

# Mission Impossible? Federalism in Somalia and the Search for a New Institutional Arrangement

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*In 1787 and 1848, the two first federations of Modern Times have been created by a movement of centralization: American states and Swiss cantons have considered that it was no more possible for them to live as quasi-sovereign states and that unity was strength. So they have congregated their fragile democracies under a more solid federal and democratic umbrella. Almost two centuries later, this centralizing element of federalism seems to have faded away. At a time where almost all states in the World are centralized (and quite often over-centralized) and unitary “nation states”, federalism is perceived as a mean of decentralization, of empowerment of regions in order to take into account minorities and diversities. But as Somalia as a state does not exist anymore, the original centralizing element of federalism should apply: first a recognition of the status quo, and then, slowly, a federalization movement driving – perhaps – through a Confederation (like USA and Switzerland) to a federation.*

## 1. Introduction

This article is a provocative one, because it questions the capacity of federalism to solve Somalia’s deep structural problems. The publication IRIN makes these observations on its website (2014):

On paper, federalism appears to be central to today’s Somalia. ‘Federal Republic’ is part of its official name. It is run by a ‘federal national government’. ‘Federal, sovereign and democratic’ are the country’s defining characteristics, according to Article 1 of the 2012 provisional constitution, a document in which the word ‘federal’ appears 710 times.

But in the wake of more than two decades of civil war and state collapse, Somalis disagree about whether

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federalism is a recipe for sustainable peace - and even whether such a system is practicable.

This article suggests, therefore, that new doors should be opened and new fields, explored.

After a brief overview of the country's history, and after a statement that federalism has not succeeded so far in achieving any notable goals in Somalia, we shall consider some examples from the history of federations in order to draw a very unusual conclusion: the best solution for Somalia could be to (re)create the first "confederation" of the modern era. Confederations have disappeared everywhere, but in Somalia the development of a brand-new confederation, one departing from its historical model, could be the opportunity to form the embryo of a state. The importance of this is that because statehood itself is lacking in Somalia, creating a federation with no sense of statehood is like building a skyscraper in a swamp.

## 2. History

Whether seen from a purely historical, an institutional or a constitutional point of view, Somalia has suffered the vicissitudes of history.

### 2.1A territory which has almost never been a state

The history of Somalia is strange and tragic (Gascoigne, 2001). As Egypt is a gift of the Nile, according to Herodotus, so are many countries the gift of their history. But Somalia's history has been unkind with its gifts. The country has never been a "real state" in the modern sense of the term, and this lack of any "national" or "state" spirit is an element that experts in federalism have not taken adequately into account. Since it was never over-centralized except during the time of the Siad Barre regime, Somalia has not needed decentralization.<sup>1</sup> On the contrary, it became increasingly fragmented under colonialism and then again as a result of clan elements that emerged as a default identity after the collapse of the Barre regime in 1991.

The country suffered a great deal during the colonial era. Euro-

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<sup>1</sup> For the background history of Somalia, see Lewis (2003).

pean interests extended into Somalia when in 1839 the British began to use Aden, on the south coast of Arabia, as a coaling station for ships en route to India. France and Italy, requiring coaling facilities for their own ships, established stations in the northern Somali regions. The French developed Djibouti, with the Italians located further up the coast, at Aseb in Eritrea. When the European scramble for Africa got under way in the 1880s, no less than three powers were competing for Somali territory. They were joined by a fourth rival, Ethiopia, when Menelik II became emperor in 1889.

Let us make a big spatio-temporal leap to the 1960s. British Somaliland and the Trust Territory of Somalia (formerly Italian Somaliland) gained independence on 26 June 1960, and 1 July, 1960, respectively. In July 1960 the two were merged to create a unified Somalian state. Then, in 1977, with Ethiopia in chaos after the fall of Haile Selassie, Somalia attacked Ethiopian garrisons in Ogaden. Soon a Somalian army was even besieging the city of Harar.

Why did President Siad Barre embark on this disastrous adventure? From the start, a major political theme in independent Somalia has been its wish to reunify itself with three large Somali groups trapped in other states, namely in French Somaliland, in Ethiopia (the Ogaden and Haud regions), and in northern Kenya. As a result of Western support for Ethiopia and Kenya, Somalia failed to make any progress on this issue and turned to the Soviet Union for military aid.

But Siad Barre was betrayed by his chosen superpower ally, which saw a more important prospective client in the new Ethiopia. Early in 1978, the Ethiopian army, using Soviet equipment and reinforced by troops from Cuba, recaptured Ogaden. The result was a mass exodus of hundreds of thousands of Somali refugees across Ethiopia's borders into Somalia.

In the aftermath of this disaster, guerrilla groups, both clan-based and regional, formed in and around Somalia with the intention of toppling Siad's repressive, centralizing regime. By 1988, full-scale civil war had broken out, leading to Siad's overthrow in 1991.

## 2.2 From an institutional point of view

A result of this troubled territorial history is that Somalia is probably the only country in the world which does not exist anymore. Contemplating the situation like archeologists beholding a field of ruins, Western political scientists have drawn on federalism for help as the only means of restoring hope in such a divisive context. This was perhaps not a good idea, as federalism is a quite complex system of government which requires some pre-conditions that obviously cannot be found in Somalia.

But the institutional history of Somalia is likewise a chaotic one. Somalia has tried out many systems of governance since independence. It followed the British model of a parliamentary system until a coup d'état in 1969, at which point the military government installed a "scientifically socialist" state. Since 2004, the country has moved toward a federal system, not because it is perceived as inherently or uniquely beneficial better, but because, in the words of the political analyst Abdulkadir Suleiman Mohamed (IRIN, 2014),

Somali people don't trust each other [...] Resource-sharing, power-sharing, political representation – all have been abused by certain people in the higher ranks of the government. Welfare services have never been delivered. Local constituents never received their share of national resources. So federalism was proposed as a way forward in Somali politics.

The possible introduction of federalism in Somalia represents the ultimate challenge for federalism. Paradoxically, Somalia is among those countries where none of the classic prerequisites for federalism exist:<sup>2</sup> it is a homogeneous society<sup>3</sup> with nothing but clan diversity to preserve, and neither a sense of democracy nor of rule of law.

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2 These are ethnic or linguistic diversity; a large state with several well-defined regions; the rule of law; and constitutional fidelity.

3 It should be noted, though, that many homogeneous countries have chosen for various reasons to be federal. Also, Somalia's homogeneity is under challenge by the clan system, regionalism and differences in ways of life.

### 2.3 From a constitutional Constitutional Point of View

Somalia's constitutional history is no less chaotic, with the country having had two constitutions before the 2012 one was developed.

On 20 July 20, 1961, and through a popular referendum, the people of Somalia ratified a new constitution, one which provided for a parliamentary democracy in which the Prime Minister and Council of Ministers (cabinet) were drawn from the membership of the legislature. The legislature also elected the head of state, or President, of the Republic.

In 1969, following the assassination of Somalia's second president, Abdirashid Ali Shermarke, the military staged a coup on 21 October. The Supreme Revolutionary Council (SRC) that assumed power was led by Major General Siad Barre, who banned political parties, dissolved the parliament and the supreme court, and suspended the constitution.

A new constitution was promulgated in 1979, under which elections for a People's Assembly were held. However, Barre's Somali Revolutionary Socialist Party politburo continued to rule. The 1979 constitution provided for a presidential system under which the President served as both head of state and head of government. As head of government, the President selected the members of the Council of Ministers, which he chaired. The Constitution of 1979 initially called for the President to be elected to a six-year, renewable term of office by a two-thirds majority vote of the legislature. After Barre's overthrow, a provisional government called for a new constitution to replace the 1979 document which had been the law of the land at the time of his ouster.

But from 1991 onwards, certain regions of Somalia seceded from it. The first independent region was Somaliland, which in 1997 drafted its Constitution of Somaliland of 30 April, 2000, and adopted it on 31 May, 2001. Similarly, Puntland, or Pount, declared itself autonomous in 1998, as did the state of Khatumo at the beginning of 2012.

In the wake of its constitutions of 1960 and 1979, the country is currently ruled by a "Provisional Constitution" adopted by the constituent assembly on 1 August, 2012, in Mogadishu. Although, as mentioned, it repeats the word "federal" about 710 times like

a mantra, the impact of federalism over the past four years has been very limited. In fact, this constitution – albeit immaculately groomed like a British lawn, even Switzerland could not wish for a better democracy – raises more questions than it answers.

Theoretically, Somalia's provisional Constitution establishes a parliamentary system of government, with the President of Somalia as head of state and a selected Prime Minister as head of government. The country has a bicameral legislature, which consists of the Senate (upper house) and the National Assembly of Somalia (lower house). Together, they make up the Federal Parliament of Somalia. Since its adoption in 2012, though, the Federal Constitution has made scarcely any contribution to ensuring national cohesion (even allowing that the economic situation has seen little improvement). Elections should have taken place in August 2016, but they have been constantly postponed.

Why this lack of efficacy? There are several reasons, but it is noteworthy that notions like “federalism” and even “state” are regarded as Western concepts that have driven the country to the point of collapse. Somalis prefer the politics of the clans, with institutions like *xeer* (contract), *sharia* and traditional councils having been imposed “top-down.” Traditional institutions such as these cannot coexist easily with Western models yet have lost their clout, particularly in South Somalia, due to the emergence of arms and money as key factors in what is termed “the political economy of war.” (Keen: 2000).

### 3. Some Technical Statements Justifying the Necessity of a Paradigm Shift

The organizers of the conference where a version of this article was presented (December 2016) asked the authors to answer a series of questions. This exercise proved interesting, because it showed that Somalia represents a case which is seemingly impossible to manage by means of classical federalist instruments. This is the point that underlies my observations about the necessity of a paradigm shift: the plain fact is that there is an abyss between the adopted Constitution and the country's reality.

In my article, I shall therefore not focus on these questions as

subheading elements, for the following reasons (nevertheless I shall briefly comment some of these questions to enlighten the origin of my reflection; see 3.1 – 3.7 hereafter):

- Numerous reports provide detailed accounts of Somalia's history and constitutional dimension, and it is pointless to repeat enquiries that have already been made.
- The problem is that all these reports remain purely theoretical, given that Somalia's constitutional situation is currently vague and uncertain (see. 2.3.).

### 3.1 What Were the Political and Socio-Economic Demands that Necessitated the Decentralisation in the Specific State in the Horn?

Basically, federalism can take shape in two ways: as an aggregation (e.g. United States, Switzerland) or in a decentralization process (e.g. Spain, Canada, Germany). But in the case of Somalia, the country never needed decentralization, except during the Siyad Barre regime: the state has collapsed. It is not a matter of decentralization but decomposition.

One has to take into account the fact that Somalia's history and geographical situation are idiosyncratic. This specificity could have been the engine of a particular form of statehood, but in fact it proved to be one remote from statism, especially after the coronation of the nation-state in the nineteenth century. Situated as the country is in the Horn of Africa, where it juts out into the Indian Ocean, Somalia's harbors are natural ports of call for traders sailing to and from India. As a result, the coastline of the region has been much visited by foreigners, in particular Arabs and Persians. In the interior, however, the Somalis have been left to their own devices.

From that point of view, and contrary to the situation in other states in the Horn of Africa, federalism in Somalia should be seen not as a decentralizing force but as a centralizing one, that is, an instrument for bringing Somalia back to order.

### 3.2 What Form of Decentralisation Has the State In the Horn Adopted?

As mentioned, the concern is not that Somalia has to be decentralized but that the state has collapsed. Over its ruins, according

to the Constitution, there is now supposed to be a federal republic. However, even though there have been extensive discussions in Somalia about federalism, the Constitution has never been adopted by national referendum and therefore never entered into force, the elections did not take place, and it is applied in no single member state (de facto, several “self proclaimed states” have evolved on their own and are not following the rules in the Provisional Constitution).

The decentralization process in Somalia is conceived against the common sense. Most countries in the world are unitary states that suffer from hypercentralization. It is thus necessary to decentralize such states in order to try to grant the regions (in the case of decentralized states) or member states (in the case of federations) some room for manoeuvre. In Somalia, the state does not exist anymore. It is therefore not necessary to decentralize but to recentralize it.

As we shall see, this process is not inconsistent with federalism, given that the two first federations in the modern world, the United States and Switzerland, are the fruit of a centralization process, but the starting conditions in Somalia are very different to what they were in those two cases and should be consolidated.

### 3.3 What is the Constitutional Status of the Subnational Units?

According to Article 49(1) of Provisional Constitution, “The number and boundaries of the Federal Member States shall be determined by the House of the People of the Federal Parliament.” Who should create the federal member states, though? The Constitution indicates that all federal states must be built from among the 18 regions that existed prior to the civil war, with Article 49(6) providing that “[t]wo or more regions may merge to form a Federal Member State.” But the process of creating most federal states has been fraught with delays, contestation and confusion (IRIN, 2014).

An independent boundaries and federation commission responsible for determining the number and boundaries of federal states has yet to be formed by Parliament’s lower house, leaving regions unsure of their legal status under the Provisional Constitution. The commission was meant to be appointed 60 days after the establishment of the new Council of Ministers following



the passage of the draft constitution in 2012, but that never happened.

“The creation of Federal Member States proved to be a very controversial issue during the constitutional conferences leading to this Draft Provisional Constitution,” noted a guidebook created by the UN Political Office for Somalia<sup>4</sup>. For this reason, the Constitution specified that the process of deciding federal member states will be carried out by the independent commission comprising international experts and representatives from all of Somalia.

Officially, no federal member states exist yet. The government had until the (postponed) elections in 2016 to create them. It is widely believed that Puntland is the closest to achieving federal state status and could be a model for other states. Jubaland and Galmudug also have state-building efforts under way, although there is a lot of in-fighting at the local level. Jubaland had two rival talks going on, while Galmudug had three or four.

### 3.4 What Powers and Functions Do the Subnational Units Exercise and How Are They Funded?

The powers and functions of subnational units are to be addressed later, as is the issue of funding. Article 54 of the Provisional Constitution provides as follows:

The allocation of powers and resources shall be negotiated and agreed upon by the Federal Government and the Federal Member States (pending the formation of Federal Member States), except in matters concerning: (A) Foreign Affairs; (B) National Defense; (C) Citizenship and Immigration; (D) Monetary Policy, which shall be within the powers and responsibilities of the federal government.

In its Chapter 13, dealing with public finance, Article 122 states: “The Principles of public finance will be discussed between the Federal Government and Federal Member State in accordance with the Constitution.” Article 50(f) provides that “[t]he responsibility for the raising of revenue shall be given to the level of government where it is likely to be most effectively exercised.”

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4 Briefing: Can federalism work in Somalia? < <http://www.irinnews.org/report/99600/briefing-can-federalism-work-somalia>>.

These elements are always complex in a federation, and in Somalia require constant dialogue and negotiation as nothing exists so far. In short, the substance of federalism – that is, the demarcation of mandates between the federal government and federal member states – is yet to be put in place.

### 3.5 How Has the Federal or Federal-Type of Arrangement So Introduced Impacted Peace and Development in the Specific State of the Horn of Africa?

Seeing as the Constitution was adopted four years ago but is not yet in force, given that elections have been constantly postponed, and given that the government controls only a fraction of the country, it seems obvious that this federalization process – to employ phrasing that avoids the term “failure” – has not been a big success.

But if the institutional or constitutional progress seems slow, the IMF believes there has been “incredible progress” from an economic point of view (Momodu, 2016). According to the head of the IMF mission in Somalia, Rogerio Zandamela,

The country realized incredible progress [...] The IMF is not alone to help Somalia. The African Development Bank, the World Bank, bilateral donors such as the European Union, and countries as Kenya, Norway, Turkey, United Kingdom and United States are extremely active. (Momodu, 2016)

On the other hand, security concerns are paralyzing investment. For the United Nations (UN), the link between security in Somalia and political and economic stability is self-evident. As Michael Keating, Special Representative of the UN Secretary-General in Somalia, explained: “We shall do our utmost to thwart the desperate efforts led by the fighters Al shabab to undermine the hopes of the Somalian people” (Momodu, 2016).

### 3.6 What Institutional Arrangements Are There for National Cohesion?

In Somalia, national cohesion is as rare as a white whale, and this despite a paradox: many countries are in trouble due to ethnic, linguistic or religious tensions, but Somalia is largely homoge-

neous from a religious and linguistic point of view. In its founding principles, the Provisional Constitution gives fundamental importance both to Islam and federalism. Therefore, one would again question the appropriateness of federalism as a solution. If yes, it could be only under the premises of United States in 1787, as this country is also quite homogenous from a linguistic and religious point of view (contrarily to Switzerland for instance).

Article 3 declares that the Constitution “is based on the foundations of the Holy Quran and the Sunna of our prophet Mohamed (PBUH) and protects the higher objectives of Shari’ah and social justice; Article 50(g), which concerns one of the Constitution’s principles of federalism, provides for “[t]he resolution of disputes through dialogue and reconciliation.”

### 3.7 Provisional Conclusion: Federalism is perhaps not Really Suitable

On 23 October, 2016, general elections were held in Somalia. They are essential for the purposes of holding the presidential election planned for 30 November this year. The electoral process will only allow one percent of Somalians to vote but it remains essential for achieving the political transition launched in 2012. Elections have been postponed again, but the new President, Mohamed Abdullahi Mohamed Farmajo, was elected peacefully on 8 February, 2017. Nevertheless, his authority hardly exceeds the zone of Mogadishu.

Somalia cannot at this moment be classified as having a federal system of governance even though its name “the Federal Republic of Somalia” would imply that it has. The chaotic situation in Somalia demands that the country go back to the political drawing board. To speak of federalism in Somalia is to put the cart before the horse. Nobody is willing or prepared to establish such a challenging system.

So why not “freeze” the current situation and establish new “quasi-sovereign countries” upon the ruins of the former Somalia, as happened with the republics of the former Yugoslavia? They could be linked under a loose confederation (as with the Swiss cantons before 1798) and then given time (because it will take generations) to restore the country as well as the notion of the state and perhaps eventually build a new federation.

## 4. The Necessity of a Paradigm Shift

As we seen previously, we are perhaps on the wrong track if we focus on one solution only. If a process does not work, it is necessary to restart everything from the beginning.

### 4.1 Origins and Objectives of the Federal System

Ronald Watts himself explained that federalism could not solve all the world's problems: "As the pathology of federations has illustrated, it is also clear [...] that federal systems are not a panacea for humanity's political ills" (2008, p. 191). This is not to offer an indictment of federalism per se but to reflect critically on the kind of federal system which has been applied in Somalia, one that arguably does not suit the basic needs of the country and provide it with the best solution (Watts, 1998, p. 105).

The concept of federalism emerged in the politics of Somalia after the dissolution of the Somali state at the beginning of the 1990s. This was not the first time, however, that federalism had been invoked in Somalia. During its transition to independence, minority groups – the popularity of the homogeneity discourse notwithstanding – feared that their rights would be trampled on by the dominant clans and called for a federal structure for Somalia. It was in 2004 that, for the first time, the concept of federalism entered Somalia's *constitutional* dictionary. Like its predecessor, the Transitional Federal Government (TFG) faced immense domestic and international challenges. In September 2012, the tenure of the TFG and Somalia's Federal Government was inaugurated. The powers of the present government are defined by the Provisional Constitution, which was adopted in August 2012. The mandate of the FGS was to expire in 2016 (but, as with so much else, this did not work according to plan).

If one reads the Inter-Governmental Authority on Development (IGAD) Draft about Somalia, one discovers that long "discussions" have been held about the choice between a federal and a centralized state yet without account having been taken of the possibility that federalism was not that suitable to begin with, given that there are some countries where the preconditions for it are not in place – Somalia arguably being precisely such a country<sup>5</sup>.

5 Draft Communiqué of the 28th Extra-Ordinary Session of the IGAD Assembly of Head of State and Government on Somalia (13<sup>th</sup> September

## 4.2 Excessive Western Orientation

Somalian experts<sup>6</sup> argue that Somalia has come to see federalism as a viable solution for restoring peace. Somalis yearn for local control of their politics, and decentralization, or any other form of federalism, is the answer to their quest. Federalism will disperse power among the states and thus reduce the concentration of power on central hands. According to one such expert, Mohamed Nurani Bakar, “The unitary system of governance has brought a lot of problems.” But where is the unitary system currently? These reflections are Western-oriented and do not suit a country which has collapsed and needs a sense of statehood.

The Constitution, federalization, the election process, and so on – all these elements are mainly Western and of course they do not suit the local reality. Hence, it is not surprising if everything goes wrong and even elections cannot be held properly. How can one elect the government of a so-called “nation-state” only in its capital, Mogadishu?

While they also have security interests at stake, the United Nations Somalia Mission (UNSOM) and other international agencies show a strong sense of urgency in wishing to complete their mandates with regard to state-building and federalization as stipulated by documents such as Vision 2016. This explains why international organizations put pressure on the Federal Government of Somalia to expedite the process of federalization so that the country could hold the planned 2016 national elections with fully fledged federal structures. As we have seen, the elections remain a fantasy.

## 4.3 Involvement of Foreign Powers

Another delicate point deserves attention: the involvement of regional and extra-regional players. Because of the absence of central authority, there has been considerable involvement by regional and extra-regional powers in Somalian politics. The involvement of international actors in federal restructuring process could have both positive and negative impacts. Regional and extra-regional players appear to have complementary and, at the

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2016); to be found [here](#).

6 Specifically, Abdi Aynte, director of the Heritage Institute for Policy Studies (HIPS), and Mohamed Nurani Bakar, MP, mentioned in the IRIN report.

same time, contradictory interests in the efforts of state reconstruction and nation-building in Somalia. (But why to build a nation? A state is enough.)

We could draw a comparison with Switzerland and its neutrality. Only such a politics allows for the avoidance of disintegration of the state. Neutrality has two sides, like a medal: an internal and an external. Externally, it prevents foreign powers to play a role in the country's management. Internally, it allows the state itself to maintain an equal distance from its constituent units. Taking the example of Switzerland, Germany or France cannot interfere in the Swiss politics, but the Swiss government does not interfere into the linguistic polities of the cantons. Of course, Somalia has disintegrated *already*, which means that any experiment in creating a united state again is, for the foreseeable future, doomed to fail. Once international players begin to flock to a country like vultures to carrion (see Syria), its fate is sealed and its global integrity is destroyed irrecoverably.

One has to restart the "stratification" process from the beginning, working from the ruins left over by what took place previously. States have collapsed throughout history but, by the same token, have been replaced by something else. The idea of resurrecting Somalia without a deep rethinking of the basics is simply unrealistic. But it can be suggested that for Somalia it would be a wise transitional measure to recognize the "states," or those parts of the state, that currently exist, rather than attempting to bootstrap from virtually nothing to the complex institution of a federation.

#### 4.4 Intermediate Conclusion

As an intermediate conclusion, it could be argued that Somalia, a country whose existence as such has always been questionable, experienced a short, dramatic period of overcentralization under the regime of Siad Barre before it ended in chaos. Since then things have not changed much, and it would seem that the federal option is no longer the best one.

## 5. The Paradigm Shift Itself

### 5.1 A Statement

Some observations from the discussion above are highlighted to indicate that it may be necessary to consider a paradigm shift in how the crisis in Somalia is addressed:

- The 2012 Provisional Constitution is not in force (more than four years after it was drafted).
- Elections were not held in 2016.
- There is no historical precedent to provide guidance on how to federalize a country after state *collapse* (and not only state crisis as we shall see hereafter).
- The electoral process does not take into account the specificities of the country. The process is a purely Western one and seems either incongruous or at least overconfident.
- A key challenge to political stability and security in Somalia has been “[the] continued disagreement between the major centers of power (that of the prime minister and the president)” (ISS, 2015). As a result, there have been frequent changes of prime ministers, the effect of which has been to intensify political instability and governmental paralysis at this crucial stage of Somalia’s transition.

All these elements could suggest that the country is lacking statehood and that the solution has to be found in another direction than federalism. It is perhaps necessary to wipe the slate clean and begin again afresh. A federal state is an efficient but complicated structure. How can one dare to build it on such unstable ground? It is simply impossible. As one would do in erecting a skyscraper, it is necessary to drain the swamp before starting the job.

In this regard, some historical examples can be of help. As mentioned, there are federations such as the United States or Switzerland which have been constituted “bottom-up” through a centralization process. But in this case the difference is obvious: these federations were built with well-defined member states: the 13 American states and 25 Swiss cantons, in addition to Austria’s nine *Länder* were well defined in terms of their histories, state institutions, legal dimensions and other characteristics. Sometimes they did not want to merge into a federal state, but the whys and wherefores were clear: to preserve disunity or to create a feder-

ation.

A suggested first step would be to reach a situation where Somalia has a number of stable, quasi-sovereign “sub-states” (“quasi-sovereign” because it is clearly impossible to have about 18 new internationally recognized members of the UN) that are interlinked within a loose confederation. Let us consider a few federal experiences that could illuminate this idea.

## 5.2 The Example of Austria: The *Länder* as Starting-Point of the Austrian Federation

Austria offers a good example of a federalization process Somalia could follow, even if the African desert is far away from the Austro-Hungarian Empire. Austria, like Somalia, is a highly homogeneous federation, with German as a common language and the population mainly Catholic (in 2009, 66% of Austrians were Catholics: the number decreases because there are always more and more persons without religion). It can be noted that other established federations such as Germany and the United States are also quite homogeneous; that is to say, it is incorrect to imagine that federalism’s primary goal is to protect ethnic diversity. It is also a system that protects regional diversity and helps to manage big countries. In fact, federalism has also a dimension of efficiency. Overcentralization is bad when there are (ethnic) minorities to protect, but it is also bad simply because it prevents regions from pursuing policies that genuinely suit their needs.

Austrian history provides the example of a disintegration of the state, of the “autonomization” of the *Länder*, and the rebirth of a state. The process has been relatively quick (because the *Länder* were for centuries formerly linked to an empire), but, its rapidity aside, it is very interesting in itself to consider the birth of the first Austrian republic.

The First World War ended in the dissolution of the Double Austro-Hungary Monarchy, this in spite of efforts by its emperor Charles I to create a federal state during the interwar years (only in 2016, and too late) and sign a separate peace. Indeed, when in October 1918 military defeat seemed inevitable, the last Hapsburg emperor tried to save the monarchy by undertaking reforms corresponding in spirit to the 14 points of the American president, Woodrow Wilson. On 17 October, 1918, he published



a manifesto transforming the monarchy into a federation of national States.

But as was often the case with the Hapsburg monarchy, this measure was adopted too late and appeared less as the satisfaction of justifiable claims than an admission of further weakness. Moreover, the Allies had already decided on the dismemberment of the Austro-Hungarian Empire. Wilson agreed with the arguments of Clemenceau and Lloyd George, and it was in vain that Charles I had tried, in the previous winter, to demonstrate to him that their two nations shared many commonalities.

The dissolution of the Empire took place remarkably quickly, even faster so that of Somalia. On 21 October, 1918, the Germans of Austria proclaimed their right to self-determination; they were followed by the Czechs, Poles, Hungarians, Serbian-Croatian-Slovenians, Romanians and even the Ukrainians of Galicia. On November 3<sup>rd</sup>, deprived of all its constituent units, the Empire of the Hapsburg had collapsed and Austria-Hungary was reduced to nine small *Länder* whose union will give birth to the small country which is called today "Austria", with Vienna as an oversized capital.

*Länder* played therefore a prominent role in the troubled times that followed, because they were the only sovereign entities to have survived the Austro-Hungarian Empire. The *Länder* parliaments (*Landtage*) and the committees of states (*Landesausschüsse*) constituted temporary assemblies. They resumed the powers of 1861 *Landesordnungen* and unmistakably represented – until the constitution of a new Austrian Federal state – revolutionary sovereign state powers.

A parallel development led – also in a revolutionary way – to the formation of a central sovereign power called "German Austria" (*Deutsch-Österreich*), a centralized unitary state created by a decree of the temporary National Assembly of 30 October, 1918. The new central power was not thus possible that to look for a compromise with *Länder* to create a viable State, and it is what it made. So, *Länder* were free to choose between two main options: firstly, membership of the new Federal republic at the cost of their full sovereignty; secondly, the independence with full sovereignty, and thirdly the abdication of any sovereignty under a centralized state.

Some *Länder* (namely, Tyrol and Vorarlberg) tried to remain independent, while others would have preferred a centralized state; but under the prevailing circumstances, they decided the best solution was to function like Swiss cantons in a federation. One after the other, in November, 1918, they joined the new Federal Republic of German-Austria. Some *Länder* subsequently collaborated with the new republic, but without a formal statement of membership. This can be called an organic process.

These declarations of membership, and the recognition of the federal character of the new state that ensued from them, were the basis on which the states acquired federal power, which took place by the law of 14 November, 1918, concerning the recognition of the state power in the *Länder* – an event marking the official birth of the Republic of Austria.

In a case of history repeating itself, the revival of federal Austria after the Second World War followed the same process as in 1918. Although a centralist government was set up in Vienna, *Länder* became the only bearers of sovereignty. In fact, their role was even more important than in 1918, because it was only the participation of western *Länder*, that is, those outside the Soviet-occupied zone, that allowed the restoration of the full power of the state (given that Austria had been annexed by Germany in the *Anschluss*). As an illustration of the importance of the role of the *Länder*, the secretary of state and *Landeshauptmann* of Lower Austria, Léopold Figl, spoke expressly of a “new Union of federated *Länder*,” in addition to which the *Länder* convened a conference to mark their union with the (new) Republic of Austria.

The significance of the Austrian *Länder* has to be emphasized. Whether it was in 1918 or 1945, the new Austrian state could not have been established politically or legally without the participation of these entities much older than itself, most of which go back to the Middle Ages. In 1918, after the collapse of the Austro-Hungarian Empire, the nine *Länder* were jointly co-holders of the right to self-determination with the temporary National Assembly.

### 5.3. The Case of the Collapse of Yugoslavia

There is another example of a “dead” state in the world, a state which collapsed following a dramatic process: Yugoslavia. After

the demise of this so-called federation (it was not a true a federal state in that it was not established with popular support), the six republics comprising Yugoslavia were replaced by six new states. From start to finish, the dissolution took roughly 30 years, if the starting date is taken as 4 May, 1980, when Tito's death was announced in state broadcasts in Yugoslavia, and the end-date, as 17 February, 2008, when Kosovo gained independence.

During this time, innumerable dramatic events took place under the name of the "Yugoslav Wars." Let us consider but a few, focusing on those connected to the rebirth of the former republics:

- In November 1991, the Arbitration Commission of the Peace Conference on Yugoslavia, led by Robert Badinter, concluded at the request of Lord Carrington that the SFR Yugoslavia was in the process of dissolution, that the Serbian population in Croatia and Bosnia did not have a right to self-determination in the form of new states, and that the borders between the republics were to be recognized as international borders. In response to the conflict, the UN Security Council unanimously adopted Resolution 721 on 27 November, 1991, which paved the way for staging peacekeeping operations in Yugoslavia.
- In January 1992, Croatia and Yugoslavia signed an armistice under UN supervision, while negotiations continued between Serb and Croat leadership over the partition of Bosnia and Herzegovina.
- On 15 January, 1992, the independence of Croatia and Slovenia was recognized worldwide.
- Slovenia, Croatia, and Bosnia were admitted as member states of the UN on 22 May, 1992. Macedonia was admitted as a member state of the United Nations on 8 April, 1993.
- The independence of Bosnia and Herzegovina proved to be the final blow to the pan-Yugoslav Socialist Federal Republic of Yugoslavia. On 28 April, 1992, the Serb-dominated Federal Republic of Yugoslavia (FRY) was formed as a rump state consisting only of the former Socialist Republics of Serbia and Montenegro. Its government claimed continuity with the former country; however, the international community refused to recognize it as such, taking the stance that Yugoslavia had dissolved into its separate states. The FRY was prevented by a UN resolution on 22 September, 1992, from continuing to occupy the UN seat as successor state to SFRY. This question was important for claims on SFRY's international assets, including embassies in many countries. Only in 1996 did the FRY abandon its claim to continuity with the SFRY. The FRY was dominated by Slobodan Milošević and his political allies.

- The five years of disintegration and war in the 1990s led to a boycott and embargo of the FRY, the economy of which collapsed as a result.
- The war in the western parts of former Yugoslavia ended in 1995 with US-sponsored peace talks in Dayton, Ohio, which resulted in the Dayton Agreement.
- The Kosovo War started in 1996 and ended in 1999 with the NATO bombing of Yugoslavia. Slobodan Milošević was overthrown in 2000. The Federal Republic of Yugoslavia was renamed on 4 February, 2003, as the State Union of Serbia and Montenegro. It proved unstable, and finally broke up between 2006-2008. In a referendum held in Montenegro on 21 May, 2006, independence was supported by 55.5 percent of voters and was declared on 3 June, 2006. Serbia inherited the State Union's UN membership.
- Kosovo had been administered by the UN since the Kosovo war; however, on 17 February, 2008, Kosovo declared independence from Serbia as the Republic of Kosovo. While the United States, the United Kingdom and much of the EU recognized this act of self-determination, Serbia and some of the international community – most notably Russia, Spain and China – did not recognize Kosovo's declaration of independence. As of July 2015, Kosovo was recognized by 56 percent of the UN.

The particular value of this case is that at no point was a restoration of the former Yugoslav federation envisaged, even in the long run. The case could be the proof that when a state has reached a high degree of violent disintegration, the only solution is to attempt something radically different.

#### 5.4. The case of Switzerland's Restoration and Regeneration (1815-1848)

One key moment in Swiss history is worth noting in this article: it is the so-called Restoration. Why? Because in a quite short period of time Switzerland experienced three models of government: a centralized Republic, a weak confederation, and a federation. This experience enlightens the advantages and disadvantages of the three systems.

In 1798, Napoleon invaded Switzerland and transformed the anarchic confederation into a centralized republic. It failed, because of the lack of popular support and the rejection of centralization by citizens. In 1803 Napoleon turned Switzerland into a kind of federation, with an Act of Mediation containing one constitution for the state and 19 constitutions for the respective cantons.

After the collapse of Napoleon in 1815, Swiss cantons concluded the so-called “Federal Pact” (*Bundesvertrag*) on August 7th, 1815. This was an international agreement between 22 cantons. This pact represented a collective safety agreement devoted to the defense against external or internal threat and arbitration of conflicts between cantons. The Treaty of Paris of 20 November 1815 included the recognition of permanent Swiss neutrality by all European powers. Nevertheless, the unique common organ, the so-called “Diete” (or *Tagsatzung* in German) could intervene only if the cantonal government asks for assistance. Otherwise, cantons were free to organize themselves and to manage their affairs absolutely as they intend to. In this context, many cantons replaced democracy by oligarchy.

*Art. 1. – XXII sovereign cantons of Switzerland, namely: Zurich, Bern, Lucerne, Uri, Schwyz, Unterwalden, Glaris, Zoug, Fribourg, Solothurn, Basel, Schaffhausen, Appenzell of both Rhodes, Saint-Gall, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel and Geneva meet, by the present federal Pact, for their common safety, for the preservation of their freedom and their independence against any attack on behalf of the foreigner, as well as for the maintenance of law and order and on behalf of the tranquillity in the inside. They protect themselves mutually their constitutions such as they will have been ruled by the supreme authority of every canton, according to the principles of the federal Pact. They protect themselves from even mutually their territory. (Filliette, 2014)*

One of the few successes of the Diet was the reintroduction of the old flag consisting of a white cross on a red field, using it for the coat of arms and the flag of the confederation. At that time Switzerland had no capital city: the national capital was rotating between three cantonal capitals, Zurich, Bern and Lucerne.

The Restoration period, involving 22 quasi-sovereign cantons and a very weak central power – the Diet met only once a year and could not decide on anything – lasted until the 1830s, at which time liberal reform movements in Europe began to influence some, though not all, of the cantons. The liberal cantons “re-generated” their constitutions in line with the spirit of liberalism, initiating a second historical period known as the Regeneration. It led to conflict, and ultimately civil war, between conservative, mainly Catholic, cantons and progressive, mainly Protestant,

cantons about the future of the country: the former wanted to preserve the status quo whereas the latter sought to have a federal arrangement like the United States. Following the civil war, a modern federal state was created and imposed by the winners of the war.

The points to highlight in the case of Switzerland are the coexistence of 22 cantons which enjoyed *de facto*, but not *de jure*, sovereignty; the fact that they took a long time (33 years) to decide on their common future; and that while the “central state” was very weak, the recognition of its neutrality by European powers proved to be in its best interests – conversely, external influences can have adverse effects on a country’s interests.

### 5.5. Tentative Conclusion

When a state collapses due to a lack of any sense of statehood among its constituent members, it is perhaps unwise to try to recreate the same state, even under another institutional form. In the case of Somalia, it is clear that the initiative to transform the country into a federation has been very far from successful (see section 5.1.).

What can we learn from other countries that have suffered from their histories? When we consider Austria, Switzerland or Yugoslavia, it is apparent that the most important role has to be given not to the ghost of a future state but to the extant or remaining components of the former state, be they *Länder*, cantons or republics. In the case of Somalia, the best course is arguably to freeze the status quo before trying to rebuild the country under another regime. This could be accomplished by reinventing an ancient institutional form that has almost completely disappeared from the institutional catalogue: the confederation. Let us take a closer look.

## 6. Why Not a Confederation of Somalia?

Currently there is almost no confederation on earth. The famous Swiss Confederation is not a confederation but a federation: the former of these terms has been preserved for terminological reasons. The Benelux alliance between Belgium, the Netherlands

and Luxembourg could also be considered as such, but due to the fact that these countries belong to the European Union, this “sub-union” has lost some of its institutional importance (especially after 2012) and the term “confederation” instead serves only to highlight the countries’ geographical proximity with each other.

More recently, the Senegambia Confederation was founded on 1 February, 1982, following an agreement between Senegal and The Gambia, signed on 12 December, 1981. It was intended to promote cooperation between the two countries, but was dissolved by Senegal on 30 September, 1989, after The Gambia refused to move closer towards union. Of course, the European Union presents also some confederal aspects, and even if its trial to move towards a kind of federation are far from being successful, the Union lasted much longer than Senegambia.

Despite the disaffection shown towards confederation, this is not a reason not to endeavor to create the first new confederation of the twenty-first century in the spirit of the famous Mark Twain quote: “They did not know it was impossible so they did it.”

### 6.1 Some Institutional Considerations about Confederation

According to the classical theory of the state, a confederation is an association of states that preserve the essence of their independence but decide, through the confederal convent, to take and implement certain decisions collectively, notably in the international field (Burdeau, 1980, p. 511). This definition creates a difficulty, but also has a peculiarity that could solve the problem.

The *difficulty* is that the definition relies on fully sovereign states. A confederation is an alliance of states (such as the European Union or Senegal and The Gambia). In applying this to the Somalian case, it is obvious that the country could not be a confederation in this strict sense of the term, because the roughly 18 “members” of the future Somalian confederation would or could only with extreme difficulties be regarded as “states” by international community (see example of Somaliland). Taking into account the fact that Somalia as a whole is a failed state, its constituent parts could never warrant international recognition as “states” or members of the UN. This is all the more so given that the international community is reluctant to increase the number of its members; for instance, it neither favors nor encourages se-

cessionist movements.

But the *peculiarity* is that this classical definition sounds quite old-fashioned. It goes back to a time when the international community was not as regulated as it is today. For instance, the level of “sovereignty” of Swiss cantons under the “real” Swiss Confederation, or of American states under the regime of the Articles of Confederation, was quite vague. Currently, states are much better circumscribed by international law. From that point of view, one could argue that the border between confederations and international associations is also rather vague, in that a number of the latter could be regarded as quasi-confederations. So, considered in that light, what space does this leave for confederation?

In the case of Somalia, the confederation would serve to link its members with each other, and internally they would be thought of as “member states,” even if the appellation “states” would not be recognized by international law. The important element in this conception of a Somali confederation is that – in alignment with the traditional model of the confederation – almost all power would lie with the component units, while the confederal state would have as an exclusive function the role of securing the confederation’s recognition and participation at the international level. In a sense, the confederal state would be the opposite of a regional state: in most regional states, the center delegates certain powers to the regions, whereas in the Somalian confederation it would be a case of the regions delegating powers to the central government in the “centralizing movement” mentioned on 3.2.

## 6.2 “Member States” of the Somalian Confederation

In the case of a future Somalian federation, the “member states” of the federation should be defined *de jure*. As we shall see hereafter, the process seems very complicated. On the contrary, in the case of a future Somalian *confederation*, the “member states” would have to be defined *de facto*: this entails the freezing of the *status quo*. It is perhaps far from realistic, but one could imagine that this second option would be less impractical than the first one.

In any case, the most difficult question is linked to the definition of “member states.” Though the intention of supporters of the



federal Somalia is to merge regions, the creation of a loose confederation would allow for the delimitation of fairly small entities according to the principle of the more, the merrier.

It seems obvious that delimitation of the future subnational units would be extremely difficult. The same would seem true of the allocation of powers and resources, which, according to Article 54 of the Provisional Constitution, should be negotiated and agreed upon by the federal government and member states and, as per Article 122, in accordance with the principles of public finance. And, undoubtedly, it is more difficult to create a state which is at the same time supposed to enter into a federal union and then defend its prerogatives against the central government, than to create a “state” that is supposed to be “almost sovereign,” as Swiss cantons were in the Restoration period.

According to Article 49(1) of the Constitution, the number and boundaries of the federal member states shall be determined by the House of the People of the Federal Parliament. Before this, the House should pass a detailed law on the nomination and the functioning of a commission devoted to this task. On 1 December, 2014, the Somalian parliament duly passed the Boundaries and Federalism Commission Act, but for the moment nothing seems to have happened regarding the commission.

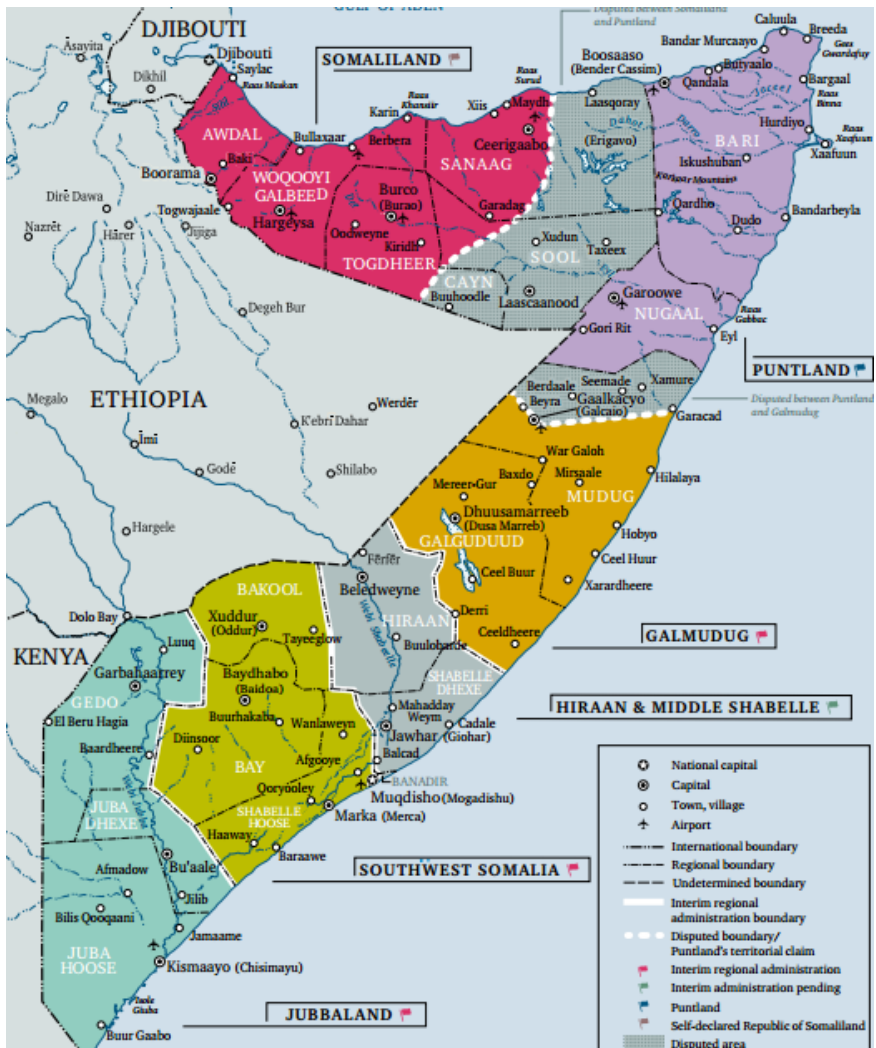
Currently and de facto, the country is divided into several entities (the “statehood” of which is both vague and multiple) that control it de facto and which should be transformed into member states (see the map below in Figure 1). The difficulty to find a link between the entities and the map looking like a patchwork illustrates the complexity of situation. By the way, it is a real challenge to find a map of Somalia, because there are as many situations as maps. These entities include (but it may change):

- Somaliland (capital: Hargeisa): a self-proclaimed republic since 1991.
- Puntland (capital: Garoowe): a self-proclaimed state in 1998, seemingly looking for integration into federal Somalia.
- Jubaland/Azania: a former self-proclaimed republic, it was conquered several times by the Islamists of the South; Jubaland transformed itself in Azania, another self-proclaimed state, in 2010 (it includes a border with Kenya).
- Maakhir (capital: Badhan): a self-proclaimed state in 2007, it joined

Puntland in 2009 after a war between Puntland and Somaliland.

- Sool, Sanaag and Cayn (SSC): a source of tensions between Puntland and Somaliland, the entity has an administration based on the Puntland model.
- Awdal: a self-proclaimed state, it was formerly part of Somaliland but asked for secession in 2010.
- Galmudug (capital: Galcayo): a self-proclaimed state in 2006, it is close to Puntland and also looking for integrating with a future federal republic.
- Ximan and Xeeb: another self-proclaimed state, it merged with Galmudug in 2015.
- Territories controlled by Ahlu Sunna Waljama'a, a sufi Islamic group.
- Territories controlled by Al-Shabaab, a radical Islamic group.

Figure 1: Map of territorial entities in Somalia



Under the Provisional Constitution, all federal states must be built from among the 18 regions that existed prior to the civil war. In fact, in 1982 Somalia reorganized itself from eight provinces into 16 regions, and in June 1984, Awdal was split from Woqooyi Galbeed and Sool split from Nugaal to form the current 18 regions. Respecting this situation could be a simple way of creating the states belonging to a confederation.

### 6.3 The Possible Rebirth of a New Type of Confederation in Somalia

If we consider the historical experience of certain federations, we

see that in Austria's case member states have to play the leading role in such a transfer. On two occasions in Austria the *Länder* retained the lost state sovereignty and had to decide what to do in the future. The case of the former Yugoslavia is also revealing: when the link is broken, it is broken – it is difficult to oblige enemies to live under the same institutional roof. But if it has been possible to create six new states in Europe from the ruins of Yugoslavia, in the contrasting case of Somalia it would be out of the question to create the large number of new, and necessarily internationally recognized, states that would be required.

From that point of view, the solution could come from the Swiss experience of confederation in 1815-1830. During that period cantons were “sovereign” and indeed exercised all the rights of a state, albeit that they were not states recognized by the international community, given that the only entity recognized in this way was the Swiss Confederation, notwithstanding its weakness.

Applied to Somalia, this would mean that the currently dissolved “regions” are considered as “cantons” and “Somalia” is reduced (as it actually is, anyway) to making appearances on the international stage. Almost all other power would be exercised at the level of the “regions.” Contrarily to the collapse of Yugoslavia, where there was from the outset no aim of state restoration, a confederation preserves the possibility, even if only long into the future, of merging the regions into a federal state once a sense of statehood has been achieved. This is exactly what happened in Switzerland, where the cantons formed a fully-fledged federal state after no more than several centuries of confederal cohabitation.

Given that a federation, in contradistinction to a confederation, is a subtle and complex institutional system that requires both a strict respect for the rule of law and the capacity for permanently ongoing negotiation in fine-tuning the allocation of powers, it is very doubtful that Somalia meets these prerequisites, at least in the short and medium term.

## 7. Conclusion in the Form of a 14-Point Thesis

- 1) Somalia is currently the only country in the world which has completely failed and practically no longer exists.
- 2) This situation is the outcome of its peculiar history, one in which it

- has never been established or developed as a “country” in the legal or institutional sense of the term.
- 3) Somalia has had a chaotic history in which it has been strongly under the influence of colonial and other foreign powers; today, it is similarly much-influenced by kin states.
  - 4) The country is deeply marked by clans, clannism, wars, and struggles for power.
  - 5) The situation in Somalia started to degenerate under the regime of Siad Barre, who created a central government.
  - 6) Any attempt to create a central government, which entails a centralization of power, automatically acts as a spur to clans to seek to increase their power and influence.
  - 7) Somalia has become a federation, but the federalization process seems complicated and unsuccessful. Elections can hardly be held, and the federal “government” controls only a fraction of the country.
  - 8) The almost complete deadlock of the federalization process means that other doors have to be opened to find a solution. It is time to explore new approaches, new solutions and new possibilities, starting from a blank page.
  - 9) One of these possibilities could be the birth of a Somalian Confederation, taking into account that the country is currently divided not only into clans but several territorial entities.
  - 10) The characteristic of this confederation would be (contrarily to the federal state) an almost complete delegation (or preservation, as the central government has currently no power) of power to the “regions,” with a very weak central power (which is always a characteristic of a confederation and could prevent a fight for power at the national level).
  - 11) Such a solution could bring stability to the country and diminish wars for the central power, and in the future, nothing would prevent the regions from strengthening their alliance in order to create a “full fledge” federation.
  - 12) Nevertheless, this confederation would be quite revolutionary, because it would not correspond to the conventional legal and institutional model of a confederation, which is an alliance of sovereign states that are recognized by the international community. Clearly, the heterogeneous Somalian “regions” do not fulfil this condition.
  - 13) But the definition of a confederation is perhaps not that important. There have been confederations in the past, but currently there are almost none of them.
  - 14) Indeed, a Somalian confederation would be a UPO – an Unidentified Political Object. But the pride of living under such a unique arrangement could in itself persuade Somalis to accept this confederation – and thereby contribute to the rebirth of the confederation in a new form.

## References

- Filliette, K. (2014, 25 July). Le Pacte fédéral du 7 août 1815 et le Valais canton suisse. *Clio-Texte*. Retrieved from <<https://clio-texte.clionautes.org/Le-Pacte-federal-du-7-aout-1815-et-le-Valais-canton-suisse.html>>
- Burdeau, G. (1980). *Traité de Science Politique, Tome II L'Etat*. Paris: L.G.D.J.
- Gascoigne, B. (2001, ongoing). History of Somalia. *HistoryWorld*. Retrieved from <<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad20#ixzz4Q9zxPZL9>>
- IRIN (2014, 5 February). Briefing: Can federalism work in Somalia? *IRIN*. Retrieved from <<https://www.irinnews.org/report/99600/briefing-can-federalism-work-somalia>>
- Keen, D., The Political Economy of War, in: Stewart F. and Fitzgerald V., *War and Underdevelopment: Volume 1: The Economic and Social Consequences of Conflict*, Oxford 2000.
- Lewis, I. M. (2003). *A Modern History of Somali: Nation and State in the Horn of Africa*. Colorado: Westview Press.
- Momodu, S. (2016, April). La Somalie renaît de ses cendres. *Afrique Renouveau*. Retrieved from <<http://www.un.org/africarenewal/fr/magazine/avril-2016/%C2%AB-la-somalie-re-na%C3%AEt-de-ses-cendres-%C2%BB>>
- Watts, R. (1998). *Comparaison des régimes fédéraux des années*. Montreal: Université Queen's.
- Watts, R. (2008). *Comparing federal systems* (3<sup>rd</sup> ed.). Montreal: McGill-Queen's University Press.