Human Rights Brief

Volume 18 | Issue 3 Article 13

2011

Book Review

Federico G. Barillas Schwank
American University Washington College of Law

Anna Maitland
American University Washington College of Law

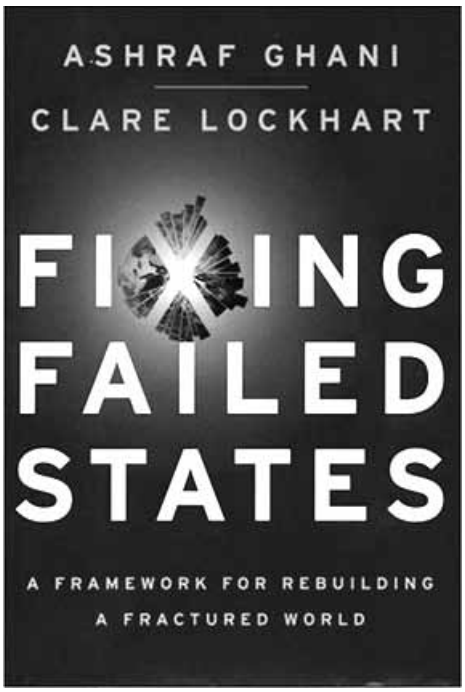
Follow this and additional works at: http://digitalcommons.wcl.american.edu/hrbrief

Part of the Human Rights Law Commons

Recommended Citation
Schwank, Federico G. Barillas, and Anna Maitland. "Book Reviews." Human Rights Brief 18, no.3 (2011): 76-78.

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

BOOK REVIEWS



ASHRAF GHANA & CLAIRE LOCKHART, FIXING FAILED STATES: A FRAMEWORK FOR REBUILDING A FRACTURED WORLD, 254 (2009).

A large percentage of the world's population arguably lives in a varying number of dysfunctional states that are either on the way to failure or have failed already.[1] The main thrust of this argument is that the governments of these states do not uphold basic human rights or provide basic public goods such as human security, effective dispute resolution mechanisms, fundamental freedoms, and public works and services.[2] Instead, corruption is rampant and the population lives in misery — one or two steps away from having no choice but to engage in violent predation against each other — their human rights rendered nugatory by authority figures more concerned with personal enrichment than governance.

The paradigm of saving failed states first arose nearly twenty years ago in an article by Helman and Ratner.[3] They argued that a failed state was one that was simply unable to support itself as a member of the international community because of civil conflict, fractured government, and/or economic weakness. Since then, countless scholars have embraced the concept to explain why so many people live in abject poverty, subjected to violence, and under the rule of despots and corrupt governments.

In *Fixing Failed States: A Framework for Rebuilding a Fractured World*, authors Ashraf Ghani and Claire Lockart provide a powerful critique of the mechanisms set up by the international community to improve the lives of people living in such conditions. Their main argument is that the international aid system, comprised of the UN, USAID, and the myriad of Western development agencies, is wasteful and is not adequately set up to provide the tools or manage the resources necessary to help address the needs of people living in states that utilize such assistance. In their opinion, there is no real strategy to achieve results and many efforts are duplicated or ultimately useless. Therefore, they propose a "double compact" that firstly defines the obligations and rights of the international community to state leaders, and secondly, the obligations of the state leaders to their own citizens. This, they argue, will help create a functioning state at the domestic level and as a member of the international community.

The book is divided into three parts. The first addresses the modern context within which modern states function or fail to function. The authors posit that some forty to sixty states suffer from what they call a "sovereignty gap," which they define as the mismatch between the legal presumption that all states are sovereign and the reality that many are dysfunctional or collapsed and do not provide their citizens with basic services because of mismanagement and corruption. Their ultimate argument is that creating functioning states requires closing the gap between presumptive sovereignty and dysfunction instead of calling for intervention and a *de facto* abrogation of a state's sovereignty.

Ghani and Lockart also provide in the first section a few examples of states that have appeared as potential failures at one point or another but managed to "reverse history." Aside from the traditional international examples of Ireland and Singapore, they also note some of the successes seen in recent years in several of the southern states in the United States. This is a bold idea, and extends the notion of state dysfunction to a region of the most powerful Western nation. Yet their assertion that some states in the United States have "reversed history" seems based mostly on the pronouncements of regional governors and positive economic indicators. Rigorous readers would probably appreciate more footnotes citing favorable and unfavorable sources. Indeed, this is a problem throughout the book, as one often wonders where their figures and facts come from — like the notion that there are forty to sixty dysfunctional states in the world.

The second part of the book aims to define what should constitute a functional state during the twenty-first century. Ghani and Lockart provide a list of ten functions that modern states must fulfill to deliver the "sovereignty dividend." The ten functions are meant to guide policy makers toward addressing the sovereignty gap, and include a variety of public goods, such as the rule of law, a monopoly on the means of violence, administrative control, sound management of public finances and assets, and the provision of infrastructure. But the authors go beyond the more ordinarily understood public goods, and actually emphasize the need for economic growth. Thus, they also list the creation of a functional market, effective public borrowing, and the creation of citizenship rights through social policy. This is an important addition to the notion of what constitutes a stable society, for it implies that the citizenry must be collectively vested in its own economic and social future.

Finally, the third part suggests the mechanisms to implement effective statebuilding. The authors believe that through a "sovereignty strategy" tailored to each particular case, the development aid community should be able to avoid working in silos that put its work at cross-purposes, such as the World Food Program dumping food into a market where Afghan farmers were also being encouraged to cultivate crops instead of poppies. Ultimately, the goal is to achieve a "double compact" that puts the complex web of stakeholder rela-

tionships in any state in linear terms: internal and international rights and obligations, both within the state and in its relation to other states. To do this, the authors suggest that nationally integrated programs are essential, in order to increase public confidence in governments' administration of social challenges. Essentially, the authors seek to revolutionize the development aid complex and find a way to avoid letting foreign bureaucracies replace national governments in the provision of public goods.

Overall, this book gives the reader much to think about. Legally- and academically-minded readers might be disappointed with its lack of references. Nevertheless, Ghani, and Lockart provide an illuminating view into the practices of the development aid complex and its seeming failure at improving the lives and guaranteeing the human rights of the inhabitants of turbulent states.

Federico G. Barillas Schwank, a J.D. candidate at the American University Washington College of Law and holder of an LL.B. from Universidad Francisco Marroquín in Guatemala, reviewed Fixing Failed States: A Framework for Rebuilding a Fractured World *for the* Human Rights Brief. *He is the author of* Unos más iguales que otros: la soberanía y la noción del fracaso como Estado (*State Failure*).

Mass Atrocity Crimes: Preventing Future Outrages (Robert I. Rotberg, Editor, Brookings Institution Press, 2010).

Labeled 'mass atrocity crimes,' genocide, crimes against humanity, and war crimes are considered *jus cogens* crimes.[4] As such, they are universally prohibited under international law. The international response to these crimes has included economic and military intervention, humanitarian and development aid, and UN resolutions designed to protect and deter, among others. In addition, international criminal courts have been created to bring those most responsible for international crimes to justice. *Mass Atrocity Crimes: Preventing Future Outrages*[5] addresses the dearth of strong measures to prevent these crimes, and the international community's responsibility to reinforce mechanisms such as the Responsibility to Protect (R2P) in furtherance of protecting communities from genocide, crimes against humanity, and war crimes.

Through a compilation of ten short essays written by prominent academics and professionals in the international humanitarian law community, *Mass Atrocity Crimes* attempts to modernize the discourse on crimes that have been internationally recognized, prohibited, and condemned. The collection is loosely organized into an introductory set of articles that lay the foundation for R2P, acknowledging the inadequacy of preventive measures such as international criminal courts. Next, the articles discuss the status of R2P by analyzing various obstacles faced, R2P's future, and the possibility of enhancing capacity. The final articles address other means of prevention, such as data collection, proper mapping and analysis, and media monitoring.

R2P is a non-binding set of international principles that promote the understanding that although sovereign states are primarily responsible for preventing mass atrocity crimes within their borders, the entire international community must also take steps to ensure these crimes do not occur. Approaches to R2P can be separated into three levels of invasiveness: 1) A sovereign state has the responsibility to protect its population from mass atrocity crimes; 2) If a state cannot do so, then other states must work cooperatively with the primary state to prevent the crimes; and 3) If a state simply does not or cannot protect its population, other states have the responsibility to intervene.

In sum, the *Mass Atrocity Crimes* collection offers a valuable discussion of R2P, with some limitations. Dan Kuwali[6] opens the dialogue by examining the efficacy of Article 4(h) of the Constitutive Act of the African Union and the post-2005 Outcome Document in relation to genocide, crimes against humanity and war crimes. While Kuwali fails to articulate Article 4(h) and his understanding of R2P, his comparison between a regional and international protection responsibility highlights the strengths and shortcomings of these approaches. Sarah Sewall[7] identifies the reluctance of the international community to promote the use of military force, and proposes that advocates reframe their approach to military intervention and look to strong forms of strategic intervention such as Mass Atrocity Responsibility Operations to enable adequate protection measures. However, as the Dutch response in Rwanda so aptly demonstrates, in democratic societies the will to intervene must exist on a society-wide level as well as within government institutions. Sewall's analysis is limited, however, in that it does not address how the will to intervene can, and must, be mobilized in a democratic polity.

In three different essays, Don Hubert,[8] Edward C. Luck,[9] Claire Applegarth, and Andrew Block[10] provide a general background of R2P while illustrating the difficulties and different strategies for implementation. Although they discuss the same subject, the articles approach R2P in a diverse manner: Hubert summarizes the evolution of R2P and its application in Darfur, Luck discusses his role as the UN Special Advisor on R2P and the General Secretary Ban Ki Moon's Three Pillar Strategy, and Applegarth and Block propose ways in which R2P proponents can work with the political infrastructure to overcome modern challenges and political roadblocks. These three articles provide a comprehensive introductory discussion of R2P as a preventative framework, yet, the brevity of these discussions limits the depth of their analysis of the proposed solutions, and questions regarding financing, political will, and actionable prevention methods were left vague and unanswered.

While insightful and thoughtful, many articles within the collection read like opinion pieces or sound bites, introducing important ideas but failing to fully address the topics raised. For example, Richard Goldstone's[11] contribution raises the pertinent question of deterrence in international criminal courts and also discusses how international criminal courts have advanced international humanitarian law. Yet, his ten-page discussion leaves more questions than answers by considering possible examples of deterrence, but not extrapolating underlying lessons. Emblematic of the unfulfilled potential of this article, Goldstone relates how information obtained by the ICTY helped confirm and publicize information on the mass graves of Srebrenica and bring closure to relatives as an example of the importance of the ICTY. While a valuable action, it is not clear how the criminal tribunal was ultimately a better forum to accomplish this closure than a truth and reconciliation commission or public media campaign.[12]

Moreover, not all of the articles within the collection address prevention methods. For example, David M. Crane's[13] insightful and interesting piece introduces the mass atrocity crimes that occurred in Sierra

Leone and discusses his time as the Chief Prosecutor of the Special Court for Sierra Leone. However, Crane's ruminations on the role of the judicial framework in dealing with international crimes contribute little to the main discourse on R2P.

Overall, *Mass Atrocity Crimes* draws on the expertise of an outstanding group of international law scholars and practitioners, and as such their contributions carry special weight forecasting the future of prevention methods. Their short essays are accessible and easy to read, and the inclusion of anecdotes from their own careers provides the reader insight into the world of the authors. Yet, the mix of academic analyses and opinion pieces results in a collection that does not serve as a comprehensive discussion of contemporary issues within the field of R2P. Further, the vagueness with which many of the articles address R2P often leaves the reader with a sense of unfinished purpose. Despite these critiques, *Mass Atrocity Crimes* is well worth reading for the individual insights and anecdotes contained within each article, and particularly to anyone interested in the prevention of mass atrocities.

Anna Maitland, a J.D. candidate at the American University Washington College of Law, reviewed Mass Atrocity Crimes: Preventing Future Outrages *for the* Human Rights Brief.

ENDNOTES: Book Reviews

[1] *See, e.g., The 2010 Failed State* Index 2010, http://www.foreignpolicy.com/articles/2010/06/21/2010_failed_states_index_interactive_map_and_rankings.

[2] Robert Rotberg, *The Failure and Collapse of Nation-States: Breakdown, Prevention, and Repair, in* When States Fail: Causes and Consequences, 336 (Robert Rotberg, Ed., 2003).

[3] Steven R. Ratner & Gerald B. Helman, *Saving Failed States,* LXXXIX Foreign Policy 3, 3 (1992-1993).

[4] Antonio Cassese, International Law 202-03 (Oxford University Press, 2005).

[5] Mass Atrocity Crimes: Preventing Future Outrages (Robert I. Rotberg, Ed., Brookings Institution Press, 2010).

[6] *Id*. at 25.

[7] *Id*. at 159.

[8] *Id*. at 89.

[9] *Id*. at 108.

[10] *Id*. at 118.

[11] *Id*. at 55.

[12] *Id.* 58-59.

[13] *Id*. at 69.