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Topic

**Mediation and Peace-Building through Regional Arms Control and
Disarmament Diplomacy; A Diplomatic Continuum in the Somali Peace
Process**

Abstract

This paper will seek to explore the role of the diplomacy of human rights and justice as a mode of mediation in protracted conflicts. It seeks to explore the concept in the peace-building stage in particular, and through the overall utilization of regional arms control legal regimes and disarmament diplomacy. The specific case study is Somalia which has defied peace-keeping, conflict management norms, and challenged the westphalian conception of the State and its legitimacy.

The sought for thesis seeks to provide the position that an overall understanding of international justice and its rule of law images could bring order both in the procedural-substantive nature of mediation and also in the transitional order element of the post mediation/conflict period in Somalia. A rule of law image that is representative of norms of international justice is arms control instruments that could be used as diplomatic kites in mediation processes.

Recent developments in Somalia, notwithstanding past unfolding, have elicited great interest in research of this paper. Laws of arms control have been violated across the board by virtually all actors in the Somali conflict and this is attributed to resurgence of high intensity conflict in Somalia. The current political-diplomatic events may have restated the role of regional laws on arms control in conflict management. The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons' relevance, not only in arms control, but also as a possible tool for realizing a sustainable peace in Somalia is brought to light. The Protocol is a arms control legal regime seeking to control the trade and movement of arms in the intermittent conflicts in the region, but it is also a political and diplomatic tool that could be used for transitional ordering in Somalia. The country is the latest signatory to the Protocol and is thus a member state of the Regional Centre on Small Arms and Light Weapons (RECSA) which is mandated with implementing the Protocol.

To connect this to the Somali peace process, a question is posed, how does the overall peace process become complete and move from inchoate (incomplete) state of diplomacy? The answer may lie in the potentials of regional laws of arms control and particularly the Nairobi Protocol which addresses the main 'fuelling indicators' of the conflict; that is the presence, proliferation and lack of transparent control of small arms and light Weapons. This paper will therefore analyze these potentials and provide a case for arms control and disarmament diplomacy as necessary ingredients in successful mediation.

About this Paper

This paper seeks to explore the role of the Diplomacy of Human Rights and Justice as a mode of mediation in protracted conflicts. It seeks to explore the concept in the peace-building stage in particular, and through the overall utilization of regional arms control legal regimes and disarmament diplomacy. The specific case study is Somalia which has defied peacekeeping, conflict management norms and challenged the westphalian conception of the state and its legitimacy.

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A rule of law image that is representative of norms of international justice are arms control instruments that could be used as diplomatic kites in mediation processes.

Recent developments in Somalia, notwithstanding past unfoldings, have elicited great interest in research of this topic. Laws of arms control have been violated across the board and this is attributed to resurgence of high intensity conflict in Somali. A new player, in the diplomatic picture is the Islamic Courts and the systemic ramifications of their activities. This new actor has added or solidified interests not only within municipal concerns but also international ideological and cultural matrix oriented interests¹.

However, it is of essence to give an account of both the demographic overview of Somalia, and the historical development of politics and conflict in Somalia to fully grasp the current impasse and forward the case for disarmament diplomacy towards a positive peace continuum in Somalia.

A Short Demographic Overview of Somalia

It is important to note that despite the existence of minority groups, Somali as a society is more or less homogeneous. Almost entirely, the language is Somali and the religion is Islam. Underpinning the Somali society is lineage, with divisions defined along clan and sub-clan lines. The main clan families of Darod, Dir, Isaaq, Hawiye and also Rahanweyn traditionally constitute Somali society, along with minority clans. In the peace processes, though (in Arta-located in Djibouti, Eldoret, Mbagathi-the latter two in Kenya) the four major clan families of Darood, Digil-rahamweyn, Dir (within which Issaq is recognized as the largest clan) and Hawiye, along with the minority clans, namely Barawans, Bajuni and Bantu, were and are still considered to represent Somalia².

In 2003, the United Nations Development Program estimated the population of Somalia to be approximately 6.8 million (of whom 350,000 are considered internally displaced persons). It was after the collapse of the Somali government in 1991 that the country was balkanized into Somaliland (the Northwest), Puntland(Northeast), the Bay/Bakool regions(the southwest) and South Central Somalia. The Somali population consists largely of pastoral or nomadic groups and agricultural communities, with a significant number engaged in trade, businesses, and fisheries (coastal areas). The rate of urbanization is increasing rapidly with groups migrating to the more developed areas in search of employment³.

Demographically, the protracted war has changed to some extent the clan settlement patterns. Valuable urban and agricultural realty and personalty has been occupied by strong clans. In the urban and arable areas, such as Shabelle, Mogadishu and Juba Valley the patterns of clan settlements have changed. This is due to heavy infusions of non-resident clans supported by their militias. Many clan groups, particularly those originally from Puntland, migrated voluntarily to their traditional clan territories to escape conflict. From Puntland, a good number of clan members transited through Yemen to settle in Australia, America and Scandinavia, but an equally large number became increasingly involved in local businesses of trade in Puntland⁴.

In South-Central Somalia, valuable agricultural land, urban realty and personalty, seaports have been taken over by armed clans for economic gains. These stronger marauding clans have grabbed rich plantations and realty owned by agricultural clans and indigenous groups, often leading to their displacement or worse still, their enslavement. The displaced are forced to move out of traditional lands into new areas, thus changing demographic constitutions⁵.

Thus competition for control of power and resources has significantly changed clan boundaries in many parts of Somalia with new clans consolidating their position on occupied lands⁶. It is also of great importance to note that Somalia is geographically located in the Horn of Africa bordering the Gulf of Yemen. It is also important to note that the Somali Republic (1960-1991) constituted the former Italian colonies of South-Central Somalia and Puntland and the former British protectorate of Somaliland. It is after the collapse of the state in 1991, that Somaliland unilaterally declared independence; however it was not given recognition by the United Nations.

Background of Politics and Conflict in Somalia

Somalia's situation and history of conflict reveals an intriguing paradox. For instance, clannism and clan cleavages are a source of conflict which are used to divide Somalis, fuel endemic clashes over resources and power, used to mobilize militia, and make broad-based reconciliation very difficult to achieve. The country's embroilment in a civil war started in early 1991, after the former Somali President, Mohammed Siad Barre, was ousted by armed Somali rebel groups. It is important to note that the sources of the overall conflict are structural and predate the current civil war. There has been in Somalia a cumulative impact of armed conflicts⁷.

The armed conflicts, it should be noted, have taken the 'third wave' of hostilities, these are skirmishes of a third kind as Kaldor defines them because preferred modes of guerilla tactics are applied. The preferred mode of violence is the use of Small Arms and Light Weapons, SALWs, and these have been a major determinant of the cyclical violence in Somalia.

A number of peace and reconciliation efforts have been undertaken largely within track-one initiatives (official diplomatic channels), including interventions by the Ethiopian government,

Djibouti government and also international diplomatic initiatives by the United Nations, European Commission and also major powers of whom have consequently adopted a disengagement policy as a result of failure in such African conflicts⁸. It is evident that by 2001, the conflict had escalated into a regional conflict, with different belligerent or warring groups receiving support from different countries, including Eritrea, Ethiopia, Djibouti, Egypt and even Kenya. Each had its own interests and concerns. The interests as understood would explain this further.

Ethiopia's interest in Somalia is traceable to the history of the two countries. Both Haile Sellasie and Menelik II annexed portions of Somalia. Ethiopia shares a 2000 km border with Somalia, which explains its security concerns. Ethiopia's interests lie in the strategic concern for security. In addition to this, Ethiopia fought the last war with Somalia over the Ogaden and is careful to create a friendly government that cannot revive the hostilities over Ogaden. Another consideration is the fact that Prime Minister Meles Zenawi of Ethiopia had taken refuge in Somalia for a long time. During this period he made friends with some of the current faction leaders in Somalia whom he would have liked to ensure became leaders like he did⁹.

Kenya's interests are also understood initially from the position that it also shares a 700-1000km border line with Somalia. Huge numbers of refugees have streamed into Kenya this has provided for financial constraints to the state and a threat also to the environment. The war in Somalia has led to an increase in insecurity through small arms infiltration. Kenya's interest is also explained by its concern especially during the Moi administration to remain as a leading peacemaker in the region¹⁰.

Djibouti's interests are understood to the extent that it sought at the Somali National Reconciliation Conference, to influence the results in order to keep the former Transitional National Government President, Abdikassim, in office. A friendly Somali government was useful to Djibouti for economic purposes. It lacks resources and has a population of 300,000 and so cannot sustain a viable market for a business oriented economy¹¹. Eritrea did see the peace process as perfect opportunities to settle scores with Ethiopia of whom it has a long-standing border dispute. While struggling to settle scores, it found perfect allies in Djibouti, which bears a

personal grudge against Ethiopia, and Uganda whose aim is to scuttle Kenya's ambitions to regain regional supremacy¹².

These developments actually have exacerbated efforts of sub-regional and regional organizations to carry out within their track-one capacity, effective conflict management initiatives. It is true that sub-regional efforts, within the IGAD process, do need complementary assistance, owing to their political debacles, of a legal and strategic nature. It is within this context that member states, and in this case facilitators like Kenya (as observed in the 2002-2004 peace process), have been recognized as having soft power capability that appeals to a good number of actors and parties in the Somali conflict. The bedrock of soft-power, small-state diplomatic initiatives rests on the ability to achieve desired outcomes through attraction and acceptance of its legitimacy, which is a power reality, in this case soft power.

Other soft power capabilities could lie in the utilization of international law in peace processes. This is specifically true of the political and diplomatic potentials of arms control legal instruments like the Nairobi Protocol which could provide a buffer support to otherwise fragile and complex peace processes like the Somali scenario.

It is at the outset of the civil war in Somalia that the world had to deal with a phenomenon of a collapsed state¹³. This had intermediary imperatives to the extent that any conflict management attempt had to give cognizance to the socio-cultural mapping of Somalia, Socio-cultural mapping of potential human resources for the peace-building efforts of Somalia, and their role in reaching the long term goal of a sustainable, positive peace¹⁴.

Mediation Processes: Elusive Quest or Political Hiccups?

With this kind of conceptualization of Somali mediation efforts and conflict dynamics, scholars, statesmen and jurists would argue that in substantive form, the Kenyan led mediation of the Somali conflict was not successful. Another school of thought could use other indicators legitimizing the mediation and its outcomes, the Transitional Federal Government.

But it should be noted that common denominators abound given the politicization of diplomacy. An agreement was unequivocally signed surprisingly in the midst of different interest, fiscal and related impediments. The Transitional Government, as weak as it was/ is has not yet gained political momentum, and the inception of the Islamic Courts is only an indicator that the diplomatic process led by Kenya was inchoate¹⁵.

The question therefore is posed, How does the overall peace process on Somalia become complete and move from the inchoate (incomplete) state of diplomacy? The answer may lie in the potentials of regional laws of arms control that address the main 'fuelling indicators' of the conflict; that is the presence, proliferation and lack of transparent control of small arms and light weapons.

As such then, the window of opportunity provided for further post conflict negotiations, could be effected through the diplomacy of human rights, and through the utilization of existing legally binding regional arms control instruments and thus a cumulative case for arms control and disarmament diplomacy as images of this diplomacy of human rights. This is a link that was missing in all aspects of mediation on the Somali debacle.

The diplomacy of human rights is also legitimized by the unsynchronized activities of the TFG government that is its cabinet, Members of Parliament and their proxies in furthering illegitimate activities towards disaggregating human security. This was a situation which was hoped would not happen, reasons being that in peace processes, amnesty extricates non-participation of all actors in the negotiation table. Apparently, this has proven otherwise¹⁶. Another point is that the diplomacy of human rights is the only link of placing Somalia in the visible black letter writings of considerations by the international community. Engagement of the international community on Somalia is resulted to, and disengagement as a foreign policy position is illegitimized.

Thirdly, the Islamic Courts have been equally forwarding their share of impunity. To assert their point and agenda in Somalia, the courts have resulted to the use of hard power imperatives which by principle have contravened rules under General Public International Law and specifically

International Humanitarian Law. It has also provided its share of challenges for transitional order in post-settlement Somalia¹⁷.

To restate this point within the underlying assumptions of this paper for the ‘Disarmament diplomacy role in Somali’s conflict Management’ is the principal regional arms control instrument, ‘The Nairobi Protocol’ and its unexplored political and diplomatic potentials. The Nairobi Protocol is no doubt a legal and diplomatic kite to think about, considering the outright arms embargo violations by myriad of actors in the Somali conflict. This has no doubt de-escalating effects towards positive peace in Somalia. A restatement of the Protocol, the Human rights pictures of the instrument and the situation of high intensity war in Somalia at the moment would explain this clearly.

As such then,

‘The continued arms embargo violations in Somalia are a clear violation of the Nairobi Protocol’.

This statement is justified by the following analogy that gives some light on the Nairobi Protocol’s validity in the diplomacy of conflict management of the Somali debacle. This is a regional exemplification of disarmament diplomacy and its mediatory role.

Stemming Arms Flows Into Somalia - What Role for Regional Arms Control and Disarmament Diplomacy?

Current political-diplomatic unfoldings in Somalia may have re-stated the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons’s¹⁸ relevance not only in matters of arms control, but also as a possible tool for realizing a sustainable peace in Somalia. As understood, the Protocol is basically an Arms Control legal regime seeking to control the trade and movement of arms in the intermittent conflicts in the region, but it is also a political and diplomatic tool that could provide for transitional ordering in Somalia. Somali is the latest

signatory to the Protocol and is thus a member state of the Regional Centre on Small Arms and Light Weapons (RECSA) which is mandated with implementing the Protocol.

This statement is justified by the extent to which the arms embargo has been violated by a myriad of entities concerned with the Somali debacle. The UN Security Council Resolution 733(1992) in its Paragraph 5, un-equivocally requires a general and complete embargo on all deliveries of weapons and military equipment to Somalia.

To connect the Security Council Resolution to the Nairobi Protocol, it is apparent that the latter does incorporate the international legal provisions that already exist and particularly affect the armament regimes in the region. This makes up a concise set of provisions feeding into the International Humanitarian Laws reflecting geo-political perspectives. In short, the Nairobi Protocol brings closer to home a reflection of International norms seeking to control the proliferation of SALWs.

As such, this does elicit great interest for the Nairobi Protocol's role in the conflict management of Somalia. And it clearly spells out RECSA's possible role in facilitating for the diplomacy of human rights in the Somalia. A classic account of arms transfers and conduit utilization of the same has been evident in Somalia particularly in the focus period from January 2007 to date. As a result of the violation of the Security Council arms embargo and juridical violation of the Nairobi Protocol, Somalia is now literally awash with arms. Clearly, the sheer quantities, numbers and diversity of arms, especially in Central and Southern Somalia, are greater than at any time since the early 1990's. Generally, the sources of the arms are varied. Arms have been brought into Somalia largely via clandestine routes and have found their way to a variety of Key Somali actors.

However the Somali armament could be understood from the context of State practice, clan activity, and the principal one-stop arms market in Somalia and War-lord activity. In State practice is the introduction of arms by Ethiopia, the Ugandan military (under a Security Council exemption for the AU), Eritrea is a principal source and conduit for arms supplies to the Shabaab and America's military action in Somalia. In terms of clan activity is the intensity at which strong

clans have been buying and purchasing arms. The ‘Grand-Mall’ of a variety of SALWs is the Bakaraaha market. Apparently it is this market that indicts all parties in the Somali conflict to the extent that Somali actors, from the Shaabab, clans, to TFG officials, have been conducting arms transactions at the Bakaraaha arms market. The warlords have in addition been reconstituting their militias and are therefore a prominent feature at the market.

Arms Purchases and sales at the Bakaraaha Arms Market; Findings of the UN Monitoring Group on arms embargo violations in Somalia¹⁹ (figure A).

<i>Identity of individual conducting transaction at the Irtogte Market</i>	<i>Type and quantity of arms and date of transaction</i>	<i>Role (supplier/purchaser/seller)</i>
Qanyare Afrah Mohamed Warlord, member of Parliament and former Minister in the Transitional Federal Government	92 AK-47, 18 PKM, 22 RPG-2/7, a variety of ammunition 20.12.2006-15.01.2007	Purchased the arms
	55 AK-47, 7 PKM, 17 RPG-2/7 02.2007	Purchased the arms
	135 AK-47, 17 PKM, 25 RPG-2/7 03.2007	Purchased the arms
	48 AK-47, 11 RPG-2/7, a variety of ammunition, magazines and belts 20.03-20.04-2007	Purchased the arms
	320 AK-47, 8 PKM, 24 RPG-	Purchased the arms

	2/7, 8 M-79 grenade launchers, 3 DShK, 1 Sekawe,* 40 boxes of ammunition for Zu-23, DShK, AK-47 and PKM 20.04-20.05.2007	
Mohamed Omar Habeeb “Dheere” Governor of Banadir region and Mayor of Mogadishu	80 AK-47, 12 PKM, 19 RPG-2/7, 2 DSkK, a variety of anti-tank-mines, anti-personnel mines and hand grenades 20.11-20.12.2006 105 AK-47, 21 PKM, 28 RPG-2/7, a variety of ammunition 20.12 2006 – 15.01.2007 21 RPG-2/7, 74 Mortars, a variety of ammunition 02.2007	Purchased the arms Purchased the arms Purchased the arms
Col Abdi Hassan Awale Qeybdiid Police Chief, Banadir Region	65 AK-47, 25 PKM, 30 RPG-2/7, 1 Dhuunshilke, 3 B-10 and a variety of ammunition 20.11-20.12.2006 287 AK-47, 22 PKM, 3 B-10, Magazines for assault rifles, a variety of ammunition	Purchased the arms Purchased the arms

	RPG-2/7, a variety of ammunition and mines, 53 pistols 20.12.2006-15.01.2007	Purchased the arms
	375 AK-47, 87 PKM, 47 RPG-2/7, 170 mines and hand grenades, a variety of ammunition especially for AK-47 and RPG-2/7 03.2007	Purchased the arms

(NB: Dhuunshilke = 1-barrel Zu-23 mounted on a tripod;

Sekawe = 1-barrel Zu-23 with a seat for the gunner.)

This analogy of events simply shows how soft law views of the Resolutions and Protocols have been exceptionally violated. The result of such treaty exceptionalism is being observed now with the increase in deaths and the rise of wounded civilians. In political risk analysis-the increase of instruments of violence particularly in Mogadishu is directly related to the observed rise in human rights violations and violations of humanitarian legal provisions.

In a conflict where a big proportion of the population is concentrated in a metropole like Mogadishu, it is not strategically expected that urban warfare would be a preferred mode of operation by all parties. In short, violations are observed in Somalia with the deployment of insurgent forces in densely populated areas and widespread, indiscriminate bombardment of these areas by the sitting government and its ally. As a result of the un-checked arms transfers into Somalia-all parties have resulted to using weapons that could be defined as –‘Un-qualified’ for use under the Laws of war-humanitarian law. It is with these events that a case is being made for the Nairobi Protocol’s role in regional-restatement of Humanitarian law provisions and practice in the Horn of Africa conflict epicenter-Somalia.

The Protocol could beef up the Somali National Reconciliation decisions or resolutions as it would be used as a diplomatic kite to the extent that it becomes a major focal point in mediation efforts-by intermediary actors, ranging from the Inter-Governmental Authority on Development (IGAD), the International Somali Contact Group, to other actors who have in the past exemplified legitimacy as mediators in the region, such as Kenya.

The next task in diplomatic engagement of the Somali conflict management should be the recognition across board that for there to be a positive peace in Somalia-arms control diplomacy has to be understood in this context and operationalized through the inclusion of human rights lenses in the diplomatic or reconciliation processes. RECSA should also take it in its strides to engage with actors in its diplomatic capacity and spell out the essence and connection of arms control diplomacy and human security. In any case, the activities in Somalia directly affect signatories to the Protocol and Member States of the Nairobi protocol since SALWs have a penchant for easy infiltration across borders.

Kenya may also seek to vigorously re-engage in Somalia through its diplomacy of conflict management and thereby utilize the diplomacy of human rights by making good reference to the existence of the Nairobi Protocol and the hosting of the Secretariat RECSA in its capital Nairobi. Historical and moral obligations are also in order since Nairobi saw the mid-wifing of RECSA. It therefore has all legitimacy to bank on the utilization of diplomacy of human rights through restating of obligations pursuant to the Nairobi Protocol.

Realistic and Genuine Diplomatic Engagement

It is important to note that the diplomacy of human rights as a mediation mode consolidates the concept of human security. It extricates impunity on both municipal and international legal concern. It solidifies the soft power nature of a well coordinated mediation. It is from these considerations that systemic power dynamics have brought unrealistic and non-genuine diplomatic maneuverings. Clearly, the small state mediation by Kenya of the Somali conflict went a long way in providing the first building block towards consolidating unitary actors

towards some kind of legitimacy in Somalia. As weak as the outcomes may be perceived, a lesser effort would have meant an unfettered anarchical escalation of the collapsed state. Systematically, these efforts have not been commended or strengthened by the international community especially the powerful states. They should recognize effective diplomatic kites may be the case with the political and diplomatic potentials of the Nairobi Protocol.

An indicator of this was the un-strategic Non inclusion of Kenya into the International Somali Contact Group. The Group's mandate is to address the way forward for enhanced multilateral engagement with the Somalia Transitional Federal Institutions and other actors inside Somalia²⁰. From this the question therefore is-would the Group's legitimacy be consolidated with an inclusion of Kenya? Efforts in Eldoret and Nairobi have proven that legitimacy was forwarded to this actor²¹ and currently, the Islamic Courts have diplomatically signaled that Kenya would be their preferred country of third party convener²². In the same dialectical sense, this would consolidate the systemic understanding of the Somali diplomatic politics of which Kenya has proven to be an authority on.

To further consolidate the position of the diplomacy of human rights, it is apparent that the International Contact Group's, un-strategic positions may be construed by the various actors in Somali politics as hard-power chest thumping through other means. The thesis is that transitional order and order in Somalia for that matter could only be realized through championing human security via the mode of soft power all inclusive diplomacy-mediation efforts. The very stuff of human security in Somalia is to be realized through remedying acts whose problematique is addressed by Human Rights Diplomacy as a mediation mode.

This could be remedied through the restatement of arms embargoes and indictment on an international scale, and should therefore be a major diplomatic kite. This has been initiated; it should be noted, by systematic work and findings of the Bruno Scheinsky reports to the Security Council regarding the Monitoring group on arms embargo violations in Somalia. International Humanitarian law regimes, and specifically the UN Security Council Resolution 733 (1992) in its paragraph 5, as above requires a general and complete embargo on all deliveries of weapons and military equipment to Somalia. This is in the black letter writings of International law and has

been adopted in regional aspects through such instruments as the Nairobi Protocol. Therefore, disarmament diplomacy has legitimacy from international justice mechanisms that have a kind of an established *opinio juris* perspective.

The Diplomacy of Human Rights as an Intermediary Role

A case for the diplomacy of human rights having already been made, it is important to match this mode to the conflict progression in Somalia. Following the logic as forwarded by Christopher Mitchell, different levels of conflict need equally matching intermediary or mediatory efforts towards a matching state of order or sustainable peace²³. This is reflective of the Somalia situation.

Clearly conflict as progression was recognized in the Kenyan led mediation process, between 2002 and 2004. Intermediary roles applied in the different conflict manifestations included, one, Good-Offices modulation in the level of overt violence in Somalia which prompted for a mutually hurting stalemate by actors in the Somali conflict. Secondly, the structural conflict manifestation of the same was the main *raison detre* of the Kenyan Mediation which sought to lessen the gap between the actual realization of equity in Somali political-economic and social relations, and the potential realization²⁴ of this equity. It is important to however note at this point that these are all mechanisms remedying the first stage of the Somali disordered state of affairs. The conflict progression stage of post conflict state of affairs elicits mechanisms better viewed as peace management.

This is from the selling of agreements back to the socio-cultural resources in Somalia, to consolidating synchronized order in Somali society. However, it should be noted that some form of violence, somatic in nature, may still abound as shaky remnants of a heavily conflict ridden zone. This is the stage where the disarmament diplomacy comes in.

The need therefore for disarmament diplomacy in Somalia is legitimized by the activities observed in the Grand-mall of weapons and their proliferation in Somalia. This is the case of arms dealings in Bakaraaha market. The market is a major escalator of high intensity conflict and lack of stability in Somalia since it is a major point of supply of arms in Somali's war economy.

Major buyers are the major players and have sustained the market's life. A diplomacy that may target this major arms source, albeit not isolated, could go a long way in providing an enabling environment for complete reconciliation to be continued in Mogadishu. The illustration of the cyclical economy of the gun in Bakaraaha market (see figure A) provides a chilling reality that does explain why arms control and disarmament diplomacy should be a major tool in mediation and an ingredient in what is cumulatively called the 'Diplomacy of Human Rights'.

It should be further noted that no generic format of mediation tactics may be generalized in all situations. Somalia is no exception to this consideration. As much as post-conflict strategies may be stressed in consolidating transitional order in Somalia, the peace management mechanism of the utilization of human rights diplomacy through such ingredients as utilization of arms control regimes and disarmament diplomacy, ought to be used hand in hand with normal third party mediation strategies as exemplified by IGAD and facilitative third parties. The point here being that a mediator first and foremost needs legitimacy for his/her ideas to be well received or sold to the target resources. Legitimacy is further needed while utilizing the mediatory mode of the diplomacy of human rights, whose attainment signifies a consolidation of positive order, the ultimate goal of peace processes.

Siege in Mogadishu

Two consolidated actors of concern in the Somali situation are the TFG and Islamic Courts. The latter has proven to be a formidable force considering its easy military incursions into Mogadishu and its eventual fortification. The TFG, sitting in Baidoa, is threatened at this point since all its modes of statecraft, including its military wing, have been challenged. Another consideration giving formidability of the two actors is that they have respective sponsors and ideological god fathers.

This only acknowledges conflict progression, in that mediatory efforts are needed even at peace management cycles of conflict and its management. Post conflict situations legitimize a position that interests elicited by endogenous and exogenous actors have a limit, a ceiling whose

challenging of the sacrosanct nature of human rights elicits international justice mechanisms of settling disputes. In Chester Crocker's and Jacob Bercovitch's words, this is a ripe moment for engagement through the diplomacy of human rights to consolidate the last deployment of resources towards a positive peace²⁵. At this point, disarmament diplomacy should be applied in the mediation processes and the diplomatic kite to be floated are the arms control laws and violations of the same.

Operationalization of Human Rights Diplomacy

The reality on the ground in Somalia is such that justice has to be realized first for there to be solid peace. A recapping of the essentials of public law is important to the extent that impunity in the essence of human security should be addressed, not on a collective basis but on an individual one on one basis. This is the Victim-Offender interface²⁶. As captured by Dr Henry Kissinger in 'Diplomacy', sometimes for a mediation effort to gain some movement it is important to 'paint pictures' through International Standards publicization of acts against human rights, this is a mode towards gaining diplomatic momentum²⁷. International condemnations, re-statement of human rights ideals while negotiating 'floats the kite' of the important nature of the outcomes of the mediation effort. This is duress of circumstances under which both Islamic courts and the TFG have to realize that the game demands a level playing ground whereby equitable or near equitable positions can be understood while conducting mediation.

This perspective of the diplomacy of human rights based on the distributive element of the rule of municipal and international law is important to the extent that it remedies the conflict progression level of overt violence during peace management. This is imperative to the extent that the easing of hostilities would give way to reverting back to the negotiation table to hammer out contentious issues.

Diplomacy of Human Rights as 'Arms Control Diplomacy'

Therefore, this analogy of events asserts a position that the diplomacy of human rights or justice has in it different elements. One is a diplomacy based on distributive justice as above, and

another is restorative justice oriented. The first diplomacy of human rights conception has to be fully understood. A representative or indicator of this mode of mediation concerns impunity and remedies towards contravening sanctions, especially UN Security Council directed sanctions as stipulated in this paper.

Clearly, Somalia had a sanction regime slapped on it concerning the delivery of weapons and military equipment to Somalia. This is under Security Council Resolutions 733 (1992) and 751 (1992). It is clear that by its resolution 733 of 23rd January 1992, the Security Council, acting under Chapter VII of the Charter of the United Nations, imposed a general and complete embargo on all deliveries of weapons and military equipment to Somalia. By Paragraph II of Resolution 751 of 24th April 1992, the Security Council decided to establish a committee consisting of all members of the Council to undertake tasks namely; to seek from all States information regarding the action taken by them concerning the effective implementation of the embargo imposed by Paragraph 5 of resolution 733 (1992); to consider any information brought to its attention by States concerning violations of the embargo, and in that context to make recommendations to the council on ways of increasing the effectiveness of the embargo; and to recommend appropriate measures in response to violations of the embargo and to provide information on a regular basis to the Secretary General for general distribution to member states.

These are the ‘pictures to be painted’ to contraveners of these ‘soft laws’ that on the other hand have serious international public opinion ramifications. The current reports therefore of the Monitoring group on Somalia are building blocs for pushing mediation forward and giving a case for disarmament diplomacy as an ingredient towards positive order. This is a function of the diplomacy of human rights’ distributive element that should be utilized in mediation efforts.

The other wing of the diplomacy of human rights relates to the restorative justice inception into the post-conflict transitional order goals. Restorative justice seeks to restore relationships, an element that has been elusive in the Somali context. It is important to note that, in relation to this kind of justice, a restatement of diplomacy should incept into post conflict third party solidification process the element of including the socio-cultural resource of the Somali people and cultural matrix. Under this premise, the main concern, as forwarded by John Paul Lederach is

to legitimize a mediatory process by including culturally-accepted practice of conflict management mechanisms²⁸, included in these elements of Xia.(traditional Somali conflict management mechanisms).

This restorative kind of diplomacy would fill a void created by an all out amnesty as was seen in the most recent ‘Somali Peace Process’ as spearheaded by Kenya from 2002 to 2004. It is within the imperatives of Social Justice that the actual realization and potential realization have to be brought closer towards each other, not different/opposite continuums. The point here is that international political dynamics should acknowledge that there is need to appeal to the Frustration-Aggression phenomenon characterizing Somali class and clan relations. The reality of the matter is that clan dynamics, relations and a shift to individual from a collective indictment should be the *modus operandi*.

To show the nexus bond between these two types of justices and so the general make up of a ‘diplomacy of human rights’, is their source of legitimacy in due regard to perpetuating order in transitional societies like Somalia. If the diplomacy of human rights is therefore treated as a construct of transitional justice, then its source of legitimacy derives from International Humanitarian Law and International Human Rights. Transitional justice relies on International Law to make the case that States undergoing transitions and other actors, are faced with certain legal obligations, including halting ongoing human rights abuses, investigating past crimes, identifying those responsible for human rights violations, imposing sanctions on those responsible, providing reparations to victims, preventing future abuses, preserving and enhancing peace, and fostering individual and national reconciliation²⁹.

As a mediation mode then, the diplomacy of human rights, and so transitional justice mechanisms, has an orientation towards certain defining characteristics and goals. As observed then, first it includes incepting into mediation, and post-conflict management efforts, the concept of justice. Although the field depends on international legal principles that require the prosecution of perpetrators, this context also includes broader forms of justice, such as reparations programs and Truth Seeking Mechanisms³⁰.

Therefore, the diplomacy of human rights framework recognizes that transitions, like Somalia, are complex and often characterized by both impediments and opportunities for new and creative democratic strategies. In this context then, transitional justice and so the aim of the diplomacy of human rights requires an awareness of multiple imperatives during a political transition, suggesting that comprehensive justice must be sought in a context in which other values are also important, including democracy, stability, equity, and fairness to victims and their families.

Counter-Veiling International Forces

The diplomacy of human rights, it should be noted, falls stark in the thick of Soft Power imperatives of statecraft. As such, its resources being non-assertive, non-military oriented need to be strategic enough to achieve desired outcomes. An immediate threat to the utilization of this mode of diplomacy is the current decision by the UN Security Council to lift the 1992 embargo on arms. On early December 2006, the Security Council voted 13 to 0 to lift United Nations Sanctions on Somalia. This means that the deployment of a regional peace support operation is underway. As noble and as expedited as this process is, the timing is not at all feasible to accomplish the desired goals for sustainable peace. A construct of the diplomacy of human rights in connection to such a move is that despite near universal disregards for the embargo, U.N Monitoring has had an impact. The naming of the individuals engaged in small arms imports and sales worry's many Somali leaders that the data could eventually be used in legal proceedings. Governments named as suppliers of weapons to Somali clients have generally found the charges unwelcome and disputed them. Most importantly, the embargo has prevented the TFG from legally securing external assistance to arm and support its security sector and created a legal impediment to the deployment of regional peacekeeping or stabilization forces³¹.

Social Constructs of Gun Use, and Re-visiting of a Militarized mode of Societal Relations; A Deterrent to Arms Control and Human Rights Diplomacy.

The concept of the diplomacy of human rights is further solidified by un-foldings in Somalia especially in December 2006 and early January of 2007. It is apparent that Ethiopia and Somali

Transitional Federal Government forces killed hundreds of Islamist fighters and scattered the rest in a lightning offensive. In addition to these military campaigns, America ‘re-engaged’ itself through hard power imperatives in the Somali Politics by orienting the Somali populace with air raids purportedly targeting al-Qaeda operatives and their proxies within the Islamic courts’ militants and radicals.

The few weeks that ensued saw a replay of the anarchical Somali that had to some degree enjoyed some relative order prior to these skirmishes. Basic strategic war and fungibility considerations meant that any male member of the concerned Somali polity had to revert back to arming themselves for ideological reasons, immediate security consolidation of close members and also as a direct reverting to a social construct of a legitimized remedying of self defense and offense incase of a military encounter.

As it is then, Somali has seen an inception of usable arms, and small arms and light weapons for that matter, within this short span³². The converse of this situation would be a long-term remedying concern. An arms control and management re-visiting would mean that part of the tasks of mediation and further diplomatic engagement would include a re-visiting of laws against the illegal and uncontrolled legal sale and sponsorship of weapons³³ especially in societies whereby mechanisms of transitional order are being pursued.

As part of the indictment mechanisms of a diplomacy of human rights, it would only be legitimate if international jurisprudential and legal instruments were restated to all actors in the Somali conflict, as appertains to rules regulating warfare and the sale and use of arms essentially so in an un-proportional manner. This would further legitimize future disarmament, demobilization efforts under the proposed IGASOM, or any other International Peace Support or enforcement operations.

Clearly so, it is important to note that the existence and upsurge of SALW in Somali society only challenges mediatory and post conflict peace-building efforts, impliedly because this challenges and re-conceptualizes social constructs of the legitimization of violence. This is an Achilles heel in general conflict management efforts. A utilization of the diplomacy of human rights would

reverse this situation towards a positive oriented and pragmatic peace process and ordering of Somali society and consequent politics.

Conclusion

It is apparent then that initiatives are needed to jump-start again direct talks between the TFG, the Islamic Courts and other important Mogadishu-based groups, with the aim of producing a government of national unity. This rendition of the diplomacy of human rights through espousing of the arms control and disarmament diplomacy, asserts the fact that diplomatic leadership in search for a settlement must be augmented in response to the growing internationalization of the crisis and international legal repercussions of the same. A way of operationalizing this principle may be through this mode of mediatory efforts even with an inception of peacekeeping operations. The best that the disarmament diplomacy –(a strong ingredient in the overall diplomacy of human rights) can do is to complement parabolically, the peacekeeping efforts.

For more than a decade, this Horn of Africa territory has been subjected to violent internal conflict, a failed United Nations (UN) peace enforcement operation and, most recently, an invasion by Ethiopia. The proliferation of small arms and light weapons in Somalia is rife, despite the UN Security Council arms embargo that has been in place since 1992. Attempted solutions by outsiders to Somalia's woes have tended to be militaristic in nature, and appear not to have had a positive impact on the Somali conflict. Is it not perhaps time to seriously consider non-military options such as arms control and disarmament diplomacy?

As a result of the destructive impact of small arms and light weapons in the Great Lakes region and the Horn of Africa, states in this region concluded a legally binding arms control and disarmament agreement in 2004, 'The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa'. The Regional Centre on Small Arms and Light Weapons (RECSA) (formerly the Nairobi Secretariat), an inter-governmental agency that is responsible for coordinating the implementation of the Nairobi Protocol, was subsequently established. Somalia and its neighbors are signatories to the Nairobi Protocol, which means that governments in the region are

obligated to execute the various arms control and disarmament provisions of this legal instrument. However, given the current intra-state conflict, such measures are not being actively pursued by certain state authorities in relation to Somalia.

An unexplored aspect of the Nairobi Protocol is its diplomatic and conflict management potential. The Nairobi Protocol is based on international humanitarian law, and therefore has a normative focus rather than a political one. This agreement could therefore be used as an effective conflict management and threat reduction instrument for the current conflict in and around Somalia. For example, the Nairobi Protocol could be employed as a diplomatic “kite” by groups such as the Inter-Governmental Authority on Development (IGAD) and the International Somali Contact Group by which to bolster legitimate mediation and reconciliation processes in Somalia.

The Nairobi Protocol makes provision for RECSA to play an active diplomatic role in promoting arms control and disarmament in the region. However, to date, RECSA has maintained a relatively low profile in this regard, mainly due to numerous priorities and a lack of resources and capacity. Recently there have been a number of encouraging developments. RECSA has been professionally restructured, further funds have been secured, and additional personnel have been appointed. Consequently, RECSA appears to be becoming a more assertive diplomatic player in promoting the implementation of the Nairobi Protocol. For example, in the coming months, RECSA will be providing affected states with practical support in terms of the marking and tracing of small arms and light weapons.

In order for sustainable peace to be achieved in Somalia it is imperative that conflict management and peacebuilding approaches by the relevant parties be vigorously pursued. This should be combined with efforts (especially by RECSA) to encourage the implementation of the Nairobi Protocol by those states that are signatories to this agreement.

Endnotes

¹ See the Executive Summary and Recommendations of, ICG. *Can the Somali Crisis be Contained?* Africa Report No 116- 10 August 2006

² World Bank, *Conflict in Somalia: Drivers and Dynamics*. (Nairobi, The World Bank department of public information, January 2005), p. 8.

³ UNDP/World Bank, *Socio-Economic Survey 2002 Somalia Report No. 1*, (Somalia Watching Brief, UNDP/WB, 2003).

⁴ See *Draft Report on Socio-Economic Assessment in Puntland*, United Nations Development Program/ World Bank, Produced by PDRC, April 2004.- (PDRC means Puntland Development Research Centre, Garowe). See ICG Africa Report No 59: “*Negotiating a Blue Print For Peace in Somalia*”, March 6, 2003.

⁵ ICG Africa Report No 59: “*Negotiating a Blue Print For Peace in Somalia*”, March 6, 2003.

⁶ Ibid.

⁷ Ahmed Samatar, *Socialist Somalia: Rhetoric and Reality*, (London: Zed Press, 1998), p. 137.

⁸ Hussein Adam, “The International Humanitarian Intervention in Somalia, 1992-1995,” in Ricardo Rene Laremont, ed, *The Causes of War and the Consequences of Peacemaking in Africa*. (Portsmouth, NH: Heinemann, 2002), pp. 179-84.

⁹ Ochieng Kamudhayi, “The Somali Peace Process”, in Makumi Mwangi, *African Regional Security in the Age of Globalization* (Nairobi : Heinrich Boll Foundation, 2004), pp. 117-18.

¹⁰ Ibid, p. 118.

¹¹ Ibid, p. 117

¹² Ibid, p. 119.

¹³ Hussein Adam, op cit, p. 172.-Adam asserts that around January 1991 and during the ensuing months, Somalia experienced a cataclysmic event, virtually unforeseen since the Second World War. Somalia witnessed complete state collapse: it was not simply a military coup or a revolution; Somalia’s collapsed state represented the literal implosion of state structures and of residual forms of authority and legitimacy.

¹⁴ Ibid, pp. 172-173.

¹⁵ See Unpublished Thesis, Mwanika Philip Njuguna. *A Critical Analysis of the Role of Track-one Diplomacy in Conflict Management: A Case Study of the Kenyan Mediation of the Somali Conflict, 2002-2004* (Nairobi: Institute For Peace Studies and International Relations, Catholic University of Eastern Africa, 2006).

¹⁶ Amnesty International. ‘Somalia: Urgent Need for Effective Human Rights Protection Under the New Transitional Government’ In AI Index: AFR 52/001/2005.

¹⁷ Op cit. ICG. *Can Somali Crisis be Contained?* Pp 9-10.

¹⁸ See a full edit of the Nairobi Protocol for the prevention, control and reduction of small arms and light weapons in the Great Lakes region and the Horn of Africa 2004 in, SaferAfrica, 2007. Compendium of Small Arms and Light Weapons Initiatives Applicable to Africa. Pretoria: SaferAfrica. Pp 437 -455.

¹⁹ See the Report of the Monitoring Group on Somalia, In Letter Dated 17 July 2007 from the Chairman, Dumisani Shadrack Kumalo, Security Council Committee established pursuant to Resolution 751 (1992) concerning Somalia.

²⁰ The organization and goals of the International Somali Contact Group can be accessed through the Official Website of the Norwegian Permanent Mission to the United Nations, New York. It should be noted that Norway actually spearheaded this process; the contact group was a brainchild of Norway.

²¹ Op cit. Mwanika Philip Njuguna

²² This is reiterated in the Africa research Bulletin, regarding , ‘ The Islamic Courts Ready to accept Kenyan mediation of the Somali Debacle between the Courts, TFG and other actors’ , see Kenya-Somali : Troop Alert, In Africa Research Bulletin: Political, Social and Cultural Series, Volume 43, No 9, October 2006. Oxford: Blackwell Publishing. pp 1677A – 16778B (2).

²³ See ‘Process: The Dynamics and Progression of Conflict’ In John Paul Lederach. (1998: 63-73).

²⁴ Actual Realization and Potential Realization: It should be noted that these two terms define a social justice situation of a conflict and post conflict zone. In these terms, violence is defined as the cause of the difference between the potential and the actual, between what could have been and what is. Social Injustice-which is a form of violence, is that which increases the distance between the potential and the actual, and that which impedes the decrease of this distance. This is captured by Johan Galtung, ‘Violence, Peace and Peace Research’ In, Journal of Peace Research. 6(3) (1969), pp 163-171.

²⁵ The concept of the ‘Ripe Moment’ in Conflict Management Efforts is well expounded in, Jacob Bercovitch. *Mediation in International Relations*.

²⁶ Op cit., Amnesty International.

²⁷ Henry Kissinger. *Diplomacy* (Washington DC: USIP, 2001).

²⁸ John Paul Lederach. Op Cit.

²⁹ The Encyclopedia of Genocide and Crimes Against Humanity (Macmillan Reference USA, 2004) Vol. 3, pp 1045-1047.

³⁰ *ibid*

³¹ Op Cit., ICG. Can the Somali Crisis be Contained?

³² A cyclical convergence of arms in Somali hot spots is well captured by events immediately within and after the 27th December 2006. This is the span and initial period when Ethiopian forces converged on Mogadishu, and the Islamic Courts leadership announced it was abandoning the capital and leaving political leadership to sub-clan leaders. At the same time, it returned many of the weapons it had confiscated from sub-clan militias and private enterprises since June 2006. It is apparent then that the clans simply withdrew their support from the courts. The clans were literally given their weapons back to ‘protect themselves’. The courts had no choice but to defer to clan authority; See ICG, *Policy Briefing. Africa Briefing* No 45. Nairobi/Brussels, 26th January 2007, p.8.

³³ A sample of source portals of weapons into Somalia, to the hands of targeted recipients is well captured by the United Nations Monitoring Group on Somalia. According to UN arms embargo monitors, for example, Eritrea steadily increased arms shipments to the courts, as well as their Ogaden National Liberation Front (ONLF) and Oromo Liberation Front (OLF) allies; See the *Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1676*, November 2006.

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