of mankind should be managed by some countries to the exclusion of others”.<sup>44</sup> Notwithstanding this debate, the frozen continent is unique and precious for the future of humankind as a whole. Therefore, a concerted process has sought to ensure that sovereignty and sovereign rights cannot be claimed over it.<sup>45</sup> The 1959 Antarctic Treaty system (ATS) is an instrument that regulates state activities in this frozen continent.<sup>46</sup> It comprises the peaceful uses of Antarctica; the prohibition of military activities, weapons testing, nuclear explosion, the disposal of

37 Convention on Biological Diversity, 1992, 1760 *UNTS* 79.

38 UN, *Marine Biological Diversity of Areas beyond National Jurisdiction: Legal and Policy Framework*, Oceans and Law of the Sea; available at: [webpage\\_legal\\_and\\_policy.pdf](http://webpage_legal_and_policy.pdf) (un.org) (accessed on 29 May 2022).

39 Shinya Murase (2017), *ILC Fourth Report on the Protection of the Atmosphere*, UN Doc A/CN.4/L.894 (1 May–2 June; 3 July–4 August 2017) at 147–62; available at: [1713796](http://1713796) (un.org) (accessed on 29 May 2022).

40 UN (1988), *Protection of global climate for present and future generations of mankind*; General Assembly resolution 43/53 of 6 December 1988; available at: 43rd Session (1988-1989) - UN General Assembly - Quick Links - Research Guides at United Nations Dag Hammarskjöld Library; [NR053032.pdf](http://NR053032.pdf) (un.org) (accessed on 29 May 2022).

41 United Nations Framework Convention on Climate Change, 1992, 1771 *UNTS* 107; Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1998, 37 *ILM* 32 (1998); Paris Agreement, Decision 1/CP.21, Annex, UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016); Vienna Convention for the Protection of the Ozone Layer, 1985, 1513 *UNTS* 323; Montreal Protocol on Substances That Deplete the Ozone Layer, 1987, 1522 *UNTS* 3.

42 Ottmar Edenhofer et al (2013), *The Atmosphere as a Global Commons: Challenges for International Cooperation and Governance*; available at: [Titel\(mcc-berlin.net\)](http://Titel(mcc-berlin.net)) (accessed on 29 May 2022).

43 UN (2013), *Global Governance and Governance of the Global Commons in the Global Partnership for Development beyond 2015*, Thematic Think Piece (January 2013) at 5; available at: [24.thinkpiece\\_global\\_governance.pdf](http://24.thinkpiece_global_governance.pdf) (un.org) (accessed on 29 May 2022).

44 UN (1987), *Our Common Future*, Chapter 10: Managing the Commons; available at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> (accessed on 02 March 2021).

45 John G. Sprankling (2014), *The International Law of Property* (OUP: Oxford) at 5–18.

46 Antarctic Treaty (1959), *The Antarctic Treaty*, signed at Washington DC; 402 *UNTS* 71; available at: [volume-402-I-5778-English.pdf](http://volume-402-I-5778-English.pdf) (un.org) (accessed on 29 May 2022).

radioactive wastes; the promotion of the freedom of scientific research etc. In fact, the early 1980s saw intense debate relating to its future management under the UN.<sup>47</sup> The period also witnessed pitched battles among the sovereign countries to establish a regime for mineral exploitation.<sup>48</sup> Therefore, the challenge before sovereign states is to ensure that Antarctica is governed in the larger interest of humankind as a whole. As such, the regulatory process comprises the protection of the Antarctic environment, the maintenance of its value for scientific research, its demilitarization, and a nuclear-free zone of peace within it.<sup>49</sup>

There has been much debate on the nature of participation in the activities of Antarctica. There have been concerns about the management system dominated by rich and technologically developed countries. Many of the countries outside the ATS have recognized that states parties to the treaty need to play a ‘trusteeship’ role for the protection of the Antarctic environment.

#### (iv) *Outer Space*

Outer space is one of the four main areas of the global commons.<sup>50</sup> The regulatory process under the umbrella of the 1967 Outer Space Treaty (OTS) has sought to create appropriate mechanisms for the sustainable use of space, the protection of the environment, and the preservation of resources.<sup>51</sup> The technological development and dependency on space technology are a threat to space weather and human civilization. Now it is a challenge before the international community to ensure the peaceful use of outer space and its protection from being biologically contaminated.<sup>52</sup>

### 5. A ‘Repurposed’ UNTC with a New Mandate

It is in this context that the 2021 report of the UNSG provides significant impetus for the idea of revival and repurpose of the UNTC with a new mandate. It has come after a long hiatus when the Töpfer Task Force (1998) was tasked to elaborate further on the concept of trusteeship as part of its proposals regarding “reforming and strengthening United Nations activities in the environmental and human settlement areas”.<sup>53</sup> The Task Force, in its wisdom, thought it best not to express any definite opinion on the concept of a trusteeship and a new mandate for the TC. Instead, it chose to assign this task to an environmental forum, which was to be held at the time of UNEP’s Governing Council meeting in 1999.<sup>54</sup> As seen earlier, the TC, as one of the main organs of the UN, is understood to have fulfilled its historical mission after the last trust territory Palau chose self-government in 1993 through plebiscite, became independent in 1994 and 185th member state of the UN. Therefore, the proposed revival and repurpose of the TC, by re-writing a new mandate in Article 87 and 88 of the UN Charter, would serve the need for least cost in-house global supervisory organ for environment and the global commons.<sup>55</sup> The UN organs have often considered assigning a new responsibility to the revived TC within the framework of the overall goals of the UN:

47 Moritaka Hayashi (1986), ‘The Antarctica Question in the United Nations’ (1986) 19(2) *Cornell Intl LJ* 275.

48 ATS (1991), *The 1991 Protocol on Environmental Protection to the Antarctic Treaty*, 1991, 30 *ILM* 1455 (1991) (Madrid Protocol); Environmental Protocol | Antarctic Treaty (ats.aq). Article 7 of the Madrid Protocol explicitly prohibits “[a]ny activity relating to mineral resources, other than scientific research, shall be prohibited.” Also see, UNGA resolution on *Question of Antarctica*, 47/57 of 9 December 1992, para 9; available at: Question of Antarctica : (un.org) (accessed on 29 May 2022).

49 Murase (2017), n.39, p.147.

50 Harlan Cleveland (1992), “Managing Human Behavior in the Global Commons: Space, Atmosphere, Oceans, Antarctica”, 55(3) *Engineering and Science* 11; available at: 2 (8) (caltech.edu) (accessed on 29 May 2022).

51 UN (1966), *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*, Annexed to the UNGA resolution 2222 (XXI) of 19 December 1966; 1967 610 *UNTS* 205; available at: The Outer Space Treaty (unoosa.org).

52 L.A.Fisk, “Space as a Global Commons”, United Nations Office of Outer Space Affairs; available at: Fisk.UNUAE.Hish.Level.Forum.pptx (unoosa.org) (accessed on 29 May 2022).

53 UN (1998), *Note on a New Concept of Trusteeship*, UN Secretary-General; UN Doc A/52/849 (31 March 1998).

54 *Ibid*, paras 61–4, Recommendation 24.

55 For details see, generally, Desai (2021), n.3; Desai (2014), n.17; Desai (2000), n.3.



“Recalling the recommendation of the President of the General Assembly at its forty-fifth session that the role of the Trusteeship Council should be further enhanced through the additional role of holding in trust for humanity its common heritage and common concerns in the interest of future generations . . . Noting the report of the Commission on Global Governance, ‘Our Global Neighbourhood,’ in which it was recommended that the Trusteeship Council be given a new mandate over the global commons in the context of concern for the security of the planet”.<sup>56</sup>

Thus, in view of the global environmental challenges, the revived and repurposed TC need to be entrusted with the task of the overall supervision of global environmental protection as well as global commons areas. Since the member states of the UN decided to retain the TC, the UNSG had proposed in his 1997 report (A/51/950) that:

“It be reconstituted as the forum through which Member States exercise their *collective trusteeship for the integrity of the global environment and common areas* such as the oceans, atmosphere and outer space. At the same time, it needs to serve to link the United Nations and civil society in addressing these areas of global concern, which require the active contribution of public, private and voluntary sectors”.<sup>57</sup>

In a subsequent note to the UNGA, the secretary-general stated that the reconstituted TC could exercise such a collective trusteeship for the integrity of the global environment and common areas (such as oceans, atmosphere, Antarctica and outer space). Elaborating on the rationale, he stated:

While a number of intergovernmental bodies and legal instruments have been put in place, especially following the United Nations Conference on Environment and Development, to address sustainable development and various aspects of the global environment and common areas, *there is no high-level deliberative forum that could take a comprehensive, strategic and long-term view of global trends and provide policy guidance* in those areas to the world community. A new high-level council with a well-defined mandate, that does not create overlaps or conflicts with existing intergovernmental bodies, could serve this purpose (emphasis added).<sup>58</sup>

The secretary-general’s suggestion was construed to be part of the mandate assigned to the 1998 Töpfer task force. It was expected that the task force would examine the concept of trusteeship in detail and come out with proposals relating to the role, if any, that the TC could assume in the future. Ironically, the task force skirted the issue,<sup>59</sup> resorting to another note of the secretary-general, which proposed convening the Millennium Assembly to consider institutional arrangements within the UN system for dealing with environmental challenges of the next century.<sup>60</sup>

The original idea of trusteeship comprised entrusting the administration of some territories until the time they attain self-government or independence. The concept now being mooted, however, has a different connotation in the new context and new challenge of the global commons and the environment, which places them in trust and assigns the task of high-level deliberations to the TC. The areas that qualify for this purpose include oceans (ABNJ), atmosphere, Antarctica and outer space.

These areas could be placed under the tutelage of the revived TC as a supervisory organ of the UN, which, in turn, would need to be in consonance with the different international regulatory frameworks already in place

56 UN (1995), *Review of the Role of the Trusteeship Council*, Report of the Sixth Committee, UN Doc A/50/646 of 1 December 1995. Also see UN (1995), *Press Release GA/9008*, 21 November 2005; TRUSTEESHIP COUNCIL PROPOSALS RANGE FROM DISBANDMENT TO NEW MANDATE, AS GENERAL ASSEMBLY DEBATES COUNCIL’S FUTURE | Meetings Coverage and Press Releases.

57 UN (1997), *Renewing the United Nations: A Program for Reform*, the General Assembly resolution 52/12 of 14 November 1997; Refworld | *Renewing the United Nations : a programme for reform : resolution / adopted by the General Assembly*; UN (1997), *Report of the Secretary-General*; UN Doc. A/51/950 of 14 July 1997 at 27, para 85 (emphasis added); available at: A/51/950 (undocs.org); N9718979.pdf (un.org) (accessed on 29 May 2022).

58 UN (1998), *A New Concept of Trusteeship*, UN Doc A/52/849 (31 March 1998).

59 UN (1998), *Report of the Secretary-General Environment and Human Settlements*, n.13 at 24–5, Annex, para 64 and Recommendation 24.

60 UN Secretary-General, *A Millennium Assembly, the United Nations system (Special Commission) and a Millennium Forum*, UN Doc A/52/850 (31 March 1998) at 1–3.

for that purpose. This arrangement need not necessarily be in conflict with the need to holistically nurture these global commons in trust in the twenty-first century. Another potential candidate could be Antarctica, which is subject to the 1959 Antarctica Treaty, under which all claims of sovereignty by claimant states have been frozen.<sup>61</sup> Each area of the global commons has its special characteristics and problems that could be looked after by the TC as a high-level supervisory body within the UN system. Any such arrangement shall have to be done through an appropriate ‘relationship agreement’ with the TC, which will need to work in tandem with the State parties to the respective regulatory frameworks for each of the global commons areas that might be placed under the supervision of the TC.

In a futuristic scenario, wherein consensus emerges among the states to revive and repurpose the TC with a new mandate, it will necessitate an amendment under Article 108 of the UN. Any possibility of amendment of the UN Charter, generally, has been thought to be a difficult task that has been rarely done since the UN came into being.<sup>62</sup> This is especially so in view of the requirement for an amendment by two-thirds of the members of the UNGA and concurrence of all five permanent members of the UNSC for any amendment to the UN Charter.<sup>63</sup> However, despite much effort in the past, no General Conference of the UN members has materialized for the purpose of reviewing (under Article 109) the UN Charter. A review conference can be convened—at least theoretically—by a two-thirds vote of the UNGA and a vote of any nine members of the UNSC. However, any alteration of the Charter proposed at a review conference cannot take effect without the consent of all five permanent members of the UNSC.

In the light of the experience since the advent of the UN, any proposal for amendment of the UN Charter will generally be treated cautiously. There has been much effort to push for the expansion of the UNSC’s membership or even to review the veto power itself. That has not yet materialized. It is feared, especially by the veto-wielding powers, that it would open up a Pandora’s box. Many member states do feel strongly that the UNSC is not representative and the UN Charter does not reflect the realities of the twenty-first century world. Hence, they want restructuring of the UN to make it more democratic, representative, accountable, and reflective of the aspirations of the ‘peoples’ in whose name the Charter was adopted. However, the odds are heavily in favour of a *status quo*. If there is a consensus on the utility of the TC in this new context, an appropriate mandate needs to be worked out to provide it with a meaningful role within the UN. Can the TC be revived and repurposed with a new mandate like the proverbial Sphinx?

In view of this possibility, the package for revival of the TC needs to comprise an amendment of Chapter XIII of the UN Charter, especially its composition (Article 86) and its function and powers (Articles 87 and 88). In terms of composition, the TC could be a small body whose membership may be limited (ranging from 15 members, at the minimum, to 54, at the maximum). The UNGA would elect members for a period of three years, with one-third of the members retiring every three years. The allocation of seats would be on the basis of an equitable geographical distribution. Unlike the earlier incarnation of the TC, there would not be any trust areas assigned to it. As such, no distinction would be drawn between members administering trust territories and those not administering trust territories. No member of the revived TC would be assigned any special role or conferred with any veto or special or privileged voting rights. The function of the TC would be democratic on the basis of the one-state–one-vote principle (same as the UNGA).

61 Antarctica Treaty (1959), n.46 Article IV.

62 The UN Charter has been amended five times: (1) ‘1965: a. Articles 23 was amended to enlarge the Security Council from 11 to 15 members; 1965, b. Article 27 was amended to increase the required number of Security Council votes from 7 to 9; c. Article 61 was amended to enlarge the Economic and Social Council from 18 to 27 members’; (2) ‘1968: Article 109 was amended to change the requirements for a General Conference of Member States for reviewing the Charter’; and (3) ‘1973: Article 61 was amended again to further enlarge the Economic and Social Council from 27 to 54 members’; see *Introductory Note to the UN Charter*; available at: United Nations Charter (full text) | United Nations; uncharter.pdf (accessed on 29 May 2022).

63 UN Charter, Article 108 is applicable for normal amendment procedure. Though, in a very rare consensus among veto powers, both memberships of the Security Council (non-permanent) as well as of the Economic and Social Council (from 18 to 27 to 54) have come to be expanded. The voting procedure (Article 27) in the Security Council has also been amended to provide for an affirmative vote of any nine members on procedural matters and on all other matters (non-procedural or substantive) an affirmative vote of nine members including the concurrent votes of five permanent members. Only on three occasions were respective amendments to the Charter adopted by the UNGA and were ratified, as required by Article 108; this covered the expansion of the Security Council and the Economic and Social Council and the review of the UN Charter. These amendments took place as Articles 23, 27, and 61 on 17 December 1963 (which came into force on 31 August 1965), Article 61 on 20 December 1971 (which came into force on 24 September 1973), and Article 109(1) on 20 December 1965 (which came into force on 12 June 1968).

If retained in its present form, UNEP (now called UN Environment), or its possible future upgrade into a UN ‘specialized agency’ that may be called UN Environment Protection Organization (UNEPO),<sup>64</sup> would have to work out a special ‘relationship agreement’ with ECOSOC. If this were to happen, UNEPO, as a ‘specialized agency,’ would report directly to the TC and, through it, to the UNGA. The TC would of course be able to avail assistance of ECOSOC and the specialized agencies in regard to matters with which they are respectively concerned (Article 91).

Thus, the new mandate for the repurposed TC could be designed as follows:

**Article 87:** The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. examine progress in reversing global environmental deterioration in consultation with the UN Environment or (its future upgrade into a UN specialized agency) United Nations Environment Protection Organization (UNEPO; or known by any other nomenclature);
- b. consider reports submitted by the UN Environment or UNEPO as well as relevant multilateral environmental agreements (preferably climate change, biological diversity, desertification, which have universal membership and were crystallized through the UNGA mandated law-making processes) duly sanctioned by their respective Conferences of Parties on the basis of relationship agreements with the Trusteeship Council;
- c. review the status of each of the designated global commons keeping in view the overall interest of all the inhabitants of the planet earth, in consultation with decision-making organs of their respective regulatory regimes through relationship agreements and provide a mandate for further law-making processes as deemed most appropriate;
- d. adopt appropriate decisions and other actions, as deemed proper, from time to time, consistent with the respective international agreements, arrangements and mechanisms.<sup>65</sup>

**Article 88:** The Trusteeship Council shall prepare the form and modalities for submission of periodic reports by each of the regulatory regime of multilateral environment agreement as well as the global commons areas placed under its supervision. The decision-making organs of the respective regimes shall provide an annual report to the Trusteeship Council and, through it, to the General Assembly.

Through the abovementioned mandate, the TC, shall reflect a genuine trusteeship, with a responsibility of the planetary ‘trust’ for the present and the future generations. Its duty will shift from territory to the rights and welfare of the ‘peoples’ (opening line of Preamble to the UN Charter). It will essentially serve as a guardian of the global ‘common concerns’ as well as of the ‘common heritage of mankind.’ Its primary mandate would remain the environment and the global commons.<sup>66</sup> It would be entrusted with the global supervisory responsibility for the earth’s natural resources and life support systems. The real beneficiaries would be future generations since the actions of the revived and repurposed TC, based upon a genuine trust for the 21<sup>st</sup> century, would be determinant of how and what they will inherit on the planet earth.<sup>67</sup>

## 6. The Future: Road Ahead

The evolution of the idea of a trust in the global domain underscores that there are places, territories, and areas that require special and careful nurturing. Hence, the practice has been to place them under the tutelage of a sovereign state or an international institution that can supervise their well-being. Therefore, in the new context, the revived and repurposed UNTC’s global supervision of environmental protection and the global commons assumes significance for those areas that hold special value for the present and future well-being of the humankind.

64 For details of the UNEPO proposal, see Desai (2000), n. 3; Desai (2006), n.19; Desai (2012), n.19 and Desai (2014), n.17.

65 Desai (2000), n.3; Desai (2012), n.19.

66 Marco de Guido and Michael Bartolo (2013) at 3.

67 Peter H Sand (2004), ‘Sovereignty Bounded: Public Trusteeship for Common Pool Resources?’ 4(1) *Global Envtl Pol* 47 at 70.

As discussed earlier, individual regulatory regimes of MEAs, placed under the supervision of the TC, would benefit from the concerted supervisory role played by the TC as the current architecture of IEG does provide for such a global body. Similarly, notwithstanding the tailor-made regulatory regimes that have been designed for the governance of areas that are generally regarded as part of the global commons, these agreements could be placed under the TC as a global supervisory body with a repurposed new mandate in Articles 87 and 88.

Interestingly, the contentions for territorial claims (for example, in case of the Antarctica; 1959 ATS), the assertion of sovereign atmospheric rights (for example, climate change under 1992 UNFCCC), the regulation of areas beyond the limits of national jurisdiction (in spite of futuristic blueprints laid down in Part XI of 1982 UNCLOS), or the renewed race for control of outer space (in spite of the existence of the 1967 Outer Space Treaty) do underscore the need for appropriate regulatory processes that will avoid the potential chaos and vandalizing of pristine areas that hold a beacon of hope for our better common environmental future on the planet earth.

Thus, individual regulatory processes such as the current UNGA mandate for the development of an international legal instrument for marine biological diversity of areas beyond national jurisdiction need not come in the way of, or conflict with, a new mandate for the revived TC. The UN will hold an Ocean Conference in Lisbon during 27 June-1 July 2022.<sup>68</sup> On the contrary, it will strengthen the need for reviving the TC to undertake the role of a robust global supervisory organ within the UN system. It could be made possible by working out appropriate 'relationship agreements' between the TC and the respective regimes for each of the MEAs that are brought under it as well as the global commons area, in a similar way to the 'relationship agreements' that exist between ECOSOC and the 16 'specialized agencies' of the UN.<sup>69</sup>

On our road to Stockholm+50 Conference (2-3 June 2022) and beyond, an evaluation of the existing international environmental institutions indicates the engagement of sovereign states in a bold and innovative institutional overhauling as part of the larger quest for the UN restructuring.<sup>70</sup> The global environmental challenges warrant institutional responses that are timely, pragmatic, and adequate to ensure the protection of the global ecological heritage and the survival of the humankind in the Anthropocene age. These UN member states will need to rise above their narrow national considerations and muster up political courage to appropriately carve out a new mandate for the repurposed TC as a supervisory authority for the environment and the global commons.

The possibility of endowing the TC with a new mandate must constitute an integral part of the ongoing exercise for restructuring of the UN as in this year (2022) it would enter 77<sup>th</sup> year of its existence. It would provide an appropriate opportunity for the revived and repurposed TC to address some of the contemporary challenges and, in turn, confer new authority and legitimacy to the UN itself. In this process, the TC with a new mandate, as a supervisory organ for some of the MEAs and for the global commons, would help in arresting the perceived trend of 'fragmentation' in international law-making as well as in the institution-building processes.

## 7. Conclusion

In spite of the scholarly audacity to seek the revival and repurpose of the TC at this critical juncture of Stockholm+50 (2022), one is alive to the need for crucial political support from the UN member states. They may be wary of such an ambitious futuristic process. In the past, states have been generally unwilling to build powerful institutions and give them stronger repurpose due to perceived fears about their national interests. The UN itself has witnessed motivated 'bashing', the squeezing of annual contributions and pressures for 'restructuring' to suit the interests of some countries or even threats for withdrawals. Notwithstanding this, sovereign states, as primary subjects of international law, continue to be the final arbiters of the strength and authority of international environmental institutions and the global commons areas.

68 UN (2022), *Save Our Ocean, Protect Our Future*; available at: 2022 UN Ocean Conference | United Nations. Also, the UNGA resolution 69/292 of 19 June 2015: *Development of an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction*; available at: United Nations Official Document (accessed on 29 May 2022).

69 For comparative picture and details of sixteen UN 'specialized agencies,' see Desai (2010 and 2013), n.19 at 143–50.

70 Bharat H. Desai (2020), "UN has been at the forefront of multilateralism", *The Tribune*, 02 October 2020; available at: <https://www.tribuneindia.com/news/comment/un-has-been-at-frontline-of-multilateralism-149629> (accessed on 29 May 2022).

In this context the call given by the Indian Prime Minister, Narendra Modi, in September 2020 address at the 75<sup>th</sup> anniversary virtual meet of the UNGA, is relevant for the comprehensive UN reforms since “we cannot fight today’s challenges with outdated structures”. In a similar vein, an explicit reference made for “trusteeship of the planet”<sup>71</sup> (at G-20 Riyadh Virtual Summit address on 21 November 2020) provides the future pathway. As a logical corollary, it paves the way for revival of the TC with a new mandate for the environment and the global commons, as the future principal instrumentality for the said trusteeship of the planet.

We need to be alive to the historic opportunity and responsibility the UN member states have to realize late Swedish Prime Minister Olof Palme 1972 vision: “Our future is common. We must share it together. We must shape it together”.<sup>72</sup> Hence the UN and its member states cannot fail the institutions that have already been established. As a logical corollary, a revived and repurposed TC with a new mandate for the environment and the global commons could strengthen the UN and vindicate one of the core purposes for which the ‘United Nations’ came together in 1945 with a solemn resolve “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”.<sup>73</sup> Now it is high time to walk-the-talk before it is too late.

71 Bharat H. Desai (2020), “Our planet needs trusteeship to meet challenges”, 02 December 2020; available at: <https://epaper.tribuneindia.com/c/56724901>

72 Anna Sundström, “Looking Through Palme’s Vision’ for the Global Environment” (Chapter 17) in Bharat H. Desai (Ed.), *Our Earth Matters: Pathways to a Better Common Environmental Future* (IOS Press: Amsterdam, 2021), pp.175-182. Also see, Swedish Delegation (1972), *Statement by Prime Minister Olof Palme in the Plenary Meeting of the United Nations Conference on the Human Environment*, Stockholm, 06 June 1972, pp.3-4; available at: [Anförande vid FN konferens \(olofpalme.org\)](http://Anförande vid FN konferens (olofpalme.org)) (accessed on 28 May 2022).

73 UN (1945), n.62.