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Implications of being failed

- A study of Somalia as a “failed State” in the international
community

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Abstract

Somalia is by scholars viewed as the definition of a “failed State”. Somalia has been without a central and efficient government since 1991 and is still troubled by internal fighting and the lack of central control over the means of violence. In 2004, the 14th attempt to establish a government since 1991 was initiated, this interim government had no civil service or government buildings and it faced a formidable task in bringing reconciliation to a country deeply divided. Its authority was further compromised in 2006 by the rise of The Union of Islamic Courts who gained control of much of the south, including the capital.

The present international system, composed for the most part of sovereign, territorial States, is often viewed as the inevitable outcome of historical development. State as we today know it has its origin in the Treaty of Westphalia signed in 1648 following the Thirty Years War. States that are not possible to provide the duties stated in the Treaty are frequently being referred to as weak, collapsed or failed and they possess a problem for the international community as a whole.

The purpose of this paper is to examine some of the implications that being “failed” has for a State in the international community. In particular I examine Somalia and how the international community has treated Somalia as a “failed” State. I believe that the international community plays a big role in what implications being “failed” have for a State.

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1 Introduction

Somalia is viewed by scholars as the definition of a “failed State”. Somalia has been without a central and efficient government since 1991 and is still troubled by internal fighting and the lack of central control over the means of violence. In 2004, after prolonged talks in Kenya, the main warlords and politicians signed a deal to set up a new parliament, which later appointed a president, Abdullahi Yusuf.¹

This administration, the 14th attempt to establish a government since 1991, had at the time no civil service or government buildings and it faced a formidable task in bringing reconciliation to a country deeply divided. It was until recently based in Baidoa, many miles to the north of Mogadishu, and had little if no influence beyond its base. Its authority was further compromised in 2006 by the rise of The Union of Islamic Courts who gained control of much of the south, including the capital. This Islamist movement emerged out of a judicial system funded by the powerful business community to try and instill law and order and with its superior military strength it made a rapid advance, imposing Islamic law wherever it went. With the backing of Ethiopian troops, forces loyal to the TFG however defeated the Islamists at the end of 2006.² In January 2007 Islamists abandon their last stronghold, the port town of Kismayo and President Yusuf entered Mogadishu for the first time since taking office in 2004. In January 2007 the USA also carried out air strikes in southern Somalia which it said to targeted al-Qaeda personnel sheltered in the area and the Somali president further consented these attacks.³

The present international system, composed for the most part of sovereign, territorial States, is often viewed as the inevitable outcome of historical development. The State is in fact an ancient human institution, but the modern State as we today know it has its origin in the Treaty of Westphalia signed in 1648 following the Thirty Years War. The Treaty provided recognition, in law as well as in fact, of the power and the authority of sovereign and independent States. Only they could at the time be considered subjects of international law and no universal authority was recognized.⁴ The architecture of this Treaty have provided the basic premises of international relations ever since. Politically, the Treaty recognized the “sovereign state” as the basic unit of world politics and the highest authority of civil society. Militarily, it accepted war as an instrument of policy only in con-

¹ http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1072592.stm#leaders, 2007-05-21.

² Id.

³ <http://news.bbc.co.uk/1/hi/world/africa/1072611.stm>, 2007-05-21.

⁴ Thakur, 2004. From Sovereign Impunity to International Accountability: The Search for Justice in a World of States, p. 17.

flicts between sovereign states; in other words, it was acceptable for one state to fight another for its own interests, but not because of internal affair within the other country.⁵

The high level of respect for national sovereignty that followed was heightened further after the horrors of World War I and World War II, as well as other wars between nations. These events provided strong support to the idea first enshrined in the League of Nations and then the United Nations: No nation should invade the territory of another, the non-intervention principle.⁶ Vital aspect of this international architecture, however, is the premise that its component parts, the sovereign States, are capable to function in a “Westphalian” sense, i.e. that they can exercise genuine control over at least the larger part of their territory and population and act as sovereign entities in the sense of cooperating with other States, govern according to the rule of law, respect international legal obligations, prevent crime etc. States that are not possible to provide the stated duties are frequently being referred to as weak, collapsed or failed states and they possess a problem for the international community as a whole.

On a general note it can be said that a failed or collapsed State is not in control over the means of violence and therefore can not ensure peace and security for its inhabitants or control the territory. Neither can the State ensure economic growth or any reasonable distribution of social goods. These States are also often characterized by massive economic inadequacies, warlordism and violent competition for resources.⁷ Even if a State is considered to be collapsed or failed their borders and legal personality are not been called in question. Such States do furthermore not lose their membership of international organizations and, for the most parts, their diplomatic relations remain intact. Though they are unable to enter into new treaty obligations, the international law treaties they have concluded remain in force. The States concerned are in practice, however, not simply left to their fate. On the contrary, the collapse of a State anywhere in the world is seen as a matter for the international community.

Somalia has clearly in the past and as well as in the present being viewed as a failed state that is in need of the support from the international community.

1.1 Purpose

The term “failed” or “collapsed” State is somewhat of recent origin and has as such not yet been completely recognized in international law. Nevertheless, politicians and academics use it, seemingly not always in a consistent way though. Failed states are often described as conflicted, dangerous and contested by different fractions. The governing power in a failed State is not capable of controlling

⁵ Etzioni, 2004. From Empire to Community: A New Approach to International Relations, p. 137.

⁶ Id, p. 138.

⁷ Brooks, 2005. Failed States or States as Failure, p. 1160.

the different peripheral regions and is unable or unwilling to perform the basic tasks of a State in the modern world, such as protecting its citizens from human rights violations. The infrastructure in a failed state is deteriorating or already destroyed and mortal diseases like HIV enhance along with increasing rates of illiteracy and child mortality. The state is also unable to uphold the rule of law and democratic values.⁸

The purpose of this paper is to examine some of the implications that being “failed” has for a State. In doing so I naturally seek to Somalia, the most failed State in the history of the UN. In particular I wish to further examine the recent events taking place in Somalia, which include the US bombing in the south of Somalia and the Ethiopian trespassing into Somalia. With this paper I will try to illustrate that the international community by its action is in control over the implications that being “failed” will have for a State.

1.2 Method and Material

The objective of this essay is as stated above to contribute to the understanding of the implications that being failed has for a States in international law as well as show the role that the international community plays concerning failed states. This paper follows both a broad perspective and a detailed focus. The broad perspective evaluates the different criteria for Statehood and failed States in general as well as the implications for the State of concern as well as for the international community, while the detailed focus lie on Somalia. This paper is aiming to be eclectic, therefore different perspectives and different resources are being used to guide me in trying to elaborate on my thesis of this paper. Mainly I have approached the subject using interpretive method for legal research in addition to a descriptive and analytical study of the legal sources.

The used material contains mostly of traditional sources of law as well as academic commentaries and doctrine; books as well as articles from various legal reviews. In addition, non-legal books and articles have been important in the process of writing this paper. The concept of “failed” States is far more than a legal one why I have felt it to be important to include other aspects of the concept in to this paper as well. Internet has also for this paper proven to be a valuable source of information. Most international organizations have easy accessible information on there web-pages which have helped to add to my understanding of the subject as well as gain information on the topic. Furthermore the web pages of BBC and Reuters have given me a lot of up to date information on Somalia.

Choosing to analyses a concept in international law and relations that has not been fully recognized does raise some methodology problems. Therefore I have tried to examine an extensive amount of literature in order to grasp the areas

⁸ Rotberg, 2003. Nation-State Failure: A Recurring Phenomenon? pp. 2-7.

where scholars on the subject agree and for that matter disagree. Given the fact just stated it has been hard to stay completely objective throughout the thesis, but to promote intersubjectivity I have tried to explain my line of thoughts as thoroughly as possible as well as make it clear to the reader when I am expressing my opinion and when I am citing others.

1.3 Delimitations

Most research on the topic of failed states is focused on State and nation building and on how to prevent a State's failure. The concern of this paper is to investigate the concept of failed States in the context of international law and the implications that this have when a state is considered *de facto* failed and that is why state, nation building and other issues have limited room in this essay. Because of the limited extent of this thesis I have chosen to focus mainly on of the legal implications of the concept of State failure in the context of Somalia and the present events occurring there. But for the reader to get a grip of what state failure means and which questions it raises, causes of failure and State failure in the context of State definition as well as the international community will be explored in this paper as well.

1.4 Disposition

This first chapter of the paper has been focused on introducing the problem and purpose of this thesis as well as I have tried to give an introduction to the problem at hand that constitutes the base of this work. Methodological and material aspects have also in this first chapter been discussed to give a more profound understanding of the scope of the paper. The following chapters will further deepen the understanding the phenomenon of States and Statehood, the "international community" and of course the concept of "failed States" and in the end I will apply this to Somalia, where a discussion involving the different aspects presented so far in the paper will be held. Throughout the following text I will complement the empirical findings that I have made with thoughts of my own and in the final chapter of this work I will sum up as well as conclude on my findings.

2 Setting the context

2.1 Conceptualizing the International Community

The phrase “international community” is in this paper used to refer only to the community of States, and in that sense I also mainly refer to the UN as the most important forum for interaction between States in the international community, it should however be acknowledged that the international community also contains an array of other actors whose actions influence the development of the international legal system. This includes intergovernmental organizations, international (and national) nongovernmental organizations (NGOs), transnational corporations and even individuals.⁹

I use this limited definition of the international community for three reasons. First, because the concept of “failed” States is used to define only States and no other actors within the community, secondly the concept is usually used to legitimate actions taken by States towards other States and finally the concept of failed States is a concept that is strongly connected to the profound definition of States.

With that said however it is important to bear in mind that a wide array of actors participates in the formulation of international law and that various experts who have studied and written on the issue agree that the concept of an international community is wider than just States and the rationale for the existence of the international community also strongly suggests that the community comprises not only by States, but also various non-State entities.¹⁰ Therefore it might seem that it does not serve any explicit goal to restrict international community to only State actors. For the purpose of this paper I however feel it to be both a necessary as well as an unavoidable distinction to make, and this because the international community in the sense of the UN is still mainly a forum in which States interact with each other as well as resolve eventual conflicts between each other, it is also the forum where States can be held responsible for wrongful actions.

The reference to the international community is found in several international legal instruments and documents. At the treaty level, one of the most well-known examples is the 1969 Vienna Convention on the Law of Treaties, which defines *jus cogens* as “a norm accepted and recognized by the international

⁹ Byers, (e.d.), 2003. *United States Hegemony and the Foundations of International Law*, p. 27.

¹⁰ *Id.*, p. 27.

community of States as a whole as a norm from which no derogations is permitted.”¹¹ Clearly, the Convention uses the term “international community” to refer only to States. A more recent treaty, however, that incorporates the term and also expands it, is the Rome Statute of the International Criminal Court, which limits the Court’s jurisdiction to “the most serious crimes of concern to the international community as a whole.”¹² This seems to be a more comprehensive use of the term, insofar as the “international community” is not expressly limited to States.

There are also specific references to the international community in the jurisprudence of the International Court of Justice (ICJ). There is, for example, the ICJ’s famous statement in the Barcelona Traction case¹³. Where the Court refers to the international community as a whole, the ICJ has furthermore invoked this term in several other cases. The ICJ is however referring to certain legal obligation that the State has, which should indicate that even if the international community is seen as more than just States the State is still the main actor within the international community.¹⁴

Finally, it is worth noting that the term international community is sometimes used by way of distinguishing it from what it is not rather than designating what it is. This seems to be the basis on which some States have at times been referred to as “rogue States,” “pariah States,” or “States of concern,” and other entities as terrorists against which the international community is at war.¹⁵ As well as States of course has been referred to as “failed States”, which is the main concern for this thesis.

2.2 The concept of Statehood

It is generally accepted that the State is to be considered a legal concept in international law and if this is so, then legal criteria on the basis of which it would be possible to determine whether an entity is State or not must also exist. The legal criteria for Statehood are not always obvious. Often, the laws are surpassed by political circumstances that instead will determine the Statehood of a nation. The international law however, provides a strong protection against disturbance that might threaten the Statehood of a once established State. Governments are presumed to be efficient, and the continuity and the identity of the state also enjoy legal protection against extinction.

One of the documents often quoted on the matter of States is the Montevideo Convention from 1933, which also has the status of international custom

¹¹ Article 53 Vienna Convention on the Law of Treaties 1969.

¹² See the Preamble and Article 5 of the Rome Statute of the International Criminal Court 1998.

¹³ See <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=1a&case=50&code=bt2&p3=4>, for more information on the case, 2007-05-23.

¹⁴ Byers, (e.d.), 2003. p. 29.

¹⁵ *Id.*, p. 31.

concerning Statehood.¹⁶ The first article states that, a sovereign State as a subject of international law should possess the following qualifications: a permanent population, a defined territory, government, and capacity to enter into relations with the other states.¹⁷ Although there must be a population, there seems to be no minimum requirement with respect to the size of a state's population. Furthermore, there is no rule prescribing a minimum size of the territory of the State. Monaco for example only compasses of 1, 5 square kilometers.

What matters, is not the size of the territory, but that there is an independent authority that exercises actual authority over the territory. The territory moreover does not necessarily have to have defined or agreed external boundaries. There is thus no need for the existence of frontiers which are undisputed by neighboring states.¹⁸ The criterion of an "effective government" does not imply that a state has to have a certain type of government, but rather some sort of authority which effectively exercises governmental functions and which is able to represent the state in the international context.¹⁹ The concept of State or Statehood furthermore has both an empirical and a juridical sense, i.e. entities can be States either *de facto* or *de jure* or both.

Empirically or *de facto*, an entity is a State if, as in Max Weber's influential definition, it is the organization that has a "monopoly on legitimate violence over a specific territory"²⁰ which may include the armed forces, civil service or state bureaucracy, courts, and police. Such an entity imposes its own legal order over a territory, even if it is not legally recognized as a State by other States.²¹ The first sentence of article 3, in the Montevideo Convention in fact explicitly states that "The political existence of the State is independent of recognition by the other States."²² This is known as the declarative theory of statehood. Some have questioned whether the criteria's in the Montevideo Convention are sufficient, as they allow less-recognized entities or even entirely non-recognized entities to claim full status as States.²³

While there are many different possibilities on how to understand and interpret the concept of Statehood as well as more criteria than the above mentioned exists in the debate of what a State is, and whilst it is also an area of the international law interesting to explore further, it goes beyond the scope of this paper. For the matter of this paper two additional aspects of criteria will be further explored; the criterion of recognition (which has been briefly mentioned above) as well as the efficient criterion.

¹⁶ Byers, (e.d.), 2003. p. 52.

¹⁷ Article 1 Montevideo Convention on the Rights and Duties of States, 1933.

¹⁸ Lysén, 2002. Folkrättsligt ansvar, en studie av EG/EU och dess medlemstater, p. 41, not 18, 19 and 20.

¹⁹ Id, p. 41.

²⁰ Weber, 1994. The Profession and Vocation of Politics. In Political Writings, p. 43.

²¹ Jackson and Rosberg, 1982. Why Africa's Weak States Persist: The Empirical and The Juridical in Statehood, p. 22.

²² Article 3, Montevideo Convention on the Rights and Duties of States, 1933.

²³ Lysén, 2002. p. 43.

2.2.1 Recognition as a criterion for Statehood

Recognition of States by other States as a criterion for Statehood has been explored thoroughly in the literature on international law and by no means am I by this brief introduction to the concept exploring all the possibilities and angles of the criteria and neither am I claiming to be grasping the whole concept of recognition of States as a criteria for Statehood. The criteria of recognition seem however in my opinion to be more political than juridical. The concept however, is still important for this paper though as it also contains legal implications, depending if a State is recognized or not has connotation on how States are viewed in the international community and this becomes important when further exploring the notion of “failed States”.

In the international jurisprudence the predominant position with regard to recognition is the declaratory doctrine. According to this understanding, an entity is a State when, as soon as, it meets the empirical features linked to Statehood, as listed in article 1 of the Montevideo Convention. In this case, recognition is but an affirmation of a pre-existing fact of Statehood. As such it provides evidence that a State has come into being, but it is itself not instrumental of that birth. Hence, Statehood is legitimized by the fact of its existence rather than by the act of recognition as such.²⁴ The opposition to this stand is the alternative constitutive theory of statehood, which claims that a state exists only insofar as it is recognized by other States.²⁵ This theory should not be confused with the Estrada doctrine which is the policy of recognizing States rather than governments. It is an alternative to the method of express recognition, in which an express statement is made according or withholding recognition after each unconstitutional change of government.²⁶

It is generally agreed by both the supporters of the constitutive and the declaratory theory on recognition, that premature recognition constitutes an illegal act. When an entity located within the boundaries of an established State claims Statehood, but does not satisfy the criteria for Statehood, third State recognition of the entity concerned is premature and a violation of the prohibition of non-intervention. The recognition of States therefore seemingly to some extent is to be regulated by at least the same legal rules which regulate the formation of States. Premature recognition must, however, be distinguished from that of a hurried and early one. While premature recognition as described above constitutes an illegal act because a necessary element for Statehood is lacking, a hurried or early recognition refers to a precipitate act from a political and retrospective point of view. The international community’s recognition of Bosnia-Herzegovina in early 1992 has been mentioned as an example of the latter situation.²⁷

Whatever position one take on recognition it can in my opinion not be de-

²⁴ Lysén, 2002. p. 43.

²⁵ Aalberts, 2004. *The Sovereignty game State play: (Quasi-) States in the International Order*, p. 250.

²⁶ Koskenmäki, 2004. *Legal Implications Resulting from State Failure in Light of the Case of Somalia*, p. 6.

²⁷ Raic, 2002. *Statehood and the law of Self-Determination*, pp. 82-83.

nied that recognition does in fact play a part for how well a State can perform its function in the international community and how well the State can carry out its duties within its territory.

2.2.2 Efficiency as criteria for Statehood

Unlike the national legal system, the international legal order has no central organ that is empowered to attribute and enforce rights and obligations. Therefore, factual situations are of great importance for the evaluation of legal positions. In the absence of such an attributive authority, it is the international legal system that contains rules which require the effectiveness of certain specific factual situations as a precondition for the attribution of a legal status (including Statehood) and/ or legal rights. Effectiveness operates to some extent as evidence of the ability to possess legal rights and to fulfill legal obligations as a State. It follows that effectiveness as a pre-condition for the acquisition of a legal right is required only when this right is claimed or when it has to be proved.²⁸

The principal of effectiveness is applied in many fields of the international law, and because of that it is nearly impossible to give an all-embracing version of the concept. What can be said however is that the criterion of efficiency is connected with that of recognition as well with the of Statehood, in order for a State to have the capacity to enter into relations with the other states, which is one of the criteria for Statehood, the State need both to be efficient as well as recognized by other States. If a State is not recognized by other State it is hard to enter into agreements with other States and hence it becomes hard to be efficient.

As follows by the principal of efficiency the basis in international law is that a government that has factual control, not necessarily total though, over the States territory and administration, is deemed competent to represent the State in the international community.²⁹ The question then arises whether effectiveness can, in and of itself, create rights and duties under international law.

Only a few authors have argued that rights are created as a result of the effectiveness of a factual situation. The problem with this line of thought is that it seems to confuse the character of a pre-condition with a source of law. It is not denied that effectiveness influences the acquisition of rights in international law, but it remains a legal notion that is coupled by international law to certain facts in defined situations. Effectiveness is only in fact legally relevant as far as the legal system permits it. Therefore, effectiveness as such, as a result of a factual situation does not automatically lead to the creation of rights. Effectiveness, in this sense, means the quality of a fact (here the exercise of power or territorial jurisdiction), which according to international law makes this fact suitable as a condition for the attribution of full international legal personality. The distinct

²⁸ Id, p. 51.

²⁹ Id, p. 113.

feature of the traditional criteria for statehood is that they are, in principle, all based on this meaning of effectiveness.³⁰

2.3 State Sovereignty and Equality

One of the particularities of the international legal system is that it has to constantly deal with the principle of equality, whereas domestic systems do not. This is why any substantial change in the balance between States may endanger the whole system.³¹ Sovereignty has traditionally been used as a term to denote the collection of functions exercised by a State in the international community as well as internally. Initially, it implied the supremacy enjoyed by a ruler over his subjects, that is, it was a term concerned with the powers within a State. Later it came to be used as to describe both internal powers and certain external relations of the State.³²

The French political philosopher Jean Bodin vocalized the principle of national sovereignty in his book *Les Six Livres de la Re'publique States*, in which he claimed that the State alone possessed the power to decide how it would behave in the world and how it would treat its own people within its own borders and those under its control elsewhere. Bodin described this power as absolute authority.³³ Sovereignty is in fact sometimes used to refer to the extent to which a State is free to behave as it wishes and this has two aspects to it; a political and a jurisdictional one.

Jurisdictional sovereignty has to do with the extent to which the State is under no specific or general international obligation regarding its internal behavior and decision. However, sovereignty does not really independently exist prior to State practice and international law, as its scope and meaning are constituted and regulated by diplomatic practice and international legal discourse. As such sovereignty is both the medium and the outcome of the practices of States and hence there is a political side to sovereignty as well.³⁴

Sovereignty in simple terms represents supreme power. States are by definition sovereign and sovereignty is therefore an essential characteristic of the States as well as it continue to be a part of a State as long as the State subsist. In other words, sovereignty is in reality inseparable from the State.³⁵ With this said however, sovereignty is considered a fact but it is not as such a principal in customary international law, and the principal of sovereignty is furthermore not absolute. When States accept international co-operation in the shape of e.g. inter-

³⁰ Id, p. 58.

³¹ Byers, (e.d.), 2003. p. 117.

³² Lysén, 2002. p. 45.

³³ Thakur, 2004. p. 54.

³⁴ Aalberts, 2004. p. 250

³⁵ Bankas, 2005. *The State Immunity Controversy in International Law: Private Suits Against Sovereign States in Domestic Courts*, p. 2.

national treaties, it gives up parts of its sovereignty in favor for the international community.³⁶ In other words; States are sovereign to the extent that its action is within the limits laid down by international law and sovereignty is furthermore closely connected with the principal of non-intervention.³⁷

The notion of sovereignty is an abstract perception that aims at describing the legal mechanisms but not the content of legal rights and duties, which in fact do not matter in the context of sovereignty. If one supports this conception of State sovereignty, then it is unthinkable that any change in the factual situation could affect the foundations of the international legal system, or its functioning. If we can observe a relative lack of States sovereignty, it is largely a matter of the exercise of sovereign rights by other States. Secondly, such a conclusion could be drawn only if we idealize the system as it was in the past. States were not, however, “more equally sovereign” before than they are now. There have always been infringements on other States’ sovereignty, or, more exactly, on other States’ rights.³⁸ This debates on sovereignty, center on the role of the sovereign and on the nature of supreme power, by what rights, and by whom, it should be exercised.

A sovereign State can be said to be one that is independent of control by other States. The debate whether or not equal sovereignty states exist or not goes beyond the scope of this paper. It however is fairly safe to say that sovereignty has to some extent lost its significance in the international community. The study of sovereignty as a principal of law is a static one, in that it focuses attention on the State’s status taken individually, without taking into account the ties with other countries that this State may have, States are legally supposable equal. The analysis of sovereignty taking place in this paper does not aim to describe the extent of one State’s power, but to explain why a subject of international law is legally empowered as a State.

³⁶ Bring, 2002. FN-stadgan och världspolitiken, Om folkrättens roll i en föränderlig värld, p. 40.

³⁷ Lysén, 2002. p. 48.

³⁸ Byers, (e.d.), 2003. pp. 119-120

3 Failed States

State collapse or State failure poses a number of complex and fundamental legal, and political dilemmas as it puts the State institution itself, the very basis of the international system, in doubt. Whereas State collapse or failure formerly used to be regarded as the internal business of the respective States, and part of their responsibility as sovereign entities, now the acknowledgement has risen that State failure not only bears upon the well-being of the citizens concerned, but its implications also reaches further, i.e. to neighboring states, regional security, and to the “global society” at large.³⁹ The natural reaction and respond to failing states of the international community has in the past been with humanitarian intervention and reconstruction of State institutions. However, after the failure in Somalia in the 1990s and the end of the early post-Cold War international activism, interest in collapsed and failing States was largely lost.⁴⁰ Only to be renewed again after “the 11 September”.⁴¹

3.1 Conceptualizing “Failed States”

The concept of “failed States” first emerged in the literature by Gerald Helman and Steven Ratner in an article published *Foreign Policy* from 1992.⁴² The authors however did not present a full scale definition of the concept and neither is there today a well established definition of failed States.⁴³ Helman and Ratner stated that a “failed nation-state” is “[u]tterly incapable of sustaining itself as a member of the international community” and “[d]epending on steady streams of foreign assistance”.⁴⁴

Robert I. Rotberg, an American scholar, has widen the definition by constructing a scale were States are divided into strong, weak, failed and collapsed states. Elements that are important in the distinction between weak and strong States are the level of effective delivery of the most essential public goods such as communications, health care, water supply and the ability to protect citizens from human rights violations. The governing powers in failed States can also

³⁹ Aalberts, 2004. p. 246,

⁴⁰ Koskenmäki, 2004. p. 3.

⁴¹ Report prepared by: The African Studies Centre, Leiden, The Transnational Institute, Amsterdam, The Center of Social Studies, Coimbra University, and The Peace Research Center, 2003. p. 7.

⁴² Id, p. 2, not 2.

⁴³ Id, p. 2.

⁴⁴ Helman and Ratner, 1992. Saving Failed States.

be said not to be able to fulfill the obligations it has towards its citizens in general. By public goods Rotberg refers to the claim a citizen once made on a sovereign and now makes on a State. He also argues that there exists a hierarchy of public goods in which the delivery of public security is first ranked.⁴⁵ Other prime functions of a State are the ability to uphold the rule of law and the ability to enable citizens to take part of the political process. The supply of these political goods together constitutes the elements needed in order to decide whether a State should be referred to as strong or weak.⁴⁶ While Rotberg's distinctions in my opinion are valuable, they are not generally accepted and when reading much of the literature on the topic, many do not distinguish between the concept of "failed" and "collapsed" States.

I have for the purpose of clarity in this paper chosen to view Somalia as a failed State, using Rotberg's definition as a base, with the addition of a time qualification. This because a State can be considered to be collapsed or failed in limited periods of time, that in fact will not have any further implications for the State as such. In order for a States failure to have real implications for itself and for the international community I believe that the time aspect is a vital one to consider in the debate, a too extensive interpretation of failed state would embrace a number of States that temporarily lack some of the requirements for effective or legitimate government.

3.2 Implications of being "failed"

After a total collapse of State institutions, a State has in practice no means to comply with its international obligations. This applies to all of its duties, irrespective of their origin. For instance, the enforcement of law and order in the territory is neglected, its own nationals and aliens residing in its territory are left unprotected, and its contractual obligations are not implemented. Thus, State failure, and in particular the prolonged absence of any State organs, entails an absolute impossibility to comply with the international obligations of the State, and the State has in the eyes of the international community failed.⁴⁷

Sovereignty, as we have seen, is one of the corner stones of the Westphalia system of which the international community is built on although not considered customary. Sovereignty is part of a State as long as the States exist and as we also have seen States does not stop to exist simply because it is considered to be failed. This continuity of States is one of the most important features in modern international law and even if a State's authority is interrupted, e.g. because of a civil war, the State continues to exist as a State.⁴⁸ Therefore, I below will consider

⁴⁵ Rotberg, 2003. pp. 4-5.

⁴⁶ Rotberg, (e.d.), 2004. When States Fail, Causes and Consequences, pp 4-5.

⁴⁷ Koskenmäki, 2004. p. 24

⁴⁸ Byers, (e.d.), 2003. pp. 119-120.

certain situations in where State failure is especially hindering for a State and for its co-operation in the international community and also where a State's failure becomes of interest to third States.

3.2.1 Consequences for the International Community

Much about the cause, costs and impacts of internal conflicts remains essentially domestic; however there are significant consequences for the international community that can be traced back to internal conflicts as well. Tormented governments invite outsiders to help fight back a revolt and all of a sudden the internal conflict has spread across borders. Intergovernmental and external non-governmental relief operations for example establishes there presents and internal conflicts also evoke an array of external interventions ranging from military infiltration to UN Security Council enforcement engagement authorized under chapter seven of the UN Charter.⁴⁹

Sovereignty and Statehood are as we have seen so far in this paper the cornerstones of the international system that we today have, ascending from the Westphalia system, which of where both are closely linked to the principal of non-intervention. The international system has however been eroded concerning these principals since internal affairs often in fact have consequences for other members of the as well as for fundamental principals of international law.⁵⁰

The principal of non-intervention⁵¹ is the norm in international law and relations that one State cannot interfere in the internal politics of another States.⁵² In the post-cold war era it can however be seen that new emergent norms of humanitarian intervention are superseding the norm of non-intervention. This is based upon the argument that while sovereignty gives rights to States; it also comes with a responsibility to protect its citizens. This has for example justified UN sanctioned interventions in Northern Iraq in 1991 to protect the Kurds and in Somalia in the absence of State power. This argument was also used (with strong opposition from Russia and China) to justify NATO intervention in Kosovo.⁵³ The principal as such goes beyond the scope of this paper. But since it does have significance in the context of failed States some issues concerning the principal needed to be clarified. The norm of humanitarian intervention is far from fully formed and this fairly new emergent norm appears to only justify the action of States if they want to act, and does not create a duty of States to intervene. Human rights violations alone are seemingly not enough for a humanitarian intervention to take place, but such a decision usually involve other political determining fac-

⁴⁹ Lahneman, 2004. *Military Intervention: Cases in Context for the Twenty-First Century*, p. 190.

⁵⁰ Fukuyama, 2004. *State Building, Governance and World Order in the 21st Century*, p. 92.

⁵¹ Article 2(7) UN Charter 1945.

⁵² Nowak, 2003. *Introduction to the International Human Rights Regime*, p. 33.

⁵³ Bring, 2002. p. 36 and pp. 301-304.

tors, such as assaults on neighboring countries, open support of terrorists and/or that the State in question has been identified as a failed State.⁵⁴

3.2.2 The threat

It seems that it has become a common claim that the gravest dangers to world security today no longer are military threats from rival States, but rather transnational threats emanating from the world's most poorly governed countries. Poorly performing developing countries are linked to humanitarian catastrophes; mass migration; environmental degradation; regional instability;; international crime; the production of weapons of mass destruction; and, of course, transnational terrorism.

Francis Fukuyama, Professor of International Political Economy, states that “[s]ince the end of the Cold War, weak and failing states have arguably become the single-most important problem for international order.”⁵⁵ Hence, some analysts and think-tanks, notably in the US, consider failed States primarily from a security point of view, as potential safe-havens for terrorists. As a matter of fact, the US government includes the concept in its National Security Guidelines of September 2002, considering failed States as henceforth a greater threat than States that have ambitions of conquest. Although rich States gave little systematic attention to the implications of State failure before 11 September 2001, they nevertheless gradually adopted policies that have assumed patterns over time, thus shaping the resulting process that we today are experiencing, meaning that of interventions in State sovereignty without legitimate reasons.⁵⁶

3.2.3 Representation in the international community

State failure poses fundamental limitations upon the State's ability to act in the international community. The absence of government leads inevitably to serious problems of representation that may entail the total exclusion of the State, and of its people, from international interaction.⁵⁷ The question of who represents a State that is undergoing domestic conflicts in interstate forums, such as universal and regional organizations and conferences, has great political, legal and practical importance. For instance, the government accepted to represent a State might argue that the acceptance would evidence its legitimacy. State failure poses many dilemmas with regard to representation: while in a failing State there may be several entities claiming to be entitled to represent the country, in a failed State there

⁵⁴ Nowak, 2003. p. 309.

⁵⁵ Fukuyama, 2004. p. 93.

⁵⁶ Report prepared by: The African Studies Centre, Leiden, The Transnational Institute, Amsterdam, The Center of Social Studies, Coimbra University, and The Peace Research Center, 2003. p. 7.

⁵⁷ Koskenmäki, 2004. p. 7.

is possibly no such entity at all. Since only an effective entity may be capable of fulfilling the obligations deriving from the membership, the authority that exercises effective control over the people and territory should represent a State.⁵⁸ Consequently, under international law, a certain degree of institutionalized political, administrative and executive organizational machinery which is entitled and capable of regulating the relations in the international community and of having relations with other States must exist.⁵⁹

⁵⁸ Id, p. 12.

⁵⁹ Raic, 2002. p. 413.

4 Somalia

4.1 The Failed Somalia

Under this heading I will give a brief background on the background of Somalia leading up to the current situation. I believe that it is necessary to know some of the history of Somalia in order to get a grasp of the profound disturbance taking place in today's Somalia.

Somalia was formed by a merger of two former colonial territories: British Somaliland, in the north, and its larger and more populous neighbor, Italian Somaliland in the south.⁶⁰ During the Cold war Somalia was an important strategic geographic zone. The placement of the country enabled control of the important oil fields in the Gulf region,⁶¹ and after the declaration of independency in 1960 Somalia became a loyal allied to the Soviet Union, however in 1969 Mohammed Said Barre came to power and Somalia became a deputy to the USA. Not much changed however, the financier's faces, the soldiers and their weapons origin simply shifted.⁶²

With the end of the Cold war the situation in Somalia considerably changed. The USA no longer needed the country in order to counter the influence of the Soviet Union in the region, and Somalia was more or less left to its own with no economic backing and a great quantity of weapons left in the country.⁶³

In 1991 Barre was overthrown by the United Somalia Congress, a coalition of rival clans, which soon after, was divided into two fractions led by Ali Mahdi and Mohammed Faraha Aidid. During 1991 Somalia was worn by battles for territory between armed groups, mostly divided along clan lines. By contrast, Somaliland in the north enjoyed several months of relative peace and stability following its declaration of independence, and work began, with the assistance of non-governmental aid organizations, on rebuilding the territory's infrastructure. "Somaliland", was however not recognized as an independent State by the international community, and consequently did not receive the significant financial aid that its economy required.⁶⁴

⁶⁰ Regional Surveys of the World, 1998, p. 926

⁶¹ Id, p. 926.

⁶² Bennis, 2004. En kuvad världsdemokrati, s. 172

⁶³ Id, p. 172.

⁶⁴ http://www.alertnet.org/db/crisisprofiles/SO_PEA.htm?v=at_a_glance, 2007-05-25.

On 3 December 1992, the UN Security Council adopted, unanimously, its noteworthy resolution 794, authorizing the use of “all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”.⁶⁵ Acting under Chapter VII of the UN Charter, the Council authorized the Secretary General and the participating Member States to make arrangements for the unified command and control of the military forces that would be involved in this humanitarian intervention. The respect for State sovereignty requires according to resolution 46/182 from the General Assembly that consent from the State of concern is accumulated. This was however, overthrown by the fact that no government existed at the time in Somalia.⁶⁶ The UN intervention in Somalia, UNOSOM I, also called “Operation Restore Hope” was a UN sanctioned US military operation from 9 December 1992 to 4 May 1993. In May 1993, the UN officially took over the operation, and a federalist government based on 18 autonomous regions was agreed upon by the leaders of Somalia’s various armed factions. The UN renamed the mission to UNOSOM II and the objective of this intervention was to initiate nation building in Somalia, disarm the various factions, restore law and order, help the people to set up a representative government, and restore the infrastructure.⁶⁷

Soon after the UN took over command, things started to go even more wrong though. General Aidid’s arrest was ordered and a price of twenty-five thousand dollars on his head was awarded. Aidid challenged the UN and gained public support by siding himself with a history of Somali resistance to Italian, British, and Ethiopian colonizers. The remaining American airborne units led the increasingly violent search for Aidid, bombing suspected hideouts, and killing more than a thousand civilians, Aidid was however, never captured, and the UN military profile was steadily lowered and UNOSOM II was ultimately ended in May 1994.⁶⁸

The UN mission in Somalia clearly failed; Somalia is still missing is a central and efficient government that has control over the territory and the population of Somalia and the country is still experiencing internal fighting as well as the country is in desperate need of aid and international help in order to rebuild and stabilize the country.

4.2 The Transitional Government

Since 1991 there have been 14 attempts to restore normal government in Somalia, with no real success. The latest began in 2004 when an interim government-in-exile was formed in Kenya, as Somalia was considered too dangerous as base.

⁶⁵ S/Res/794.

⁶⁶ Bring, 2002, p. 303.

⁶⁷ Regional Surveys of the World, 1998, p. 926

⁶⁸ Worldbook, 200, p. 129

From the outset, there were tensions between rival warlords, and as the interim government in 2005 moved back to Somalia, the tensions worsened. For months, major factions within the government refused to meet in Somalia because of key disagreements as where to house the government and whether to accept foreign peacekeepers.⁶⁹

From June 2006, the interim government, the Transitional Federal Government (TFG) found itself facing a new threat: the growing power of Islamist militias who took control of Mogadishu and a part of southern Somalia after a bloody three-month battle against a coalition of warlords. By late September, the Islamists controlled all the country's main ports, apart from the semi-autonomous northern enclave of Puntland and the self-declared independent enclave of Somaliland.⁷⁰

Although the Islamists signed a pact to recognize TFG President Yusuf's government in June 2006, their formation of a national council, creation of new sharia courts and movement of their militia outside Mogadishu were perceived as a challenge to the TFG's authority. In fact, the Union of Islamic Courts (UIC) power soon eclipsed that of the shaky interim government. Grouped together in an organization called the Somalia Islamic Courts Council (SICC), the Islamists initially sought to be portrayed as a moderate organization and said they simply wanted to bring order to anarchic Mogadishu. But the rise of Sheikh Hassan Dahir Aweys, a hard-line Muslim minister on the UN and US "terrorist" lists, to the top post seem to increase the fears of the international community that the SICC wanted an Islamist rule.⁷¹

4.2.1 Efficient and Recognized

As tensions between the TFG and Islamists quickly escalated, the Arab League began mediating between the two. They cautiously agreed to a unified military front in early September 2006, but it was stalled over the Islamists' demand that Ethiopia, the interim government's strongest ally, should withdraw its troops from Somali soil. Ethiopia, which is also a US ally, had deployed troops across the border in line with a promise to defend the interim government.⁷²

After the fall of the UIC in late December 2006 after intense fighting between SICC, troops loyal to the TFG and Ethiopian troops, the resemblance of order and security that the UIC had created in Mogadishu began to deteriorate. Roadblocks and checkpoints returned, together with banditry and violence, despite the efforts of the TFG to improve security in the capital.⁷³

The interim government is seemingly supported by the African Union (AU) the UN as well as by the regional grouping, the Inter-governmental Author-

⁶⁹ http://www.alertnet.org/db/crisisprofiles/SO_PEA.htm?v=at_a_glance, 2007-05-25.

⁷⁰ S/2007/204, p 5.

⁷¹ S/2006/838, p. 2.

⁷² S/PRST/2004/38.

⁷³ S/2007/115, p. 4.

ity on Development (IGAD).⁷⁴ In February 2007 the UN Security Council passed resolution 1744, which put forward the idea that there shall be a national reconciliation effort led by President Yusuf and the TFG Institutions and that the AU should send in a peacekeeping force to help with this process, with possibly a UN force to take over at a later stage.⁷⁵ Paragraph 3 of the resolution request that the Secretary General help assist the TFG institutions of Somalia with the organization of a national reconciliation congress, and, more widely, promote an ongoing all-inclusive political process, working together with the AU, the League of Arab States and the IGAD.⁷⁶ The international community is putting pressure on the TFG to promote national reconciliation involving all national stakeholders.⁷⁷

Not surprisingly the TFG is by the international community recognized as the legitimate government of Somalia. The TFG is however neither in control of Somalia nor is it exercising efficient governance over the country. As we have seen earlier in this paper efficiency and recognition however are closely linked to each other, and efficiency as a criterion for statehood is only a pre-condition for the acquisition of a legal right and it is required only when this right is claimed. The TFG is not claiming a right because this right has already been given to them by the international community.

Since the fall of the UIC some of the inter- and intra-clan rivalries that were suppressed during the UIC control over Mogadishu and parts of the country has raised again and serious clan-related fighting was reported in Bardera (Gedo region), Tayeglo (Bakool region) and elsewhere. The TFG has yet to establish effective authority or to establish law and order in Mogadishu and other main population centres.⁷⁸ Only with the help of the international community has the TFG maintained some level of security outside Mogadishu.⁷⁹

4.2.2 Representation

In order to be recognised as well be efficient as a State in the eyes of the international community there has to be communication with the international community.

The case of Somalia constitutes a unique episode in the history of the UN; the State had no representation in the organisation between the years 1992 – 2000. But Somalia remained unrepresented in the UN General Assembly not due to the rejection of credentials, but due to the absence of any government and declared entities.⁸⁰

⁷⁴ <http://news.bbc.co.uk/2/hi/africa/5092586.stm>, 2007-05-25.

⁷⁵ S/Res/1744, p. 4.

⁷⁶ Paragraf 3 S/Res/1744.

⁷⁷ S/2007/204, p. 2.

⁷⁸ S/2007/115, p. 3.

⁷⁹ Id, p. 3.

⁸⁰ Id, p. 13-14.

Since 2004 it seems that the UN is viewing the TFG as the main channel of communication with the country. The Security Council among other things in particularly urges the Somali clan leaders to create a favourable environment for the future of the TFG by making determined efforts to bring about improvements in the security situation on the ground and reiterates that those who persist on the path of confrontation and conflict will be held accountable.⁸¹ Furthermore, on the 11 May 2007, The Special Representative for Somalia, François Lonseny Fall, travelled to Mogadishu to appeal to the leaders of the TFG. Mr. Fall met with President Yusuf and Prime Minister Gedi but not with other political leaders in Somalia.⁸² The TFG also has representatives in the USA and in the UN representing Somalia.⁸³

President Yusuf and Prime Minister Gedi, also while still residing in Nairobi, undertook a number of diplomatic missions to countries of the region and in late October 2006, President Yusuf visited Ethiopia, where he held talks with the Chairman of the AU, Alpha Oumar Konaré, and requested AU to send 15,000 to 20,000 peacekeeping troops to Somalia. He also discussed European Union (EU) assistance to the TFG with Javier Solana, the EU High Representative for the Common Foreign and Security Policy, who was visiting Ethiopia. At a joint press conference with President Yusuf and the Prime Minister of Ethiopia, Meles Zenawi, stated that the new Government of Somalia needed to move to Somalia at the earliest opportunity.⁸⁴

Contradicting the above stated, is that the UN in other statements is urging both the SICC and TFG to settle there differences peacefully,⁸⁵ illustrating that the UN at least is recognising the SICC as an organisation at a higher political, level in Somalia, which as such needs to be considered as a channel for communication as well as the TFG.

The chairman of the SICC, Sharif Sheikh Ahmed, have also tried to create a channel of communication with the international community, writing to the UN, the European Union and the USA, calling for the establishment of friendly relations with the international community, based on mutual respect.⁸⁶

After the fall of the UIC the main if not the only channel of communication that the international community prefers, however seems to be the TFG, referring to the TFG in many statements and reports as the government of Somalia.⁸⁷ Hence, declaring that the TFG is the legitimate representative of Somalia, as well as declaring that the international community views the TFG as the government that has efficient control over the territory and the population of Somalia, although it in fact does not possess any of these things.

⁸¹ S/PRST/2004/38.

⁸² <http://www.un-somalia.org/>, 2007-05-25.

⁸³ <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>, 2007-05-25.

⁸⁴ S/2005/89, p. 3.

⁸⁵ S/2007/115, p. 2.

⁸⁶ <http://news.bbc.co.uk/2/hi/africa/5092586.stm>, 2007-05-25.

⁸⁷ See for example S/2007/115 and S/2005/89.

4.3 The Sovereign Somalia

In 1994 the UN declared that one of its members, Somalia, suffered from total absence of a government. This statement did not, however, effect Somalia as a State, Somalia were and is still in the international community regarded as a sovereign State and no comments on the possible loss of statehood were neither made in the declaration.⁸⁸

In several documents the UN Security Council states and reaffirm its commitment to a comprehensive and lasting settlement of the situation in Somalia, and its respect for the sovereignty, territorial integrity, political independence and unity of the country, consistent with the purposes and principles of the Charter of the UN. As well as several documents are stressing the need for the TFG Institutions in Somalia to continue working towards establishing effective national governance in Somalia. The UN is also commending the efforts of the AU and IGAD in support of the TFG Institutions and welcoming the AU's continued support for national reconciliation in Somalia.⁸⁹

Somalia is traditionally run by about 100 clans. Until now, there has been no leaning to build anything like a formal State and reacting to the recent developments in south-central Somalia, the three main political parties in "Somaliland" issued a press statement on 14 January 2007, reaffirming the independence of "Somaliland" from the TFG. Stating that "Somaliland" would oppose any claim over their sovereignty.⁹⁰ "Somaliland" and its "capital" Hargeisa are in fact doing quite well economically compared with other parts of Somalia, with trade coming in from Saudi Arabia.⁹¹ The aims of the UN, however, are to make the TFG institutions more representative, promote national reconciliation for the whole country and broaden acceptance of the TFG Charter as the framework for governance until the elections envisaged for 2009.⁹²

Clearly the UN is wanting a united State of Somalia and there seem to be no wish by the international community to recognize "Somaliland" and other fairly stabilized entities as independent States and this is even though these entities more than the State of Somalia seemingly are fulfilling the criteria for Statehood, where in fact recognition is not even a requirement.

While the situation in Somalia as it is now might be viewed as the closest the country has come to being one in years. The Secretary-General expressed his grave concern about continued reports of the involvement of foreign forces in the current conflict. He implored all involved to respect the sovereignty and territorial integrity of Somalia. He further urged all the countries of the region to do whatever they can to ensure that the parties return to the peace talks and pursue a

⁸⁸ Koskenmäki, 2004, p. 6.

⁸⁹ S/Res/1676, and S/Res/1724.

⁹⁰ Id, p. 4.

⁹¹ <http://news.bbc.co.uk/1/hi/world/africa/6653899.stm>, 2007-05-25.

⁹² S/2007/115, p. 15.

negotiated settlement of the crisis.⁹³ The AU has also called for Ethiopian forces to leave Somalia following their offensive; however the UN Security Council has failed to agree on a statement calling for the withdrawal of all foreign forces. Earlier in December 2006, the Security Council passed a unanimous resolution to provide an 8,000-strong African peacekeeping force to protect the weak government.⁹⁴ Consequently, the sovereignty of Somalia is not respected and furthermore the only reason the TFG is in some sort of control is due to the interference of foreign troops and not because it possess control of its own.

The Secretary General although concerned by the foreign involvement in Somalia has proposed an UN-sanctioned “coalition of the willing” to enforce peace and restore order in Somalia. Salim Lone, who was the spokesman for the UN mission in Iraq after the 2003 invasion and now a columnist for the *Daily Nation* in Kenya, states in an article published in the Guardian on the 18 April 2007, that he is astound about this proposal from the UN Secretary General. In the words of Lone this means that “[t]he UN would help Ethiopia and the US achieve what their own illegal military interventions have failed to accomplish: the entrenchment of a client regime that lacks any popular support. Such an operation is unlikely to succeed in any event, but it could further threaten the turbulent Horn of Africa, which is already teetering on the brink of chaos”.⁹⁵

U.S., Ethiopian and Kenyan intelligence officials accuses some Somali Islamists of providing shelter to a handful of al Qaeda members, including suspects in the 1998 bombings of the U.S. embassies in Kenya and Tanzania and a 2002 hotel bombing on the Kenyan coast. Shortly after the Islamists’ defeat, in January 2007, U.S. and Ethiopian attack planes launched a number of strikes on remote areas near the Kenyan border where the USA believed al Qaeda suspects were hiding. The U.S. Navy also beefed up a naval cordon along the Somali coast, to prevent Islamists fleeing by sea.⁹⁶

Lone further argues, that resolution 1725 adopted by the Security Council in December 2006, in which the Security Council decided to authorize IGAD and the AU to establish a protection and training mission in Somalia⁹⁷, actually is disregarding the charter itself, because it makes the Security Council the aggressor and turned a clearly peaceful situation into war. The resolution linked the SICC to international terrorism and mandated peacekeeping force, on the basis of chapter VII of the UN charter, to address the “threat to international peace and security” that Somalia posed, when every independent account, indicated that the country was experiencing its first calm period since 1991.⁹⁸

⁹³ <http://www.un-somalia.org/News/news7.asp>, 2007-05-25.

⁹⁴ <http://news.bbc.co.uk/2/hi/africa/5092586.stm>, 2007-05-25.

⁹⁵ Lone, 2007. Inside Africa’s Guantánamo, The only way the US can prop up its client regime in Somalia is through lawlessness and slaughter.

⁹⁶ S/Res/1744, p. 1.

⁹⁷ Paragraph 3 S/Res/1725.

⁹⁸ Lone, 2007.

5 Conclusion

Despite the frequent reference to the “new world order”, the international community has more or less remained traditional referred to as one of States and the international community as such has responded to the concept of “failed States” by applying an attitude of consolidation and stabilization rather than one of confrontation. The centrality of the State as the basic building block of the international order has been confirmed. Even when States have failed, their borders and legal personality have not been called in question. Such States have furthermore not lost their membership of international organizations and, for most parts; their diplomatic relations have remained intact. Though they are unable to enter into new treaty obligations, the international law treaties they have concluded remain in force.

Since Somalia appears to be the very definition of what a failed State is considered to be, Somalia is in my opinion an important country to study as well as closely monitor in the future. Obviously when looking closer at Somalia questions on how it will end and forth go pops up, and even if these questions goes beyond the scope of this paper I can't help wondering if the international community have tied itself up by backing a government without any real broad national voting public in Somalia. The TFG led by President Yusuf is backed by the international community and even if the UN is urging a dialog with the SICC it seems like the UN and the international community as whole would prefer a unified Somalia with the TFG as ruling government at least until the elections in 2009.

Every “failed or failing” State has unique problems, which means no single policy can be applied to them. The issue of bad borders, however, either as relics of colonialism or of longstanding rivals, seems to crop up frequently when researching the concept of failed States. The only semi-stability in Somalia during the years of breakdown has been “Somaliland” and smaller mini entities like Puntland and Jubaland, which, although unrecognized internationally, have been the only signs of stability in a totally failed State. For the international community to recognize these “States” as independent and sovereign would however mean that the State of Somalia would be dissolved. I might be going out on a limb here, but I believe that the international community is not willing to do so because too much is invested in Somalia, and even though the UN clearly failed in 1992 it is not about to fail again. Somalia needs to be secured as a state in order for the UN to regain some of its trust in the area and dissolving Somalia into smaller States would defeat this purpose.

According to customary international law recognition on its own is not a criterion for Statehood, which would mean that e.g. Somaliland in fact is a State, however as we have seen it is almost impossible for a non-recognized State to per-

form its tasks as a State if not recognized by the international community and hence recognition in fact becomes a criterion for Statehood.

The international community is in my opinion, by clearly appointing the TFG as the main channel for communication putting aside the well international established criteria for Statehoods. By no means can the TFG be said to be in efficient control over the territory or the population of Somalia and nor is it in control over the means of violence in the country. The TFG is however recognized and furthermore considered to be the legitimate representative of Somalia by the international community. Which then would suggest that the recognition is not only a criterion of Statehood it actually prevails other well established criteria for Statehood.

The fear of “terrorism” in Somalia seems to be one of the main reasons behind the backing of the TFG as the representative of Somalia. In the international community, no matter what grievances and internal conflicts a nation may have aggressive warfare is an illegal means for settling those grievances according to the non-intervention principal which we know is a well-established principal in international law. The US-UN backed Ethiopian invasion of Somalia to prevent the SICC from expanding its influence all over Somalia should in my opinion, agreeing with Siam Lone, is to be regarded as an act of aggression, a violation of the UN Charter and an infringement of international law. The SICC never imposed a threat to international peace and security, rather in the aftermath of the quick victory declared by Ethiopia over the UIC, continuing unrest and attacks has occurred and escalated in Somalia.

The UN Security Council did nothing, as Ethiopia invaded, and as the U.S. bombed Somalia and instead it is now working to legitimize Ethiopia’s US-backed invasion and occupation of Somalia. In my opinion and it also follows by the principal of efficiency, that the basis in international law is that a government that has factual control, not necessarily total though, over the States territory and administration, is deemed competent to represent the State in the international community. The TFG was not in control over the territory of Somalia when it consented to the U.S. bombings and neither was it in control when Ethiopia assaulted the territory of Somalia. Rather the TFG came in to control due to the bombings and the invasion of USA and Ethiopia.

In the case of Somalia as a “failed” State, the international community has been and is reluctant to view Somalia as something else than a State which have had sever implications for Somalia as an actor in the international community. The sovereignty of Somalia has clearly been violated and trespasses in to Somalia have definitely been made and this is due to the fact that Somalia is being viewed as State with the responsibilities and rights of a State. Clearly, it is problematical for a “failed” State to function as a State in the eyes of the international community, therefore the international community when dealing with “failed” States should withdrawn from treating the territory as a State with the legal implications that that may have. Instead the international community should, in my opinion, operate on a case by case basis and making sure that all voices in the “failed” State is heard and represented in the international community, so that legitimate

representation of the State or the different States the original State may contain can be achieved.

The current situation in Somalia may represent the best opportunity that Somalia has had in years to find a long-term solution to its extended conflicts by putting in place a functioning and effective State under the framework of the TFG Charter with the help of the international community. At the same time though, the risks of renewed and prolonged insecurity will increase unless the TFG is able to rapidly fuse its authority and ensure stability and the rule of law as well as promote dialogue with all of the political leaders in Somalia. Even if I might disagree with reasons why the international community is present in Somalia, it is important however that they do not withdraw too quickly and that the international community sees its actions through.

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