Chapter One

The Appearance and Features of the Absence of Effective Government

Public international law, political science, and sociology use different criteria to describe the appearance and features of the absence of effective government.¹ Robert Rotberg, a political scientist, describes the phenomenon as the inability of a state to bring positive political goods to its inhabitants. William L. Zartman, a social scientist, characterises the phenomenon as the disintegration of state structure, authority (legitimate power), law, and political order.² Some definitions are interdisciplinary. A political-sociological analysis by Ingo Liebach ascribes five characteristics to the absence of effective government: collapse of the state order, armed internal conflicts, substantial violations of human rights and humanitarian crises, an endogenous character, and social fragmentation.³

Different descriptions of the phenomenon also are found within disciplines. In public international law, for example, Jürgen Bartl identifies three criteria: the lapse of effective government, the increased use of privatised force, and an endogenous character.⁴ Ingo Liebach, who uses Georg Jellinek’s definition of the state as a basis for analysing the phenomenon from the perspective of public international law, considers the collapse of effective government to be the most important element.⁵ Vis à vis Liebach, Robin Geiß pinpoints the dissolution of

³ Ingo Liebach, Die unilaterale humanitäre Intervention im “zerfallenen Staate” (Cologne: Carl Heymanns Verlag, 2004), 25.
⁴ Jürgen Bartl, Die Humanitäre Intervention durch den Sicherheitsrat der Vereinten Nationen im Failed State, Das Beispiel Somalia (Frankfurt: Peter Lang Verlagsgruppe, 1999), 74.
⁵ Liebach, Die unilaterale humanitäre Intervention, 40.
effective government and the absence of law and order,\(^6\) manifested in armed conflicts, displaced persons, devastation of internal infrastructure, and extreme human suffering.\(^7\)

**The State in Public International Law**

Given this diversity of opinion about the features of the absence of effective government, it may be useful to start by defining the state in public international law. The definitions of Jellinek and Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States are generally accepted as the legal criteria for the definition of statehood.\(^8\) According to Jellinek’s ‘doctrine of the three elements’ (*Drei Elemente Lehre*), a state is established as a social association through the three constitutive elements of defined territory, permanent population, and government.\(^9\) Article 1 of the Montevideo Convention adds to Jellinek’s doctrine the capacity to enter into relations with other countries:

> The state as a person of international law should possess the following qualifications: a) a permanent population, b) a defined territory, c) government, and d) capacity to enter into relations with other states.\(^10\)

Some authors have interpreted the fourth element, ‘capacity to enter into relations with other states’, as independence.\(^11\) However, whether this element is a constitutive element of the state is subject to dispute.\(^12\) This capacity could be accepted either as a requirement of the government or as a requirement of independence, or even both. John Dugard considers it a consequence of inde-

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\(^6\) Robin Geiß, “Failed States”. Die normative Erfassung gescheiterter Staaten (Berlin, Duncker & Humblot, 2005), 58.

\(^7\) Ibid., 43.


