

FOREWORD

Dr. Kreijen has asked me to write this foreword and I do so gladly because it is my view that this is not only a good book but an important book. It is, as the title indicates, about failed States – for example, Somalia, Liberia, the Democratic Republic of the Congo, Sierra Leone – and that is indeed a tragic and intractable problem. But it is not possible to tackle the question of failed States without taking a really close look at some key international law concepts, such as statehood, sovereignty, independence, recognition of states, decolonization, effectiveness, membership of the UN, and self-determination. It is not merely that these concepts of international law are inescapably relevant to the problem of State failure: it is also the fact that the study of them in the context of State failure provides a very revealing test of the meaning, the working, the adequacy and the limitations of these basic notions. It provides a sort of international lawyer's test bench. This book therefore should be studied not only by those particularly interested in failed States and what to do about them but also by anyone wanting to understand more deeply the meaning and uses of these basic concepts of international law.

The book begins, as it should do, with the facts of the 'failure' situations. The author has cast his net widely for sources. In these days of over-specialisation it is interesting to note that, for example, he relies quite heavily on writers such as Margery Perham, an acclaimed expert on the relevant period of African history. These days it is quite refreshing to read a work on international law that cites authorities other than other international lawyers.

Nevertheless the basic problem is a legal one. It is well expressed already on page 4, which summarises a main message of the book for the future development of international law and order, that 'international law as it currently stands could do with some realism'; and a little later we find this: 'The basic thesis underlying this study is that State failure, as it is presently witnessed in sub-Saharan Africa, is the result of a normative revolution that caused a sudden swing from effectiveness to legality in the laws governing statehood' (p. 7). I have no great affection for that word 'norm', but assuming that it means simply rules and legal precepts, that sentence points very precisely to the high road to failed statehood which has been so eagerly hewn and surfaced by international lawyers of the decolonization time. As the author very clearly expresses that thought later on in the sub-heading, "Compensating for a Lack of Substance by Stressing Form" (p. 238).

The learned author is concerned mainly with the actual facts and the actual law. But he does not shirk a careful examination, in his Chapter 4, of theories of international law, which certainly have some responsibility for the parlous state in which we international lawyers now find ourselves. Those who are interested in theories will find a

minute and enlightening examination of Hans Kelsen's contribution to the separation of law from the realities on the ground.

The tendency of international lawyers to prefer form to substance was mirrored in the changing theories about the law of recognition which came to be seen by some as "a mere cordial cognitive act" (p. 143 and 369), thus surrendering a powerful political tool to facile convenience. Then there was the parallel emergence of self-determination, which was no longer to be merely a useful political idea (as it was in President Wilson's 14 points) but a 'right' in international law. The theory was no doubt that there was 'a people' waiting to get its right of independence as a people. On the ground it might well be rather different: two or more groups of politically ambitious and probably ruthless individuals, determined to take power. It was, the author tells us, the Soviet Union that was the main instigator of the incorporation of the principle into the UN Charter, which was to be the decisive move for the development of self-determination from a political principle to a legal right (p. 124 and 126).

A major difficulty with self-determination as a right is that there is no dear idea of what it is that is in law to be self-determined. As Dr. Kreijen points out, the French idea of the healthy development of a colonial territory was not at all preparation for separate independence but "for *assimilation* into the metropolitan community" (p. 136). Could there be a more telling difference?

There is no great mystery about the nature of the malady of failed States; but what to do about it? The lack of an effective local government must frustrate most normal attempts to do anything, whether by other governments or by an international Agency. International law itself simply assumes that if there is a State there is an answerable government.

Dr. Kreijen fully considers a number of imaginable ways; and the weaknesses of each one. There is no clear or sufficient solution. It is one of the several basic and urgent international problems to which international law has no satisfying answer to offer. This is not surprising for international lawyers have tended to keep away from these 'black holes' in the system where the basic assumptions, and even the policies of the law have parted from reality. It is greatly to Dr. Kreijen's credit that he has in his Chapter 6 looked squarely at the possibilities and at the impossibilities. All who care about the future of international law should study it with care.

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