

## Summary

### *The Breakdown of Effective Government in International Law: The Failed State*

1. If in a State effective government breaks down, respect for „internal“ self-determination of the people and care for humanitarian standards of international law determine the position of the *failed State* towards other States and the United Nations as well as the ambit of „therapeutical“ measures. Paralysis of elementary State functions, reaching as far as a possible extinction of the State as a subject of international law, constitutes a process which suspends the application of certain principles which presuppose the existence of the State and its integrity as a subject of international law.
2. Democratic legitimacy may compensate the erosion of effectivity on the part of a once established government with respect to the representation of the State. If, however, a government has entirely lost its effectivity without a concrete perspective of recovering authority, recognition by the community of States (or the United Nations) remains without effect. The manifest breakdown of effective government destroys the representative powers of diplomatic missions.
3. In the specific case of the *failed State*, the prohibition of the use of force between States does not extend to „humanitarian interventions“ if whole segments of the population are threatened by physical persecution. The conditions for such intervention, *i.e.* the permanent paralysis of elementary State functions and grave violations of human rights, must be evident. In this context, fact finding by (auxiliary) organs of the United Nations is particularly relevant. The prohibition of intervention and the right of self-determination strictly limit unilateral measures. In the case of breakdown of effective government, neighbouring States may respond to cross-border activities of armed bands with military counter-measures.
4. Wide-spread non-compliance with elementary human rights standards by physical persecution under anarchical conditions constitutes a threat to (world) peace under Article 39 of the UN-Charter and enables the Security Council to take measures under Chapter VII of the Charter. In the case of a *failed State*, the Security Council can dispense with any special reference to cross-border effects of the violation of humanitarian standards.
5. The exercise of sovereign functions based on Chapter VII of the UN Charter has a fiduciary character and must heed existing legal traditions of the State. Mandatory regulations of the Security Council may be directly addressed to individuals, thus having direct effect. Such measures do not require specific transformation under domestic law.

6. Measures taken by the United Nations aiming at re-establishing the internal order of a *failed State* must respect the principle of political non-discrimination vis-à-vis civil war parties: selective measures against individual parties of civil strife require justification in light of the legitimate aims of intervention, *i.e.* internal pacification and the re-establishment of democratic structures. Assistance provided for re-building administrative structures must aim at creating a basis for the undisturbed articulation of the people's will according to democratic tenets. The establishment of an interim government on the basis of Chapter VII of the UN Charter requires prior consultations and endeavours to reach an agreement with the most important political forces.
7. In the case of a *failed State*, „humanitarian interventions“ by regional organizations do not necessarily require an authorization by the Security Council according to Article 53 (1) of the UN Charter.
8. Measures taken by the United Nations according to Chapter VII of the UN Charter take precedence over intervention by regional organisations. Such intervention claims priority over unilateral measures of individual States.
9. Defective administrative structures which are a lasting impediment for complying with obligations of conduct and duties of protection constitute a violation of the standard of due diligence under international law. This standard refers to a minimum of functioning statehood. However, generally a total collapse of effective government amounts to necessity which precludes responsibility under international law.
10. Financial obligations (including the payment of interests) are only suspended by a breakdown of effective government amounting to necessity. In this case, the State cannot be held responsible for delays.
11. As a general rule, reprisals cannot be taken against a *failed State* in order to enforce compliance with international law. However, counter-measures may be taken to enforce liability, especially by seizing property of the State.