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# A Principled Approach to State Failure, International Community Actions in Emergency Situations

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# A Principled Approach to State Failure

International Community Actions in  
Emergency Situations

By  
Chiara Giorgetti

*With a Foreword by*  
Professors Michael Reisman and Lea Brilmayer



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# Foreword

States, organized and territorially-based political communities, are the essential building blocks of the international political system. Their governments play a major role in creating international law and are also its primary agents of implementation, both within their internal domains and in external arenas. As international law has become more ambitious in scope, the burdens on states with respect to implementation have increased. The duty to assure to their own peoples the minimum conditions of life prescribed by international law have become more onerous, as have those peoples' demands and expectations. Indeed, without effective states, the most ambitious programs of human rights, environmental protection, and the maintenance of public health will fail to be achieved. The frequently lamented failures of international law are, in fact, failures of states.

In the latter part of the twentieth century, as the responsibilities of states were increasing, the international legal system began to confront, in acute form, the phenomenon of failing and feckless states: territorial entities that could not provide the basic welfare requirements of their populations nor fulfill their basic obligations to other states. The latter dimension of the problem is of more recent prominence and is also theoretically more challenging. The term "failed states" became a new focus of concern, not simply because of the impacts on the failed state's own population, but also because of the impacts of internal failure on other states. With the rise of terrorism and international organized crime and, most recently, entrepreneurial piracy, it has become apparent that the failed state presents a clear and present danger to the international legal system.

Dealing with this widely acknowledged problem has proved difficult. At the theoretical level, the major institutions of international law are wary of authorizing interventions in the internal affairs of other states for any reason. Although there are circumstances in which such interventions appear to be required by other peremptory international policies, there is always a parallel fear that any acknowledgement of a right (let alone, as has more recently been argued, a duty) to intervene will lead to abuses. The net effect, it is feared, will be increasingly powerful limits on the autonomy of states; and autonomy is a value which is highly prized by the vast majority of state elites.

Yet the mandate to do something in the face of state failure is intuitively undeniable. When states fail, people die – innocent people, typically, and sometimes in very large numbers. It is also undeniable that international law has part of the responsibility for creating the problem. States are, to a large degree, creatures of international law. They are “recognized” as states in accordance with a body of international legal doctrine and practice, and it is this recognition that appears to entitle them to the very autonomy from outside intervention that proves to be so problematic when they fail.

“Yes, yes, I know it will work in practice,” a denizen of the Ivory Tower is supposed to have lamented, “but will it work in theory?” International law often muddles through with practical solutions but failed states have presented the opposite problem. Repairing state failure in practice has proved at least as challenging as addressing it in theory; indeed, in interventions designed to remedy state failure, the cure can be considerably worse than the disease. It has proved difficult to repair failed states and, for that matter, even to provide the minimum services which the populations of such states require. Chiara Giorgetti’s book is, thus, timely and important. In addition to her profound legal analysis of the theoretical legal problems presented by failed states, Dr. Giorgetti brings a unique practical perspective. She has worked as an international lawyer in a failed state on behalf of an international organization and thus, more than anyone else, is sensitive in her analyses, not only to the theoretical issues but to the gritty problems of implementing international policy for this challenging problem.

Dr. Giorgetti’s insights into the conundrum of failed statehood are penetrating. One example has been alluded to above; it is that international law is responsible for recognizing or creating states in accordance with criteria that it establishes, but makes no analogous provision for taking statehood away. A simple failure to continue to satisfy the criteria for statehood (e.g. a state’s loss of control over most of its territory) does not automatically deprive the state in question of its statehood. Indeed, there is no clear body of rules or practices for divesting states of recognition, once they have acquired it. This is only one of the problems that Dr. Giorgetti confronts. But it is at the center of the dispute over failed states.

As professors who supervised much of the research that went into this book and for which Dr. Giorgetti was awarded a doctoral degree from the Yale Law School, we are proud to write this introduction. The questions that she deals with are fresh, important, and theoretically challenging. That Somalia (the country of her primary area of practical expertise) has so frequently figured in the news in recent months has much to do with its status as a failed state and thus attests to the prescience of her choice of topic. Her extended discussion of topics such as air space safety, suppression of piracy, transboundary public health, business affairs and diplomatic protection give

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concrete meaning to the abstract concept of a “failed state” and underscore its importance both to the academy and to the people living in, or affected by conditions in, their failed neighbors. This book thus marks an important addition to the international legal discussion about failed states. This is a discussion that needs to be had, for theoretical reasons and for improvement of the human condition.

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