

Summary

The Breakdown of Effective Government: The Failed State

I. Features of Identification

- A. Today *failed States* are mainly Third World States which are characterized by the following factors of world politics: the end of the Cold War, the burdens inherited from colonialism and failed processes of modernization.
- B. Factual elements of *failed State* problems are first of all the collapse of state monopoly of power as well as the intensity and brutality of use of force within the State.
- C. Conceptual elements of *failed States* are:
 - intrastate character (geographical aspect);
 - total dissolution of order as to be distinguished from fragmentation of governmental power as a consequence of true civil war (political aspect);
 - absence of an effective negotiating partner vis-à-vis the international community (functional aspect).

A *failed State* could also be characterized by its quality as a subject of international law, on one hand, its lack of capacity to act, on the other.

II. Analysis of Main Characteristics of Legal Position

A. Tension areas between state sovereignty and self-determination

1. A *failed State* continues to exist as a State entity and to enjoy, notwithstanding its temporary lapse of effective governmental power, the protection of the ban on the use of force (sovereignty line of assessment).
2. The basic problem of the *failed State* situation is whether and to what degree an independent status for the peoples concerned can be recognized on the basis of values underlying the international legal order (self-determination line of assessment).

B. Practice of the UN Security Council

1. In its „Agenda for Peace“ the UN Secretary-General differentiated between the following instruments of action:
 - a) prevention of conflict;
 - b) peacemaking;
 - c) peace-keeping;
 - d) peace- building;

- e) peace enforcement;
 - f) sanctions.
2. The instruments of action can be systematically categorized according to:
 - a) the prerequisite of consent by the „host State“ (cases 1a-d);
 - b) the development of the peace-keeping concept: „First generation“ (esp. case 1c), „second generation“ (esp. case 1d) and „third generation“ (esp. cases a, d and c);
 - c) the extent of the mandate: development from classical peace-keeping (case 1b) to „multifunctional operations“ (esp. cases 1d and e).
 3. The Security Council reacted to *failed State* situations by:
 - a) a wide interpretation of the notion of „threat to the peace“ in the sense of Article 39 of the Charter, which now also embraces cases of grave and systematic violations of human rights and serious violations of the principle of democracy;
 - b) use of peace enforcement measures with the aim of restoring state order;
 - c) a wide interpretation of its mandate which now also embraces various humanitarian as well as political and administrative measures;
 - d) indirect measures in the intra-state sphere analogous to chapter VI of the Charter.

C. *Protection of Human Rights*

1. In „Failed States“ situations human rights law and humanitarian law overlap in a unique way.
2. General protection of human rights in *failed States* can hardly be ensured due to lack of an administrative infrastructure.
3. According to the rules of humanitarian international law, an unbiased humanitarian institution like the ICRC is authorized to offer its services directly to a party of a non-international armed conflict, but in addition, in cases of internal turmoil and tension, it can also assert and exercise its right to initiative in an informal manner.
4. Significantly, the General Assembly of the United Nations has recently developed the practice of calling upon the international community to grant humanitarian aid, calling upon the States concerned to facilitate such aid.

D. *Responsibility under international law*

1. Generally, a *failed State* is exempt from responsibility in international law.
2. According to the most recent developments of international criminal law there exists a direct criminal responsibility of the individual; in such in-

stances, criminal jurisdiction can be exercised by third States as well as by competent international tribunals.

III. Perspectives

A. Trends of developments on the international level

1. General trends in practice:

- a) A dominant feature is that the traditional concept of State has been consolidated through the responses to the *failed State* issue (centrality of the State).
- b) The Security Council has developed a new type of transitory administrative regimes.
- c) In the balancing process between human rights and democracy, on the one hand, and sovereignty rights of States, on the other, less importance is placed on sovereignty („human security“).
- d) In the practice of the United Nations, a new emphasis is laid on humanitarian actions.

2. Proposals for institutional reform:

- a) Reactivation of the Trusteeship Council through a new definition of its powers;
- b) Creation of a new „Rapid Reaction Force“ under the authority of the Security Council;
- c) Rapid acceptance, and possibly even strengthening of the draft articles submitted by the International Law Commission in the field of international criminal law.

B. Measures designed to reconstruct governmental institutions

1. Model providing for the construction of a „Leviathan“ capable to domesticate and overcome internal power wielders;
2. Model providing for self-constitution of a people within the framework of „Civil Society“;
3. Combined approaches.