

**THEORETICAL INTERPRETATION: A DESCRIPTION OF THE
DISCOURSE PATHWAYS TOWARD WEAKNESS AND DEATH
IN FAILED STATES**

DR. KARAMAN MAMAND*

ABSTRACT

Failed states create disastrous consequences and significantly trouble the international community. To alleviate the consequences of a failed state, the international community must recognize its characteristics. The term “failed states” emerged in the international vocabulary near the end of the last century. There are several factors that may contribute to a state’s failure. For example, a state’s location, historical background of and war between local factions, the condition of political and democratic progress, and governmental institutions may substantially affect a state’s permanence. To alleviate the impact of failed states, the international community has taken action. This Article studies the impact of failed states and discusses both internal and external factors. After the period of colonialism, new-born states struggled to succeed and cope with challenges. The absence of traditions of democratic background also contributed to states’

* Dr. Karaman Mamand holds a Scientiae Juridicae Doctor in International Legal System Studies and a Master of Laws in U.S. Legal System Studies earned at Golden Gate University School of Law. Dr. Mamand also holds a Master of Laws from Koya University, College of Law in the Kurdistan Region in Iraq, as well as Bachelor of Laws degree from Salahaddin University, College of Law. Dr. Mamand has taught at Koya Technical Institution in the legal administration department and served as a teaching assistance at Koya University College of Law, Department of Law. Dr. Mamand has taught law courses, performed research, and monitored student projects. Dr. Mamand has also gained valuable experience and skills working with non-governmental organizations, volunteering, and serving as managing director of various justice-based projects. He has researched and led workshops on several subjects including human rights violations.

436 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

challenges. Despite international efforts, failed states cope with domestic tensions, which has resulted in the death and displacement of millions of people.

TABLE OF CONTENTS

INTRODUCTION	436
I. INTERNAL FACTORS.....	437
<i>A. Overview of the Circumstances Behind Failed States and Scrutiny of the Situation Inside Them</i>	437
<i>B. The Internal Characteristics of Failed States' Sickness</i>	445
<i>C. Recognizing Internal Approaches for Rebuilding Failed States</i>	448
II. EXTERNAL FACTORS	451
<i>A. Dynamic Changes in the International Order that Affect Failed States</i>	451
<i>B. Understanding the Phenomenon of Failed States from an International Perspective</i>	453
CONCLUSION	455

INTRODUCTION

There is no doubt that failed states produce catastrophic outcomes and substantially burden the international community. To mitigate and prevent the harm caused by a failed state, the international community must understand its characteristics. The term “failed states” appeared in the international lexicon near the end of the last century. Today, it has gained significant attention, and there is a yearly report that ranks countries called the *Fragile States Index* (formerly the *Failed States Index*). Several factors may contribute to a state’s failure. For instance, a state’s location, historical background of conflict among domestic groups, democratic progress, and the quality of political and governmental institutions, all of which may significantly impact its stability.

A primary difference between stable and failed states is observed in the quality and efficacy of security and public service systems. Stable states differ from failed ones because stable states have strong control over their security and provide high-quality public services.

On the other hand, the bulk of failed states' budgets goes to defense spending, but with counterproductive results. Meanwhile, the process of fixing failed states is both lengthy and costly. To mitigate the risk of potential failed states, the international community has taken several approaches to help. There is a high expectation that states should provide security and services to the community. However, once a state fails to provide these basic necessities, it becomes a failure both in the eyes of its citizens and the international community.

The end of colonialism and the trend toward self-determination saw dramatic change as new kinds of states were born with no histories of self-governance or democracy. At the same time, it is crucial to pay attention to the bottom-ground approaches within any given intervention and external strategies for dealing with failed states. A country's social and cultural contexts play a substantial role in the process of applying the international legal and political agendas that foreign powers introduce to it.

This article studies the discourse pathways toward weakness and death in failed states, it contains two Chapters: the first describes internal factors, and the second discusses external factors.

I. INTERNAL FACTORS

A. *Overview of the Circumstances Behind Failed States and Scrutiny of the Situation Inside Them*

Thomas D. Grant¹ suggests considering the following four core criteria when determining whether a state should be classified as "failed:"

- (1) either no government exists or any government that does exist cannot discharge the international obligations of the state;
- (2) no single government exists that can provide basic public order throughout the state territory, or most of it;
- (3) public order in substantial parts of the territory of the state has

1. Thomas D. Grant is a Senior Research Fellow of Wolfson College, Cambridge University and a Fellow of the Lauterpacht Research Centre for International Law. His book, *Recognition of States: Law and Practice in Debate and Evolution* (1999), addresses how governments acknowledge change in the international community. He is currently working on a study of international law and the conflict in Chechnya.

438 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

broken down to the point where personal security is severely compromised and all or most forms of constructive, communal, or corporate activity are precluded by uncertainty and violence; and (4) this state of affairs results not from transitory phenomena (famine, flood, short-term political crisis) but, rather, reflects an enduring systemic problem or problems unlikely to be resolved through limited, conventional measures, such as statutory reform by municipal law makers, new financial structures backed by international lending institutions, or material relief from donor countries.²

The Fund for Peace is an independent non-profit organization dedicated to promoting peace and security in fragile and conflict-affected environments. This organization developed an analytical and assessment framework which eventually resulted in the development of the Fragile State Index (“FSI”). “The FSI combines existing quantitative datasets, qualitative research, and content analysis of tens of millions of articles and reports from print and online media sources around the world to assess the risks and vulnerabilities faced by 177 countries across 12 indicators.”³

There are five types of failed states: “the anarchic (Somalia and Liberia), the phantom (Zaire), the anaemic (Haiti and Cambodia under different circumstances), the captured (Rwanda) and the aborted (Bosnia). These categories do not remain fixed; states may straddle them at particular points in their history.”⁴

The first is the anarchic state, in which the central power has collapsed.⁵ Following collapse, warlords gain power over its territory.⁶ Rebuilding an anarchic state is extremely difficult. An

2. Thomas D. Grant, *Partition of Failed States: Impediments and Impulses*, 11 IND. J. GLOBAL LEGAL STUD. 51, 52 (2004).

3. The Fund for Peace, *Fragile and Conflict Affected States*, <https://fundforpeace.org/what-we-do/fragile-and-conflict-affected-states/> (last visited Jan. 25, 2021).

4. Jean-Germain Gros, *Towards a Taxonomy of Failed States in the New World Order: Decaying Somalia, Liberia, Rwanda and Haiti*, 17 THIRD WORLD Q. 461, 461 (2010).

5. *Id.* at 458–459.

6. *Id.* at 459.

example of efforts to rebuild an anarchic state occurred when Western countries attempted to restore peace in Somalia.⁷

The second is the phantom state. A phantom state is characterized by a lack of meaningful government in at least some region.⁸ “The difference between an anarchic state and a phantom one is that while all anarchic states are ipso facto phantom states, not all phantom states are anarchic.”⁹ For instance, Zaire, run by Mobutu Sese Seko from 1965 to 1997, is now known as the Democratic Republic of Congo (“D.R.C.”).¹⁰ A single party was governed under Mobutu’s authoritarian regime, with all powers concentrated in his hands.¹¹ Scholars have described the three decades of Mobutu’s presidential power as marked with economic manipulation, corruption, and wide-ranging human-rights violations.¹² Today, Syria is a good example of a phantom state because the government appears in some parts of the country as a defender of the elite and the ruling minority.¹³

Third, is the anemic state. An anemic state stops functioning because of an insurgency against the government. This situation can only be fixed by either overcoming the insurgency or giving its members a place of power in the government. For example, Haiti was once an anemic state.¹⁴ The militia, Tontons Macoutes of the Duvalier regime, was a repressive force that committed many human rights violations to control Haitian politics.¹⁵ However, the weakness of Haiti’s governing institutions became apparent when a conflict arose between the United States Marines and the Haitian Army, which resulted in great perish for Haiti.¹⁶

The fourth category of failed states are captured states; they have been characterized by concentrated power; however, one of the

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* See also Robert I. Rotberg, *Failed States in a World of Terror*, 81 *Foreign Affairs* 127, 128 (2002); *STATE FAILURE AND STATE WEAKNESS IN A TIME OF TERROR* 12 (Robert I. Rotberg, ed., 2003)

13. Gros, *supra* note 4, at 459.

14. *Id.* at 459.

15. *Id.*

16. *Id.* at 459–60.

440 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

vulnerable leading rivals seizes power to eliminate and destroy adversaries.¹⁷ In this situation, the fragile centralized government is not considered as the contributor of the state failure, but the main factor is the state does not represent the whole “polis,” only parts which fit the desire of the dominant elite would be included. An additional factor is the state’s failure to reach an agreement on governing rules and policies among ruling leaders.¹⁸

The fifth category of the failed states are aborted states. Some states failed *in vitro* (they are called aborted states), meaning that they experienced failure even before state formation was consolidated.¹⁹ The following states are two examples. Bosnia and Georgian Soviet Socialist Republic was one of the republics of the Soviet Union federation, and there was a quick move toward statehood deprived of assurance of minority rights. Serbia and Russia’s aggressive eagerness to challenge the shift to independence is another example.²⁰ Up until Lately, from day one of their independent existence, Angola and Mozambique fall into this category; they certainly not accomplished restrain the unrest which was created by rebellion factions and supported by foreign powers such as the United States and South Africa.²¹

Scholar, Mary Manjikian, described the relationship between failed states and “well” states as synonymous to the comparison between a sick body and a healthy or well body.²² Failing states are sick and healthier states, such as the United States, act as the healer or doctor. The failing state suffers a loss of autonomy or sovereignty to the more dominant, well state.

Since the end of the Cold War, millions of people have been killed and displaced in failed states. Failed states do not only pose a threat to the citizens they govern, they also pose existential threats to neighboring countries and global terrorism. Therefore, the

17. *Id.* at 460.

18. *Id.*

19. *Id.* at 461.

20. *Id.*

21. *Id.*

22. Mary Manjikian, *Diagnosis, Intervention, and Cure: The Illness Narrative in the Discourse of the Failed State*, 33 ALTERNATIVES: GLOBAL LOC. POL. 335, 335 (2008).

international community has a moral responsibility to prevent and save failed states.²³

Geographical, physical, historical, and political factors contribute to failed states.²⁴ In 2002, seven failed states existed: Afghanistan, Angola, Burundi, the D.R.C., Liberia, Sierra Leone, and Sudan. However, today, over seventeen countries are in high-alert categories for failure such as South Sudan, the Central African Republic, the D.R.C., Sudan, Chad, Afghanistan, Yemen, Haiti, Pakistan, Zimbabwe, Guinea, Iraq, Cote d'Ivoire, Syria, and Guinea-Bissau.²⁵ Robert Rotberg's book, *Failed States, Collapsed States, Weak States: Causes and Indicators*, emerged from a five-year project of the World Peace Foundation and Harvard University's Program on Intrastate Conflict on all aspects of state failure:²⁶ Rotberg explained, "states are much more varied in their capacity and capability than they once were." Additionally, states' populations, weath, and productivity is greater than ever before.²⁷

According to the United Nations Development Program ("UNDP") Human Development Index, Transparency International's Corruption Perception Index, and Freedom House's Freedom of the World Report, strong states can maintain control over their territories and deliver high-value of civic services to their inhabitants.²⁸ Strong states are governed by laws, which are then, independently interpreted by judges.²⁹ Strong states can maintain peace and order while offering greater security, ensuring political freedom, and encouraging economic growth.³⁰ Conversely, weak states cannot provide its citizens the channels and resources to stabilize their basic needs

23. Robert I. Rotberg, *Failed States in a World of Terror*, 81 FOREIGN AFFAIRS 127, 127-34 (2002).

24. *Id.* at 128-29.

25. HAROON A. KHAN, THE IDEA OF GOOD GOVERNANCE AND THE POLITICS OF THE GLOBAL SOUTH RULES: AN ANALYSIS OF ITS EFFECTS, 56-57 (Rutledge 2016).

26. ROBERT I. ROTBERG, *Failed States, Collapsed States, Weak States: Causes and Indicators*, in STATE FAILURE AND STATE WEAKNESS IN A TIME OF TERROR 1-2 (Robert I. Rotberg ed., Brookings Inst. Press & World Peace Foundation 2003).

27. *Id.* at 2

28. *Id.* at 4.

29. *Id.*

30. *Id.*

because they are overburdened by crime; geographical, racial, and religious tension; and corrupt economic and political systems.³¹

Following this, failed states are generally characterized by civil wars, and they tend to have a high rate of ethnic and intercommunity conflicts. However, judging a state's failure cannot be purely based on its ability to uphold respect for diversity and minority rights. Instead, a state's brutality is usually primary indicator of failure. Generally, a failed state has lost control over a majority of its territory, including international borders. Failed states tend to concentrate power in their capital cities.³² Subsequently, citizens in these states live in fear of growing instability, criminal violence, and regular attacks by rebel groups. Further, in most cases, failed states target and oppress their populations. Such was the case with the Taliban in Afghanistan, Saddam Hussein's regime in Iraq, and Bashar al-Assad's regime in Syria.³³

Due to a failed state's lack of control, it logically follows that they are incapable of providing their citizens with access to fundamental political processes. Their democratic cultures and independent judiciary systems are absent, and they have devastated infrastructures.³⁴

When a state has failed or is in the process of failing, the effective educational and health systems are privatized (with a resulting hodgepodge of shady schools and questionable medical clinics in the cities), or the public facilities become increasingly decrepit and neglected. Teachers, physicians, nurses, and orderlies are paid late or not at all, and absenteeism increases. Textbooks and medicines become scarce. X-ray machines break down and are not repaired. Reports to the relevant ministries are ignored. Citizens, especially rural parents, students, and patients slowly realize that the state has abandoned them to their own devices and to the forces of nature. Sometimes, where a failed state is effectively split, as in the Sudan, essential services may be provided to the favored half, but not to the half in rebellion and engulfed in war. Most of the time[,] the destroyed nation-state completely underperforms. Literacy rates fall, infant mortality rises, the AIDS epidemic overwhelms any

31. *Id.*

32. *Id.* at 5-6.

33. *Id.* at 6.

34. *Id.* at 5.

health infrastructure that continues to exist, life expectancies plummet, and an already poor and battered citizenry becomes even poorer and more immiserated.³⁵

Men, rather than women, are primarily to blame for a state's failure, which is most commonly a result of weak leadership decisions. This is particularly the case in Africa and the Middle East. In Zaire, Mobutu and his followers took over most of the country's resources and wealth. President Jose Eduardo dos Santos acted similarly in oil-rich Angola.³⁶ In Sierra Leone, Siad Barre reserved most power and privilege for himself and his clan.³⁷ President Robert Gabriel Mugabe forced Zimbabwe into starvation through his autocratic and extremely corrupt rule motivated by his own personal interest.³⁸ Similarly, in Afghanistan, Gulbuddin Hakmatyar and Burrhan uldin Rabani, as leaders of the Pashtuns and Tajiks, prevented the Afghan populace from participating in the country's political process, thereby facilitating Taliban to control the country.³⁹

According to the Fund for Peace and Foreign Policy Magazine Index, approximately two billion people live in misgoverned or unstable states. Most of these states, though they have not yet failed, are at great risk and display elements of failure.⁴⁰ Information from the Fund for Peace and Foreign Policy Magazine Research Index estimates over two billion people are at major risk of violence or potential violence.⁴¹ Currently, the majority of failed and weak states are located in Africa and the Middle East.⁴² Surprisingly, a large portion of these countries' budgets are assigned defense spending—even though defense costs have no correlation with a country's stability.⁴³ Iraq, Yemen, and Syria are among the world's highest military spenders and yet have some of the highest rates of conflict.⁴⁴

35. *Id.* at 7.

36. *Id.* at 23–24.

37. *Id.*

38. *Id.*

39. *Id.*

40. Pauline H. Baker, *Fixing Failing States: The New Security Agenda*, 8 WHITEHEAD J. DIPL & INT'L REL. 86 (2007).

41. *Id.* at 86.

42. *Id.* at 92.

43. *Id.*

44. *Id.*

444 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

Unfortunately, international media pays no attention to failed states until catastrophic crises occurs.⁴⁵

Corruption is another epidemic that has deeply affected failed states by creating instability, further preventing these states from dealing more effectively with crises they face:

Eight of the ten most stable countries also appeared among the ten least corrupt countries in Transparency International's perception of corruption scores. Chile, one of the most stable countries in Latin America, is recognized as among the least corrupt in the region. There have been motivations of violence in these countries such as demographic pressures (especially a youth bulge and natural disasters), economic inequality (not merely poverty), criminalization and de-legitimization of the state (most often based on corruption, coups, and rigged elections), and a legacy of vengeance-seeking group grievance (from religious and ethnic divisions).⁴⁶

The process of fixing failed states is long and costly. The two most important elements are building national institutions and eliminating factors that lead to violence. Specifically, this process requires funding, leadership, and national and international support. James Dobbins at Rand Corporation—an American think tank and California-based strategic research intuition—developed a hierarchy of nation-building that includes following functions:

- Security: peacekeeping, law enforcement, rule of law, and security-sector reform
- Humanitarian and relief efforts: refugee return and containing potential communicable diseases, large-scale famine, and other acute health concerns
- Governance: resuming public services and restoring public administration
- Economic stabilization: stabilizing currency and developing a legal and regulatory framework for resuming local and international commerce

45. *Id.* at 92.

46. *Id.* at 92.

2021] WEAKNESS AND DEATH IN FAILED STATES 445

- Democratization: building political parties, free press, civil society, and a legal and constitutional framework for elections
- Development and infrastructure: fostering economic growth, poverty reduction, and infrastructure improvements.⁴⁷

The international community helps failed nations develop by adopting different approaches for both non-self-governing and independent states.⁴⁸ For example, a postwar program known as the Marshall Plan “provided more than \$16 billion, about \$114 billion in 1992 dollars, in bilateral economic assistance to the countries of Western Europe, which were so ravaged by war as to constitute failing states.”⁴⁹ The United States also made efforts to reorganize broken political systems along democratic lines, and The World Bank began offering grants and loans for projects in developing countries.⁵⁰ Unfortunately, each of these approaches have only achieved limited success. For example, because there is a lack of efficient administration in Somalia, Iraq, Syria and Afghanistan, international and coalition funds are not being distributed as the international community desires.⁵¹ There is a strong connection between ongoing internal conflicts and international crises. Failed states have become incubators for terrorist groups and their threats extend to regional and global levels.⁵²

B. The Internal Characteristics of Failed States’ Sickness

As previously mentioned, the Foreign Policy annually publishes the FSI, which is an annual ranking of world’s most vulnerable states prepared by the Fund of Peace. In 2015, the study included 177

47. *Id.* at 94.

48. Gerald B. Helman & Steven R. Ratner, *Saving Failed States*, 89 FOREIGN POL’Y 7, 6 (1993).

49. *Id.* at 6.

50. *Id.* at 6–7.

51. *Id.* at 7.

52. Grant, *supra* note 4, at 56.

446 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

states and used twelve so-called conflict assessment indicators, which included:⁵³

(1) mounting demographic pressures, (2) massive movement of refugees or internally displaced persons, (3) legacy of vengeance-seeking group grievance or group paranoia, (4) chronic and sustained human flight), economic indicators [(5) uneven economic development along group lines, (6) sharp and/or severe economic decline)], and political/military indicators [(7) criminalization and/or delegitimization of the state, (8) progressive deterioration of public services, (9) suspension of the rule of law and widespread violation of human rights, (10) security apparatus operates as a ‘state within a state,’ (11) rise of factionalized elites, (12) intervention of other states or external political actors)] Eventually[,] the FSI is based on a composite indicator, or super indicator that is simply the sum of the 12 individual indicators for each country[,] thus leading to single values and as such a simple index, i.e., linear order of the 177 countries.⁵⁴

The FSI’s twelve indicators provide a suitable approach for identifying failed states.⁵⁵ *Foreign Policy Magazine* coined the term “failed state” after the Cold War, and since 2005, the Fund for Peace has published an annual report on failed states.⁵⁶ Similarly, the U.S. Center for Disease Control and Prevention (“CDC”) have published medical reports that evaluate the health of a wide range of countries.⁵⁷ The main purpose of these reports and definitions is to avert states from failure, often based upon the medical axiom “preventing sicknesses is easier than treatment.”⁵⁸ Just as lifestyle factors and genetic makeup play a significant role in a patient’s susceptibility to illness, so too a state’s culture, history, and performance contribute to

53. Lars Carlsen & Rainer Bruggemann, *The ‘Failed State Index’ Offers More than Just a Simple Ranking*, 115 SOC. INDIC. RES. 525, 527 (2015).

54. *Id.* at 527.

55. *Fragile States Index*, FOREIGN POL’Y, <http://foreignpolicy.com/2015/06/17/fragile-states-2015-islamic-state-ebola-ukraine-russia-ferguson> (last visited Nov. 23, 2015).

56. Manjikian, *supra* note 24, at 347.

57. *Id.* at 348.

58. *Id.*

its failure.⁵⁹ Like a patient who dies after a long fight with illness, a state's failure does not happen abruptly; instead, the state first slips slowly into turmoil.⁶⁰ Failed states—however long their decline—endanger peace and development globally.⁶¹

Failed states can either die or recover to stable conditions, and the analogy to sickness or health is apt here. First, similarities exist between the doctor-patient relationship and the non-governmental organization (“NGO”)-failed state relationships.⁶² A patient does not have complete control over their health in the sense that they must rely on the doctor to help remedy their illness.⁶³ Second, ethical arguments in medical literature state “when a patient is too incapacitated to make medical decisions for himself[,] . . . a guardian must be appointed.”⁶⁴ The argument for an NGO's intervention in a failed state is similar.⁶⁵ Third, failed states often have narrow options and, therefore, NGO's who represent the international community should take responsibility for curing their disease.

Indeed, failed states have similar characteristics regardless of their geographic locations. They have the same unhealthy indicators whether they are in Africa or the Middle East. Once a state loses control over its territory and lacks the authority to govern its citizens, intervention is the best option. Intervention not only stops the state from failing, but also prevents the virus from infecting other states.

According to the medical ethics described in the World Medical Association's *Declaration of the Rights of the Patient*, patients have self-determination in selecting their medical care, while doctors play the leading role.⁶⁶ Nevertheless, “there are two circumstances in which the patient's wishes may be essentially overridden by the medical establishment (in essence losing his autonomy): (1) when he is said to be impaired or no longer competent; and (2) when his disease presents a threat to the larger community.”⁶⁷

59. *Id.* at 349.

60. *Id.*

61. *Id.* at 344–45.

62. *Id.* at 336.

63. *Id.* at 337.

64. *Id.*

65. *Id.* at 336.

66. *Id.* at 350.

67. *Id.*

448 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51]

The international community considers a failed state to be “contagious” when it shows symptoms of failure, such as with Somalia, Afghanistan, and Iraq.⁶⁸ The Foreign Policy Institute defines unhealthy states as having “extensive corruption and criminal behavior, an inability to collect taxes or otherwise draw on citizen support, large-scale involuntary dislocation of the population, sharp economic decline, group-based inequality, institutionalized persecution or discrimination, severe demographic pressures, brain drain, and environmental decay.”⁶⁹ The international community can pronounce the failed state dead before dismembering it and dividing its components among itself.⁷⁰ The “dead body” no longer deserves the respect a living body would; it has no rights or autonomy, and it is no longer functioning.⁷¹ Correspondingly, a number of inside actors such as military groups or outside actors, such as the United Nations and other regional or international organizations, can control or occupy a failed state. If the state can manage to regain its reputation by recovering from its failure, it will rejoin the international community again.

C. Recognizing Internal Approaches for Rebuilding Failed States

A fully functioning state delivers positive political goods through viable public institutions. This “political good” includes providing security, a legal system to adjudicate disputes, communication infrastructures, and some form of welfare policies.⁷² When political good remains weak, these weaknesses may be a strong indicator of failure.⁷³ Nevertheless, the weakness of the state does not mean the state has lost complete control.⁷⁴ For instance, leaders of North Korea, Belarus, and Iraq (under Hussein’s regime) demonstrate strong control

68. *Id.* at 343.

69. *Id.* at 342.

70. *Id.* at 346.

71. *Id.*

72. ARMIN VON BOGDANDY ET AL., *State-Building, Nation-Building, and Constitutional Politics in Post-Conflict Situations: Conceptual Clarifications and an Appraisal of Different Approaches*, in 9 MAX PLANCK Y.B. OF U.N. L. 580–81 (2005).

73. *Id.* at 580–81.

74. *Id.* at 581.

over their population and territory, but they are ineffectual in providing political good.⁷⁵

State-building involves rebuilding the state's capacity to provide political good within its territory.⁷⁶ In particular, state-building must include legitimate power to govern the nation, and this source of legitimacy must come from the people.⁷⁷ Meanwhile, the concept of the nation includes state power, citizens, and a constitution. All of these elements are crucial in the "legitimizing state-building processes."⁷⁸ State failure is parallel to nation failure.⁷⁹ In this case, not only has the state failed, but the nation's major elements weaken—the historical glory is no longer appealing, and the coercive promise seems unsound to the people.⁸⁰ In this situation, the state could lean toward internal conflict.⁸¹

A great concern is that world powers impose the European–Western model of the nation–state on other nations around the world despite their dissimilar social, political, economic, and historical backgrounds.⁸² Importantly, some countries would be more sustainable with their native political formats and social structures because they are not compatible with the universal model of the nation–state.⁸³

Since September 11, 2001, the subsequent "war on terror," has been a priority of the United States.⁸⁴ Prior to being selected as Secretary of State, Condoleezza Rice set forth a foreign policy program which proposed America create an international system with shared values, strengthen democracy to fight terror, and spread freedom and democratic values worldwide.⁸⁵

South Africa, Afghanistan in post-invasion, and the Cypriot constitution are great success stories of the nation-building process,

75. *Id.*

76. *Id.* at 583–84.

77. *Id.* at 584.

78. *Id.*

79. *Id.* at 585.

80. *Id.*

81. *Id.*

82. *Id.* at 586–87.

83. *Id.*

84. *Id.* at 592.

85. *Id.*

450 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

and they are deemed to be fully democratic.⁸⁶ The political transformation in South Africa, for example, was not the consequence of a failed state. Instead, it was a direct outcome of international and national political pressure toward the end of the apartheid policy.⁸⁷ In fact, South Africa's national failure resulted from its lack of inclusiveness.⁸⁸ Later, the constitutional process occurred in an undemocratic way. The negotiations for drafting a new constitution primarily occurred between two major political forces, the white elites holding power and the anti-apartheid groups, without representation of some parts of South African society.⁸⁹

On the contrary, Afghanistan is an example of the failure of both state and nation as the result of the foreign intervention, invasion, and internal conflicts. However, Afghanistan never experienced a strong and functional government.⁹⁰ "The constitutional response to this situation was the drafting of a constitution with far reaching competencies for the President as leader of a unitary Afghanistan."⁹¹

Directing focus to Greece, U.N. Secretary, General Kofi Annan, initiated the Cypriot Constitutional Settlement in 1999 as a plan to resolve the Cyprus crisis. However, the majority of Greek Cypriots rejected the plan on April 24, 2004.⁹² The Annan proposal suggested a federation that included two entities with high levels of the internal sovereignty and autonomy.⁹³ "In this draft constitution, article 15 allocates all governmental competencies to the constituent states as long as they are not explicitly transferred to the common state by the constitution itself." These competencies are limited to the descriptions of national administration expressed in the draft constitution.⁹⁴

86. *Id.* at 601.

87. *Id.* at 604–10.

88. *Id.* at 603–604.

89. *Id.* at 604–605.

90. *Id.* at 607.

91. *Id.* at 608.

92. *Id.* at 610.

93. *Id.* at 609–10.

94. *Id.*

II. EXTERNAL FACTORS

A. *Dynamic Changes in the International Order that Affect Failed States*

Since the end of World War I, self-determination has gained ground. The main idea of self-determination is to free people from colonialism to rule themselves through a functional nation-State. However, the United Nations Development Program (“UNDP”) and other international organizations, such as the World Bank, have provided tremendous resources to help developing nations. Given this aid, failed states are challenging the notion of self-determination and the idea that post-colonial nations can be successful as independent countries.⁹⁵

High ethnic tensions arise in failed states because of their lack of a well-functioning government, strong civil society, and a stable economy.⁹⁶ Failed states are not only associated with third-world countries, but also almost all countries created after the falls of the Soviet Union and Yugoslavia.⁹⁷

Colonialism is an ideal approach for colonial powers and colonized nations. Moreover, colonial powers tended to retain their control over Africa at the end of World War II based on the belief that African nations were “not quite ready for civilization.”⁹⁸ Consequently, “in Chapter 11 of the UN Charter, colonial powers voluntarily undertook, as a sacred trust, the obligation to promote the well-being of the inhabitants of “their” territories and to assist them in developing appropriate political institutions.”⁹⁹

The idea of European supremacy and the unquestionable power of the white man’s rule validated colonialism during the colonial era. Colonial powers thought Africans were at the bottom of humanity and in urgent need of European civilization. This concept was integrated into international law by identifying Europeans as an exclusive character in the international legal system and refusing sovereignty to

95. Helman & Ratner *supra* note 50, at 3–4.

96. *Id.* at 5.

97. *Id.* at 5.

98. Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion*, 91 AM. SOC’Y INT’L L. 421, 421 (1997).

99. *Id.* at 421.

452 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

others. For this purpose, “a central idea undergirding trusteeship was to eventually endow trust territories with sovereignty by leading them to self-government or independence; of course, it was their colonial benefactors who would show them the way to civilization.”¹⁰⁰

More importantly, the trusteeship must start from the bottom, as opposed to the top-down method. This means that developing and planning should originate with native people and communities, followed by foreign assistance if there is any need for it. Natives know better how to make their communities thrive because they have been living in their territories for many generations.¹⁰¹

Territorial disputes are the predominant cause of international war.¹⁰² States with territorial disputes are in highest jeopardy of death because research shows the relationship between the two.¹⁰³ State death is “the loss of formal control over political decision making.”¹⁰⁴

Conflict over territory has been a persistent theme of state history. Such conflict has been likely whenever the borders between states are made ambiguous because of overlapping ethnic or religious enclaves, past histories of territorial control, or foreigner-established borders.¹⁰⁵ Scholars have noted that, while the two world wars were absolutely devastating to Europe, they succeeded in fostering greater communication between national populations and states.¹⁰⁶ This is one reason why contemporary European states are peaceful.¹⁰⁷ However, many states of the global South have yet to experience an equivalent reconciliation between state and nation.¹⁰⁸ Indeed, colonial and imperial border legacies have all but ensured that most states still struggle with the issue of border ambiguity, which creates conditions for territorial disputes and even state death.¹⁰⁹

100. *Id.*

101. *Id.* at 422.

102. Brandon Valeriano & John Van Benthuyssen, *When States Die: Geographic and Territorial Pathways to State Death*, 33 *THIRD WORLD Q.* 1165, 1165 (2012).

103. *Id.*

104. *Id.* at 1165–66.

105. *Id.* at 1116.

106. *Id.*

107. *Id.*

108. *Id.* at 1168–69.

109. *Id.* at 1168–69.

Territorial issues include questions of conquest, secession and irredentism. More importantly, the national interest, security, and survival are highly related to the state's ability to defend its territory. Three territorial factors, together or separately, may contribute to the end of a state. The first is the loss of legitimacy over its territory because a state is defined as legitimate power over its territory. If a state is unable to defend its territory, its legitimacy is challenged. Whenever a state loses control over part of its territory, its legitimacy is questioned. In this case, the entire domestic state system would go to ruin. The second territorial issue is conquest that leads to war. There have been several cases where war has led to state death. Lastly, rivalry among states, such as territorial and natural resources disputes, requires strong leadership and continuity. Otherwise, failed and weak states in these rivalries can hasten their demise.¹¹⁰

B. Understanding the Phenomenon of Failed States from an International Perspective

There are too many questions regarding the phenomenon of failed states in international-law literature, such as: "Are such states still international subjects or do they lose their legal personalities? How may respect for the human rights of people living in such states be ensured? What can be done about this failed state problem?"¹¹¹

Along with the term "failed state," many other terms arise. "Collapsed state," "failing State," "weak state," "fragile state," and "rogue state" have all been used to describe the consequences of deep crises within states. The term "failed state" was used for the first time by S.R. Ratner and G.B. Helman in 1993. They view a failed state as "utterly incapable of sustaining itself as a member of the international community" and "characterized those States as descending into violence and anarchy—imperiling their own citizens and threatening their neighbors through refugee flows, political instability, and random warfare."¹¹²

The bottom-up approach is a more practical and reasonable way to deal with failed states. It not only includes external solutions, but also

110. *Id.* at 1171.

111. Agnieszka Szpak, *What to Do with Failed States—A Quest for a Solution From the Inside*, 13 CHINESE J. INT'L. L. (2014).

112. *Id.* ¶ 2.

454 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

focuses on internal factors. As an example, Somalia finds it difficult to adopt the democratic system, so its fundamental structure must be considered in its state-building approach. Local participation is essential in repairing a failed state as there is no one size fits all legal system.¹¹³ It is important to consider the culture, knowledge, and customs of the people living within the local community.¹¹⁴

As has been shown, other states must stop military intervention against failed states. In effect, the international community should support failed states in the nation-state-building process by focusing on their human and national resources. What's more, the "liberal Western concept of a state is not the only one and it may not match all the conditions present in many states, including the failed ones."¹¹⁵

Ever since the end of World War II and until the end of the Cold War in 1991, the international system has been divided and run by two major global powers and ideas: (1) the United States and capitalism; and (2) the former Soviet Union and Communism. Simultaneously, there were states with severe economic hardship, social and political corruption, and violations of human rights. However, the two major powers overlooked the weaknesses of these countries, desiring to keep them under their own political and economic control. At this moment, most of these types of countries have collapsed or failed.¹¹⁶

By and large, 'failed states' may be identified as those in which public authorities are either unable or unwilling to carry out their end of what Hobbes long ago called the social contract, but which now includes more than maintaining the peace among society's many factions and interests. The degree of 'stateness' that exists in a given social formation might be assessed in terms of the following questions: is there a well-defined territory that is internationally [recognized]? Is there a polity whose social boundaries can be more-or-less delineated and which has a general sense of belonging to the country and state in question? How effective is the control exercised by whatever authority structure lays claim over the territory and polity? In other words, do public authority figures have a monopoly over the means of coercion nationally, or are there parts of the country that are off-limits? Are taxes- as opposed to

113. *Id.* ¶¶ 17–18.

114. *Id.* ¶ 17.

115. *Id.* ¶ 19.

116. Gros, *supra* note 4, at 455.

tributes paid to local lords acting in the name of the state-collected, and do they make their way into state coffers?¹¹⁷

CONCLUSION

There is an urgent need for the international community to fulfill its moral responsibility toward failed states. Despite international efforts, dozens of countries stand on the brink of failure. Moreover, failed states face internal conflicts which have resulted in the deaths and displacement of millions of people.

Failed states are among those who dedicate the highest portions of their budgets to military and security spending. Corruption is another major obstacle these nations face when taking positive steps to end a crisis. Failed states need a package deal that includes ensuring security, stability, the process of democracy, and economic growth that all require time and resources. Sometimes, these needs go beyond a country's capacity to implement such needs.

Regrettably, most international approaches to rescuing and rebuilding failed states have been unsuccessful. Like a sick person's disease, states' cultural, historical, and institutional backgrounds play a significant role in the process of a state collapse and rebirth. Thus, this comparison between a failed state and sick person suggests a doctor-patient relationship in the international stage. Strong states see themselves as doctor acting and intervene in the failed states' affairs.

By putting failed states in a sick person's position, there are two options for other nations: either help the state recovery or let it die and take advantage of its inheritance. That is why the world powers compete in regions where a state is declining. They hope to grab the biggest portion of a dead state or collapsed region.

A failing state does not only include its collapsing institutions; its failure may go beyond a its cohesive identity, and its pertinence would fall apart among members if they felt less belonging to it. The most dramatic change occurred in the world's political landscape right after the era of colonialism. These types of new-born states were not ready with nonexistent heritages of democratic culture and organized civic society. In most cases, it was difficult for nations to survive and face their problems, so failing states became frequent accidents.

117. *Id.* at 457.

456 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 51

Eventually, failed states lose their roles as active members of the international community. Meanwhile, there is a debate about the status of these states in international law and their ability to obtain a legal personality and carrying out their responsibilities.