



Intergovernmental Authority on Development (IGAD)

**Consultancy Report
to the
Somali National Reconciliation Conference
in Support of Committee 3 – Land and Property Rights**

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Support for the Somali Peace Process

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Abstract

The ultimate failure of the Arta process should be a warning example to the Eldoret/Mbagathi process. The Transitional National Government (TNG), formed in Djibouti, did not, when it was transferred to Mogadishu, manage to establish its authority over the national territory or a significant part thereof. One of the reasons for this was the lack of instruments to carry out its policies¹. The new transitional government about to be formed at Mbagathi/Nairobi, as soon as it is transferred to Somalia, needs to show speedy success in establishing peace and justice in order not to lose again in the first weeks after its arrival in Somalia any legitimacy it might have initially. The Mbagathi resolutions about restitution of property, demobilization etc. need to be implemented soon and any preparations for this, which can be done now, need to be done NOW. Statistical data on demography and economy, data on recent population movements, forced or otherwise, agricultural survey data, geographical data by remote sensing and on-the-ground research as well as practical experience in development intervention are available at UNDP, at the Somalia Unit of the Delegation of the European Commission, in the archives of the GTZ at Eschborn near Frankfurt, with the GTZ International Services here in Nairobi and in other places.

This report aims at identifying the needs of the future Somalia administration in terms of information and organisational assistance, as they have been expressed in the documents produced by the various reconciliation committees in Eldoret and Mbagathi, and at bringing these needs to the attention of international organisations and transnational NGOs, so as to facilitate the more detailed planning of the measures decided on by the Peace and Reconciliation Conference and their smooth implementation. It also tries to give a preliminary overview of existing initiatives by international agencies, to encourage existing and emergent Somali administrations at all levels to make optimal use of these initiatives and to coordinate their own activities with them.

It will further discuss some options for intervention in the fields of conflict resolution and related activities which can be considered if the Mbagathi process does not come to a successful conclusion or, in case the Mbagathi process or subsequent processes draw out and do not come to definite results soon, activities which can be taken up parallel to an ongoing diplomatic process so as to support it on other "tracks".

1. Objective: Linking demand and supply in the field of support to the Somali Peace Process

The success of development intervention depends to a large extent on its close fit with the perceptions of the target group. Intervention should respond to the aims and needs of the target group as perceived by them. This report starts with the stated needs of the Somali

¹ The *European Commission Strategy for the Implementation of Special Aid to Somalia, 2002-2007* states: Right from the beginning, it became obvious that the Transitional Government (TG) [=TNG] did not have a clear political agenda for completing the reconciliation process as well as diffused and unsubstantiated priorities" (p.12). This is the technical aspect of this failure. A more political view of the reasons for the failure of the TNG has recently been given by Samatar and Samatar (2003).

represented at the Eldoret/Mbagathi conference, as expressed in the documents accepted by the conference and derived from discussions with the delegates. From these sources statements are derived, which specify which inputs are expected from the international community for the facilitation of the implementation of the policies the future Somali government has been obliged by the conference to adopt. Where such needs have been formulated only in a very general way, this report tries to specify the questions, which yet need to be clarified and to list up technicalities yet to be specified. Then discussions with representatives of various international organisations are summarized and project documents analysed in order to see how many of these needs are already being addressed in one form or the other somewhere and how a closer fit between the demand for and the supply of international support for the Somali peace process can be achieved.

The possibilities of intervention are then discussed in a variety of possible future political scenarios. To meet these objectives, the report is organised in the following way:

0. Abstract
1. Objective: Linking demand and supply in the field of support for the Somali Peace Process
2. Background: Recent history and the current Peace Process
3. Background: Personal experience with the “Committee on Land and Property Rights”
4. The stated needs: What Somali expect from the International Community
 - Demobilization, Disarmament and Reintegration
 - Land and Property Rights
 - Economic Recovery; Institution Building and Resource Mobilization
 - Regional and International Relations
5. Ongoing activities in the field of technical assistance
 - Demobilization, Disarmament and Reintegration
 - Land and Property Rights
 - Economic Recovery; Institution Building and Resource Mobilization
 - Regional and International Relations
6. Learning from Somaliland
7. Overarching Issues
8. Actions recommended in anticipation of the success of the Mbagathi process.
9. Options in case of the failure of the Mbagathi process
10. Actions recommended irrespective of the outcome of the Mbagathi process
11. References

2. Background: Recent history and the current Peace Process

Since the American-led UNOSOM intervention had ended (it had basically failed in 1993 and then dragged on in a reduced form until March 1995), UN sub-organisations and international NGOs continued to work in the disintegrated country, often intermittently and wherever the security situation permitted to do so. Technical aid continued in a very much reduced form. Much personal bravery was required from the side of involved organisations and their staff on the ground. In the political sphere, however, there was hardly any interest in the fate of Somalia left in the period from 1993 to 2001. The world did not seem to care. Political observers, used to a world of states, sometimes wondered how life went on without a state, but soon lost interest again. Then there were the terrorist attacks in New York and Washington of September 11, 2001. International terrorists, so it was suspected, might hide in some wilderness beyond the reach of statehood. Statehood therefore had to be restored in

places where it had faded away. Money was suddenly available again for peace initiatives for Somalia.

The organisation which was suspected of being the Somali branch, partner or equivalent of al Qaa'ida is called al Itihaad, 'unity'. It had operated in the Somali region of Ethiopia (formerly "Region 5") and been decimated at the hands of the Ethiopians. It had suffered defeats against the forces of Mohamed Farah Aidiid (USC, forces recruited in the Hawiye clan, mainly Saad) in Kisimayu in 1991 and against the Somali Salvation Democratic Front in the north-east of Somalia (now Puntland) in 1992. It finally got a foothold in the Marrehan area along the Juba, but due to Ethiopian incursions into Somalia since 1996 and al Itihaad's involvement with the Ogadeen National Liberation Front (ONLF) operating in "Region 5", which did nothing to endear it with the Ethiopians, al Itihaad finally gave up independent military activity. In the Ethio-Eritrean war 1999-2000, Eritrea supported briefly the ONLF and al Itihaad to open a second front against Ethiopia. (Le Sage 2001) Thus it became part of a temporary alliance of Eritrea, the OLF (Oromo Liberation Front which had been operating in southern Ethiopia from northern Kenya and had been expelled from Kenya) and the forces of Hussein Aidiid. (Schlee 2002a: 264, Schlee 2003, Schlee and Shongolo, forthcoming).

Al Itihaad and its sister organisation al Islaah are also engaged in entirely peaceful occupations like running orphanages, schools and health centres (Marchal 2001: 9). Al Itihaad may be less of an actual terrorist threat to the rest of the world than suspected. The bombings of the American Embassies in Dar es Salaam and Nairobi and the bomb attack against a Mombasa hotel frequented by Israelis in recent years have raised the suspicion, that non-Somali terrorists and their weapons could easily move through Somalia (UN 2003: 32), but no significant links of Somali with international terrorism have been identified so far.

In the Somali framework one can therefore safely say that al Itihaad is a minor player. Its role in international terrorism is more difficult to assess, because of the inherently secret nature of this type of activity. Doubts about its importance may be justified. The most dramatic historical effect that al Itihaad has so far had, is that by being associated with the spectre of terrorism, be it in reality or in the perception of others, it has contributed to the motivation of the international community to resume diplomatic activities with regard to Somalia and to dedicate substantial means to a renewed Somali peace process.

Phase one of the 14th Somali Peace Conference was concluded in Eldoret on October 27, 2002, with a ceasefire. The signatories to this agreement were the "leaders", as they came to be known in diplomatic parlance. Most of them are otherwise known as "warlords". For some of them the signature to the ceasefire agreement was a mere lip service, because their respective militias resumed hostilities a couple of days later, just as if the "leaders" had to prove that they had mobile phones and were still in charge.

The organisation of the conference in "phase 2" consisted of the Technical Committee, basically a steering committee manned by the IGAD frontline states which hosted the conference, and a "Leader's committee". Then there were six committees, which dealt with technical issues, namely

1. Federalism and Preliminary Charter
2. Demobilization, Disarmament and Reintegration
3. Land and Property Rights
4. Economic Recovery, Institution Building and Resource Mobilization
5. Conflict Resolution and Reconciliation

6. Regional and International Relations

These committees were to draft resolutions to be discussed by the Leaders' Committee and the Plenary. Resource Persons (international experts) were attached to the committees in order to provide the guiding structure.

The "Proposals for the Process and Structures of Phase two", dated Nov. 1, 2002, stated that "the technical, practical and political arrangements must be in place *before formalizing power sharing arrangements* (emphasis in the original)". That makes perfect sense. The constitutional institutions need to have been outlined, the regional and administrative units defined, the basic content of the peace agreement stating how the future government was to create a just post-war order needed to be established, before power sharing could take place. In other words: powers needed to be defined before they could be shared.

In fact the haggling in the Leaders' Committee (although no formal decisions were taken) then went on parallel to the work of the six thematic committees. The latter, who were composed of the more qualified among the Somali delegates assisted by non-Somali academics, thus were left with the impression that whatever they decided might be of little importance to the parallel deliberations of a group of 23 "leaders", mostly only qualified by the firing power they could mobilize. What if the division in regional states to be proposed by committee 1 would differ from a bargain the warlords had struck among themselves in the meantime? What would happen to the elaborate rules for restitution of property devised by committee 3, if the warlords said that they did not dream of surrendering their loot?

Warlords are people who use arms to acquire loot, to extort money from legal and illegal businesses, simple citizens and foreigners, or to defend an illegal source of income like payments for dumping waste or selling fishing² rights, which are not theirs. This illegal wealth is then used to acquire yet more firepower, to play the same game on a larger scale. Invitations to join the peace conference as a "leader" were on the grounds of military power held, i.e. they were awarded to the most successful players of this game.

It is correct to say that the earlier Arta process had largely failed because its results were not accepted by the warlords and that a peace process has to involve the powers that be. But involving them could have taken a different form. Instead of warlords holding court in posh country residences surrounded by their own retainers, graciously giving audiences to long successions of diplomats and international journalists who then proudly enumerated how many warlords they had spoken with, instead of making them feel like the grey eminences behind the peace process, they should have been dragged to the fore. They should have been made to explain their deeds to the mass of the delegates, to the mothers of their victims, to human rights groups. That would have been a meaningful involvement. It would have meant to make them part of the peace process by putting them under pressure to accept its results, not by surrendering the peace process to them as a new playground for their power games.

As peacemakers the warlords had poor credentials. An ICG (International Crisis Group) report summarizes on March 6, 2003: "...leadership at the conference was awarded to the same faction leaders who had failed to implement previous peace agreements." (ICG 2003:3). They had not honoured their ceasefire agreement this time either.

² For some pre-war perspectives on the potential of fishery for Somalia v. Janzen 1991, Mohamed & Touati 1991.

Lacking legitimacy, these figures might have been poorly qualified to make peace even if their intentions had been sincere. The TNG shows no effective presence as a Government in its own capital, Mogadishu, nor does any of the minor warlords there fill that role. The Jubba Valley Alliance (JVA), which rules Kismayu, is perceived as an occupying force by the local population. Various factions of the Rahanweyn Resistance Army (RRA) fight each other in Baidoa while their leaders enjoy each others company in Eldoret/Nairobi. Puntland has no legitimate president but is ruled by force if at all, since Abdullahi Yusuf's democratic mandate expired in July 2001³.

The sincerity of the commitment of these "leaders" to the peace process can also be put into question by citing the following warlike actions and atrocities, all committed during the peace conference, often while the chief instigators were sitting together, and after they had signed a ceasefire agreement. In December 2002 Abdullahi Yusuf had to leave the conference temporarily, just in time for the subsequent clashes in the Sanag region of Somaliland (own notes). In June 2003 "clashes between the militias of the rival RRA leaders Shatigudud and Habsade degenerated into a series of reprisals involving abduction and rape of young girls" (Menkhaus 2003: 32). Armed conflict continued in the Medina District of Mogadishu between the militias of Omar Finnish and Musa Sude (Menkhaus 2003: 32). Puntland, often praised as a place with a relatively high level of law and order, has been found to have a particularly poor human rights record in terms of arbitrary arrest and detention (Menkhaus 2003: 34) while the conference was going on. This paragraph is not meant to single out individual "leaders" as particularly bad, but to underline the doubts whether the International Community was really dealing with the right set of people, and whether, if dealings with them were inevitable, they should have been given this prominent role.

A basic shortcoming of the peace process was that the committee 1 on Federalism and the Provisional Charter, also referred to as the one about constitutional issues, had controversial discussions and came out with two competing drafts, one of which was hardly federal but calling for a strong central power. This is especially unfortunate since it would have been useful for all other committees to know more about the regional and constitutional framework within which the activities they planned would take place, be it property restitution, demobilization or whatever. (How can you plan arbitration bodies and coordinate them with the administration and the juridical system, if you do not know how many administrative units there will be at which level and which types of courts will be established? How can you plan demobilization, if you do not know whether there will be federal or state police, army or navy of a type and size capable of absorbing a part of the demobilized militia men? ...)

The preference for a more federal or a more centralist model might reflect the interest of the warlords behind the delegates in the committee. Those who feel strong might favour a higher concentration of power, because they speculate that this power might become theirs. It is difficult to say to which degree there were connections between the work of the thematic committees and what was going on in the Leaders' committee and whether there was or any active warlord interest in what the committees were doing. This may have to do with a general warlord disinterest in legality and other such niceties. People actively involved in the work of drafting resolutions also tended to be more educated than at least some of their political "leaders" and compensated the reality of being oppressed with the feeling of intellectual superiority.

³ IGC 2003: 3, and own conversations.

A Somali lawyer who contributed substantial amounts of text to one of the drafts, at one point introduced to the author someone whom he referred to as his “boss”. Later the author asked him who the man was. He responded with a dismissive gesture and said that the man spoke neither English nor Italian and was of no importance at all. He was deputising for the warlord to whose delegation the lawyer belonged. The warlord, a particularly notorious figure, had gone back to Somalia to practice his profession as such⁴.

In July 2003 the resolutions of the committees two to six were accepted by the plenary. Discussions about the draft federal constitution, a unified version of two competing drafts with which committee one had come up, only started and continued into August. That the chronological order would have been better the other way round, and that the work of the other committees would have profited greatly if the one on the constitution had advanced faster, has already been explained above. Even now, for the sake of not putting the agreement on a unified document at risk, many problems were put aside rather than solved. The draft (The Transitional Federal Charter...), for example, states that federalism will be based on the existing states (Art. 88.0, §1, p. 41 "The existing states and regional administration [sic] shall be part and parcel of the Transitional Federal Government of Somalia.") No observer of Somali politics can fail to notice that it is not clear how many such federal states exist. Some of those, which appear to have a kind of existence, tend to be engaged in violent boundary clashes with each other. In other words: there are no existing federal states with accepted boundaries, which can be used as ready building blocks for a federal system. The entity, which most resembles a state, Somaliland, did not participate in the conference, and the other entities still either have to emerge or have a long way to go to become states.

Ambassador Kiplagat, a senior Kenyan diplomat who has taken over the chairmanship of the Conference in January 2003 after many things had already been put on wrong tracks and the reputation of the whole exercise had suffered from mismanagement and corruption, has shown great skill in making the best of an ill-fated process. It remains to be seen whether the process will come to a conclusion and whether a transitional constitution will be accepted in addition to the five policy documents, whether a parliament will be formed and a transitional government be elected. If that happens, the government will be part of the same peace agreement as these policy documents and will be bound to implement them.

Even in the case of a successful completion of the peace conference, there are many imponderables for the time immediately following. Will the government be able to establish its authority in Somalia? Will it, once elected, honour all parts of the peace agreements? It is common wisdom that we always have to be prepared for the worst case. The worst case is that the peace process evaporates, and Somalia stays as it is or further deteriorates if there is room for further deterioration. But should we not also be prepared for the best case? What if in the not too distant future there is a Somali government, based on a fairly broad consensus, willing to implement the policies outlined in the Eldoret/Mbagathi peace process? It would be a great shame for the international community if they then did not have their tools ready to assist in this implementation.

3. Background: Personal experience with the “Committee on Land and Property rights”

The author is an anthropologist who has done research on mostly pastoralist communities in East and North East Africa since 1974. He worked on interethnic clan relationships which also involve Somali groups (Schlee 1994 [1989]) and on patterns of alliance in recent Somali

⁴ Eldoret, February 3, 2003, diary p. 41

history (Schlee 2002a), as well as development related matters (MoLD: 1991, 1992). He has been appointed on short notice as an expert to the Somali Peace conference, then at Eldoret, in October 2002.

He was the Resource Person for Committee 3: Land and Property Rights, for which he drew a problem outline and sketched an agenda which is by and large reflected by the document produced by this committee in the subsequent months. The work also comprised identifying questions, which had remained open and discussing problems of harmonization of the Somali and English versions of the document. From January to March 2003 he was supported in this task by a student assistant, Hege Magnus from Norway. She then joined a GTZ project (in cooperation with the author's institute, The Max-Planck-Institute for Social Anthropology, Halle/Saale, Germany) in the Bay and Bakool regions of southern Somalia. Their work at Eldoret, and later Nairobi, was paid for by the GTZ⁵. The author's appointment was in response to an initiative by the GTZ representative at the IGAD head office in Djibouti. The IGAD proposal to appoint him was endorsed by the German Embassy in Nairobi and finally the Kenyan Ministry of Foreign Affairs.

The perspective of this report is shaped by the author's experience with the Committee on Land and Property Rights. The following quotations stem from a summary of the report of that committee which the author gave the Technical Committee on February 7, 2003. In the ensuing discussion the Somali Chairman of that Committee on Land and Property Rights insisted that this summary reflected positions agreed on by the committee "word by word and paragraph by paragraph". For the present purpose it is useful because it is much shorter than the full document:

"The committee 3 on land and property rights has dealt with an issue, which is essential to a just post-war order. A just post-war order is, in its turn, a prerequisite for a lasting peace [...]⁶].

I am glad to be able to say that from the beginning of its work the committee adopted the principles of restitution of property or compensation for the loss of property. There was not a single voice claiming that it would be better to forgive and forget for the sake of peace before justice was done.⁷ Justice is the prerequisite for reconciliation. There might be people who use reconciliation as an excuse for tolerating injustice – who say 'let's preserve the status quo, let us forgive and forget for the sake of peace' – at the expense of the victims. But such views were not uttered on our committee. This committee was unanimous in its conviction that the prolongation of injustice, that leaving property in the hands of those who have taken it by force, would lay the seed for the next conflict. A lasting peace can only be built on justice, and that is giving property back to those from whom it was taken by force.

The alienation of land and other forms of property in Somalia has not started in 1991. The committee has insisted on a substantial historical first part to this document, which speaks of expropriations throughout the colonial period. As to the post-colonial governments, the laws, which were valid then are recognised. Land transactions, which were legal at the time will not

⁵ Gesellschaft für technische Zusammenarbeit, the publicly funded German development corporation.

⁶ Paragraphs omitted here contain information about the work process and acknowledgements of the contributions by Abdurrahman Aden Ibbi and Mohammed Sheikh Ali. Also the chairman of the committee, Ali Ismail Abgidir, is mentioned.

⁷ The task of the committee was to devise rules and a plan of action to deal with property issues *after* setting up a new government. This sentence is therefore meant to imply that such a new government should give priority to unresolved property issues so that subsequently true reconciliation could take place and a stable and peaceful post-war order be established. All footnotes to this quotation are later additions. The document as originally presented to the Technical Committee did not contain any footnotes.

be reversed. But there was misuse of power. Government officials or their cronies have illegally acquired land belonging to smallholders and these lands are to be given back.

It is the period since 1991, of course, which has seen land and other forms of property changing hand by force on an unprecedented level. Unlike thieves, who hide what they have stolen, today there are people in Somalia who have acquired land or other properties at gunpoint, by all sorts of human rights violations, who have subdued the former owners of their farms and reduced them to forced labour, and who enjoy the properties they have unlawfully acquired openly; in open defiance of the principles of justice; in open defiance of the teachings of Islam; and of any form of human decency. These people will have to give back what they have taken by force.

On a more technical level, regarding solutions to these problems and how to implement them, the committee has decided to recommend the following:

As no ordinary judiciary will be able to deal with the number of cases of contested property, which can be expected in Somalia, special committees are to be set up.

To deal with the colonial legacy the government will constitute a committee in which a number of ministries and an expert on colonial history, public and international law are represented. This committee will conduct research on Italian and British colonialism in Somalia. It will assess violations of property rights and environmental damages and see whether compensations for these have been paid and, if not, how claims for compensations can be established.

As to the injustice done by postcolonial governments, in the period from 1960 to 1991, regional or district courts will deal with cases of deliberate or habitual abuses in the domain of land management and property rights by the government or by individuals in positions of government authority or people close to them.

With regard to violations of property rights, which date from the period since 1991, at first an appeal should be made to all those who hold property illegally⁸ to return those properties to their rightful owners within a specific period. Those who do not comply expose themselves to punishment.

Two types of committees will be established at the district level:

1. type 'A', on the resolution of conflicts on land and settlement in general, including urban lands and other types of property.
2. type 'B', more specifically on farmlands where those exist and are contested.

Apart from different branches of the administration, the police and local dignitaries and elders are represented on these committees. These committees have the power to summon the parties to the conflict and witnesses, and to call for expert advice. Within a period of 10 days, appeals to a competent court can be made against the ruling of the committee; otherwise the ruling of the committee is final.

Another problem is government property, which is now found in other hands. The federal government is called upon to form a committee with the task to repossess all government

⁸ Concepts like "legal" and "illegal" were not discussed by the committee in a deconstructionist or relativist fashion. There was a shared understanding that property acquired by force or misuse of Government power was acquired illegally.

assets, such as all public buildings, national reserves, ships, aeroplanes and the transport infrastructures, and all government industries. Those who have benefited from the illegal use of these properties will have to account for their benefits or will be exposed to the full force of law.

Also at the regional and district levels such committees will be formed to trace and reclaim state property. There are cases where offices, banks, hotels, petrol stations and other facilities, which belonged to the government, have been illegally appropriated by others.

Special attention will have to be paid to the properties of the Italian Trusteeship Administration, which should have been given back to the people of Somalia. Often such properties have been taken over by influential individuals who have managed to destroy records, which prove the public status of these properties. In this, like in other cases, oral evidence⁹ will be important for establishing the truth, so that the regional governments can repossess these properties.

A special problem, dating from the period since 1991, are the occupied and disputed areas. We speak of occupation where the indigenous population has been expelled, while in other areas, those we call disputed, the original inhabitants can still be found but are marginalized and intimidated. Such matters need to be taken into its hand by the federal government. It shall name a neutral and impartial administration for the contested regions for a transitional period not exceeding 6 months. The head of state shall nominate a committee composed of the key ministries and the police to deal with these matters.

All militias who hold occupied territories by force shall be ordered to withdraw, so that evidence on rightful ownership can be gathered with out intimidation.

At this point the committee appeal to the international community and IGAD to maintain their commitment in Somalia and to ensure that this government shall be capable of enforcing peace, law and order, and will be able to disarm and demobilise militias.

The question of rights in property is closely related to the productive use of property. Lands, which have been rightfully confiscated for public interest in earlier periods, should be put to productive use. If not redistributed to the landless, they should be used to attract foreign investment in production for international markets. Also, the mineral resources have to be brought under government control. If the federal government derives benefits from these, it should give the regional administration of the areas where the mining takes place the opportunity to participate in the planning, in concluding the mining contracts, and to share in the eventual gains.

The administration of land use and range management is in the hands of the regional administration. If land is needed for federal institutions, it has to be requested from the regional administration for a specific use and needs to be given back when no longer needed for that specific use. On the other hand, if the federal government realised a gross violation of federal law or constitutional principles by the regional administration, it has the right to appeal to the national parliament for authorisation to intervene.

⁹ It may be necessary to add that the use of oral evidence may also be problematic. It needs to be critically cross-checked to be of any use in establishing the truth. The source criticism applied by oral history in academic writing may be taken as an example.

The document we have handed over contains much more details than I could present here in the brevity of time. It also deals with the question how to deal with constructions built, changed or amplified without proper procedures if they do not interfere with public interest; it guarantees the private ownership of existing radio, television or telecommunication enterprises etc. [...]"

A report of the International Crisis Group which appeared a month later, which is fairly critical of the peace conference in general, finds some kind words for the work of committee III but also puts the finger on some remaining problems. It is quoted here at some length, with comments inserted:

"Wisely, the Reconciliation Committee for Land and Property approached its work by attempting to categorise the various types of land and property disputes and the possible mechanisms for their resolution, rather than passing judgement on which historical period to consider."

In fact, the question of the time horizon was high up on the agenda, which the author had drafted for the committee. The committee not only agreed to take the Siad Barre period into consideration as well, but wanted to address property issues since 1912, the beginning of colonial rule.

"Focussing exclusively on disputes since Barre's fall would appear to reward those who had profited from the old regime, while punishing the 'liberators'. Extending the remit to cover disputes since independence might appear more even-handed but would also require more cumbersome bureaucratic and legal machinery for investigating titles under previous governments. (Much pre-war documentation has been lost or destroyed, and land titling was extremely politicised during previous governments). Extending the committee's horizon further back to, say, the clan zones demarcated by the colonial powers – as some members of the Committee have suggested – would risk opening a Pandora's box of irreconcilable claims and counter claims."

That is one of the reasons why one does not find the names of clans in the whole of the report. The level of agreement on the principles of land ownership reached would never have been achieved if it had been attempted to attribute in the official report any form of collective guilt to any named clan group, or to point to territorial gains by any clan at the expense of any other, even if phrased in a way which sounds morally neutral to outsiders. For a Somali reader it is clear anyhow, to which cases the various sections of the report refer.

"Given the sensitivity of its task, which the draft describes as dealing with the 'root causes of the ongoing civil war', it is not surprising that the committee assigns priority to assessing the damage caused by colonial land practices and seeking reparations from former colonial powers – an issue that few members can have objected to."

The draft document also states that the land transactions by the colonial governments, legitimate or illegitimate, have been superseded by later legislation. There is therefore no necessity to undo everything, which has happened since 1912 and to revert to precolonial ownership. To which extent former colonial powers will acknowledge and compensate wrongs, is indeed doubtful. For the delegates it was, however, an important moral point that injustice in Somalia did not start with independence. I would not have succeeded to leave out the sections referring to the colonial period, if I had attempted to do so.

“Somewhat more problematic is the system of national and local level committees it proposes, which would require the leadership of a fairly robust and impartial central government. However, with further deliberation, a more pragmatic system that gives greater responsibility to local authorities might emerge.”

That indeed might emerge. It needs to be explained, however, that it was the task of the committee to design a policy which would be implemented *after* the government which would be formed as a result of the peace process would have moved to Mogadishu, and even to break down the actions to be taken into month n^o 1 after the formation of a government, month n^o 2, etc, without having slightest idea when that would be nor which type of government there would be. After all, the committee 1 on constitutional issues was working parallel to the work of our committee and on a lower level of internal agreement, so that for us no shape of a future government, whether more centralist or more federal, was even vaguely discernible.

“The committee’s boldest – and potentially most controversial - assertion is that all militias occupying areas by force should withdraw prior to negotiation or arbitration. Although no specific cases are mentioned in the draft, this recommendation has greatest import for the Habr Gidir militia strung out between Mogadishu and Kismayo, and its Marrehan partners in the Juba Valley Alliance. Difficult as it may be, the issue may be squarely addressed now that it has been tabled. The Lower Shabelle and Lower Juba are unlikely to know lasting peace as long as their leaders impose themselves by force. And now that Somalis have spoken clearly, the international community – which has for too long resisted taking position – should feel emboldened to do likewise.”

4. The stated needs: what Somali expect from the international community

This section is based on an evaluation of the reports of those commissions, which dealt with policy issues, namely

2. Demobilisation, Disarmament and Reintegration

3. Land and Property Rights

4. Economic Recovery, Institution Building and Resource Mobilization

6. Regional and International Relations

The report of committee 5, *Conflict Resolution and Reconciliation*, has not been available at the conference secretariat.

What is extracted from these reports is the demands for technical assistance in the implementation of the policies elaborated by these reports. Additional sources are notes taken from discussions with Somali delegates. Wherever these needs are clearly enough articulated on a general level, but not broken down into more detailed steps of technical implementation, it will be tried to raise more specific questions

Demobilization, Disarmament and Reintegration.

This report is the shortest of the four reports available and is correspondingly general in its statements. It asks for assistance of the international community in two fields: 1. It encourages the presence of international observers to implement the United Nations Security Council resolution 733 (23rd January, 1992) and 1407 (3rd May, 2002) to stop the flow of weapons into Somalia. 2. It asks for international military advance forces to establish a secure environment

for the new government. These forces are to be stationed at government headquarters and at strategic points like airports. (p.4)

The present report will come back to the theme of Demobilization, Disarmament and Reintegration under the heading "Ongoing activities in the field of technical assistance".

Land and Property Rights

This report addresses among other things the contested regions, where large segments of the population have been expelled by militia moving in from other areas. In order to ascertain collective rights (like pasture rights) in these areas, certain types of evidence are to be considered. As this evidence might be found in archives abroad or in University Libraries, needs for research can be identified. The types of evidence mentioned include: historical books, maps and other documents relating to the contested regions, documentation about boundaries between the Somali communities drawn by the colonial government and other colonial documents. Expert advice is also asked for. (p. 23f)

The restitution of agricultural properties to previous owners will leave large numbers of illegal occupants without a livelihood. Many of them stem from pastoral areas. To enable them to engage in productive activities, the areas to which they will go need development programmes like restocking, a range management package, a livestock marketing programme, small-scale irrigation or the establishment of crafts and industries. The Committee 3, in its meeting on March 28, 2003, when it discussed the role of the international community in the reconstruction of Somalia, drew the attention of the future government and the international community to these inevitable social consequences of the process of re-establishing rightful ownership.

The committee 3 discussed environmental issues like the misuse of the open range and the territorial seas of Somalia for dumping toxic waste. In connection with the protection of the marine environment and the control of the use of marine resources, it is stated: "As there will be no tax income in Somalia in the initial phase of the new government, sources of funding and expertise [have to] be identified." (p.32) "The Committee 3 on Land and Property Rights would be grateful for any expertise which can be provided on the following issues:

- Planning and budgeting (including matters like the number of boats required and their prices).
- Experience, which can be shared by other countries dealing with similar problems. In addition to training of personnel and technical assistance, equipment and instruments to measure radiation and other forms of toxicity are required."(p.33)

The report of committee 3, which has been summarized above, in the section on *Background: Personal experience* at some length, stresses the restitution of property and also clarifies some procedural questions. It remains, however, silent, on a number of more detailed technical questions like

1. How are land rights to be recorded and where are these records to be stored? With modern technology like GPS describing a location and measuring a surface have become much easier, but still such records need to be made for future reference. We shall come back to this under *Ongoing activities in the field of technical assistance*.

2. Who is going to enforce the decisions about property restitution by the arbitration committees and later by regular courts? In Kosovo this has been left to the local police and they often have not done anything¹⁰. Will there be special organs of enforcement like bailors? There must be an institution, which is *obliged* to enforce decisions on property restitution, to monitor deadlines and to carry out evictions. Non-compliance with eviction orders must be regarded as a criminal offence, trespassing, and punished. Orderly evictions require manpower and material resources like holding pens for the livestock, which needs to be vacated from a property, and storage facilities for mobile belongings of evicted people.

These activities, proper documentation of decisions and their enforcement, need to be done in a consistent fashion. It has to be avoided that they are done in some cases and then the respective programmes run out of funds. This would undermine the credibility of the entire property restitution process. Justice ceases to be justice if it is done in some cases and not in others.

Much more detailed research and planning is required for the smooth implementation of property issues. Statistics about the number of cases to be expected do not appear to exist. How is the effect of precedents to be assessed? Will one model case settle dozens of similar cases, because illegal occupants give up their claims? Or will procedures at least be sped up considerably by precedents? Or will each case be fought out with the same tenacity? Experience from other parts of the world would certainly be welcome here.

Economic Recovery, Institution Building and Resource Mobilization

The need to rehabilitate livestock production and marketing stated by the committee on *Land and Property Rights* in connection with pastoralists who will have to evacuate agricultural lands which they have occupied by force corresponds well with the actions and investments recommended by the Committee on *Economic Recovery, Institution Building and Resource Mobilization*. The first four of the recommendations refer to livestock production, namely 1. the establishment of veterinary services including certification for livestock exports, 2. encouragement of the export of meat and animal by-products, 3. development support facilities such as holding grounds, stock routes, quarantine stations and animal feeds, involving the private sector, and 5. improvement and conservation of rangelands (p.10).

The report also goes into some detail with regard to fiscal policies. As revenue and finances are cross-cutting problems, we shall come back to this below under *Overarching issues*.

Regional and International Relations

In the report of the committee on *Regional and International Relations* the importance of integration and active participation of Somalia in regional and wider international organisations is stressed. This is a means to reduce tensions and the danger of conflict, as consultations will be possible as soon as problems are articulated.

In terms of capacity building it is suggested that Somali delegations are taken to visits to national and international institutions to see how parliamentary work or the activities of

¹⁰ I thank Daniel Lewis, UN-Habitat, for sharing his experience with me.

governments are carried out elsewhere. The lack of qualified personnel in the field of diplomacy is identified as a problem for Somalia.

5. Ongoing activities in the field of technical assistance

Demobilization, Disarmament and Reintegration

There are some differences between the resolutions of the Eldoret/Mbagathi process and what seems to be the prevailing expert opinion on Demobilization, Disarmament and Reintegration (DDR). The resolutions of the peace conference give chronological priority to disarmament, because "the new government will not have the ability to fulfil its duties as long as the weapons are in the hands of the people."¹¹ Also committee 3, *Land and Property Rights*, argues with some plausibility that arbitration about areas occupied by force cannot take place before the militias occupying them have withdrawn (p. 23). All this makes the impression that not much can be done in terms of Government activities while the arms are about. On the other hand, a policy document by international experts¹² states under the heading *Lessons learned* that "Peace and the existence of an effectively functional authority is a pre-requisite for the conduction of a DDR exercise." This inverts the chronological order: it states that a functioning state is a prerequisite for disarmament rather than disarmament having to be completed before the state can take up any functions. Also 'Land commission' is found here among the pre-requisites of DDR (p.23). That means that conflicts about land must be defused *before* disarmament can take place. The chronological order of these processes or how they can mutually further each other if carried out simultaneously appears to need further discussion.

Land and Property Rights

The view of Committee 3 that injustice in matters of land rights did not start in 1991 and its insistence to address property issues since the start of the colonial period is supported by recent scholarship. In a monograph on Geledi (Afgooye), Luling concludes the section on *Land and Land holding* with the following paragraph:

“Behind all these changes force, or the threat of it, was present. The takeover of the land by the Italian colonialists had been based on overt military force, albeit translated into treaties and agreements. The second land grab of the Siyad Barre years proceeded under legal forms, but force was clearly behind it. With the breakdown of state institutions in the early 1990s, the land grab was continued by naked force, and the militias of different clan groupings competed for control. In Afgooye and most of the lower Shabelle it was the Habar Gidir who were in control, and were experienced as the new ‘colonists’” (Luling 2002: 163).

Reconciliation, between Somali and other Somali as well as between Somali and other nations, has to be based on truth. It cannot be based on covering up the past. Even in those cases where old land claims can no longer be enforced because they have been superseded by subsequent legislation or by irreversible realities, it is important to bring to the light what

¹¹ Somali National Reconciliation Conference, *Disarmament, Demobilization and Reintegration*, draft report, Dec. 3, 2002

¹² UNDP Somalia, Somali Aid Coordination Body/Governance Working Group 2001

happened to them. More historical research is needed to set the moral record straight and thus to build a basis for forgiveness.

With regard to all those, generally more recent wrongs, which can be rectified, the International Community has a clear policy. There is broad agreement that lasting peace can only be built on finding out the truth and re-establishing justice, not on some foul and transient compromise between a larger or smaller number of predators who happen to be powerful at a given moment. "UN development agencies and international NGOs have increasingly embraced a 'rights-based' approach to post-conflict development in Somalia" (Menkhaus 2003: 37). No-one's property is safe as long as his or her life is threatened and there are no institutions to appeal to in case of infringements on rights referring to one's body, one's dignity or one's material belongings. Property rights have to be embedded in a wider legal order, and it is on this order that any prospects for deriving prosperity or development from a property regime depend. "A rights-based approach to development will only have meaning if socio-economic and civil and political rights are addressed simultaneously" (UNDP 2001: 182).

Committee 3 on *Land and Property Rights* has suggested the creation of a number of arbitration committees which will deal with contested properties for a limited period. The remaining cases will be addressed by regular courts, to which also appeals can be made if the results of arbitration are not accepted. This presupposes the existence of judiciary institutions. Recent surveys, however, show that this existence cannot be simply assumed. We shall deal with this issue below, under *Economic Recovery, Institution Building and Resource Mobilization*, since judicial institutions are not just relevant for property rights but for the framework of societal and economic development in general.

On a more technical level there are a number of on-going activities which deserve attention. A UNDP Somalia report with the title *Capacity Building for Governance* from June 2001 (UNDP 2001) addresses many of the problems identified above, in the section on *Land and Property Rights* under *Stated needs*. It recommends cadastral surveys, which map each farm in agreement with the neighbours to avoid future conflict. A land database will also serve land management. Pioneer work in this field has been done in Somaliland (see below: *Learning from Somaliland*).

A whole section of the above mentioned document is devoted to *Capacity Building for Land Dispute*. The special dimension the problem of land alienation has reached in Southern Somalia is reflected by the insight: "In the case of Southern Somalia, a large-scale bird's eye view of surveyed farms would be an indispensable tool for the future resolution of the widespread and complex problems of land dispossession in the inter-riverine agricultural areas. Aerial photography cannot, of course, pick out unmarked boundaries." (UNDP 2001)

Economic Recovery, Institution Building and Resource Mobilization

Between the documents of the Eldoret/Mbagathi process and the programmes of organisations for technical cooperation, there seems to be a high level of agreement with regard to the importance of livestock production and marketing, a functioning infrastructure and many other issues. Beyond the recommendations made by the committees at Eldoret/Mbagathi, the important field of Municipal Administration has been addressed by the UN sub-organisation HABITAT.

There seems to be, however, one type of institutions, which has been given inadequate attention, namely the judicial ones. As has been described above, the committee 3 on *Land and Property Rights* more or less assumes the existence of legal courts to appeal to and to take over the work of the arbitration committees after the span of the latter has expired. It is therefore worthwhile to have a look at the state of jurisdiction in Somalia.

The Human Development Report Somalia 2001 describes Somaliland and Puntland as the most advanced areas of "Somalia" (in the wider sense). Still, what is reported about the state of jurisdiction in these two regions is not encouraging: "Only 19 out of 35 judges in Somaliland possess law degrees, the rest having some education and practice in administering *shari'a*. Most district judges read only Somali and Arabic so cannot administer civil and criminal procedures written in English or Italian. There are few complete legal texts available and offices are generally under-equipped. Remuneration for judges is extremely poor, equivalent to UD \$ 4-5 per month in 1999. [...] Puntland likewise suffers from a lack of qualified judges. Only 18 out of 44 judges possess law degrees from reputable universities. Most have knowledge of *shari'a*, but no experience in judicial procedure" (UNDP 2001: 176) The author was told in Hargeisa in July 2002 that many people preferred the *shari'a* courts to the ones set up by the state, because the former delivered their service (a verdict) while the latter dragged on endlessly. Elsewhere, the elders took over judicial functions again. About Afgooy we read: "After the breakdown of the Siyad Barre government, the traditional system remained as chief support of law in a lawless time" (Luling 2002: 200).

Enabling legal institutions to work faster and better should be high up on the development agenda.

Regional and International Relations

The needs addressed by the Eldoret/Mbagathi committee on *Regional and International Relations* are to some extent reflected by the emphasis of UNDP and European projects on capacity building for Governance. These, however, have no special programmes for the training of diplomats and the raising of awareness of the public and of representative bodies about the role of regional and international institutions. The suggestions of the committee deserve careful consideration by the International Community.

6. Learning from Somaliland

Somaliland has no budget worth that name and is not internationally recognized. In spite of these odds, Somaliland has managed to attract many international organisations which assist in re-building the country, devastated by a war of genocidal proportions waged against it by the Mogadishu based military dictatorship in 1988. What Somaliland could offer these organisations, and what gave it a competitive advantage over the south in the past decade, is relative peace and a degree of security. To locate projects in areas of relative peace is not only in the security interest of the individual aid worker, but it also corresponds to an explicit policy by the international community to give a "peace dividend" to such islands of peace in order to stimulate other areas to emulate them. It is clear from the discussions the author has

held with the development community that technical assistance of all sorts will be withdrawn from areas in which violence erupts again.¹³

Lewis (2002) attributes the fact that the Somalilanders were relatively successful in sorting out their differences to the fact that they were left to do so by themselves, while in the south the most warlike and obnoxious elements of society were over and over again rewarded by the international community by inviting them to peace conferences, paying them air tickets and covering their hotel bills.

The scarcity of means, which did not prevent Somaliland from doing relatively well, is stressed by the literature. One report states: "It was noted that NW Somalia should be commended to demobilise with limited resources."¹⁴ Elsewhere we read: "Though it continues to be plagued by serious problems of disputed authority, corruption, and weak administrative capacity, Somaliland enjoys governance of higher quality than any other part of Somalia."¹⁵ And this is so in spite of the fact that "civil servants are paid so little that they must work other jobs during the day."¹⁶

The relative peace has allowed many studies to be made and much practical experience in institution building to be gathered, from which the south later, when similar conditions prevail there, will be able to profit. In the field of Demobilization and Reintegration a substantial study by Odenwald et al. (2002) shows the interactions between traumatic experiences and long term *qat* abuse in the development of psychic disease, which has become a mass phenomenon among ex-combatants and leads not only to human tragedies but to an enormous strain to the families of the affected and has become a burden to the overall economy.

An important model project for the security of land rights is the cadastral survey carried out under the guidance of John Drysdale in Gebiley. Here it can be learned how a combination of advanced surveying techniques in combination with computer based data banks can provide solutions to some of the problems outlined above under *Land and Property Rights* in the section *The stated needs: what Somali expect from the international community*. In the wider context of Urban Planning the European Commission in cooperation with UN Habitat has a programme, in the framework of which a Consultative Forum on Urban Strategy and Governance, Somaliland, was held in Hargeisa, 30th and 31st August, 2003, which the author had the opportunity to attend. It emerged from this meeting that there is an hitherto untapped potential to increase the effectiveness of municipalities by letting them learn from each other in the organisational framework of a Somaliland Municipal Association. Also twinning with cities on other continents may provide intellectual stimuli for and material inputs in municipal development.¹⁷

7. Overarching issues

All committees working on the different technical issues in the Eldoret/Mbagathi process were asked to develop a time frame and a budget for the activities they propose in their

¹³ The policy of the European Commission states: "The Commission will globally continue to adhere to the *peace dividend approach*. Its proactive application will form the guiding principle with respect to all administrative and government institutions ..." (EC 2002, p. 19f)

¹⁴ UNDP Somalia, Somali Aid Coordination Body/Governance Working Group 2001, p. 19

¹⁵ UNDP Human Development Report Somalia 1998, p. 87

¹⁶ UNDP Human Development Report Somalia 1998, p. 91

¹⁷ From Atkinson 2003 insights about the possible future course of EC activities in the field of urban development can be gathered.

resolutions. So they did. There was little concern where the money in question would come from. It was implicitly understood that it would have to come from outside donors.

In the committee on *Land and Property Rights* the author could not gain acceptance for his proposal that a part of the costs of adjudication should be paid by the losing party, so as to discourage upholding evidently unjustified claims and to provide some revenue. This will give even the richest warlords the opportunity to litigate in defence of their loot at the expense of others, presumably the international community.

The paucity of revenue collected and the heavy reliance on outside finances has been a pervading feature of the Somali state in the different periods of history. "...the colonial States in Djibouti, British Somaliland and Italian Somalia were never remotely self-sustainable – all required subsidies from the colonial powers, which were unable to generate significant tax revenues from the poor and evasive nomadic populations. The economic unsustainability of the State in Somalia remained a problem throughout the era of independence when Somalia relied heavily on foreign aid, and constitutes a significant challenge to those seeking to revive a central state in Somalia."¹⁸ (UN 1998: 26) "...at independence, the new Somali State could only cover 69% of its budget; subsidies from Italy and Great Britain covered the rest." The dependence on outside finances rose steadily. "...By the mid-1980s, 100% of the Somali development budget and about 60% of the regular budget was funded by foreign aid. Foreign aid constituted an astounding 57% of the country's GNP." (UN 1998: 57) Paucity of revenue will probably be a birth defect of a possible re-emerging Somali state, not only in its initial phase. But unlike the 1980s, now there are no blocks of nations led by rival superpowers who compete for influence in the Third World. The *Human Development Report, Somalia 1998* predicts that those who expect outside finances will be disappointed: "Like a post-Cold War cargo cult, Somali political leaders continue to believe that if they can cobble together an internationally-recognized state, funds will flow again into the coffers. Few have fully grasped the changed nature of international politics since the end of the Cold War and the failed intervention in Somalia. Few understand that, for the first time in history, the Somali state will have to rely primarily on resources generated internally." (p. 28) Since that was written (1998) the situation has changed again. In the aftermath of September 11, 2001, the international community tries, in the name of anti-terrorism, to abolish statelessness, and money for re-building and maintaining a state in Somalia might be available to some extent. But a situation like that in the 1980s is unlikely to recur.

The report of the Committee on Economic Recovery, Institution Building and Resource Mobilization of the Eldoret/Mbagathi peace conference asks for an "effective and operative federal fiscal structure" which defines the powers to levy taxes at various levels of government and provides a formula for sharing the revenue between them (p. 6). In the field

¹⁸ As the Somali colonies never paid out for their colonizers, one might ask whether colonialism in this region was based on a miscalculation or whether there were reasons behind it, which cannot be derived from a cost/benefit analysis of specific colonies regarded in isolation. In the case of the British, many of their colonial conquests in Africa were ultimately justified by securing possession of India. After the opening of the Suez Canal, Aden became strategically important for securing the route to India, and the British interest for Somaliland was evoked by its potential to provide livestock to be slaughtered for the garrison at Aden. Egypt, the half-way house to India, was transformed into a semi-colony and British interest in what came to be the Sudan, Uganda, and Kenya (with its Uganda railway) were shaped, or ideologically justified, by the need to secure the headwaters of the Nile, the lifeline of Egypt. The Somali territories of Kenya, not financially viable in themselves, were incorporated into that colony as a buffer zone against Italian and Ethiopian expansion. Observers of the Eldoret/Mbagathi peace might wonder whether some of these 19th century geopolitical considerations still inform the stand of some regional powers towards Somalia. For Italy, as a latecomer among colonial powers, prestige might always have been as important a consideration as gain, when occupying one or the other stretch of dry land in northern or eastern Africa.

of fiscal policies, as in that of monetary policies, assistance is sought from outside agencies ("the Swiss authorities, and/or the World Bank and IMF") (p.7).

The international community shares the perception that in this field assistance is needed. Good governance, transparency and accountability are high up on the agenda of many development assistance policy documents. Fiscal institutions need to collect, store and retrieve vast amounts of data. This feature they share with other branches of government. The vagueness of many of the policy documents produced by the Eldoret/Mbagathi process speaks for itself. It is obvious that statistical data and other types of policy relevant information are missing. "One of the tragedies of severe internal conflicts is the destruction of public sector institutional memory located in staff and information centres. [...] The Somali governing authorities face several challenges to effective policy formulation. First, there is dearth of data and information to provide a rich basis for policy alternatives." (UNDP Somalia et al. June 2001, p. 17, 18)

The task ahead is not just one of data collection but of finding optimal ways of handling data. By their use of the mobile phone and the internet the Somali have shown that they can jump stages of development or "leap frog poor communications infrastructure" (UNDP Somalia et al. June 2001, p. 20). Recommended technologies should not be based on what has incrementally and gradually developed in Europe or America over long spans of time and is now existing practice. The Somali have thoroughly destroyed their entire infrastructure and now have a chance to have a completely new start. They do not need to worry about the best use of the things they have got. There is nothing. Whatever infrastructure they had, has been sold as scrap metal by whoever got hold of it a long time ago. Now they are in the unique position of starting from scratch. It might well be that the most modern information and telecommunication technology turns not only out to have the highest performance but also to be the cheapest.

8. Actions recommended in anticipation of the success of the Mbagathi process

Even if the Mbagathi process comes to a successful conclusion, i.e. if the remaining factions agree on a mode of power sharing and the Mbagathi parliament elects a transitional government, the failure of this government to establish itself in Somalia, or, if established, to remain in power for no more than a couple of weeks or months can be predicted, unless massive support by the international community is provided.

The highly political issue of a peace keeping force with a mandate by some international organisation like the UN or the AU is left aside here, since this paper concentrates on the more modest issues of technical cooperation rather than international politics and diplomacy.

It is, however, in this field of technical cooperation that the way in which such a military intervention is carried out has important consequences. The legal economy in Somalia is small and regular forms of revenue collection hardly exist. The locally generated budget will therefore be extremely low for quite some time. Comparative studies of post-war nations have shown that a high proportion of the mostly meagre budgets of these states is used for military expenditures.¹⁹ If military expenditures can be kept low by the presence of foreign troops paid by foreign agencies, this will have a beneficial effect on the capacity of the Government to allocate means to non-military ends.

¹⁹ There is a correlation between the level of military spending in post-war states and the risk of reversion to war. Apart from diverting means from civilian forms of development, high military spending generates mistrust and opposition which in turn is answered by yet more military spending (Collier et al. 2003:152)

Non-Somali soldiers, as long as they are financed from non-Somali sources, might therefore, apart from having a better chance to be regarded as neutral by rival factions, have the additional advantage of setting Somali energies that would otherwise be absorbed by military activities, free for other purposes. Demobilized Somali militiamen, whether organised in forms, which resemble a military organisation or not, can then direct their activities towards other community-oriented tasks and acquire skills which might be more useful for a peaceful future than handling a gun.

In general, post-war countries, especially those which had belonged to the “least developed” category already before the war, have low rates of economic growth and do not have the capacity to absorb much economic aid. “The earliest that economic recovery can realistically hope to take over the burden of maintaining the peace is by the middle of the first post-conflict decade. During this period growth rates are atypically high and, even more important, could be raised substantially more if aid were targeted to this phase” (Collier et al. 2003:167)

In contrast to other post-war societies, the economy of Somalia not only cannot be expected to grow fast in the immediate post-war period, it can even be expected to shrink. Large parts of the present Somali economy are illegal by standards applied elsewhere or infringe on import regulations of neighbouring countries. As these neighbouring countries are involved in the peace process, they will strive for a post war order in which their custom regulations will be respected. If successful, such a policy may lead to the break-down of large parts of the Somali economy.

Illegal trade is difficult to tax, because it is not transparent and because taxing it would involve problems of legitimacy. Such taxes may be constructed as a way to legalise these forms of trade. In fact, states tend to have an interest in the continued existence of anything they can tax and may be accused of complicity if they attempted to derive revenues from activities which are regarded as illegal. The disappearance of illegal trade may therefore not affect state revenue directly and in a significant measure, but it may lead to livelihood crisis and eventually to social and internal political problems.

Massive economic aid in a situation of weak institutional controls may also lead to the state itself becoming corrupt and aid addicted. This is what characterised the late 1980s and which led to the violent phase of the Somali crisis in the first place. At one stage, the Somali civil war was a war about aid money. Certainly no-one wants to go this path once more, knowing where it leads (Hancock 1991:198, Schlee 2002a:256).

If massive economic aid cannot be advised at an early post-war stage, what can be recommended? In addition to peace keeping, a costly military engagement which will require a long breath by whoever provides it, functioning institutions need to be built up so that economic recovery can set in, before the remaining risk of reversion to conflict can be expected to be dealt with by the Somali themselves.

Apart from military intervention of the peace keeping or peace establishing type, many of the measures demanded by the various committees of the Eldoret/Mbagathi process and many of the on-going activities of the aid community in Somalia should be intensified.

What is needed is knowledge and skill. There is a missing generation in Somalia in terms of education. Records and archives have got lost. The knowledge to run a country needs to be gathered and systematized again and people who will apply and expand this knowledge have

to be provided with the necessary skills. The focus of aid in the immediate post-war period should be on *governance* and *capacity building*, of the type for which examples have been given above, in parts 4 to 6.

Work in the fields of training administrative personnel, setting up libraries of policy relevant documents (as started by the Somali Aid Coordination Body), and exploring the local conditions under which the measures decided in the Eldoret/Mbagathi resolutions are to be implemented, in fact should be taken up and, to the extent that it is already done, intensified immediately, even before a new transitional government is set up. Otherwise the government, once in place, might fall into a competence gap and lose its credibility very soon.

9. Options in case of the failure of the Mbagathi peace process

Given the intention of the International Community (and within this community especially the “West”) not to tolerate statelessness in any territory of the post 9/11 world, there are basically two options in the case of the failure of the Mbagathi process.

The first is military intervention without a Somali transitional government as a partner. The country would be occupied, the militias disarmed, and a foreign military administration be set up. Then, in a drawn-out process, civil society organizations, consultative bodies at various levels of government, and other elements of a democratic society would be encouraged to develop. Representative Somali institutions might be empowered step by step. At the end of such a process there would be “Independence”, for the second time in Somali history.

Such an intervention without Somali consent and without a mandate by a Somali peace conference would have to overcome prolonged resistance. It would therefore have to be massive, extended over time. The expenses for it would be high. In view of the difficulties the occupation forces have met in Iraq recently, it is unlikely that the International Community or any part thereof will favour the option of non-consensual application of force in Somalia at the present moment, but it is not beyond imagination.

The other option is to give up the aim to abolish statelessness in Somalia in the short term. Intervention would then continue to be limited to technical assistance, and this technical assistance would continue to follow the “peace dividend” approach. That means that cooperation would be limited to areas of relative peace where institutional life has developed and a degree of order been established. The reasons for this would be pragmatic (the security of aid workers) and programmatic (providing incentives for communities to be peaceful). If this form of intervention, which is basically what takes place already, was intensified, this would not lead to the abolition of statelessness in all parts of Somalia, but it might help in keeping violence at present levels or reducing it gradually and in making islands of relative peace multiply and grow. To add conflict analysis and conflict mediation components with a local or district/regional focus to development projects might be advantageous in such a scenario.²⁰

The importance of Somaliland as a separate unit, the degree to which it is de-facto recognised by the International Community and its chances for ultimate official recognition, its capacity to attract technical assistance, and its role in a future political order in the Horn, might all be enhanced by a failure of the Mbagathi process. “Because of widespread insecurity in most of [Somalia] and because of an ongoing absence of a national government, the aid community

²⁰ An example is the EU financed project on “Improvement of Farming Systems in Bay and Bakool Regions, Somalia”, which is administered by GTZ International Services.

has since 1995 had to relocate its country head offices to Nairobi, Kenya. Though security conditions are good in Somaliland, the fact that that administration's claim to sovereignty is not recognized makes it problematic for UN agencies and most NGOs to have a 'country' office in Hargeisa, so field operations in Somaliland are headquartered in Nairobi as well" (Menkhaus 2003: 44). A failure of the Mbagathi process would substantially lower such hesitations to locate offices at Hargeisa. Also future thinking about a more encompassing peace order might take Hargeisa rather than Mogadishu as its starting point.²¹

10. Actions recommended irrespective of the outcome of the Mbagathi process

It is possible to define activities which will be required irrespective of the outcome of the Mbagathi process, and irrespective of the situation in Somalia getting better or worse. These comprise creating bodies of knowledge in the form of digitalized and conventional archives which collect studies done in connection with the many development projects of the 1980s, government records which might have dispersed and need to be traced and preserved, scholarly writings and anything else which might become policy relevant. The preservation of a public memory is essential for any future attempts to re-establish peace and justice and to build up functioning institutions at any level, locally, regionally, or nationally.

Much knowledge and many skills do not exist on paper nor in electronic form but in human brains. As a whole generation of Somali in Somalia has not had a chance to get education, educated Somali in the diaspora²² will have an important role to play. Wherever possible,

²¹ This paragraph has considered the issue of recognition of Somaliland only from the perspective of the aid community and diplomacy. For other players, the analysis of advantages and disadvantages of such an eventuality results in a very differentiated picture. Foreign entrepreneurs in non-recognised political entities find it difficult to appeal to international bodies of arbitration or international courts of commercial law to protect their interests in such non-recognised entities. Foreign insurance companies therefore hesitate to indemnify operations in such places. Non-recognition even prevents Somaliland from becoming a member of the postal union or from having dealings with the World Bank. Legal claims based on Somaliland law are disadvantaged in the Us, because District Courts there have denied "standing to litigants who base claims on laws of entities whose sovereignty is not recognized by the US Government" (Reno 2003: 29f).

Since Somaliland does not have the power to abrogate agreements by earlier Somali Governments, companies cooperating with the Somaliland Government in the field of mineral extraction might face litigation by these partners of earlier Government, who, although inactive at present, might still defend their contractual rights in courts outside Somaliland. These earlier contractors comprise powerful multinational oil companies. Chinese companies are willing to take this risk and thus profit from this niche vacated by the multinationals. Also the personal networks of Somali have taken over commercial niches which in other places would be filled by economic actors who belong to a more formal and legalistic sphere. The Chinese and certain Somali networks thus might be among the losers, if international recognition of Somaliland sovereignty ever takes place. (Reno 2003: 30f)

²² There are strong tendencies in the Somali diaspora which work against repatriation. Because of the prolonged state of lawlessness in Somalia, the criteria for the choice of a country of residence in the West have changed from short term to long term benefits. While in the early 90s welfare and health care were important considerations, later, as Somali migrants increasingly anticipated their stay abroad might turn out to be permanent, security of status later became more important. Somali often preferred countries where they could get secure residence status and preferably a passport soon, to others, where material benefits might be higher in the short term but long term residence less secure (Alim 2002). The conditions in exile have often favored women in the marital power balance. When confronted with the wish of their husbands to return to Somalia, women might fear to leave their enhanced status again in the process of remigration. Another dividing line runs between the generations. Diaspora children do not submit to parental control to the same degree as they would be expected to do so in Somalia (Griffith 2002: 108-118, Schlee2002b). Middle aged Somali often have taken an active interest in the Eldoret/Mbagathi process and have complained that their children did not bother about the future of Somalia at all. They described their children as "Finnish" or "Canadian" or whatever might be the case. Attempts

even if this is only in certain regions, programmes should be set up to facilitate the return of skilled members of the diaspora for specific tasks (too vaguely defined remigration programmes might be counterproductive by favouring those who delay their return plans to wait for the facilitation funds).

There are other activities which the International Community will carry out anyhow in one form or another, irrespective of the outcome of the Somali peace process and irrespective of any consideration of what is good for Somali or not, because these activities are in the International Community's own interest. These comprise monitoring environmental pollution (harmful substances, wherever they are dumped, have a way of getting into the food chain and to travel back to where they come from). Also the traffic in arms and drugs will have to be monitored in some form, whatever happens in Somalia.

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to take diaspora children to Somalia, even just for a holiday, often fail miserably and end in generational conflict (Schlee 2002b).

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