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Statebuilding in Somalia:
The Role of International Actors and Actions

By

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"Mankind must put an end to war – or war will put an end to mankind."[1]

John F. Kennedy

[1] John F. Kennedy. 35th President of the United States. Address to the United Nations General Assembly, delivered September 25, 1961. New York, USA.

Abstract

The purpose of this thesis is to examine the grim necessity of statebuilding and the outwardly visible international actions in the present-day Somalia. Although the topic of statebuilding has received much scholarly attention, the limits of foreign intervention in the process are still hotly debated by academics and policy analysts. While the work is essentially a chronological presentation of the frequent peacebuilding efforts in Somalia, it is not merely a narrative history. I attempt to examine critically the impact that international intervention has had for the Somalis. Throughout this thesis, I also develop a number of parallel themes that if collectively considered, would argue for an alternative approach to the old-fashioned statebuilding policies common in post-conflict societies. These include harmonization of laws, constitutional courts, and judicial reform. The development of a thesis about just what the impact of "harmonization of law" amounts to, however, is really beyond the concerns of this study. It is an interesting and important topic that deserves a separate and equal treatment of its own and therefore will be given only secondary attention in one section of the thesis.

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1   INTRODUCTION

1.1 The Somalis in the Horn

Africa's Horn is an especially volatile subregion of the African Transition Zone, which
contains Ethiopia, Eritrea, Djibouti, and Somalia.[2] The Somali people live in the modern Federal
Republic of Somalia (former Somali Democratic Republic), the ministate of Djibouti, the Somali
Region of Ethiopia, and the Northern Province of Kenya. The last successful decennial census on
Somalia, conducted in 1975, published limited information on the population, and since then,
other efforts have not produced clarifying information. In August 1976, Tom Farer said, "As of
now nobody had taken an accurate census, but informed guesses have reckoned them to number
around five million."[3] According to Mr. M. Y. Artan, the director of statistics and the Somali
directorate of planning who supervised the 1974 census, the population of the Somali
Democratic Republic is just shy of the four million mark.[4]

However, using the 1986 pre-civil war boundaries, the United Nations Population Fund, with
the support of Somali authorities in all regions, coordinated a population estimation survey in all
eighteen regions of Somalia in 2004. The findings of the population estimation survey were that
the estimated total population in urban, rural, nomadic areas, and camps for IDPs in the eighteen
pre-war regions were 12,316,895.[5]

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[2] H. J. De Blij, Peter O. Muller, and Jan Nijman, *Geography: Realms, Regions, and Concepts*, 15 ed. (Hoboken, NJ:
John Wiley & Sons, 2012).

[3] Tom J. Farer, *War Clouds on the Horn of Africa: A Crisis for Détente* (Washington, DC: Carnegie Endowment for
International Peace, 1976).

[4] Ali A. Hersi, *The Arab Factor in Somali History: The Origins and the Development of Arab Enterprise and
Cultural Influences in the Somali Peninsula* (Ann Arbor, MI: University Microfilms International, 1977), 48108.

[5] "Population Estimation Survey 2014 for the 18 Pre-war Regions of Somalia," OCHA reliefweb, posted May 31,
2015, https://reliefweb.int/report/somalia/population-estimation-survey-2014-18-pre-war-regions-somalia.

Somalia is an ethnically and religiously homogenous country, with the distinction of becoming Africa's first democracy in 1960s. This ethnic uniformity is a beautiful, unifying thing, but the population is still divided into tribes and groups. Yet, this homogeneity is a good deal less than complete. Somalia is a country that is cursed by too much tribal fractionalization, and Somali identity goes beyond the boundaries. As many as three to five million Somalis live permanently on the Ethiopian side of the border, but this is not the only division the Somali "nation" faces.[6] In reality, the Somali people embody an assemblage of five major ethnic groups fragmented into hundreds of clans engaged in an endless struggle for power as well as survival.[7]

A decade-long conflict in Somalia, from 1991 to 2000, has brought renewed attention to the contemporary Somali culture and the clan features embedded within it. The Somali nation is divided into six clan families which, nevertheless, all claim descent from two eponymous ancestors, brothers known as Sab and Samaale.[8] Each clan family is in turn subdivided into clans, lineages, sub-lineages, and so on down to the individual family.[9] However, the power-sharing arrangement in 2000 at the Djibouti peace conference categorized Somalis into "four major clans and one group referred to 'Other Clans.'" The same method was upheld in subsequent peacebuilding conferences in Kenya and Somalia. This is generally referred to as "4.5 System" in the representative government of Somalia. It is designed so that the four major clans receive equal representation in parliament and all remaining clans share half of whatever one major clan receives. Similarly, theoretically but not practically, clans receive the same representation in all public service positions.

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[6] De Blij, Muller, and Nijman, *Geography: Realms.*
[7] De Blij, Muller, and Nijman, *Geography: Realms.*
[8] Hersi, *The Arab Factor.*
[9] Hersi, *The Arab Factor.*

Informed guesses can reckon the population of "Other Clans," to number about the same as, if not more than, any of the four major clans. Therefore, the power-sharing deliberation is not based on statistics; it is based on a clan's political, economic, and warfare abilities. This clan affiliation determines one's prospects of stepping into a representative or elective public office, with the most binding loyalty reserved for the clan.

Although Somalis have the same social norms, customary practice (*xeer*), and Islamic Shari'a law, the general legal tradition of the country is complex. Somali republic has received independence on July 1, 1960, from Italy and Britain. The new republic had to overcome the different legal, language, and other official practices prevalent in the two former colonies.[10] The two colonies, Britain and Italy, hail from two distinct and very influential legal traditions, common law, and civil law respectively. A legal tradition, as the term implies, is not a set of rules of law about contracts, corporations, and crimes, although such rules will almost always be in some sense a reflection of that tradition.[11] Rather, it is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and in the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied studied, perfected, and taught.[12] Although not classified as a major legal tradition in Western scholarship, Islamic legal tradition together with the Somali customary law (*xeer*) is prominent in the Somali legal system. In this sense, this essentially strange character is such a basic and salient

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[10] Abdi Samatar, *Africa's First Democrats: Somalia's Aden A. Osman and Abdirizak H. Hussen* (Bloomington, IN: Indiana University Press, 2016).
[11] Merrymen and Perdomo, *The Civil Law Tradition*, 1–5.
[12] Merrymen and Perdomo, *The Civil Law Tradition*, 1–5.

trait in the Somali justice system that it invited Andre Le Sage[13] to suggest that Somali justice system requires review and harmonization into a complementary whole.

1.2 The Failure of the Nation-State

Somalia and the Somali people are an enigma to much of the world.[14] Somalia is essentially a homogeneous nation of constituent, segmented clans in which political forces are carefully balanced to share power in normal times.[15] To a reader who is aware of the Somali problem but has not studied much about the complex social structures of Somalis, the notion of homogeneity—in culture, race, religion, and language—would sound somewhat unusual. Certainly, one may strongly and quite legitimately question if Somalis share uniform language, religion, and culture, what the major causes of fragmentation in their nation-state are. To facilitate the readers' appreciation of the contemporary Somali dilemma, however, it is necessary to take a look at the past in order to become familiar with the evolution of Somali society into its present contours.[16] Said S. Samatar,[17] a famous Somali historian, demystifies the enigmatic nature of Somali culture through an entertaining passage in his article, "Somalia: A Nation in Turmoil (1991)": According to a satirical Somali creation myth:

> ***"God first created the family of the prophet Muhammad, and he was very pleased with the nobility of his handiwork;***

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[13] Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives* (Geneva: Centre for Humanitarian Dialogue, 2005).

[14] Ali Jimale Ahmed, Hussein Muhamed Adam, and Richard Ford, *Removing Barricades in Somalia* (Washington, DC: United States Institute of Peace 1998).

[15] Said S. Samatar, *Somalia: A Nation in Turmoil* (Ann Arbor, MI: Minority Rights Group, August, 1991).

[16] Samatar, *Somalia.*

[17] Said S. Samatar is a renown African history scholar, a Somali, and a professor of African history at Rutgers University, New Jersey, USA. His books include *Oral Poetry and Somali Nationalism: The Case of Sayyid Mohammad Abdille Hasan* (1982), and with coauthor David D Laitin, *Somalia: Nation in Search of a State* (1987). He is the managing editor of *Horn of African Journal*. His first book metamorphosed from his PhD dissertation (1977) at Northwestern University, Evanston, IL, USA.

then he created the rest of mankind and was modestly pleased;

then he created the Somalis and he laughed!"

Aside from the cheerful self-mockery the Somali people enjoy, the tale powerfully signifies the Somali's consciousness of their corporate unity—a people created separately and distinctly from others, as it were, even though they may be destined to remain a laughable sort of creation.[18] Professor Samatar continues to explain the complexities of Somali society and their culture from the perspective of the evolution and structure of the clan-family system, which is really beyond the concerns of this thesis.

This section of the thesis will draw on the effects of the post-conflict cataclysm upon the Somali society. The ensuing accounts attempt to illuminate critical facets of the conflict. It should be said at the outset that Somalia's principal troubles during the first decade of statehood were more external rather than internal. The fate of the three missing territories—Northern Province of Kenya, Ethiopia's Harar Province, and the French colonized Djibouti—was disturbing the affairs of the government. Yet the Somalis managed to enjoy nine years of democratic civilian rule, nine years of unprecedented political and civil liberties, a vigorous participatory democracy with fiercely and freely contested elections, a lively free press, and the government under complete civilian control—Somalia became a model of democracy in Africa.[19] At the time, the continent was mired in dictatorships, suffering under bloody military coups, and lumbering under a single party system.[20] However, Somalia had embraced a multiparty system that represent smaller sub-clans, separately or in coalition. As far as the 1969 elections were concerned, there were claims of

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[18] Samatar, *Somalia: A Nation.*
[19] Samatar, *Somalia: A Nation.*
[20] Abdi I. Samatar, "Somalia's Toxic Political and Security Order: The Death Knell of Democracy," Zox Press, ALKEYGA website, April 24, 2021, https://dalkeyga.com/somalias-toxic-political-and-security-order-the-death-knell-of-democracy-3/.

abuse of power, irregularities, and accusations of corruption and nepotism. Elections were marred with corruption, rigging, violence, and chaos.[21] The outcome of the election resulted in more violence that led to the assassination of the president, Abdirashid Ali Shermarke, pushing the nation to the edge of collapse. Clearly, this political unruliness was a factor in the disunity of the civilian administration and the rise of the military against the parliamentary democracy.

Amid widespread social unrest, on October 21, 1969, General Mohamed Siad Barre seized power in a carefully planned decisive coup d'état, six days after the assassination of President Abdirashid Ali Shermarke in Las Aanod[22] city. Siad Barre, the nation's highest-ranking military officer, was an anti-corruption nationalist with a clear agenda to liberate the nascent state from the legacy of the colonial rule and the marks of the consequent UN trusteeship administration. The first public speech of Mohamed Siad Barre was released on the 23rd of October 1969, in which he articulated the military's short-term and long-term intentions:

We want to create a country in which everyone is equal before the law, everyone obeys the law, everyone respects their fellow citizens, shares common work, interests, values, beliefs, and everyone believes in the union. We want to eliminate corruption, eliminate nepotism, and completely eliminate the filthy clannism which is the most lethal weapon available to foreigners to intervene in our internal affairs. Foreign interveners always take advantage of unhappy wretches who lack self-confidence, have little or no faith in their religion and country, and we want to totally shut all those evil doors.[23]

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[21] Hussein M. Adam, *From Tyranny to Anarchy: The Somali Experienc*e (Trenton, NJ: The Red Sea Press, 2008).
[22] Las Aanod (Laascaanood, in Somali) is the capital city of Sool region in Somalia—currently a disputed region between Somaliland and Puntland.
[23] Mohamed Siad Barre, Public Speech (in Somali language) released on October 23, 1969, from the Somali National TV. Accessed at BBC Somali Service, London, UK, and to the best of his ability, translated by the author.

In the first ten years of his administration, Siad Barre is depicted as a leader who fights tribalism and "corruption." Siad Barre also admired the audacity of Egypt's president Nasser in shaping the political culture of Egypt and believed in the triangular system of socialism, pan-Somalism, and Islam (similar to Nasser's socialism, Arabism, and Islam). During this period of time, he focused on radically remaking the political and social order via what was then known as "scientific socialism," and although his administration lacked necessary instruments and resources, some important achievements were made. One of the earliest triumphs of the military administration was their ability to successfully implement the Latin script for the Somali language, followed by universal literacy campaigns across the country.

Furthermore, taking the reins of power firmly in hand, the military junta was very determined to forge ahead with extensive institutional reforms and public-driven programs. The population immediately benefited from the new regime's better culture of governance, expanding free social services, and instigating "do it yourself" (DIY) projects and an end to tribalism, nepotism, and corruption. DIY projects helped the government to develop social services, such as education, health, clean water, housing, and infrastructure. This means that the military enjoyed popular support during the early years of the regime.

The situation in Somalia grew worse after General Siad Barre precipitated a disastrous war against the unrelenting Mengistu Haile Mariam's still-fledgling regime in Addis Ababa. On July 23, 1977, the Somali president, as the commander-in-chief of the military, mobilized a massive army with an adequate arsenal of Soviet weaponry aided by liberation movements from the Ogaden region. The invasion ignited a major war of attrition that involved many external actors

and brought the Somalis very close to attaining their strategic goal.[24] To the military junta in Mogadisho, the annexation of the Ogaden region (currently, Somali Regional State of Ethiopia) would be an initial step toward the creation of a greater Somalia that would have included the Somali Democratic Republic, the then French colony of Djibouti, and the Northern District of Kenya. The Ogaden is the second largest region of Ethiopia after the Oromia region, and a military conquest of that region would have cost the country about a third of the Ethiopian territory. Inevitably, Ethiopia made the maximum effort to avert catastrophe and defended this large part of her territory.

The Ethiopia-Somalia armed conflict was one of the two biggest wars between African states in contemporary times,[25] the other being the Eritrean-Ethiopian war (1998–2000). It was one of the most ferocious conflicts in Africa, but we do not know enough about the real winner or loser. According to an official interview of the then vice president General Muhammad Ali Samatar, the chief commanding officer of the Somali National Army, Somalia won the battle, not Ethiopia as has been commonly held. General Samatar says the following in the interview:

It was a great and historic war that have left an indelible mark on the history of Africa. The war has revealed to the world the might and potency of the Somali man, because, Ethiopia was renowned as the "Lion" of Africa or the Horn of Africa, and no one has ever thought that the Ethiopian army can be challenged by any other Army in Africa. But we turned the tables on them, and their army, the "lion" of Africa, became a "cat" before us within a matter of few months. Had they not received the dramatic and massive intervention by Cuba and Soviet Union, Addis Ababa would have been obliged to capitulate. I can simply summarize it: that we really defeated them

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[24] Gebru Tareke. "The Ethiopia-Somalia War of 1977 Revisited." *The International Journal of African Historical Studies* 33, no. 3 (2000): 635–667.
[25] Tareke, "The Ethiopia-Somalia War."

militarily, and they defeated us politically by winning alliance with militarily and economically

powerful countries. The reason is crystal clear: that Somalia was seen as an aggressor state, and

there is no nation available to offer support to an aggressive state in most territorial conflicts.[26]

Of course, the power of international norms against changing borders by force has played an active

role in the war.

World-renowned Ethiopian historian Gebru Tareke[27] has given a similar account that

concurs with General Samatar's statement; he shares information about the Soviet Union and

Cuban support to Ethiopia during the war, obtained from the then-Ethiopian ambassador to Havana

on March 12, 1994, in Addis Ababa:

They (referring to Soviet Union)*, of course, brought with them intimate and thus invaluable*

knowledge of the strengths and weaknesses of the Somali military that the Ethiopians put to good

use. Along with the Soviets came regular Cuban troops; starting with few hundreds in December,

they grew to 3000 in January and 18000 by February, more than half of them ferried from Angola.

The Somali regime had gambled by expelling the Soviet and Cuban professionals; now there was

no one else to compensate them for the loss. Now the Somalis stood almost alone against an

international colossus.[28] Gebru Tareke asserts that the massive intervention by socialist countries

enabled the Ethiopians to crush and repel the invading army, which never recovered fully from its

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[26] General Muhammad Ali Samatar, 1977 Chief Commander of Somali National Army, interview by Abdullahi Haji, *The Somali History Program*, BBC Somali Service (Taariikhda Somalia Qeybta 13aad, 1998).

[27] Gebru Tareke is a professor emeritus of history at Hobart and William Smith Colleges and author of *Ethiopia: Power Protest: Peasant Revolts in the Twentieth Century* (Trenton, NJ: Red Sea Press, 1996).

[28] Gebru Tareke, *Ethiopia: Power Protest: Peasant Revolts in the Twentieth Century* (Trenton, NJ: Red Sea Press, 1996).

stunning defeat.[29] As a matter of fact, both Cubans and Ethiopians who met them on the battleground admit that Somalis were "tough and fought bravely."[30]

Be that as it may, Ethiopia might have won the war, but neither Ethiopia nor Somalia won the peace. The territorial contest reverted into guerrilla warfare, and each country moved quickly to take advantage of the political turmoil in the other one. Mogadishu immediately began to support liberation fronts in the Ogaden that clamored for self-determination and had a clear ambition to forcibly seize their territory from Ethiopians while Addis Ababa provided support to impending and extant clan-based opposition movements, just to counterbalance Mogadishu's backing of the liberation fronts in Ogaden. With the clan-based movements came the disintegration of the SNA and this led some disgruntled senior military officers to flee the country and mobilize a coalition of armed movements against the Siad Barre administration from within Ethiopian territories.

For the Somalis who were in the midst of intense social programming and large-scale development projects, the Ogaden debacle was the beginning of the demise of the Somali state. In 1988, after eleven years of war with Ethiopia, armed conflict broke out in Somalia's largest northern city of Hargeisa, in which the Somali National Movement (SNM) led an uprising against the Siad Barre regime. Steady government advances against the SNM rebellion extended the impact of the war on the unarmed civilians, to a level, according to *Africa Watch Report*, that it became "A Government at War with Its Own People."[31] Roughly 50,000 to 60,000 were killed between May 1988 and the beginning of 1990 through indiscriminate strafing of major cities and SNM members fleeing away to the hinterland. As Barre's regime was already weakening, this offensive sparked a civil war of attrition that involved many other clan-based militias, such as

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[29] Tareke, "The Ethiopia-Somalia War."
[30] Tareke, "The Ethiopia-Somalia War."
[31] The Africa Watch Committee. *Somalia: A Government at War with Its Own People.* African Watch Report, 1990.

United Somali Congress (USC), Somali Patriotic Movement (SPM), and the Somali Salvation Democratic Front (SSDF). It must have become ostensibly clear to all militia leaders that the Mogadishu authority had been fatally wounded by the upheaval, resistance, and armed tribal uprisings so that it could not resist the effect of an all-out attack by a coalition of well-equipped clan militias. Without a robust and viable alternative plan, their primary aim was to drive Siad Barre out of power in disgrace. In January 1991, the coalition forces of the militias led by the USC leader, General Muhammad Farah Aided, launched an offensive on the statehouse, forcing Siad Barre to flee the capital. Upon his departure, on January 27, 1991, the administration failed, and the Somali state evanesced into nonexistence.

2 THE POLITICS OF INTERVENTION

2.1 Perspectives from Implementers

To understand the delineation of the words "global politics" in a theoretical manner is complex but interestingly appealing. However, it can be simplified through the comparison of the isomorphic culture of nation-states and through the theoretical understanding of international organizations and their role in the world arena. As evidenced by the history of the world, without international bodies, the human race has had basic systems of governance that demarcated the respect and cooperation between their entities. These basic governments have gone through different forms, starting from tribal or ancestral associations, chiefdoms, and monarchs, and finally culminating in complex democratic and military systems. In modern days and after the world wars (I & II), these types of states (monarchies, militaries, and democracies) agreed upon the formation of the United Nations—as the name depicts, an organization that is intergovernmental in nature. Though the United Nations and international organizations are outstandingly engaged in all

political, administrative, and social systems of the modern world, the cooperation and interdependence of that world is facing complex challenges.

Today, our world struggles with a disheartening increase in armed conflicts and humanitarian emergencies.[32] In some cases, the needs are enormous, and rapid response from international actors and their partners is a must. The mission of a humanitarian intervention is to provide rapid assistance for the people affected by disasters to help them heal from the effects of the conflict. The United States has historically been a leading responder to these crises, in funding and diplomacy.[33] Humanitarian assistance is a critical component of United States foreign policy and represents an expression of American values in an increasingly unstable world.[34] The complexity and necessity of such humanitarian assistance demands that we think very carefully about the basic conceptual framework that guides the programming and planning of interventions from start to finish, in order to reach essential goals. One essential goal of an intervention in a humanitarian disaster is to build a robust and effective stabilization assistance program from funders, through implementers, down to the receivers. But most of stabilization programs are established swiftly, in a short period of time, and this suggests that the efficacy of a program will depend on the strength of the implementer and its effective network, which distributes aid throughout the receiving target.

Somalia is a country that experienced competitive foreign intervention, protracted civil conflict, and the prevalence of political Islam. It has also experienced a civil war that became the costliest and deadliest war ever on the land of Somalia, with greater destruction of resources of the state, disintegration of the country into tribal regions, a massive exodus, and existential

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[32] Jacob Kurtzer, *Denial, Delay, Diversion: Tackling Access Challenges in an Evolving Humanitarian Landscape* (Washington, DC: Center for Strategies & International Studies, 2019), https://www.csis.org/analysis/denial-delay-diversion-tackling-access-challenges-evolving-humanitarian-landscape.
[33] Kurtzer, *Denial, Delay, Diversion.*
[34] Kurtzer, *Denial, Delay, Diversion.*

disconsolate prospects for the majority that remained in the country. But Somalia has historically been marked by strong people and a weak state. The strength of the people emerges from their unique social organization, ethnic, and religious homogeneity. Nevertheless, Somalis have encountered social fragmentation that resulted in a complex array of ministates and micro-societies with incessant civil conflicts. Therefore, statebuilders decided to play the role of mediator in the crises, mostly in consort with neighboring states that understand better or have a strong active network and intelligence in the politics of Somalia. Ethiopia, Kenya, and Djibouti are the three neighboring states that understand more about Somali politics, but in the process of helping international community they also bring their own national interests into the intervention. Because it hosts the headquarters of African Union, Ethiopia has an enormous influence on the political affairs and decisions of the organization. Despite the failure to establish a Somali state in over two decades, parts of the country made significant progress in terms of security, reconciliation, and peace building.[35] This can be supported by Somaliland's level of civil order and peace, which is relatively better than the rest of the nation.

Humanitarian aid is, in modern days, more explicitly used as a foreign policy tool, and there are many conflating terms that are complex to distinguish: humanitarian aid, foreign assistance, and military intervention. Similarly, there are other conflating actors in the global arena, such as INGOs, contractors (nonprofit contractors), militaries, and private security firms. Even if their goal is the same, it remains difficult to disentangle. Typically, implementers have the freedom to decide what should be done in a particular intervention, but, in the end, the politics of intervention is determined by nation-states, and international implementers are only tools of powerful member states. Yet, there are unintended consequences of intervention, and these include but are not limited

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[35] Bjorn Moller, *The Somali Conflict: The Role of External Actors* (Copenhagen, Denmark: DIIS Report, 2009): 03.

to the following: international humanitarian law that is harder to enforce due to the changing nature of war, a reduced access to those in need, and the disintegration of humanitarian principles, such as independence, neutrality, and impartiality. However, international interveners are trying to overcome the dilemma by choosing between emergency and long-term humanitarian intervention. Emergency interventions are always short-term but have the benefit of certainty, clear outcomes, and shorter feedback cycles from intervention outcomes. Conversely, long-term intervention is durable in nature and while it involves more uncertainty, it has the advantages of better outcomes and the prevention of future crises. Thenceforth, what do local populations (recipients) prefer?

2.2 Perspectives from Recipients

At the most general level, fragile states are concerned with losing their sovereignty in order to meet humanitarian ends. This concern is heightened by the controversy surrounding the legality of intervention. While there is some disagreement over the legality of humanitarian interventions, the majority of legal scholars consider it to be legal at present.[36] This, however, does not necessarily have implications for the legitimacy of an intervention; indicatively, NATO's intervention in Kosovo in 1999 was judged by the Independent International Commission on Kosovo (IICK) to have been "illegal" but legitimate.[37] The legitimacy of the humanitarian intervention depends on the consent of the hosting state. But the host state then needs to take responsibility for protecting the resources and personnel of the humanitarian intervention. Generally, the debate surrounding the legitimacy of any given intervention is rather complex and, in most cases, very difficult to fathom. So, the interlinked perspectives on the issues of consent, means, and motives of intervention can indicate whether an intervention involves the use of force.

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[36] Aidan Hehir, *Humanitarian Intervention: An Introduction,* 2nd ed. (London: Palgrave Macmillan, 2013).
[37] Hehir, *Humanitarian Intervention.*

Commonly, the popular conception of humanitarian intervention is that it is mainly motivated by altruism rather than interests. Sometimes even an intervention that is motivated by strategic interests can be in the interest of the hosting community if it results in positive humanitarian consequences. In the world today, international interventions to promote political development can also be a primary cause of state weakness and fragility, as a country can be torn apart when different nations intervene to support rival factions for power.[38] This is exactly the practice in Somalia. Two major Somali tribes contest the highest political office, each one of them claiming that they entitled to lead the nation, and each pursuing a foreign country to back them. Ahmed I. Samatar,[39] a distinguished scholar in global political economy and an expert in Somali politics, introduced the word "duopoly" into the Somali political system. He argues that only two tribes (Hawiye and Darood) have been monopolizing the country's two highest political offices. If one of them receives the presidency, the other one will receive the premiership.

A thorough examination of the current situation of the Somali government will divulge the striking impact the international interventions have had on the Somalis. The following few paragraphs explore the various ways statebuilders helped or harmed post-conflict Somalia. First, out of an unexpected confluence of events, the Djibouti Peace Conference was held for Somalis. Djibouti, formerly French Somaliland, was seen by Somalis as a brotherly state that was working to help Somali People rise up again. Ethiopia, which is a putative foe of the Somalis in the eyes of ordinary Somali citizens, was not happy with the role Djibouti was playing in Somali politics. As a result, it flagrantly violated the international agreement by arming factions opposing the still-fledgling interim administration in Mogadishu. This kind of intervention has obviously harmed

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[38] Roger Myerson, *Perspectives on the Theory of Statebuilding* (preliminary first draft of a future coauthored paper with David Laitin, David Lake, and James Fearon, summer 2020).

[39] James Wallace professor of international studies and chair; founding dean of Macalester's Institute for Global Citizenship.

Somalia. The Ethiopian interference became much worse in the first term of current Somali Transitional Federal Government (TFG). It exponentially increased meddling in the affairs of the country until a concurrence of events lent credence to the rumors that Ethiopia and Somalia were planning to have a common passport.

However, international peacebuilders are, on the other hand, helping Somalia to overcome many challenges. They helped reform the financial management system of the government, renewed the Somali Central Bank, and facilitated loan forgiveness programs for Somalia. This has substantially increased the legitimacy of the current administration and drastically decreased the corruption that was rampant in Somalia. The African Union is also helping the government of Somalia to rebuild the Somalia National Army. This effort has increased public support for the peacekeeping forces that protect Somalia's weak government. Nonetheless, Islamic political leaders, traditional elders, and sheikhs generally support peacekeeping forces from Muslim countries only. In any case, the central government of Somalia has the exclusive authority to decide the origin and mandate of international peacekeeping forces in the country.

3 PEACEBUILDING AND STATE FORMATION

3.1 Theoretical Concepts

The state, understood as an organization holding the monopoly of force over a stable population and territory, emerged a few thousand years ago, mainly in those areas that had first transited to agriculture, and then spread rather slowly across the globe—vast parts of the world still remained stateless until the age of European colonialism.[40] Today, however, states cover the entire planet, at least from a formal point of view, prompting historian Joseph Strayer to write

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[40] Carles Boix, *The Origins of the State, Background Note for the 2017 World Development Report* (Washington, DC: World Bank, 2017).

that "there is no salvation on earth outside the framework of an organized state."[41] Throughout

this thesis, when I speak of a state, I mean an autonomous political unit encompassing many

communities within its territory and having a centralized government with the power to collect

taxes, draft men for work or war, and decree and enforce laws.[42] Classical writers like Aristotle,

unfamiliar with other forms of political organization, tended to think of the state as "natural" and

therefore as not requiring an explanation.[43] But, it worth mentioning that Aristotle certainly knew

about tribal societies, and even Herodotus wrote about tribes before him. However, since

classical literature informed us that people throughout history lived in autonomous tribes, not in

formal political units, the idea that states arose through accident is not satisfactory. Modern

scholars are therefore more sagacious to think that states began out of a serendipitous confluence

of forces and events that occurred in their social life. Institutions arise because they satisfy a

need of human beings confronted with violence or social maladies. For some researchers,

institutions rose and remained in place through a process of natural selection that weeded out

suboptimal outcomes.[44] Normally, peoples' political actions tend to result in the making of rules

and institutions to solve their collective social failures.

　　Tracing historical roots of statebuilding to the modern world requires us to understand how

humans were engaged in social contracts as a strategic approach to peacebuilding after a war.

Political analysis of international relations has conventionally assumed that the entire habitable

world is divided into a "Westphalian" system of independent nations, each of which is governed

by a sovereign state that exercises supreme authority over maintaining order and enforcing laws

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[41] Boix, *The Origins of the State*.
[42] See Robert Carneiro, "A Theory of the Origin of the State," *Science* 169, no. 3947 (Aug. 21, 1970): 733–738.
[43] Carneiro, "A Theory of the Origin of the State."
[44] Boix, *The Origins of the State*.

within its territory.[45] A deep dive into Turan Kayaoglu's piece on Westphalian eurocentrism in international relations delineates the emergence of the Westphalian concepts of state sovereignty and the modern inter-state system. He argues that the Westphalian narrative was first developed by German historians and usurped by international jurists in the nineteenth century, and according to Germans, the peace of Westphalia allowed European states to establish an international order based on mutual independence, political tolerance, and the balance of power.[46] In North America, East Asia, and other regions where states are now generally regarded as consolidated, statebuilding was an organic, incremental, and evolutionary process that unfolded over centuries.[47] Today, where ill-governed territories of weak or failed states predominate, it remains up to international organizations and nation-states to intervene and rebuild. To understand the problems of such weak states and to formulate effective policies for mitigating these problems, we must think more fundamentally about how nations develop from anarchy to prosperity and what can be done to promote such political development.[48] Yet, nations cannot manufacture and ship a functional state-in-a-box to a foreign land to compensate or fix bad governance and social problems.

3.2 In the Context of the Horn of Africa

People cannot lead a reasonably full life under rampant anarchy, disorder, and roguishness. If they do so, they are in danger of reducing their nation to a kakistocracy—a system in which the least competent persons are in power. The demise of a state is inherently linked to a breakdown of

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[45] See Roger Myerson, *Perspectives on the Theory of Statebuilding*.
[46] Turan Kayaoglu, "Westphalian Eurocentrism in International Relations Theory," *International Studies Review* 12, no. 2 (June 2010): 193–217.
[47] David A. Lake, *The Statebuilder's Dilemma: On the Limits of Foreign Intervention* (Ithaca; London: Cornell University Press, 2016): 1–22. http://www.jstor.org/stable/10.7591/j.ctt20d88d7.
[48] See Roger Myerson, *Perspectives on the Theory of Statebuilding*.

social coherence on an extensive level, as civil society can no longer create, aggregate, and articulate the supports and demands that are foundations of the state.[49] Societal structures and the state are two things that are intrinsically intertwined—one cannot survive without the force of the other. In early 1991, the problem of state collapse and social disintegration presented dangerous challenges that invited multilateral military intervention. Risks inherent in the political crises of Somalia provided the basis and moral obligation for the international community to respond effectively to encourage peaceful reconciliation. When the United States and United Nations intervened militarily in 1992, they focused on the humanitarian aspects of the emergency, thereby limiting their ability to act on the core political and security dimensions.[50]

Later in the decade, the international community refocused its attention on Somalia after the new president of the republic of Djibouti, Ismail Omar Guelleh, in consultation with the intergovernmental authority on development (IGAD), unilaterally called for a "Somali National Peace Conference" in 2000 to encourage political reconciliation. Djibouti's government invited all those who claimed to be political leaders, members of the civil society, and community groups, as well as warlords, but unlike previous congresses, the warlords were invited as individual participants rather than agenda-setters, something that offended many of them who consequently refused to attend.[51] The absence of these merchants of violence made the deliberations more congenial, as participants had to engage in political compromises, although a significant number

[49] Terrence Lyons and Ahmed Samatar, *Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction* (Washington, DC: The Brookings Institution, 1995).

[50] Lyons and Samatar, *Somalia: State Collapse*.

[51] Redie Bereketeab, ed, *The Horn of Africa: Intra-State and Inter-State Conflicts and Security* (London: Pluto Press, 2013). doi:10.2307/j.ctt183p650.

of sectarian politicians gerrymandered the agenda and chose to use genealogical divisions as the basis of political representation.[52]

The authority to select the clan representatives was exclusively given to the traditional elders. Traditional elders normally consult with sub-clan elders, commonly known as peace-seekers, to allocate representatives across the clan. The outcome of this effort received popular acceptance from the Somali people across the globe; nevertheless, the Ethiopian government was not happy with it, and various factions armed by Ethiopia allied themselves in order to spurn the legitimacy of the new government. Since 1964, perhaps before, Somalia and Ethiopia were archenemies, and so the reasons underpinning Ethiopia's rejection of a legitimate Somali state are not startling. In fact, it was discernable from its actions that the Ethiopian government, as an external actor, was mobilizing warlords against the new government in Mogadishu that enjoys the support of the majority. The group then began to dismiss the transnational government (TNG) as another faction, while the regime in Addis Ababa began to lobby the African Union and, more importantly, IGAD, to sponsor yet another conference.[53] At first, the interim president and his administration were reluctant to succumb to interventionists demands, but suddenly they felt overwhelmed after their two-year transitional term ended in the midst of political turmoil. The TNG could have succeed if Ethiopia had not undermined it by supporting warlords against it. The key mistake of the international community was to allow Ethiopia sizable influence on international affairs of Somalia. In the end, the Somali National Reconciliation conference was convened in Kenya in 2002–2004.

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[52] Bereketeab, *The Horn of Africa.*
[53] Bereketeab, *The Horn of Africa.*

3.3 Case Study: Somali National Peace Conference in Djibouti, 2000

After years of failed national peace conferences, in 1988 and 1999 IGAD and the government of Djibouti proposed a Somali National Peace Conference (SNPC), to be based not on factional representation but rather on representation by Somali civil society.[54] The "Djibouti Initiative" was endorsed by the UN Security Council in December 1999.[55] This became major peacebuilding effort to restore law and order in Somalia. But the conference was not all inclusive, and many politically powerful actors were not brought into the fold. Key players missing from the conference included most of the Mogadishu-based warlords, the Puntland administration, and the Somaliland administration.[56] To a mild-mannered reader who has an idea of what Somali reconciliation amounts to but would still welcome some elucidation, the very title of this section— "Somali National Peace Conference"—might sound slightly bewildering. How can anybody speak of a national conference when Somaliland, which is roughly one-third of the nation, is absent; when the semi-autonomous state of Puntland boycotted the conference; and when many armed factional leaders who control southern regions of Somalia have also rejected participation in the conference as ordinary individuals without political weight. It is not only those aspects of the conference that are enigmatic, however, but the very nature of Djibouti-Somalia relations is challenging.

Since Djibouti has no economic and military wherewithal to further the Somali peacebuilding beyond the modus vivendi outcome of the conference, it needed a stronger state, perhaps her former colonist, France, to back her actions up in Somalia. That did not happen and could not easily happen for two reasons. First, Somalis deep-seated historical aversion to European

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[54] Ken Menkhaus, *Somalia: A Situational Analysis*, reliefweb, OCHA services. originally published November 30, 2000, https://reliefweb.int/report/somalia/somalia-situation-analysis.
[55] Menkhaus, *Somalia: A Situational Analysis.*
[56] Menkhaus, *Somalia: A Situational Analysis.*

influences combined with the recent rise of armed Islamic insurgents create a very strong resistance to any international newcomer state. Secondly, Britain and Italy, who colonized Somalia and understand very well the identity, political Islam, and peacebuilding issues of Somalia, would neither allow nor advise new countries to burn their hands in the Somali conflagration. Currently, Somalia's natural resources invite many European countries such as United Kingdom and Norway to refocus their attention on Somalia, and therefore, Somalis today are more warried about European influence than about Ethiopian influence.

If I can turn your attention back to the conference, I would like to provide a brief overview of the systematic structure of the conference. As usual, the conference was organized on clan representation that extrapolates the 1960 model for parliament representation that was adopted after the country's independence. The international community endorsed this effort and argued that all representation had to be based on the insidious genealogical formula (4.5)[57] despite the fact that the appointment process was manipulated by influential politicians. Influential politicians often convince both the international community and the traditional leaders on how clan representatives are chosen. The conference invited close to 1000 delegates from across the nation, reflecting all Somali tribes[58] in a knotty representation system, for the sole reason of electing a Transitional National Assembly (TNA). Only 920 active delegates were required to attend the conference in order to elect the 245 legislators, but the numerical representation by clan came out of the honored consensus of traditional elders. It is important to note that elder's negotiation skills and influence played a crucial role for the clan in receiving a fair deal from the consensus. Clans whose traditional institution of elders was moribund received the smallest representation. That is

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[57] Abdi Ismail Samatar, "The Production of Somali Conflict and the Role of Internal and External Actors," in *The Horn of Africa: Intra-State and Inter-State Conflicts and Security*, ed. Bereketeab Redie (London: Pluto Press, 2013): 156–177. doi:10.2307/j.ctt183p650.14.
[58] "tribe" and "clan" are interchangeably used, but tribes are commonly understood as subdivisions of a clan.

why it is so important to support reforms to strengthen the traditional institutions of elders in Somalia. Foreign aid can be used to revive and strengthen these institutions for the minority clans.

After much deliberation, traditional elders arrived at apportioning delegates along clan lines, with four major clans receiving 175 delegates each, minority clans (a.k.a. others, or the 0.5) receiving 90 delegates, and the cross-clan representation of women (a.k.a. the sixth clan)[59] receiving 100 delegates. One of the four major clans, Dir (primarily the Isaaq of Somaliland), received an additional 30 members, making their delegates 205. According to the prevailing view, this was not because of the size of their population, but their traditional institution of elders was stronger and alive compared to that of the south. Additionally, the conference organizers and other traditional elders were so desirous to make the conference receive world attention that Somaliland tribes were not only present but were also the leading majority clan in the conference.

On August 13, conference delegates selected a new 245-member Transitional National Assembly apportioned along clan lines[60] that would immediately approve a previously drafted Transitional National Charter, then elect a president, who was to appoint a new prime minister, who the Parliament would then approve by a majority vote. Abdiqasim Salad Hassan, a 60-year-old former long-term interior and finance minister in the Siad Barre regime, was elected as the interim president from 2000 to 2002. He appointed a prime minister, Ali Khalif Galaydh, former industrial minister of Siad Barre regime too, an accomplished Somali American professor of public administration at Maxwell School of Citizenship & Public Affairs, Syracuse University, to head the government. This government faced many difficulties because, while it had been elected by members of civil society groups and traditional elders together with professionals and academics

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[59] Somalis refer the "women" as the sixth clan in political representations; they also refer to "the international community" as the sixth clan when it comes to actual decision making in Somali politics.
[60] Menkhaus. *Somalia: A Situational Analysis*.

among others, the other crucial group of actors, the armed groups, did not participate.[61] Thus, these groups effectively blocked and confined the activities of the TNG to a section of Mogadishu.[62] These groups, however, would not have blocked the TNG if they had not had Ethiopian backing. The progress of the TNG was also obstructed by the outwardly visible actions of the government of Ethiopia, which had publicly voiced its dissent on the outcome of the conference by calling it non-inclusive and incomplete. Ethiopia then called for a meeting of its client warlords and helped create a warlord alliance, the Somalia Reconciliation and Restoration Council (SRRC).[63] This group has weekend the TNG by confining it to one tiny area of the city, officially announcing their intention to create a rival and parallel national government of their own. Before doing so, however, and at the end of the transitional term of the TNG, IGAD begun to sponsor a more inclusive reconciliation conference that was to take place in Eldoret, Kenya, in 2002–2004.

3.4 Case Study: Somali National Reconciliation Conference in Kenya, 2000–2004

Traditionally, international relations scholars have defined a state's power as the ability to influence outcomes in its favor.[64] Since peacebuilding efforts in Djibouti failed to establish a strong state that has the capacity to control violent actors in its territory, the international community led by the IGAD proposed and sponsored another reconciliation conference that would actually promote positive political development in the war-torn Republic of Somalia.

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[61] Afyare Elmi and Abdullahi Barise, "The Somali Conflict: Root Causes, Obstacles, and Peacebuilding Strategies," *African Security Review* 15, no. 1 (2006): 32–54.

[62] Elmi and Barise, "The Somali Conflict."

[63] Redie Bereketeab, ed, *The Horn of Africa: Intra-State and Inter-State Conflicts and Security* (London: Pluto Press, 2013). doi:10.2307/j.ctt183p650.

[64] Brock Tessman, *A Quantitative Depiction of Somalia at the Crossroads: Assessing National Capacity and Humanitarian Development.*

On October 15, 2002, the fourteenth multilateral conference, spearheaded by the IGAD, convened in Eldoret, Kenya.[65] It soon become clear that the agenda for this conference was not to reconcile the TNG with the Ethiopian-backed warlords but to start from scratch in order to unseat the TNG and empower the warlords.[66] It seemed as though the international community gave the warlords a blank page on which to draw Somalia's future.[67] The way in which this reconciliation conference was conducted was similar to the peace conference of Djibouti, except that warlords were placed at an advantage in manipulating the delegate appointment process. Each of the two conferences attempted to be all inclusive and to lay the foundation for a comprehensive peace and reconciliation program. Another similarity between the two conferences was that each of them was hosted by a friendly neighboring country. However, in Kenya, conference participants had to confront a language barrier that did not exist in Djibouti, as Kenya's official communication languages are English and Swahili, while in Djibouti, the Somali language is most publicly used.

Although the warlords were united under a single alliance against the TNG, some of them were politically and economically more influential than others. Colonel Abdullahi Yusuf Ahmed, the then incumbent president of the northeastern regions of Somalia (Puntland) had more resources than other warlords, making him the most powerful politician at the gathering. Although Hussein Farah Aidid, the son of the late General Mohamed Farah Aidid, was a highly respected leader of the warlord alliance, the SRRC, he was actually less influential than Mohamed Qanyare Affrah, who was a factional leader in Somalia as well as a business mogul in Kenya. For stateless societies

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[65] Abdullahi Osman, *Somalia at the Crossroads: Challenges and Perspectives in Reconstituting a Failed State* (London: Adonis & Abbey, 2007).
[66] Abdi Ismail Samatar and Ahmed I. Samatar, eds., *The African State: Reconsiderations* (Portsmouth, NH: Heinemann, 2002).
[67] Osman, *Somalia at the Crossroads.*

recovering from civil war, reconciliation efforts can be easily doomed when too many people are involved in trying to push their own demands.

To avert this problem, the hosting country of Kenya had to devise an approach to expedite the process. According to a recent public interview of Kenya's ambassador to Somalia, Mohamed Affey, a Somali Kenya citizen, Kenya's ministry of foreign affairs arranged a clandestine meeting with only two contending leaders, each of them coming with one right-hand companion: Abdiqasim Salad Hassan (TNG president) came with his prime minister Mohamed Abdi Yusuf and Col. Abdullahi Yusuf Ahmed came with Mohamed Qanyare Affrah to discuss key political issues and recommend all possible resolutions. This was done to avoid a future political impasse at the conference. This brilliant idea to organize a clandestine meeting was proposed by Mohamed Qanyare Affrah, the ambassador affirmed. In order to avoid disagreements, Kenya pretended offering advice on the reconciliation process and proposed the very recommendations made in the clandestine meeting to the conference participants. Once the proposal was announced, Col. Yusuf and President Abdiqasim stood up in the crowd to accept it, and everyone else eventually accepted the process.

After two years of reconciliation, reformation, resolution, and policy-making meetings in Nairobi-Kenya, the warlords and the nominated members of the parliament finally selected an interim government.[68] Col. Abdullahi Yusuf was elected as the new president of the TFG, appointing Ali Mohamed Gedi, a former Somali academic and professor, to head the federal government. The new government made a general call for external military support from the African Union. However, this was in fact an invitation to Ethiopia, a bordering country with the

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[68] Omar Eno, *Somalia's Recovery and Reformation: Transcending the Rhetoric of Clan Politics* (London, Adonis & Abbey, 2007.

means and interest to intervene, as it was clear Pan-African military support would not be forthcoming. The Africa-wide call was a political cover.

Many Somalis have been concerned about the motives of military actors from a neighboring state. However, long before the establishment of the TFG, the U.S. government, through its various intelligence agencies, had engaged some of Mogadishu's warlords—now members of the TFG—to hunt down what it considered to be terrorists and their radical Islam supporters.[69] Consequently, a group of warlords came together to create The Alliance for the Restoration of Peace and Counterterrorism (ARPTC), for facilitating the U.S. counterterrorism interests in Somalia. Geographically, whatever happens in Somalia invariably affects Ethiopia and other neighboring countries.[70] Accordingly, Ethiopia had to act in answer to the request of the TFG for military support. Ethiopian National Defense (ENDF), with political support and military assistance from the United States, entered the sovereign state of Somalia to bolster the TFG against the increasingly powerful Islamic Courts Union (ICU).[71] Amid outbursts of public indignation, TFG leaders affirmed that all was well, and the Ethiopian government was only acting upon an official request submitted by the TFG, which was unanimously approved by the Somali Federal Parliament (SFP). The leadership and the advice of Soviet-trained, experienced Somali military generals—who were more acquainted with the topography of the country than both ICU and Ethiopian military leaders—enabled the Ethiopians to crush and disband the ICU forces, which have certainly not recovered from since then. President Yusuf's administration was not able to exercise any influence over many parts of the country. Often, statebuilders impose a leader who is loyal to them, and the

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[69] Samatar, "The Production of Somali Conflict."
[70] Mohamed Mohamed (Farmajo). "US Strategic interest in Somalia: From Cold War to War on Terror" (master's thesis, University at Buffalo, 2009). https://cpb-us-w2.wpmucdn.com/u.osu.edu/dist/5/1926/files/2018/06/US_STRATEGIC_INTEREST_IN_SOMALIA-22fbj8j.pdf.
[71] Chris Albin-Lackey, *So Much to Fear: War Crimes and the Devastation of Somalia* (New York: Human Rights Watch, 2008), 3.

"trade-off between legitimacy and loyalty is the statebuilder's dilemma."[72] For that reason, it was easy to predict that outcomes of such meetings held outside the country with too much influence of neighboring countries were certain to be doomed. Although these criticisms do not nullify achievements made in both conferences, nevertheless, every administration will inherit a messy political environment that poses daunting challenges. A political development of possibly great influence can only occur in Somalia when internal and external actors establish legitimacy by reasserting public security and law and order in the country.

4 FAILED STATEBUILDERS APPROACH IN SOMALIA

The collapse of the Somali state resulted in rampant criminality and total disorder. Several international actors, including the UN and United States and its allies, attempted to restore law and order in Somalia right after the collapse of the state, but their combined efforts were unsuccessful—except for famine relief programs.

Today, if we were to characterize in one word the outcomes of foreign intervention in Somali statebuilding for the three decades after the collapse of the military regime in 1990, the word would be "failure." The impact of the various types of intervention has varied from one nation to another. The emphasis in Somalia has been not on public law—constitutional and administrative—but on political reconciliations and institutional developments designed to advance international interests in the fight against terrorism. Constitutional law is the law governing the organization and operation of the state.[73] Administrative law is the law governing organization and operation of the administrative branch of government and the relations of the

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[72] David Lake. *The Statebuilder's Dilemma:*

[73] John Henry Merrymen and Rogelio Perez Perdomo, *The Civil Law Tradition,* 4th ed. (Stanford, CA: Sanford University Press, 2019): 136–144.

administration with the legislature, the judiciary, and the public.[74] The absence of such a law has made the institutions of the government relatively ineffective, and that consequently dispensed with the checks and balances between the branches of the government. Although Somalis and interveners collectively attempted to take the initiative and make a new constitution by making good use of expertise accorded to them by international partners, they ultimately failed to achieve their goal, mainly for two reasons: First, instead of setting up a formal legal system of their own, the Somalis simply imported a constitution modeled on Western values without carefully balancing means and ends. Somali society is very sensitive to the Western view of Somali tradition, which springs from the Islamic traditional norms. The attitude is based on traditional viewpoints, the modern political Islam ideologies, and the lack of legal education. Secondly, by taking advantage of huge external support and their own political superiority, the Somali leaders were able to undermine the values of public participation in the political system and to draft a constitution that does not derive legitimacy from the very people it should govern. External support enabled them to avoid the hard negotiations with different local leaders that would be required to build strong national support. Still, there are foreign actors that are tipping the balance in their favor—just to subdue the force of Islamists in Somalia. Leaders' loyalty to foreign interveners prevents engagement with legitimizing Islamic jurists. But Islamic jurists, in mosques, have undeniably delegitimized the validity of any written legal system that does not live under the shadow of the Islamic law, ensuring the total failure of the Somali judiciary system. Even though Islamists made their rejection on the basis of religion, political interests also lay behind their claim. For that reason, Islamic movements have hitherto been able to stir up political unrest inside the country and even instigate armed conflict between themselves and the

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[74] Merrymen and Perdomo, *The Civil Law Tradition*.

government forces, in which Islamic movements are severely mauled by the Somali National Army with the support of foreign peacekeeping forces.

This view is consistent, although the context may vary, with the work of other scholars, such as Andre Le Sage[75] and Tom Ginsburg, on stateless societies as well as the broader literature on peacebuilding, rule of law, and social norms. Tom Ginsburg argues that "in a society in which there is no effective state government, citizens will have to develop alternative ways of resolving disputes other than to state authorities,"[76] and this exactly applies to Somalia. Their customary practice and Islamic law serve as an alternative way for the Somali people. Generally, any law that can be used to resolve conflicts between people is a good law. Congruently, Andre Le Sage stresses in his report on "Stateless Justice in Somalia" that the process of harmonization of Shari'a law, state law, and the Somalia customary practice of *xeer* (pronounced as *heer*) would also be a means of increasing Somalis' participation and raising their level of ownership over their emerging government structure.[77]

Somalis are an ethnic group of about 15 million, which occupy a large territory across Somalia, Ethiopia, Kenya, and Djibouti. They have never been unified into one great nation; they freely enjoy identities that cross borders. Although those who live beyond the boundaries of the Somali state are governed by the rules and laws of their countries, they still practice Somali customary norms and Islamic rule in their day-to-day conflict resolutions and, to some extent, legal practice.

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[75] Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives* (Geneva: Centre for Humanitarian Dialogue, 2005).

[76] Tom Ginsburg, "An Economic Interpretation of the Pashtunwali," *University of Chicago Legal Forum* 89 (2011): 6–15.

[77] See summary and recommendations of Andre Le Sage report: *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives* (Geneva: Centre for Humanitarian Dialogue, 2005).

International interveners did not attempt to harmonize Somali's various justice systems after the end of the first post-colonial parliamentary democracy of Somalia that was overthrown in 1969. Some local harmonization efforts driven by the unilateral decision of the military regime that took power in 1969, with little public participation, have austerely failed too.

5 ALTERNATIVE APPROACHES

5.1 Harmonization of Justice Systems

After long neglecting issues of citizen security and justice, democratization theorists have recently begun to recognize the importance of the rule of law.[78] The fledgling Somali state cannot stand on its feet by patching together scraps of laws enacted by foreign country; rather, a locally owned comprehensive judiciary system would be a key pillar to reconstruct the failed state of Somalia. One element, albeit a very central element, of a strong judiciary is the legal system. Building a new legal system or reforming an existing one involves complex tasks that include formulating policies, drafting laws, training legal personnel, and establishing effective administrative regularity.[79] However, the key challenges of an effective legal system for Somalia are the multiple, often inconsistent, traditions of law that coexisted in the country since its inception. It is therefore imperative to understand Somali legal history from the perspective of its colonial past. Prior to colonialism and independence, the Somalis had eked out a precarious living in this barren land for centuries.[80] On independence in 1960, two out of the five former Somali territories—British Somaliland and Italian Somaliland—merged into what is today the Federal Republic of Somalia. Much history has been written since the collapse and disintegration of the

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[78] Charles T. Call, "Democratization, War and Statebuilding: Constructing the Rule of Law in El Salvador," *Journal of Latin American Studies* 35, no. 1 (November 2003): 827–862.

[79] Erik Jensen, *State Building and the Rule of Law*, Stanford, CA: Center on Democracy, Development, and the Rule of Law (CDDRL) at Stanford University.

[80] Samatar, *Somalia: A Nation in Turmoil*.

Somali state, in a tediously repetitive manner, on the nature and peculiarities of the modern Somali political system. Therefore, this study will dispense with unnecessary details and present a brief overview of the most prominent features of the Somali legal system.

Andre Le Sage[81] has identified four justice systems that currently coexist in Somalia: formal judiciary structures in regional administrations and the central government created during the international peace process, the traditional clan-based system known as *xeer*, the growing number of Shari'a courts in urban areas, and civil society and private sector initiatives as well as ad hoc mechanisms established by Somali militia-factions.[82] In the first nine years of parliamentary democracy, from 1960–1969, and under the twenty-one years of military regime, Somalia settled on the adoption of a hybrid legal procedure based on Islamic law devoid of severe forms of corporal punishment, and a Somali Penal Code derived from the Italian *Codice Penale*, and up until now, Somali criminal courts adjudicated cases with reference to both Islamic and the Somali Penal Code. But there were unyielding demands from Muslim jurists that the government ought to repeal all laws but the Islamic Law—since it is the major source of law, they assert. These jurists and their supporting elites would vindicate their argument by underscoring the moral commonwealth of the Somalis, the deep sense of kinship, customary law (*xeer*), and the principles of Islam that consolidates their culture with the broad Islamic culture. After the collapse of the state in 1991, however, Somalis lost their moral commonwealth, which they had so proudly flaunted. Endless political and social crisis that emanated from the cataclysms of the civil war have plunged the country into an indefinite conflict.

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[81] Le Sage, *Stateless Justice.*
[82] Le Sage, *Stateless Justice.*

Nevertheless, it was a golden opportunity for the Islamists, who were very weak under the military regime, to demand in the wake of this pressing crises a new commonwealth founded on their famous catchphrase "Islam is the Solution." Starting their political pressure in the northeastern region of Somalia (recently Puntland State), they were swayed by momentary impulses and have never been driven by the principles that are inherent in their pursuits. So, their project failed, primarily because of absence of a strategic vision and mission and because their leaders were governed by their personal interests and the advantages of the moment.

In 2006, the same endeavor with different and perhaps with some of the previous characters took shape in the capital city of Mogadishu as the Islamic Courts Union. This endeavor was thwarted by a new Somali government, created in an international land, with strong military support from Ethiopia, which had received huge international incentives for the intervention. Somalia now has a weak federal government that is protected by international forces at the heart of its capital city. While it claims to be a sovereign central authority that fully controls the entire eighteen regions of the country, it has tenuous reach to many extended districts of the very capital city in which it resides. The social side of the country has a different history. Reconciliation and peacebuilding that was merely alive in moments of crises are now taking shape in what has become a continuous process. From beginning of twenty-first century, Somalia has been benefiting from the influx of a reverse brain drain of Somali diaspora human capital. This massive return of displaced people is an important factor in stimulating local socioeconomic progress in a more globalized manner.

As a result of globalization, Somali society underwent discernable changes in its political culture, social norms, literacy, and international networks. Also, due to increasing drought and famine, many Somali pastoral nomads have moved from the hinterland to villages and big cities,

and after virtually two decades of sedentarization, they have become thoroughly urbanized. While more people attended schools, the majority of the public took advantage of informal educational settings brought about by the changes in technology and internet.

Although globally most people are rationally ignorant of the law, Somalis are specifically impacted by their social norms and the adjudication practices under anarchy. However, many of the modern-day Somali youth, from the diaspora community and home, are now strong proponents of democracy and the rule of law; but there is a significant number of citizens who are more recalcitrant and less likely to support the democratic agenda. Certainly, most Somalis agree that the current practice of *xeer* needs to be reformed, particularly in those instances where it contradicts Shari'a, as well as in many cases where it contradicts international human rights norms.[83] This is a beginning of new hope; opportunity now appears for the task of harmonization of the Somali justice system. Notwithstanding that legal experts dismiss the project of harmonization as unproductive, Somalia should be deemed an exception for the following reasons:

1. Somalia is a post-conflict society, virtually all Muslim, with complex and chicanery customary norms (*xeer*).

2. The Qur'an is fulcrum of Muslim faith, and it is the main source of Islamic law that many countries, including Somalia, use as revered reference for their constitution.

3. Harmonization will promote the society's sense of ownership of their legal system.

4. Harmonization could also be an effective means of checking the rise of Islamic extremism in Somalia.[84]

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[83] Le Sage, *Stateless Justice.*
[84] Le Sage, *Stateless Justice.*

Once forming a coherent justice system in Somalia is taken seriously and the international statebuilders support the initiative, the essential remaining tasks would revolve around its implementation strategies and tools. To create a rule of law culture in a segmentary society that is driven by conflict and run by a rudderless political elite is extremely difficulty. Segmentary society means that it is comprised of numerous small, self-regulating groups that periodically come together to form a larger group. As one scholar puts it, "rivalry and status competition is a key defining element within as well as between the elements of the segment.[85] Accordingly, it is important to examine and present solutions to some unique challenges that impede the promotion of rule of law in post-conflict societies: literacy, law enforcement, and judiciary reform.

5.2 Constitutional Court and a Strong Judiciary System

Walter Murphy, one of the most distinguished scholars of constitutional law, is fond of interrupting conversations about "constitutions" with the pointed interjection, "you mean the text, right?"[86] Indeed, all national charters and constitutions of independent states are a written text. But a general caveat is that all written texts are not constitutions, and all constitutions are not always written. One of the major trends in constitutional design over the past century has been the global expansion of judicial power; especially important is the power of judicial review of legislation and government action, by which courts can set aside or overturn the acts of the other branches.[87] Currently, the highest judicial organ in Somalia is the Supreme Court, which is nominal in Its current form, which does not administer constitutional review or justice with vigor. In the first nine

[85] Tom Ginsburg, "An Economic Interpretation of the Pashtunwali," *University of Chicago Legal Forum* 89 (2011): 6–15.

[86] Zachary Elkins, Tom Ginsburg, and James Melton. *The Endurance of National Constitution* (Cambridge, MA: Cambridge University Press, 2009), 36–64.

[87] Ginsburg, Tom. *"Comparative Constitutional Design.* Book Chapter on *Judicial Review and Judicial Power"*, edited by Versteeg, Landau, Ginsburg, and Choudhry. University of Chicago Law School, 2014.

years of the Somali Republic, from 1960 to 1969, the rule of law had prevailed, and the Somali judiciary system demonstrated this by upholding the constitution as the supreme law of the land. However, the 1969 military government abolished the institutional powers of the judiciary and legislature by suspending the constitution and relegating the Supreme Court's role to a ministry under the command of the executive branch. This indicates the bad governance currently gripping the entire Somali Peninsula first began to take shape during the military government.

Today, thirty years since the downfall of the Somali state, with no change in sight, Somalia's millennials believe that it is the right time to revive and restore the dignity of the Somali judiciary system. There are several reasons to empower the judiciary in Somalia and grant it the genuine autonomy it deserves. First, the independent judiciary is good for monitoring the actions and decisions of bureaucrats. Somali public servants are known for power abuse, nepotism, tribalism, and corruption. Consequently, these bad leadership qualities make the government as a whole an illegitimate entity. One good reason why the Somali government lost legitimacy in the eyes of its citizens is that the central authority, Villa-Somalia, cannot effectively monitor all government employees. Secondly, the strong and independent judiciary can be a useful tool for economic growth and entrepreneurship promotion. In today's complex market, entrepreneurs face countless legal disputes, with a wide number of market players, that require mediation, arbitration, and adjudication proceedings. A regime that wants to make a credible commitment to the market may set up courts with the power to rule against the regime in economic cases.[88] As a result, market transactions devoid of government arbitrariness can encourage economic growth. Thirdly, apart from adjudicating legal disputes and carrying out administration of justices, strong courts also

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[88] Ginsburg, Tom. *"Comparative Constitutional Design.* Book Chapter on *Judicial Review and Judicial Power"*, edited by Versteeg, Landau, Ginsburg, and Choudhry. University of Chicago Law School, 2014.

protect citizen's rights and interests against wicked government policies that can hurt the life and liberty of all. This can convince citizens that those policies, not challenged by courts, are just, and this in turn will enhance the legitimacy of the regime. The quality of the judiciary system also fosters the global image of the regime. Likewise, high-quality justice system provides high-quality services to citizens, which can help legitimize the administration.

Because Somalia has adopted the new federal system of government, federal courts should be spread throughout the nation. In addition to administering justice in its jurisdiction, every court shall bear the responsibility of protecting the constitution through the exercise of judicial review. Because this system spreads the power through the judiciary, it is sometimes called a decentralized or diffused model of constitutional review.[89] However, "federalism" has no correct meaning in Somalia. If the virtues of federalism include enabling the national government to focus primarily on public obligations, leaving societal secondary affairs to states, this kind of federalism does not have a real history in Somalia. For instance, the national government still manages the local affairs of education and elections. Furthermore, the country has not integrated the judiciary system so that federal district courts, appellate courts, and the Supreme Court are accessible in different jurisdictions. Also, the power of judicial review is limited to the Supreme Court only.

As explained before, in the previous section of the chapter, Somalia experienced and still experiences different legal traditions. It has had *civil law, common law,* and *Islamic legal systems*. But after the union of the two parts of Somalia, the resultant Somali Republic practiced *civil law* traditions, and most Somali lawyers and judges were trained in Europe. Therefore, it may be best

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[89] Ginsburg, Tom. *"Comparative Constitutional Design. Book Chapter on Judicial Review and Judicial Power"*, edited by Versteeg, Landau, Ginsburg, and Choudhry. University of Chicago Law School, 2014.

for Somalia to follow the German court system for a reason: Both are federal republics in the *civil law* world.

Following the German model,[90] each state in Somalia needs to have three ordinary courts of record: (1) a lower court or municipal court, (2) an intermediate court or trail court, and (3) a high state court. In addition to those three levels of courts, states can have four special branches of jurisdiction—administrative court, tax court, labor court, and if necessary, a welfare court.

An administrative court hears controversies between citizens and the various administrative agencies of government, concerning, for example, such matters as granting or revocation of permits and licenses.[91] A tax court is a special court for revenue and tax disputes between citizens and government. Labor court hears disputes between workers, their unions, and employers.[92] Welfare court may not be applicable to Somalia since Somalia is a very poor nation that does not have a welfare system in place. This type of court, however, adjudicates disputes of unemployment, healthcare complaints, disabilities, and so forth.

All of the above courts at the state level will be the first resort for all suits. Each state will also have a federal appellate court of last resort that only accepts appeals from lower courts in the state. Then, the country should also have one federal Supreme Court that only welcomes appeals from high state courts—that is, cases ending up in the Supreme Court must have gone through all three levels of courts in a state.

Finally, and most importantly, the Federal Republic of Somalia needs to create the first "constitutional court" ever in the history of the Horn of Africa, a unique and most important

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[90] See William T. Sweigert, "The Legal System of the Federal Republic of Germany," *Hastings Law Journal* 11, no. 1 (1959).
[91] Sweigert, "The Legal System."
[92] Sweigert, "The Legal System."

judicial instrument for preserving the supremacy of the constitution. A constitutional court should not be confused with the federal Supreme Court; it is only concerned with the interpretation of the federal constitution.

To conclude, leaders, their advisors, and policymakers in the Somali peninsula wrongly believe that Somalia can easily follow the American federal system. The American federal system is complex, expensive, and hard to implement in post-conflict states. For instance, the dual system of state and federal courts, state and federal bicameral houses, and state and federal agencies is very sophisticated and demands a great deal of legal knowledge and a vibrant economy. Moreover, think about establishing a "circuit court of appeal" in Somalia. All five current states of Somalia would have one "circuit court of appeal," which makes no sense when state courts appeal to a high state court and the Supreme Court.

In general, Somalia needs a robust judiciary reform, well harmonized laws, and good constitution. Better Somalia can develop from a reformed judicial system that is very closely related to the history of how English government actually evolved. Somalia needs to establish a court system with superior authority to compel national leaders to respect the powers and privileges of local courts.

6 CONCLUDING REMARKS

If we were to ask an ordinary Somali citizen about the statebuilder's approach in the Somali peacebuilding process, they would simply respond in one venerable Somali proverb: It is like "Qawda maqashii waxna ha u qaban:" "make them hear the noise (actions) and do nothing for them." Somalis are talkative and very inquisitive about everything, and a pertinent question one may ask in a social talk is, "What is the solution that the international community offers for the ills

and evil of these days?" Most may not concede to the reality that sustained international efforts to help Somalia failed because of the refusal of Somalis to help themselves.

As shown in the preceding chapters, this study examined several theoretical constructs in relation to the role of internal and external actors in Somali statebuilding. In the international community's viewpoint, failed states cannot exercise effective sovereignty, and when there is no responsible authority to protect civilians, defend human rights, and provide minimum services, the international community has a moral obligation to intervene. They do so to forestall the possibilities of genocide, ethnic cleansing, and other atrocities that occur without remedy. They also want to prevent malignant forces that emerge from ungoverned spaces and attack the interests or territories of sovereign nations, such as the U.S. embassy attack and the Westgate shopping mall attack that occurred on August 7, 1998, and September 21, 2013, respectively.

In the local viewpoints, however, the international community is just pouring water into a bottomless barrel and is being egged on by the world's supper power, the United States. Statebuilders empower local leaders who can serve their geopolitical and strategic interests. They always desire an obedient servant who can protect their interests. This undermines the legitimacy of the state before the eyes of the citizens. A leader who is loyal to a foreign state/interest cannot expect legitimacy from his people. Citizens believe that the empowerment of these incompetent and corrupt leaders by the international community will make the unhappy Somalia disappear into a political black hole.

Now the focus is on how to make Somalia better. If Somalia is to achieve the same or better than what Rwanda achieved after reconciliation, then it will need to emphasize some of the biggest challenges that the country is facing: First, Somalia and her peacemaking partners need to redefine the term "reconciliation." As this study highlighted earlier, a good reconciliation process is

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comprehensive and complete by design, has clear principles of inclusion and participation, removes barriers for the voiceless, and most importantly, has courageous leaders who have integrity, honesty, and a clear focus. Second, Somalia needs to be left to its own devices. Minimal intervention, especially from the neighboring countries who have vested interests in Somalia, will allow Somalia the rule of self-determination—whether Somalis agree to adopt a unitary system, federal system, or a unique mixture of their own. Somalis must be given the power to draft their own full-fledged constitution originating from inclusive participation of all. Somalis, particularly Islamic jurists, do not obey the constitution, and they consider secular laws as inane text on a plain paper. To prevent this ideology from prevailing, statebuilders must lobby for a people-made, people-owned, new constitution.

Also, this study acknowledges that Somaliland achieved tremendous success in their peacebuilding and state-making projects. Somaliland has achieved a modicum of democracy and stability. In other words, Somaliland invariably trumps Somalia, and the tenuous secret of success can be attributed to two things: first, Somalilanders, youth and elders, have a high degree of solidarity and the common purpose of achieving international recognition for their blossoming state. In the course of this, they show good political and social behavior before the international community. Second, the government's ability to exercise power is an important factor that enables Somaliland to secure peace and stability. After the inception of the tiny state, the new Somaliland administration was able to succeed in disarming the tribes and demobilizing insurgents, except in few peripheral jurisdictions. Furthermore, unlike southern Somalia, political violence is not normalized in Somaliland. People avoid the bitter partisan competitions that can undermine the legitimacy of the country's political system and secession project.

However, Somaliland faces many daunting and interconnected challenges that can undermine pillars supporting the country's dream of a peaceful secession. Fostering social equity is one challenge. Increased inequality of economic and social systems can result in societal polarization and instability. Another challenge is to modernize and invigorate the public service. The lack of clear structures, roles, and effective responses to citizens' pressing social needs and concerns can undermine the legitimacy of the government. Another big problem that can splinter the rickety legs of the Somaliland state is the dream that has eluded its leaders for thirty years: to proclaim its sovereignty over SOOL and SANAAG regions hitherto outside its full domain. SOOL and SANAAG are inhabited predominantly by "Daarood" clans, the dominant two being the "Dhulbahante" and "Warsangali," whose consanguinity is very strong and who are also strong political stakeholders of the fledgling semi-autonomous state of Puntland. Having miserably failed, all Somaliland border security initiatives eventually deteriorated into internecine bloodshed. Therefore, if Somaliland is to succeed in its profound social transformation and statebuilding, it has to prevent murderous border conflicts with Puntland, bitter power struggles at the center, and social revolts on the periphery.

To briefly recapitulate the salient points that are sprinkled throughout Chapter 5, "Alternative Approaches," Somalia's informally applied customary and Shari'a law are more prevalent than formal statute and constitutional law. Contradictory sources of law can cause confusion and contention in the justice system—that is prima facie evident and cannot be denied. To obviate difficulties springing out from that confusion, statebuilders (internal and external) can review and harmonize Somalia's various justice systems that are currently in place. For a full review of the legal system, the international community should acknowledge the fact that the central authority in Mogadishu has a tenuous reach into the regions where the practice of *xeer* and

Shari'a prevail. Therefore, it is necessary to act very quickly before those who refuse the rule-of-law forestall the process. However, a good harmonization of justice systems cannot happen without a new constitution that allows it. Thus, unless Somalis modify the current provisional charter into a fully-fledged, new constitution, there is no hope that the country can be spared the feud, conflict, and violence that is destroying it.

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