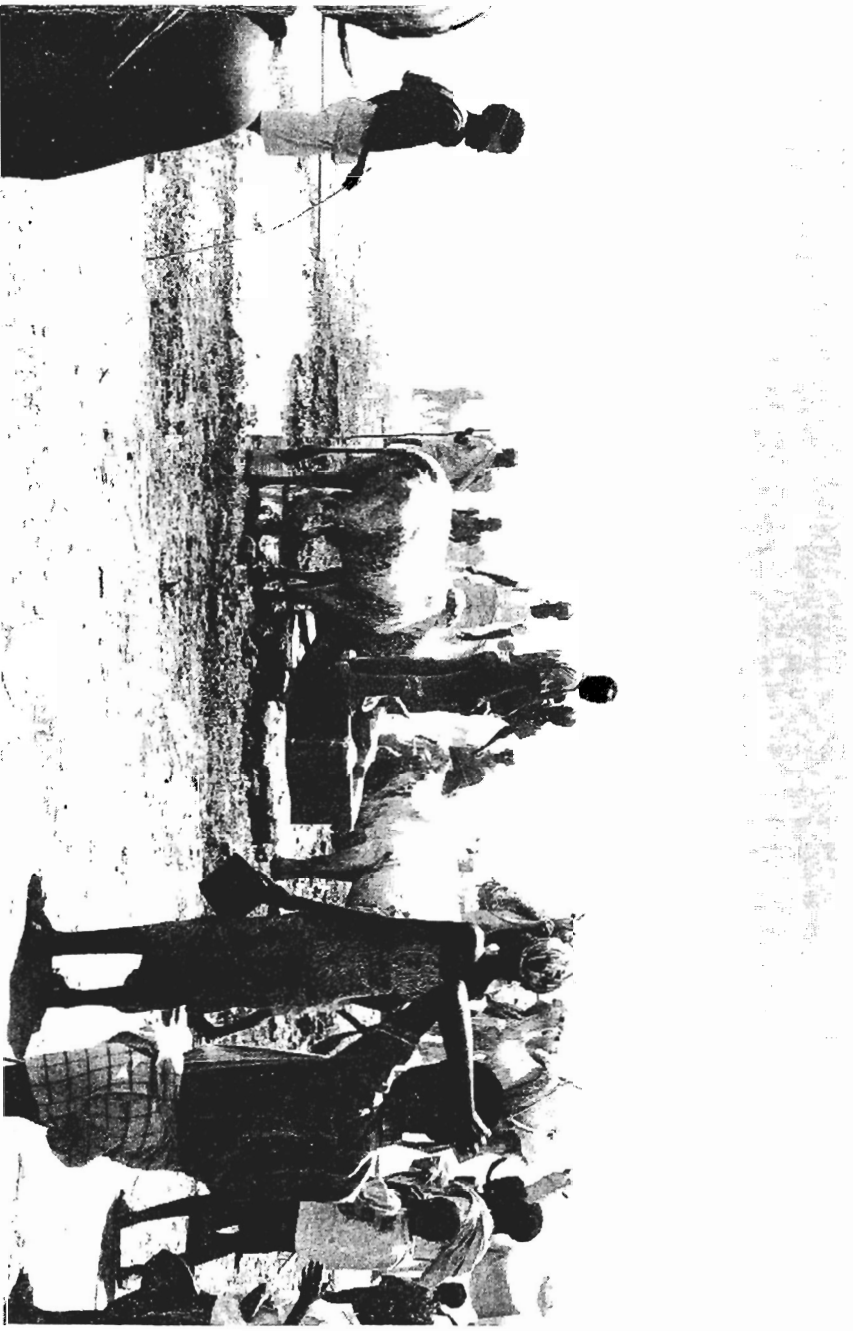


A STUDY OF DECENTRALISED POLITICAL STRUCTURES FOR SOMALIA*:

A MENU OF OPTIONS



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August 1995

* The term 'Somalia' refers to what was formerly known as the Somali Republic.

Chapter 1. Decentralisation Options for Democratic Reconstruction

A. Introduction

This chapter has two objectives: first, to outline four feasible models of decentralised constitutional government based on countries that have, in some respects, experienced similar histories to the peoples of the Somali region; and second, to relate these models to the emergent governmental institutions spontaneously developing in the former Republic.

1.1. State-formation is occurring in some parts of the former Somali Republic, and new and old governmental forms are operative in many other parts of the country. Traditional and modern ideas and institutions are being skilfully employed to re-establish some of the most basic functions of the state: the maintenance of law and order, the promulgation of constitutional laws, and the collection of taxes and other public imposts. Governmental institutions are being established at regional and district level, and in several instances, potential states are being established, which to many of their inhabitants merit international recognition. These developments are the product, not of a centrally directed initiative, of external intervention, or of the type of despotism that marked the Siad Barre regime, but rather of local initiatives. Amongst Somalis there appears to be widespread enthusiasm to avoid the creation of any overly powerful central government, like that of the former dictatorship. It follows that constitutional arrangements elsewhere in the world that have arisen from local initiatives, or that confer considerable powers on local institutions and peoples, are likely to be of considerable interest to those Somalis engaged in the constitutional and consensual reconstruction of their nation.

1.2. Three territorially-based models of constitutional arrangements meet the requirement for 'local' and 'decentralised' government and will be discussed in the next section: (i) a confederation; (ii) a federal state, and (iii) a decentralised unitary state with strong guarantees of local or regional autonomy. Examples of these models will be discussed in this chapter (Sections B-D). A further model, (iv) the consociational, provides a *non-territorial* form of decentralisation (not based on or fixed to territorially localised units). This model is especially useful where people belonging to different communities are intermingled but wish to enjoy the distinct benefits of community self-government and a common state, and it has the advantage that it can be combined with any of the three territorial models of decentralisation. It is discussed in Section E. However, before we outline these models the first question that Somalis need to address is a simple one: how many states should be built from the old Somalia (which itself is historically comprised of the former British Somaliland Protectorate and the former Italian Somaliala)?

1.3. The question is simple, the answers difficult. Somalis have three fundamental options, that are consistent with democratic and consensual government, based on respect for the principles of self-determination and of international law. If so, they have three fundamental options. They can agree:

- (i) to re-establish a united Somalia; or
- (ii) to create a Union (or Confederation) of the Somalias built upon the agreement of two or more states arising from the decomposition of the old Somali Republic;

- (iii) to form two or more independent states that have no constitutional ties with one another.

Whichever of these options they develop the initial decision need not be permanent and irreversible. Constitutional arrangements can be built in, whatever number of states are created, which would allow *either* for the re-unification, by agreement, of the states of the former Republic of Somalia, *or* for the secession, by agreement, of any of the new political entities created by the re-establishment of a united Somalia.

1.4. One equally important and directly linked question must also be addressed by the Somali peoples: what should be the nature of the holder(s) of sovereignty in Somalia or the states of Somalia? If sovereignty is the ultimate source of lawful authority then there are three distinct but not exclusive answers that might be relevant:

- (i) the constitution may specify that sovereignty derives from the consent of the Somali nation, defined as all legitimate adult citizens;
- (ii) second, sovereignty may be vested *additionally* in the territorial units that compose a Somali state, federation or confederation; and
- (iii) third, sovereignty may *also* be vested in the peoples (or clans) of the former Republic, wherever they may be territorially located.

B. Confederation

1.5. If the Somalis agree to establish two or more sovereign independent states from the remains of the former Somali Republic they may nevertheless agree to remain linked in confederal arrangements. *A confederation is a union for specific purposes of equal but independent states.* A confederation has been well described by a Swiss constitutional lawyer as a federation of states; that is, a group of states linked by international treaties. This indeed was the position of the Swiss cantons for most of the 500 years preceding 1848, that of the American states at the time of the Articles of Confederation in 1781, and also that of the separate states in Germany before 1867. The European Union, a union of previously warring states, is also of this nature, though this association also has some of the characteristics of an emergent federation.

1.6. In a confederation the power of the central authority is delegated, whereas in a federation it is autonomous; or, to put matters another way, *in a confederation sovereignty rests with the constituent states, whereas in a federation it is shared between the centre and the provinces* (sometimes called states or regions). A confederation, unlike a federation, need not be all-purpose; a confederation may be established for a specific purpose (e.g., defence or free trade) but have no other necessary implications for the domestic or foreign sovereignty and policies of its members. Perhaps the most important attribute of a confederation is that the separate political entities that have come together retain their own international status and remain therefore in the eyes of the international community, separate states. These separate states co-operate together for strictly limited purposes and the nature, extent, duration and detailed terms of the agreement are negotiated by the separate governments of the co-operating states.

1.7. *Functions of a Confederation.* There are no particular matters that a confederation of states must come together to agree upon, but what is generally characteristic of a confederation is that no all-purpose powers are conferred on the central co-ordinating body of the confederation. A confederation may be established to create a common defence policy, to combine against common enemies; or to establish a common economic or trade policy, a free trade area or common market; or it may be self-consciously established as a stepping stone towards a closer political union, a prelude to the formation of a fully-fledged federation. In all the historical confederal precedents mentioned above (Switzerland, Germany, the USA, and the EU), confederation preceded federation; that is a loose union of independent states, some of them very small, ripened into a federation as the states and the peoples in the states began to perceive the advantages of deeper co-operation. The same pattern is evident in the evolution of Canadian institutions. A federal state, in short, need not be imposed; it can emerge through co-operative consent from parties previously involved in confederal arrangements.

1.8. The most famous existing examples of functioning confederations are European, notably the European Union, and its predecessors the European Community and the European Economic Community; and the Western European Union, established for 'collaboration in economic, social and cultural matters and for collective self-defence'. We shall focus briefly on the European Union even though it has emergent federal features. A number of member-states - now 15 but there is no limit to the number who may join - have agreed through a succession of international treaties, notably the Treaty of Rome (1957), the Single European Act (1987) and the Maastricht Treaty (1992), to establish European institutions with jurisdiction over all of them, and to transfer to those institutions certain functions previously exercised by the member-states alone. The formal objective has been to introduce, maintain and extend a common market in goods, services, capital and labour. Once these functions have been transferred they can no longer be exercised exclusively at the member-state level. Nevertheless, to ensure that the interests of member-states are properly considered in the making and implementation of policies to uphold and advance the common market, elaborate provisions have been written into the treaties to provide for member-state inputs into decision-making. For example, provisions exist for vetoes and 'opt-outs' on certain matters where states consider that their interests would be harmed by the introduction or application of a particular policy or law.

1.9. Unlike many classical confederations, the European Union has established central institutions, which are recognisable as a legislature, an executive and a judicial body, all three of which may issue legal decisions binding member states. In this respect, the European Union has come, partially, to resemble a federal state, and the analogy may be driven home by noting that the Union's judicial body, the European Court of Justice, may give decisions whose effect is to indicate that a particular law passed by a member-state's legislature cannot stand against the constitutive treaties, or a legislative act of the European Union. Since sovereignty is traditionally thought to involve the right of a state to legislate for those within its borders as it sees fit, and the right for the highest state court to make the final and binding judgement on any matter within the state, evidently the member-states of the European Union have voluntarily surrendered a portion of their sovereign decision-making capacity to another authority. They are still, however, sovereign states with the right of secession, and the European Union's central institutions have no means of

enforcing their decisions except through the active consent of the institutions of the member-states.

1.10. The evolution of the European Union has some relevance for Somalis. Its origins lie in the experiences of western European states in the wars of 1914-18 and 1939-45. The Somalis too are familiar with ruinous and protracted warfare and may well find confederal arrangements a sensible starting point for the avoidance of further conflict. It would be possible for different parts of the Somali state as it was on 1 July 1960 to form themselves into separate states, yet still agree to come together in a multilateral treaty to establish certain common institutions to develop and implement certain commonly agreed aims and policies. A treaty is a contract, and the concept of contract is firmly embedded in the traditional forms and processes of Somali political culture. To begin the process of the re-establishment of central co-ordinating capabilities through contracts between different groups of Somalis may well be an appropriate way forward. As with the European Union the peoples of the member-states may develop co-operation protected by their own sovereign status, and create central agencies in which each state is represented. The right to opt-out from a majority decision of member-states or to veto certain proposals might also have confidence-building consequences. Constructing a confederation would, however, require prior agreement on the constituent units.

C. Federation

1.11. If, despite their recent experiences, there develops some of the previous degree of trust between the Somali peoples, they may feel sufficiently strong bonds of shared nationhood, of past memory and future destiny, to move immediately into formally federal constitutional arrangements. The merit of a federation is that it satisfies the ambitions of both those who want to establish a central governing capability and those who want to have strong provincial (or state or regional) government.

1.12. *In a fully fledged federation central and provincial governments share sovereign constitutional authority, and the central or federal government cannot unilaterally amend the constitution.* A federation, unlike a confederation, is all-purpose or multi-functional, though the federal constitution may specifically limit the powers and capacities of the central or federal government. In fact there are three ways of organising central-provincial relations in a federation, viz.

- (i) most of the functions of government are allocated to the provinces, except for the strictly defined and delimited powers of the centre [the most formally decentralised option]; or
- (ii) most of the functions of government are allocated to the provinces, with the provinces' powers being strictly defined and delimited [the most formally centralised option]; or
- (iii) the provinces and the centre may share powers of government with specified methods for mediating or arbitrating disputes between them [a mixed option].

Federal relationships between the centre and the provinces can also be either *symmetrical* or *asymmetrical*, i.e., all member-states can be defined as equals with identical rights and

duties, or, alternatively, some member-states may enjoy greater autonomy from central or federal government than others. For example, if it was decided to form a new Somali Federation, some regions might merit a special autonomous status, including the right of secession.

1.13. Much ink has been spilled distinguishing between a federation and a confederation, and it is important that either form of government can develop into the other. As used here, a confederation is a union of independent states, in which the central organs of government, if they exist at all, are dependent for their existence and powers on the separate states. They are subordinate to the separate states, and this is so even in the European Union because the member states that make up the Union can meet together and rewrite the treaties from which the European organs of government derive their existence and powers. By contrast, in a federation, the federal government and the federated provincial units are constitutionally co-sovereign, and neither level of government is legally or politically subordinated to the other.

1.14. A federation is one state with (at least) two constitutionally independent territorial levels of government, the powers of which are provided for and protected by the constitution. It is a form of government designed to permit and indeed facilitate diversity within an essential unity: 'out of many one' (*e pluribus unum*) is the motto of the constitution of the United States of America. The unity of a federation is exemplified by the constitution, which has a fundamental role, since it is the guarantee of the rights of the separate units against any attempt by the centre to take them over, or subordinate them to itself. The diversity of a federation is exemplified by the autonomous powers of the provinces, regions or states that join together. It is additionally often symbolically emphasised by the location of the federal capital in a small city in a small district - an idea, which if adopted in a future state or states would require the removal of central governmental authority from Mogadishu. The diversity of a federation is also evident in the fact that there is no one model of a federal state, and there are, in principle, forms of federal government that have not yet been tested anywhere. The long-established federal democratic states that presently exist in the world (Australia, Austria, Canada, Germany, India, Switzerland and the USA), exhibit many differences from each other, as do more recently established federations (such as Belgium and the United Arab Emirates). However, they all have the underlying principle of co-ordinate systems of government, with neither one being constitutionally superior or subordinate to the other.

1.15. *The Swiss Federation.* In this report we shall briefly concentrate on just two examples of federations that have particular relevance for Somalis. The first is the Swiss Confederation that despite its name is a federal system. The federal system first came into being by the Constitution of 1848, though the current constitution dates from 1874. The history of Switzerland in the first half of the nineteenth century bears some resemblance to the last few years of Somalia's history. There were *coups d'etat* in various cantons - the regions or provinces or states of Switzerland - and constitutions came and went, along with interference by outside powers. It took a brief civil war, the Sonderbund War of 1847, before the Swiss forged a new federal agreement. In the view of one commentator 'the political map of Switzerland even today bears marks of this event... and if the final state of Swiss society and governance is considered enviable, then the civil war was necessary for Switzerland to become itself'. The federal arrangements were designed to meet the need to placate a people torn apart by political and religious differences and with a suspicion of

unaccountable central government. The essentials agreed to in 1848 were replicated in the constitution of 1874, and only those matters of particular relevance to discussions of the reconstruction of Somalia(s) will be noted here.

1.16. The cantonal units, of which there are now 26, are stated to be 'sovereign insofar their sovereignty is not limited by the Federal Constitution and, as such, exercise all rights that are not entrusted to the federal power'. In short, the powers of the centre are circumscribed whereas those of the cantons are not. The cantons may enact their own constitutions provided they do not contain anything inconsistent with the federal constitution, and that they ensure the exercise of political rights according to democratic forms. The general rule is that the federal government alone has the right to conclude treaties with foreign states, but exceptionally, the cantons retain the right to conclude treaties with foreign states concerning matters of public economy, neighbourly relations and police, provided these treaties do not infringe the rights of other cantons, or are not contrary to the federal constitution. In the event of disputes arising amongst the cantons, the cantons are to submit to the settlement of the disputes 'as decided in accordance with federal regulations.'

1.17. A distinctive feature of the Swiss federation is its collective presidency which acts as a check against any personal centralisation of power. The 'Federal Council', the executive authority, consists of seven equal members: there is no prime minister, or chancellor, or president in the American or French sense. The constitution provides that the chairman of the Federal Council, who is chosen by the Federal Assembly for a term of one year, shall be the President. A Vice-President is similarly chosen and 'the same member may not hold the office of Vice-President for two successive years.' These roles are symbolic rather than substantive. So effective is the Swiss system in denying personal power and authority to one politician that no Swiss statesman is famous outside his or her native land, and frequently none is famous within it. The members of the Federal Council are elected for four year terms by both the popular and federal chambers of the parliament sitting together. Not more than one member may be elected from the same canton. Amongst the functions specifically conferred upon the Federal Council by the Constitution are ensuring that the guarantee of the cantonal constitutions is not infringed; examining the agreements of the cantons amongst themselves, and with foreign states, and approving them if they are within the constitutional powers of the cantons; and ensuring the internal security of Switzerland and the preservation of peace and order.

1.18. Rather than providing, as many federal constitutions do, systematised lists of matters that are exclusively within the powers of the federal authorities, and the state (cantonal) authorities, and that are within the powers of both levels of authorities - i.e., concurrent matters - the Swiss constitution sets out these matters in some 60 articles, many of which contain within themselves statements about which level of authority may do what.

1.19. Two other federal institutions should be mentioned. The first is the Federal Assembly, which consists of two chambers: a National Council of 200 members allotted between the twenty-six cantonal units in proportion to their population, and a Council of States which has 46 members, elected in each canton at the rate of two per canton. Each chamber must elect from amongst its members a president and vice-president for each session. In the National Council, there must be a new president and vice-president for each ordinary session. In the Council of States, the new president and vice-president must come

from a different canton from which the president and vice-president of the immediately preceding session came.

1.20. The second is the Federal Court that consists of 39 persons elected by the Federal Assembly. While there is no specific requirement that all cantons should be represented in the court, the Constitution does require that all four official languages (French, German, Italian and Romansch) are represented - which in practice ensures fair representation. There is no particular qualification specified in the Constitution for membership of the Court; any citizen eligible for the National Council may be appointed to the Court. The Court adjudicates on disputes between the federal government and the cantons and between the cantons. It does not, however, have any power to question the constitutionality of federal legislation; the Federal Assembly is the final arbiter of that issue, subject to a referendum which may be demanded by 50,000 citizens or eight cantons.

1.21. Three other features of Swiss constitutional practice are of potential relevance to the peoples of the former Republic. First, the Swiss have pioneered the idea of 'internal secession' through democratic means; that is, it is possible through local referendums for portions of a canton to secede to form another canton, or to join another. In the famous case of Jura (post-World War II) plebiscites were held commune by commune to produce a result that split the new canton in two, along religious lines (Protestants voted to stay with Bern canton). Second, a Swiss person is in the first place a citizen of his commune, and as such a citizen of his canton, and hence automatically a Swiss citizen, and both communes and cantons can, and do, impose their own requirements for citizenship.

1.22. Finally, Swiss constitutional provisions for the military may also be valuable for Somalis to reflect upon. Three are of especial importance:

- (i) Every Swiss is under the obligation to perform military service.
- (ii) The Confederation may not maintain a standing army.
- (iii) Without the consent of the federal authorities, no cantonal unit may maintain a standing armed force of more than 300 men, not including police forces.

Military dispositions are a federal responsibility, as is the act of declaring war and legislating on the armed forces. However, the federal army is stated by the Constitution to consist, *inter alia*, of 'the troops of the Cantons'; and the execution of federal legislation on military organisation is a cantonal responsibility within the cantons.

1.23. Many other aspects of the Swiss Constitution and its evolution testify to that country's desire to ensure that the federal authorities remain of modest proportions and of modest resources. At the outset of the federation in 1848, very few matters were allocated to the exclusive jurisdiction of the federal authorities and it has only been with the development of a modern economy that Switzerland, like many other federations, has allocated increased powers to the federal authorities. The referendum, the initiative (the right of the citizenry to propose a law at either cantonal or federal level which the legislatures must vote on), and the *Landsgemeinden* (the direct democracy of free citizens of the village or town), ensure that the people and the cantons can block any increase in central powers beyond what they consider proper.

1.24. The Swiss federation remained unified, in the final analysis, because the cantons agreed that it should. The cantons are the rock on which the state has been built : 'Cantonal identity, like the powers of the *Gemeinden* [communes], provides a receptacle for differences. It is the foundation of Swiss multilingual, religious and social peace. Each canton resembles a set of Chinese boxes or, perhaps a beehive into which history has built dozens of smaller boxes, the *Gemeinden*, or communes. They in turn are often subdivided into ethnic, religious or cultural sub-units which, while not formally recognised, give the commune its characteristic colour or tone. This cellular political system allows ethnic and other particularisms to flourish side by side.' (J Steinberg; *Why Switzerland?*)

1.25. Many features of the Swiss model may be exportable. It has, for example, distinct proportional representation electoral systems. Switzerland's population is close to Somalia's: 6.8 million. There are 26 cantonal units, so there are many small units of government below the federal level. The individual cantons have a history going back many hundreds of years and would clearly not have agreed to a federation if it had meant that they would have had to be subsumed into a bigger, or allegedly more 'viable' unit of government. The Swiss have an immensely democratic, accountable, and egalitarian federal executive and similar power-sharing arrangements for the presidencies of the two chambers of the legislature. Their democratic traditions are evident also in their referendums and armed forces. Above all, the Swiss model shows that out of adversity and civil war it is possible to forge a peaceful state, with maximum recognition and powers given to small units that have geographical or social or historical reasons for wanting to retain a separate identity, and the same reasons for wishing to prevent an overly powerful or despotic central government.

1.26. *The United Arab Emirates.* In many respects, the federation of the UAE could not be more different from the Swiss. It is less than 25 years old; it is made up of seven Emirates, none of which had constitutions before coming together into a federation; and all the Emirates declared themselves to be separate states immediately after ending a colonial relationship with the United Kingdom, and before joining together in a federation. It does illustrate an important point: the federation is a coming together of free and independent states willing to transfer limited amounts of their sovereignty to federal authorities. This commitment is reflected in a provision similar to that contained in the constitution of the Swiss Confederation on external relations. As such, the Emirates may, as an exception to the exclusive jurisdiction of the Union in matters of foreign policy, conclude 'limited agreements of a local and administrative nature with neighbouring states and regions provided that such agreements are not inconsistent with the interests of the Union.' The Union authorities have to be informed in advance of such agreements that are suspended pending a ruling of the Supreme Court if those authorities object to the agreement.

1.27. In another important respect there is a similarity between the Swiss Confederation and the UAE: the collective authority of the state. In the UAE, this is the Supreme Council of the Union, which consists of the Rulers of the Emirates, exercising supreme control over the affairs of the Union generally. Decisions of the Supreme Council must be taken by a majority of five of its members, which must always include Abu Dhabi and Dubai, the two most wealthy and populous emirates. Unlike Switzerland the UAE does not add a rotating presidency to its supreme authority. The President of the Council, elected by the members of the Council, serves for five years, and there is no constitutional prohibition on his being re-elected - the same goes for the Deputy President.

1.28. Below the Supreme Council, there is a Council of Ministers of the Union that manages the day to day business of governing the UAE. It is 'under the supreme control of the President of the Union and the Supreme Council' and 'shall be collectively responsible before the President of the Union and the Supreme Council for the execution of the general policy of the Union internally and externally.' There are no constitutional provisions to ensure an equality of or indeed any representation from all the Emirates in the Council of Ministers. This is left to convention. Matters within the jurisdiction of the Union authorities are set out in two articles of the constitution with the general provision that 'the Emirates shall exercise all powers not assigned to the Union by this Constitution.'

1.29. The principal deliberative body of the UAE is the Union National Council consisting of 40 persons, with the number of seats allocated to each emirate set out in the constitution. Each emirate is left to determine the method of selection of the citizens who represent it on the Union National Council. The Union National Council is not a legislature in the sense in which that term is generally used. It may debate draft laws put before it by the Council of Ministers, and even amend them, but in the final analysis, it is the decision of the President of the Supreme Council or the Supreme Council that determines the content of the law and whether it is promulgated. A law that has been rejected by the Union National Council may, notwithstanding its rejection, be promulgated by the President after ratification by the Supreme Council.

1.30. A Supreme Court has jurisdiction over disputes between emirates and between emirates and the Union, and may also examine legislation from both the Union and the emirates for its constitutionality. An interesting power of the Court is the 'interrogation of Ministers and senior officials of the Union concerning the conduct of their official duties on the basis of a request by the Supreme Council', a mixture of judicial review of administrative action and impeachment.

1.31. The UAE is a federal system with few individual units of government below the federal level. The collectivity of the supreme authority is less pronounced than that of Switzerland. The constitution provides a lesser role for the citizenry or their representatives, falling some way short of democratic standards, indeed, the Union National Council may represent the emirs rather than the citizens. Nevertheless, since it is a working example of the combination of traditional authorities (although in contrast to the republican and egalitarian traditions of Somali society, these are hereditary and aristocratic) and their modes of rule with a modern state structure and institutions, it may have relevance.

D. A Decentralised Unitary State with Regional or Local Autonomy

1.32. Political opinion may be moving toward confederal or federal structures. The decentralisation possibilities within a unitary state structure are also worth exploring, however, because all options need to be considered. More importantly, even within a confederal or federal structure, it seems likely that within each future region, province or state there may well be a demand for constitutionally entrenched decentralisation.

1.33. Just as the dividing line between a confederal and a federal system is sometimes difficult to draw, so the dividing line between what might be called maximum

decentralisation in a unitary state and minimal federalism may also at times be a very fine one. The essential difference between a federal system and a decentralised system is this: a federal system creates a division of powers between central and regional authorities, each of which, in its own sphere is co-ordinate with the others and independent of them, whereas in a decentralised system, the regional governments are subordinate to the central government, which may, in principle, reconstruct or destroy them without their consent. This general statement may be illustrated by reference to the draft Constitution of Uganda which makes provision for extensive decentralisation of powers to district councils:

'Subject to such limitations as Parliament may prescribe, and as may be consistent with the decentralisation of local government, District Councils may exercise and perform functions and services other than those... exclusively reserved to the Central Government... The President may, with the approval of the National Council of State delegate to a District Council any of the functions and services within the exclusive jurisdiction of the Central Government if satisfied that the function or service can be effectively carried out by the District Council. The President may with the approval of the National Council of State take over the administration of any district in any of the following circumstances: ... (c) if circumstances have arisen which make it impossible or extremely difficult for a District Government to function.'

1.34. Here, despite the aim of transferring considerable powers, and in practice financial resources, to district councils, the central government retains considerable reserve powers. Constitutionally, it would be a central government decision alone to delegate (not transfer) exclusive central government functions to districts; and it will be an Act of Parliament, rather than the Constitution, which will set limitations on the exercise of powers by district councils. Even in Papua New Guinea, which has gone further down the road of decentralisation than Uganda, the decentralisation provisions are contained in an Organic Law, not the Constitution. The National Parliament retains ultimate supremacy and there are provisions that the central government can invoke to interfere in provincial affairs, including the coming into existence of a provincial government which requires its approval.

1.35. In Uganda, which from the mid 1960s, had an increasingly centralised (and corrupt, brutal and inefficient) government, the decision to decentralise government, and to entrench the principle of decentralisation in the constitution, is a major change of direction. According to Uganda's President: 'Our decentralisation measures aim at undoing the harm that was caused to local systems; of governance by centralisation. We want to unleash local initiative and invigorate the local democratic process which together will sustain development and enhance local capacity for self-governance and service delivery... Human beings can govern themselves in peace and dignity in pursuit of their collective well-being once entrusted with their own destiny through the medium of popular democratic local institutions. Central government only defines the rules of the game and then proceeds to vest responsibility to local authorities and other local organisations... Decentralisation effectively breaks the monopoly of Central Government over the social, economic and cultural life of society...' Many of these sentiments will resonate with Somalis.

1.36. Nevertheless Ugandan decentralisation is essentially a top-down process. The central government of a unitary state is relinquishing powers. The construction of a federation usually is a bottom-up process; individual units of government coming together to create a

tier of government above them for limited purposes. In the former Somalia the decentralisation option may be more apt *within* the regional units of government, and indeed it does seem as if it is already being acted upon by the regional authorities. The federal or confederal options may be more appropriate for the re-creation of central governmental capabilities. There are two simple decentralising ideas, however, that may be worth embedding in any future Somali constitution. First, the constitution should specify powers that local governments may have as of right, though they may choose to delegate these powers to higher levels or to share them with other authorities; and, second, constitutional checks should be placed upon the abilities of regional, provincial or state governments to abolish or circumscribe the powers of local governments. Requirements for extraordinary legislative majorities or for local referendums are some of the more obvious mechanisms that can fulfil this objective.

1.37. Whatever territorial constitutional structure Somalis devise they would do well to establish provisions for amending the constitution that are relatively inflexible. Examples of such provisions might include special weighted majorities for the legislative passage of amendments, unanimous agreement amongst regions, stipulations mandating periods of reflection before the passage of amendments, or veto powers for specific regions or other institutions.

E. Consociation

1.38. We have so far discussed territorially-based decentralisation and examples of how this principle may be put into effect. Decentralisation may have another meaning - the simultaneous decentralisation to and sharing of power by communities as opposed to districts. These *power-sharing* or *consociational* principles can be used within confederations, federations or unitary states, and can operate at the level of an entire state, or within a region of a state characterised by conflict. In short, these principles are relevant to both central and local governments. Their pertinence for Somalis, for whom clan, and sub-clan, rivalries are presently endemic, should be apparent.

1.39. Consociational practices are continually invented or re-invented by politicians within divided societies. They were invented by Dutch politicians in 1917 and operated until the 1960s; they were forged by Lebanese politicians between 1943 and 1975; Malaysian politicians experimented with consociationalism between 1955 and 1969, Fijians on and off between 1970 and 1987, Northern Irish politicians for a brief spell in 1974, and South Africans, in the course of abolishing the white minority dictatorship, have effectively created, at least for the time being, a consociation. Consociational democracies usually have four key features:

- (i) A *grand coalition government* incorporates the political parties representing the main groups in the divided society. This can take several forms, such as a grand coalition cabinet in a parliamentary system, a 'grand' council or committee with important advisory functions, or a grand coalition of a president and other top officeholders in a presidential system, or a collective presidency. In a less ambitious version of consociation the guiding rule is *government by more than a simple majority*, which guarantees representation for minorities. It is important to realise that the same effect as grand coalition government can be accomplished if and when the separation of powers

prevents any one group, or majority group, from monopolising political power. For example, in the United States when different parties control different branches of government and are obliged to work together the impact is equivalent to the formation of coalition government.

- (ii) *Proportionality-rules apply throughout the public sector*; i.e., each community is proportionally represented in all the core institutions of the state (by what are in effect community quotas): the legislature(s), the executive, the judiciary, the civil service and the police. Proportionality-rules may be specifically entrenched in electoral rules (see Chapter 6) or in the composition of parties. Proportionality-rules apply both to public employment and public expenditure - each community gets its fair share of public sector jobs and public expenditure, for example to fund its educational and broadcasting needs. The principle of proportionality might also apply to private sector employment: requiring employers to have balanced workforces to prevent or correct discrimination in employment and the development of potentially lethal economic inequalities between rival communities.

- (iii) *Community autonomy operates*. Each community, formally or informally, is given self-government over those matters of most profound concern to it. In cases of ethnic conflict these issues revolve around language, education, religion, culture and the expression of national identity. In Somalia(s) the principle would mean respecting the autonomy of the clans, and sub-clans, and potentially the linguistic and cultural particularity of the Digil-Mirifle peoples and of the Bantu riverines and other culturally distinct minorities. Community autonomy within a consociational system differs from territorial autonomy under federal systems because members of each community must have their autonomy respected irrespective of where they live and work. One can, if one finds it easier, think of consociation as 'community federalism', or 'corporate federalism' in contrast to territorial federalism. The most obvious examples of the principle are religiously or linguistically organised education systems. For Somalis it could mean, for example, leaving each clan free to administer criminal law.

- (iv) *Vetoes exist for minorities*. These vetoes can take various forms. For example, in Belgium weighted majorities are required before some legislation becomes law. Vetoes can be legally or conventionally entrenched. In Canada, before the adoption of its new constitution in 1982, Quebec had an informal veto over constitutional change (its loss of this veto is one of the factors underlying Canada's current constitutional crisis). If Bills of Rights are established, with supreme courts to uphold them, and if these bills entrench individual as well as communal rights, they can provide an effective way of protecting minorities. A controversial but interesting example of this phenomenon is the Canadian Charter of Rights and Freedoms of 1982.

1.40. Consociational principles embrace pluralism, whether that pluralism is based on ethnicity, religion, language or some other deep-rooted cleavage, such as a clan or lineage. They are based on the idea of allowing groups to be separate but equal. Like federal

principles consociational practices facilitate unity and diversity, but without any necessary territorial or uniform implications. *They aim to secure the rights, identities, freedoms and opportunities of all communities, and to create political and other social institutions which enable them to enjoy the benefits of equality without forced assimilation, and without being dominated by the largest group or alliance of groups.* Consociational principles do not oblige people to be schooled together, although they do imply a commitment to integrated proportionality in political and legal institutions and possibly to proportionality in work-organisations - since these arenas are the ones in which ethnic or clan differences may produce violence, instability and perpetuation of conflict.

1.41. Consociationalists argue that in some parts of the world the relevant populations have a simple choice between creating consociational democratic institutions or having no meaningful democratic institutions at all. They argue that only consociational mechanisms can avoid perpetual civil war or dominance by the largest group or alliance of groups. A case in point is the Lebanon whose delicate consociational compromise was destabilised by Israel and Syria in 1975/6, and by the impact of the expelled Palestinian Diaspora. Consociational arrangements do not require academic experts or consociational engineers to come into being. They are constantly re-invented by politicians. The key point is that they have the autonomy, imagination and incentives to construct such compromises, and the appropriate external environment - a common threat. They require politicians to believe that it is better to have a share of power rather than to bear the costs and risks of seeking dominance. This situation may be emerging in Somalia. It is true that Somalis face no major external threat at present, but the collapse of the state has turned them against one another to the extent that each clan grouping constitutes an external threat to its neighbour, albeit from within Somali society rather than from outside it. The best case for consociational arrangements is that they involve the self-government of the relevant communities, and they are better than the alternatives: majority-domination, bloody partition, secessionist warfare, expulsion and genocide.

1.42. To work, consociations require at least three fundamental conditions:

- (i) The potentially rival communities must not be unreservedly committed to immediate or medium-term integration or assimilation of others into 'their' community, or to the creation of their own nation-state. The Somalis do share a sense of national identity which may help them develop a consociational system, though it has not stopped warfare among them.
- (ii) Successive generations of political leaders must have the right motivations to engage in conflict-regulation and sustain the consociational system. The leaders of the rival communities must fear the consequences of a return to war, and desire to preserve economic and political stability. They must, for example, believe they are incapable of governing successfully on their own, or establishing hegemonic control over others. Their motivations for supporting the system may be self-interested or high-minded, but without them there is no prospect of producing a stable settlement. The moment rival political élites and their followers believe that the benefits of war exceed the costs of peace a consociational system is doomed. The implications for Somalis will be apparent to all.

- (iii) The leaders of the relevant communities must enjoy some political autonomy, so that they can make compromises without being accused of treachery. If they lack confidence they may not be prepared to engage in hard-bargaining, or to make difficult decisions. This condition requires restraint within the relevant communities, which will be especially difficult for Somalis with their traditions of splitting and splintering within clans, as well as between them. The authority of the elders, however, reinforced by Somali consensual local decision-making, may possibly help create the right types of leadership. Choosing the right kind of electoral systems to encourage effective and co-operative power-sharing is also problematic (see Chapter 6). Competitive elections, using proportional representation - which are normally recommended for consociational systems - may create incentives for extremist leaders to compete for office confident that they will not lower the overall support for their group. The net result of such behaviour may be that each group's extremist leaders may lack the skills or incentives to moderate their demands sufficiently to establish a workable power-sharing system. By contrast, in plurality-rule elections, a dominant party may emerge which may have no incentive to appeal to minorities. Thus in addition to no majority group believing it can govern on its own a consociational settlement requires that each community must be internally politically stable in a way that promotes compromise, and the workings of the electoral system must not undermine the internal stability of the communities.

1.43. These are demanding requirements. If they are not present, or break down, as has happened in recent times in the Lebanon, Northern Ireland, Malaysia, Cyprus and Fiji, then consociational experiments will also fail. An even more depressing conclusion is also possible. Consociational practices may work to calm ideological, religious, linguistic or ethnic conflicts, but only if these conflicts have not become the bases of separate national identities. In other words consociationalism may only be practicable in moderately rather than deeply divided societies. Perhaps Somalis, free of external intervention, and wishing to avoid any future humiliating external interventions, will prove only moderately divided - after all, they do share a common national identity.

1.44. How might consociational principles work in a future Somali state or states?

- (i) One way of creating a grand coalition government would be with a constitutional requirement that the President require the Prime Minister to include representatives from enough parties in his/her Cabinet so that the sum of the parties represented equals at least 3/4 of the seats in the Assembly. This suggestion seems to assume a unitary state; but it could work within the Somali regions. A better suggestion for a federal executive might be that a collective presidency should be created. It would consist of representatives from each of the states or regions in the federation, as is the case in the UAE, and provided consociational principles operated within the regions then these representatives would be broadly acceptable. These are only two brief suggestions for creating a grand coalition government. Somalis themselves could elaborate others very effectively.

- (ii) The principle of proportionality could be applied in all institutions, federal or regional (for discussion see Chapters 2-6), in a common civil service, judiciary and police, in electoral designs, and in the allocation of public moneys. Its full implementation, however, will require a census as well as an agreement on the constituent groups who are to be parties to the arrangements.
- (iii) The principle of clan autonomy could be operated in a radical or less radical form. In the radical form the clan could be left to decide what contracts it makes with other clans to establish co-operative institutions; in a less radical form clans could be left to govern themselves in those matters judged by Somalis to be of such obvious importance that to do otherwise would recreate the conditions for war, e.g., policing.
- (iv) Veto powers - of both a federal and non-federal, and of both a legal and non-legal kind - can be designed to prevent any group or coalition of groups lording it over others. In any reasonably liberal system provision would also need to be made to protect those who do not wish to belong to any clan.

F. Conclusion

1.45. Both federal and consociational principles may be fruitfully applied by Somalis intent on reconstructing their nation. The federal, or confederal, approach would help avoid the construction of an overly strong centre, while the consociational approach recognises openly the real importance of the clans for most Somalis, and their concern that they are treated fairly in the future. Consociational and federal principles could also help Somalis break decisively with their Anglo-Italian colonial heritages and re-address their needs for stable and fair government. In subsequent chapters the implications of these arguments are elaborated. The key difficulties in developing both federal and consociational ideas, naturally enough, will lie in Somalis' willingness to agree on the appropriate federating and consociating units. That is a matter for Somalis, rather than the authors of this report.