THE KENYAN INTERVENTION IN SOMALIA: ETHICAL DILEMMAS

Jolaade Bademosi, B.A.

Mentor: Dr. William Douglas

ABSTRACT

Somalia is known for its anarchy and dysfunction. With the absence of government, security and rule of law, Somalia has been left to its own devices and has been consumed by violence and civil unrest. This has led to its vulnerability to religious extremism and a potential breeding ground for terrorists and pirates. Somalia’s failing state has not only created a humanitarian disaster for its citizens, but also threatens the national security and interests of its neighbors, Kenya, Ethiopia and other countries in eastern Africa. In October of 2011, the Kenyan government launched Operation Lindi Nchi, an armed intervention in Somalia to counter the growing terrorist threat and impart stability and governance.

Operation Lindi Nchi brings many questions and concerns. Does Kenya have the authority to make such a decision, and if so, are there criteria that should be met for such decisions? This thesis seeks to discuss the moral and ethical dilemmas that arise from armed interventions by analyzing just war theory and other ethical frameworks to measure the morality of Kenya’s decision to intervene in Somalia. This thesis will also examine the previous UN and US intervention in the early 1990s as a means of understanding the relevant issues and concerns that the US and the UN faced and relating those experiences to the current intervention led by Kenya.
ACKNOWLEDGMENTS

I would like to acknowledge the time and efforts of my advisor, Dr. William Douglas.

I am grateful and appreciative for his confidence and wisdom. Without his guidance and patience, this thesis would not be possible.
TABLE OF CONTENTS

ABSTRACT ..................................................................................................................................ii

ACKNOWLEDGMENTS ...............................................................................................................iii

CHAPTER 1: INTRODUCTION AND HISTORICAL BACKGROUND OF SOMALIA .................................................................1

CHAPTER 2: UNITED STATES AND SOMALIA: FAILED INTERVENTION AND CURRENT STATE OF RELATIONS ......................14

CHAPTER 3: KENYA’S DECISION TO INTERVENE: ANALYSIS USING JUST WAR THEORY .........................................................................................................................34

CHAPTER 4: OPPOSING VIEWS TO JUST WAR THEORY AND POSSIBLE CHALLENGES AHEAD ..............................................48

CHAPTER 5: CONCLUSION ...........................................................................................................61

REFERENCE LIST .........................................................................................................................79
CHAPTER 1

INTRODUCTION AND HISTORICAL BACKGROUND OF SOMALIA

With a population of approximately ten million, the relatively small country has faced gargantuan troubles in the last few decades. Many people who hear of the country automatically think of the atrocities that have been publicized in the media. Journalist Jeffery Gettleman of the New York Times describes the dire conditions in Somalia noting, “Somalia has become synonymous with famine, war and anarchy…” (Gettleman 2011). Unfortunately, this has been the reality of Somalia in the last several decades despite the efforts of the United States, other European countries and regional powers. Even with its current state of despair, Somalia has great potential to one day reclaim its dignity, provide for its people, and join the world stage as the leader and power player that it has the potential to become.

To better understand Somalia’s current state and aspirations for improvement in the future, it is critical to assess and understand Somalia in a historical context. Many of Somalia’s current issues and various crises have been impacted by past events and cultural nuances. It is with this holistic understanding and approach that we can better assess realistic and long-term solutions for Somalia in the years to come.

This paper seeks to address the recent humanitarian and military intervention initiated in October 2011, formally known as Operation Linda Nchi. The intervention
symbolizes an increasingly independent regional force in Africa and a step forward in terms of African nations attempting to solve regional crises. Despite these steps forward, it is important to assess whether the actions taken by Kenya in October 2011 were morally justifiable and ethical. There are many forums for which this question can be answered and measured. I will be using just war theory to assess the morality of the Kenyan decision to intervene in Somalia in 2011.

I am using just war theory as a vehicle to analyze the morality of the Kenyan intervention because the components of just war theory clearly outline the morality of war by defining the prerequisites for deciding to intervene, parameters for behavior while in war, and appropriate actions at the conclusion of war. If utilized appropriately, just war theory can provide clear standards and norms for proceeding with armed interventions and war.

Just war is a widely accepted theory and basis from which to derive moral and ethical guidelines for states in regard to interventions. C.A.J. Coady of the United Institute of Peace refers to just-war theory stating, “This tradition has been criticized in various ways, but suitably understood it provides a reasonable apparatus for tackling the questions of war and intervention” (Coady 2002, 18).

Through a critical analysis of just war theory, the morality of Kenya’s decision will be investigated. Due to the recent nature of events, this can serve as a framework on how decisions humanitarian intervention should be implemented.
I will also take a critical look on opposing views of just-war theory. I will assess how other opposing views may view the Kenyan intervention and some of the probable challenges that the Kenyan’s may face as a result of its decision to intervene in Somalia.

Through this essay, I hope to re-introduce Somalia in a new way. I hope not only to shed light on the important questions regarding Kenya’s moral dilemmas but also to contribute new ideas to the analysis of humanitarian and military intervention. There are many states that somewhat resemble Somalia’s lack of stability, anarchy and persistent violence. Kenya’s decision to intervene is one that sets the tone for the African continent and world as a whole. With humanitarian disasters facing other countries, it is important to discuss the morality of interventions and best practices for such interventions, to provide a framework from which countries can determine the ethicality and morality of decisions regarding interventions.

I chose to study and research humanitarian intervention in Somalia for several reasons. For one, Somalia remains one of the most unstable, anarchic countries on the African continent and in the entire world. Second, Somalia has a long record of failed interventions from the United States and Ethiopia. Despite the efforts of non-governmental organizations, aid from foreign governments, pressure from international organizations and resources pouring into Somalia, the results have been meagre and no improvements have been made. As Somalia continues to fall into an
abyss, the world cannot continue to ignore Somalia because its failure is beginning to have worldwide implications.

These implications have caused a stir in the international arena and threaten the well-being and national security of Somalia’s neighbors and lands far away. This may have very well been a contributing factor in Kenya choosing to invade Somalia in October of 2011. With the decision for Kenya to intervene, come many questions. But there is one question that intrigues me and seems to be missing from much of policy discussion regarding the intervention: was it ethical and morally justifiable for Kenya to invade Somalia?

Somalia borders Ethiopia to the west, Kenya to the south, Djibouti to the north whilst sharing a coast with the Gulf of Aden to the north and the Indian Ocean to the south (United Nations, *Horn of Africa*). Its proximity to the Middle East and the Arabian Peninsula has enabled a rich history of Somali trade and cultural and religious exchange (Lewis 1980, 9). It is important to examine the cultural and historical nuances of Somalia because these details help to understand some of the present-day conflict and issues that Somalia faces. Through understanding and appreciation for its past, we can then gain insight towards its future and develop long lasting solutions to some of the issues that have plagued the country for the last several decades. Chapter one will address Somalia’s rich history, the perils and
troubles that have plagued the country in recent decades and the moral questions surrounding the Kenyan decision to invade Somalia in October of 2011.

Before one can delve into the morality of the decision, it is important to understand the context and the status of the Somali state in regards to governance, health and other crucial development indicators.

In the fall of 2011, just before the Kenyan invasion of Somalia, the Center for American Progress released a vital report summarizing just how much a failing Somalia has cost the United States and other countries who have actively tried to assist the failing state. The report highlighted many of the frustrations that the world has in regards to Somalia and was quite prescient noting as follows:

The international community has poured enormous resources into this small patch of land, and no end is in sight. Indeed, the humanitarian needs of Somalia’s populations are escalating sharply, and the dire situation in that country could again trigger some kind of extraordinarily expensive major international intervention beyond the scope that we have seen to date. (Norris 2011, 3)

The numbers are astonishing and are not limited to financial costs; there are other costs as well. The report notes that for the last 20 years, $13 billion was spent on humanitarian and development aid, yet up to 1.5 million lives have been lost (Norris 2011, 1). Costs aside, it appears that aid and money alone have not helped the desperate situation in Somalia.

With costs increasing, financial stakes soaring and problems continuing to mount, the Kenyan government invaded Somalia in October of 2011. The Kenyan
invasion of Somalia begs an important question, “Is this a morally justifiable action?”

According to just war theory, there are several steps and questions that must be answered to truly determine the morality and justifiability of intervention in war.

The just war theory analyzes the morality of war in three important perspectives; jus ad bellum (prior to engaging in war), jus in bello (whilst in war) and jus post bellum (after the conclusion of the war). These components are important to identify and study as one investigates the morality of just war and intervention.

By invading Somali territory, one would hope that the Kenyan government thoroughly investigated the components of just war and properly investigated the possible consequences actions taken in all three important components (jus ad bellum, jus in bello and just post bellum).

As we discuss some of the principles behind the morality of just war and humanitarian intervention, it is critical that certain terms be defined, so as to further demonstrate the morality or lack of morality in the Kenyan decision.

T.A.J. Coady of the United States Institute of Peace and author of *Ethics of Humanitarian Intervention* clearly defines armed humanitarian intervention as follows:

Intentional act of one state or group of states or an international agency aimed at exercising overriding authority on what are normally the ‘internal’ policies or practices or practices of another state or group of states. It is crucial here, therefore, that the target state (as I will call it) does not consent to the intervention. (Coady 2002, 10)
The key, fundamental aspect of Coady’s definition of armed intervention is the notion that the offending state is violating the sovereignty of the state being invaded, which has agreed to the intervention. While it is true that Somalia is universally known to be a failed state and one that has been in a continual turmoil for the last several decades, in accordance with Coady’s argument, Somalia does have the right to “consent” to such interventions and in the case of the October 2011 invasion, Somalia certainly did not.

This paper will use an analysis of just war theory and acceptable norms and processes as defined by international law and leaders in foreign policy and diplomacy to thoroughly assess the morality of the Kenyan armed intervention.

Historical analysis is key and somewhat crucial because much of history in Somalia is relevant and related to present-day issues. It gives us better insight and understanding of the current state of conflict and where much of it stems from. It also give us a better opportunity in addressing some of the mistakes of the past and how those lessons can be applied towards making better decisions and policies moving forward.

Akin to many countries in the continent of Africa, Somalia experienced its share of colonialism. Somalia was colonialized both by British forces and Italian forces, and was divided by the line of authority by both the Italian and British control (Fitzgerald 2002, 68).
The division of authority between colonial powers had lingering effects on Somali identity. As aforementioned both the British and the Italian maintained power in Somalia, and because of the divide imposed by the British and Italians to maintain their respective areas, clans began to emphasize and cling to their clanship rather than a national identity or Italian or British identity. This phenomenon is addressed in Somalia, when Fitzgerald states:

Although the modern Somali state, which is largely a creation of European colonialism, tried vainly to exercise a measure of centralized authority through the armed forces and the civilian bureaucracy, most Somalis continued to give greater political and emotional allegiance to their lineages. (Fitzgerald 2002, 44)

This notion suggests that perhaps the colonial divide indirectly helped to create a common ground between clans and further exacerbated the tension and divide, and gave room for artificial divide and ethnocentric tendencies which is still evident in Somalia today. The clan divisions ultimately led to divisions in other areas of society often economic, political, etc. For example, one of the larger clans in Somalia, known as the Samaal, is essentially a large group made of smaller clans and identifies themselves as the Samaal (Fitzgerald 2002, 44). The two other competing groups are the Digil and Rhanwayn (Fitzgerald 2002, 44). Essentially, there are several layers of identity and clans within clans that often identify with a larger clan for a larger sense of identity and belonging.
As one could infer, this structure was cumbersome and confusing. However, with the obliteration of the Somali government in the early 1990s, and increasing lawlessness, clan identification became an increasingly more effective means of protection and identity formulation. This point is further demonstrated when Fitzgerald notes:

Clan families too large and scattered for practical cooperation, in the past had no real political or economic functions. However, with the renewal and intensification of clan feuding in the wake of Siad Barre’s fall from power in early 1991, the clan-families assumed critical significance as nascent political parties pitted against one another along tribal lines in a disastrous civil war. (Fitzgerald 2002, 44)

The prevalence in of intra state conflict and the erosion of civil order continued to fuel internal conflict and dysfunction in Somali society. With the absence of a functioning government, identifying with a clan offered an economic and political safety blanket for clan members. Fitzgerald goes on to highlight this issue noting, “…some clan in a clanfamily might united for political and military purposes, and some lineages with a clan might associate to pay and receive blood compensation in cases of homicide, injury and other offenses” (Fitzgerald 2002, 44).

Essentially, what was evident was an overall breakdown of Somali society and infrastructure. The clans were essentially taking to themselves to perform duties and obligations that would likely otherwise be provided by a government. From the exterior, the clanship method seemed as if it could provide a means of protection, justice, etc. for Somalis but in reality it just fueled the overall tension and breakdown
in society by fueling the divide between individuals based on clan belonging. It also provided capital for political leaders to politicize and gain from politicizing clan divides and clan politics for their own purposes as evidenced prior to the fall of Siad Barre (Fitzgerald 2002, 45).

After gaining independence from the British and Italian powers in 1960, Somalia was once a democratic state (Norris 2011, 7). However, in 1969 Siad Barre overthrew the government and installed a socialist government (Norris 2011, 7). After years of human rights abuses and mass atrocities committed by the Barre regime, Somali clans overthrew the Barre government, taking control over Mogadishu, the capital of Somalia (Norris 2011, 7). The Center for American Report, Twenty Years of Collapse and Counting recounted the coup and its aftermath noting, “After deposing Barre, the warlord-led clan factions quickly descended into intense internecine battles, plunging Somalia into a violence civil war” (Norris 2011, 7).

Since Barre administration was overthrown, Somalia has never returned to any form of stability and has been frozen in a state of anarchy. Twenty Years of Collapse and Counting expresses this stating, “Effective national governance has never been restored despite multiple efforts by Somalis and the international community” (Norris 2011, 7). After the fall of Barre in 1991, the northwest area of Somalia is considered itself to be independent from Somalia and is known as Somaliland (Norris 2011, 8). However, despite these efforts, it does not have official statehood (Norris 2011, 8).
Somaliland continues to have defied the odds on many levels as it has a democratically elected government and relative peace and stability. But even with these positives, it continues to lack official statehood, which will continue to be a barrier to true, long-term peace and stability for the region moving forward.

Despite northern Somalia’s relative stability, the rest of the country has not been so fortunate. As Somaliland calm, clan warfare continued to ravage Somalia and destroy any hopes for peace. In 2004, the Transitional Federal Government (TFG) was created to form a government that could help steer Somalia in the right direction and provide a sense of stability and governance. However, the TFG has not been successful and there have been many criticisms about the TFG. Referring to TFG, the Center for American Progress notes:

> It was hoped that the TFG could be developed as a government of national unity. But it represented a narrow swathe of interests and clans in Somalia, and it has often been seen as lacking basic legitimacy and competence among much of the public. (Norris 2011, 8)

Unfortunately, though the TFG was supposed to be a mechanism of drawing Somalis together and creating stability and governance, the TFG has been unsuccessful in this realm. In fact, it has been a divisive force in Somalia and it has further exacerbated tensions.

Because of the lack of widespread and grassroots support of the TFG, it has given way for other groups to counter its efforts. This is evidenced by the Islamic Courts Union, which is a coalition of Somalis and Islamic court officials (Norris
The coalition was not supported by the international community because of its known affiliations with terrorists and extremist groups though it at one point was in control of significant parts of Somalia, including the capital, Mogadishu (Norris, 2011, 8). Having captured the attention of regional states, Ethiopia invaded Somalia in 2006 with the support of the TFG, States, and African Union AMISOM forces (Norris, 2011, 8).

Ultimately, the United Nations helped to coordinate a peace agreement between the TFG and Islamic Courts Union, but many of the extremist members of the Islamic Courts Union opted out of the peace agreement. One of the key groups that opted out of the agreement is the Al-Shabbab (Norris 2011, 9). The Al-Shabbab is now one of the most prominent extremist groups in Somalia and is known to have links with the Al-Qaeda network.

In retrospect, it seems that Somalia’s plight began with the coup of Siad Barre. Before the end of his regime, Somalis—regardless of clan identity, joined together in unity to overthrow the regime. However, after the regime was overthrown, there was not a substantive plan or course of action for how the country would move forward. Instead, factions continued to grow and clan divisions and tensions began to grow as they competed for power and control. The International Peacebuilding Alliance published a report on the Somali peace process highlighting the phenomenon of clan tensions after the Siad Barre fall and how world faced other
foreign policy crises that perhaps played a role in the lack of attention to Somalia’s mounting issues. The report noted, “…Multiple clan-based liberation movements sprung up in opposition to the regime. In part, because of external preoccupation with dramatic political developments elsewhere…” (Menkhaus 2009, 9). The report goes on to acknowledge that this may have played a role in the lack of leadership or courage by the international community to address Somalia when it may have been able to actually prevent much of what we see today (Menkhaus 2009, 9).

As the intrastate conflict was not addressed, Somalia was essentially left with factions and clan-violence, and clan members who were heavily armed from the violence that erupted from the coup of Barre. These points are important to discuss because studying Somalia’s extensive history, allows us to have a better understanding of the nature of its issues and where problems may stem from. In addition, it facilitates a clearer context for the study of the Kenyan intervention and its morality.
CHAPTER 2

UNITED STATES AND SOMALIA: FAILED INTERVENTION AND CURRENT STATE OF RELATIONS

Somalia’s dysfunction and absent government deem it to be a failed state. Without a basic functioning government, Somalia is known to be essentially anarchic. Though far away, the effects of a Somalia failed state have serious and imminent implications for the United States and the United States has recognized these issues for the two several decades.

Following the end of Colonial rule in Somalia, the United States became increasingly concerned about the role of the Soviet Union in the Horn of Africa, and in 1973 Henry Kissinger, then Secretary of State, sent a memo to the Secretary of Defense and Central Intelligence Agency, directing a study to obtain more information about pressing issues that could potentially threaten American interests and activities. The memo instructed American forces as follows:

Estimate the significance of Soviet activities in Somalia and how they relate to Soviet objectives in the Horn of Africa, Arabian Peninsula, Persian Gulf and Indian Ocean, and the extent to which they pose a threat to American interests in the area. (Kissinger 1973)

Foreshadowing future conflict, the memo goes on to also request information about Somalia’s relationship with other Horn of Africa countries, stating that Kissinger wanted to do the following:
Discuss the prospects over the next five years of strife between Somalia and Ethiopia and Kenya...examine also the prospects for an accord between Somalia and its neighbors as well as any U.S. role in encouraging such an accord (Kissinger 1973).

These previously classified memorandums reveal that forty years prior to the Kenyan intervention, the United Stated was aware of the disintegration of Somalia and that Somalia’s path downward was foreseeable.

This section will address the previous intervention conducted by the United Nations and the United States in the 1990s as a means of understanding some of the similarities and differences in comparison to the present Kenyan intervention exactly twenty years later. This section will also address some of the current U.S. interests in Somalia and ways that the United States government is attempting to address some of the shortfalls in its policies towards Somalia and how this may affect the Kenyan-led intervention in Somalia.

*What Went Wrong in Somalia That Led the UN and US to Intervene?*

As noted in the introduction, the fall of modern-day Somalia began as the Siad Barre regime began to crumble in the late 1980s and early 1990s. Siad Barre installed a military regime and was ruthless in persecuting political opponents or anyone who criticized his regime, including the Issaq insurgency, which supported the Somalia Nationalist Movement (SNM), whose ultimate goal was to oust the Barre regime (Rutherford 2008, 5).
In the spring of 1988, the Issaqs entered Somalia through northern Ethiopia and defeated Barre’s forces and essentially took control of northern Somalia (Rutherford 2008, 6). This effectively launched the “start of all-out civil war” (Rutherford 2008, 6). In response to the attack from the Issaqs, the Barre regime launched a campaign against the Issaqs and “ordered aerial bombardments of the cities which generated thousands of noncombatant causalities and displaced civilians, many of whom were non-Issaq” (Rutherford 2008, 6). What was initially an Issaq-Barre conflict grew widespread and culminated into a grassroots campaign against the Barre regime in Somalia (Rutherford 2008, 7).

Clans began to form coalitions against the Barre regime, and this ultimately brought about the destruction of the Barre regime. People were already angry at the Barre regime and blamed it for “continued national economic decline and government human rights violations” (Rutherford 2008, 7). The Issaq bravery gave room for other demonstrations and provided to be a source of inspiration for other groups to join together and defeat the Barre regime.

In addition to grassroots coalitions and clan alliances, the Barre regime faced threats from military factions and clan divides. One of the most notable was the isolation of the Ogdens from the Barre regime. They ultimately formed another subgroup known as the Somali Patriotic Movement (SPM), which ultimately sided
against Barre due to the group’s own political motives; this severely weakened the military’s capacity (Rutherford 2008, 7).

The Issaq clan’s SNM and the Ogden’s SPM sided together. “The SPM helped the already existing clan-based insurgencies, the SNM and the SSDF, in generating internal instability by combating the Somalia military” (Rutherford 2008, 7). Before long, the Barre government was backed in a corner as it faced criticism and backlash from its own citizens and from the international community as well, particularly from the U.S. government, which began to withdraw military and non-military aid to Somalia by mid-1990 (Rutherford 2008, 7).

Frustrated with the spiral downward, the Barre regime grew increasingly violent vis-a-vis opposition groups, further isolating itself from the international community and drawing attention to its abusive practices. As the Barre regime continued to deteriorate, it took more aggressive approaches to maintaining power, essentially targeting any and all opposition, which increased violence and instability in Somalia. With violence and uncertainty on the rise, the United States embassy was evacuated and many NGOs and aid groups left Somalia (Rutherford 2008, 9-10). This was in the best interest of aid workers and embassy staff, but counterproductive in terms of gathering intelligence and getting a grip on the crisis. “The international exodus from Somalia had detrimental effects on addressing the Somalia crisis efficiently and quickly” (Rutherford 2008, 11).
In January of 1991, Siad Barre was overthrown, but in no way did that curtail violence and fighting; it exacerbated it. After the Barre regime fell, factions and clans turned their anger from Barre to each other. Rutherford underscores this notion noting, “The factions now had very little in common to unite them to form a national government” (Rutherford 2008, 30).

In the midst of violence and conflict, famine and hunger issues continued to garner international attention. As more media and attention was brought to the Somali crisis, more pressure was put on the United States and the United Nations to help alleviate the dire circumstances in Somalia, which ultimately led to interventions conducted by the United Nations and the United States.

*The United States and the United Nations Decide to Intervene*

To better understand the United Nations and United States intervention in Somalia, it is best to describe them as two separate interventions with two separate missions: United Nations Operation in Somalia I (UNOSOM I) and United Nations Operation in Somalia II (UNOSOM II). The first mission was rather expedient, and consisted of delivering food and supplies to Somalis who were affected by the famine and widespread violence that ensued from the civil unrest. The second mission (essentially an expansion of UNOSOM I, it followed shortly thereafter) was more bold and encompassing. The second mission aimed to try to strengthen peacekeeping
and install some of the institutions and governance that was virtually destroyed by the civil unrest and violent fighting after the fall of the Barre regime.

United Nations Operation in Somalia I

In the spring of 1992, the United Nations in Somali Mission I (UNOSOM I) was launched. Initially, UNOSOM consisted of a small force of five hundred, but grew to thirty-five hundred, because heavy security and personnel were crucial to supplying food and supplies. Even with the expansion, security needs were not met, and the safety of personnel was at risk, essentially threatening the entire mission (Amstutz 2008, 170).

By December of 1992, the state of Somalia was still fragile. Feeling the pressure and the desire to assist, President George H.W. Bush sent U.S. military forces to assist in the relief efforts and keep the peace through military means (Amstutz 2008, 170). This military force included thirty thousand troops and was denoted as Operation Restore Hope (Augelli 1995, 341). This was move set a precedent in humanitarian intervention and was one of the most groundbreaking decisions to date, in that it lacked permission or authorization by the Somali people. “The U.S. intervention was unique in the annals of international relations because it was the first time that the United Nations had authorized a largely single-state military intervention without an invitation or consent of the government” (Amstutz
The United States fulfilled its rather simple and humble goal by delivering supplies. U.S. forces were met with open arms in Somalia and were generally seen as a positive presence and were able to mediate some of the security threats that were preventing the distribution of aid rather quickly, so the troops were sent home and the mission was completed by early spring of 1993 (Amstutz 2008, 170).

United Nations Operation in Somalia II

After the United States left, peace indicators improved. Mogadishu, the capital was under control and famine and hunger issues were at bay (Augelli 1995, 341). In response to the improved conditions, the United Nations passed resolution 814, which essentially began the second phase of the operation (UNOSOM II), and more importantly allowed UN forces to utilize force as a means of keeping the peace (Augelli 1995, 341). This set the tone for the future of UNOSOM II, and what some might say as the ultimate failure and catastrophe of the UNOSOM II venture.

In the late spring and early summer of 1993, Somali forces attacked Pakistani forces enlisted by the United Nations and the United Nations retaliated by bombing Somali forces and the Somali media outlet, Radio Mogadishu (Augelli 1995, 341). By mid-1993, the main Somali insurgency was being led by General Aideed, who was targeted by the UN, “The UN placed a bounty on General Aideed’s head because he was considered the man ultimately responsible for the killing of the Pakistani
soldiers” (Augelli 1995, 342). This exacerbated tension and further isolated the foreign peacekeeping forces from Somalis. It gave leverage and capital to General Aideed and led to increased violence and crisis.

By the end of 1993, the world was once more made aware of the growing chaos in Somalia, and the United States offered troops once again to deal with the situation and aid in the peacekeeping efforts. The United States failed in its attempt, costing the lives of American troops and equipment. The United States forces received a backlash from Somali natives and lack of support from the international community. Due to the failures of the mission, the US deferred decisions on the future of the mission to the UN and the UN suspended the operation in 1995 (Augelli 1995, 342).

Mistakes and Lessons Learned and Ethical Dilemmas

One of the most important lessons from the failed intervention was that it is absolutely crucial for states to plan around the just post bellum restoration and have strong plans in place in regards to strategy and possible obstacles. This was one of the failures that ultimately proved to be a detriment to the United States and the United Nations. There was a lack of planning on how much effort such an intervention would require, and how much involvement it would take to restore peace and achieve a successful jus post bellum.

The international intervention in Somalia was remarkably complicated. Initial involvement was intended to create a stable environment for effectively
providing humanitarian relief to vulnerable populations. But it evolved stealthily toward creating a workable governing system and rehabilitating the destroyed social and economic infrastructures, including creating an indigenous police force and judicial system, while at the same time trying to induce a secure environment. (Rutherford 2008, xvii)

The UN and U.S. intervention in Somali raised a very important question about the morality of the UN and U.S. entering Somalia, using force to enforce peacekeeping and provide humanitarian assistance. In Thakur’s article, “The UN Operation in Somalia”, he notes the issues that arose between pacifism and realism. Thakur notes, “Peacekeeping as an institution evolved in the grey zone between pacific settlement and military enforcement” (Thakur 1994, 393). Thakur suggests that there is a very fine line between assisting states with peacekeeping efforts and using force as a means to help them with peacekeeping efforts. In some ways, an “armed peacekeeping effort” is an oxymoron and very contradictory in nature as it exposes the contraindications of the terms “peacekeeping” and “armed.” This continues to be one of the most central questions in debates regarding humanitarian intervention, not only in Somalia but in other conflict-ridden areas as well. In more contemporary, modern times, we see ourselves debating this issue over the Kenyan intervention, which will be discussed in the next chapter.

Another ethical issue that was raised by the intervention was: how much do self-interested motives detract from the morality of a decision and is this a relevant question? In the case of UN/US intervention in Somalia, there were red flags early on
regarding the questionability of the intervention and decision to use force in Somalia. Boutros-Ghali, the then Secretary General of the United Nations had reason early on to believe the mission might not be advisable. Thakur notes that Botrous- Gathii had an inkling that things might not go as planned but feared for his own reputation, and did not try to determine a way forward, that did not include utilizing force as a means of peacekeeping in Somalia. Thakur notes this conundrum as Botrous- Gathii weighed options regarding next steps in Somalia explains:

The second option was to abandon UNOSOM’s mission of protecting humanitarian activities and to withdraw force. Apart from the fact that an admission of failure of this magnitude is too costly for a new Secretary-General in his first year in office, it was also unlikely to be acceptable to a United Nations flushed with success in dealing with Iraqi aggression. Moreover, coming in top of a policy of inaction in the former Yugoslavia, it would have called into question the credibility of the organization. (Thakur, 1994, 394)

This revelation proves that perhaps the motives of the UN were not purely altruistic and but were somewhat self-seeking in nature. It is somewhat naïve to believe that states and actors will or should make decisions on a purely altruistic level, but I believe it is immoral to make decisions based purely on self-interested or self-centered motives, knowing that lives are at risk and the safety and stability of an entire nation depends on it. I also believe that perhaps if Boutros-Ghali had holistically weighed the consequences of the possible actions and performed a thorough cost-benefit analysis, he would have developed a more coherent strategy
towards Somalia, so that the internal dysfunction that was mentioned previously would not have been as severe and as detrimental as it proved to be, and perhaps the mission would have had its goals and objectives on the forefront and stuck to them, instead of changing them midway and ultimately failing at everything. It further demonstrates that prioritizing selfish motives in world affairs can be detrimental and dangerous, as it showed to be in the UN/US intervention in Somalia.

While the U.N.’s motives could be questioned, it appears that the U.S. motives for intervening in Somalia were actually mostly altruistic in nature, as it really had no other significant motives for entering then. It begs the issue of whether or not this is moral or immoral and to what extent.

U.S./Somalia Current State of Relations

Having recognized the mistakes and dilemmas of the past, it seems the key to address the crisis in Somalia and developing a sound policy towards Somalia, is to take a more proactive approach rather than a more reactive based policy towards Somalia. However, the use of such an approach is not always the case; particularly among leadership in foreign policy and diplomacy. Such sentiment is acknowledged in a Center for American Progress report regarding the financial consequences of a failed Somali state. The report notes:

As much as policy experts and others, including the U.S. secretary of defense, call for sensible investments in crisis prevention, international development, and expanded diplomatic capabilities, the default setting of the U.S. government and its partner in the international community is to scrimp on
crisis prevention while pouring money into crisis response and containment. (Norris 2011, 2)

Knowing and recognizing this shortfall is the first step in addressing this issue and developing a more proactive approach to conflict management, and to Somalia specifically. This in turn will create a better return on investment for the United States and better outcomes for the people of Somalia too.

Despite previous efforts, Somalia continues to lack a central government, stability and overall functionality as a state. These realities have created a diplomacy headache for the United States and have endangered U.S. interests on multiple levels. The main implications for the United States include: a threat to U.S. national security, and threats to trade and economic interests. This section will address the implications for the United States and how the United States is intertwined with the failure of Somalia, though thousands of miles away. In July of 2011, the United States House of Representatives Committee on Africa, Global Health and Human Rights, the Subcommittee on Terrorism, Nonproliferation and Trade and Committee on Foreign Affairs held a hearing, “Assessing the Consequences of the Failed State of Somalia.”

Piracy Issues

In assessing Somalia and the many issues that Somalia faces, piracy is one of the most critical issues on the forefront. The piracy issue in Somalia threatens Somalia, its surrounding neighbors, as well as the entire international community, so
much so that it directly affected the United States and has therefore caught the
attention of the U.S. and other international actors as well.

However, the most serious involvement of Somalia in international criminal
activity is, by far, piracy. Pirate attacks in the waters off Somalia, and off the
Horn of Africa, including those on U.S. flag vessels, have brought renewed
international attention to the long-standing problem on maritime piracy. (U.S.
Congress, House of Representatives 2011, 2)

Somalia’s piracy has become such an economic drain that it has been referred
to as “Somalia’s pirate economy” (U.S. Congress, House of Representatives 2011, 2).
This economy has grown over the years to include ransoms and has truly become a
great source of revenue for bandits and criminals, but at the cost of the international
community. “The annual cost of piracy to the global economy ranges from some $7-
12 billion, by some estimates” (U.S. Congress, House of Representatives 2011, 2).

In addressing the piracy issue in Somalia, it is important to recognize it as a
layer among the several layers of issues that indicate a larger more complicated
appropriately when it notes, “Piracy in Somalia is a symptom of state collapse in
Somalia and a comprehensive solution needs to focus on its roots causes” (Middleton
2010, 13). As with many of the issues that Somalia faces concerning food security,
piracy and terrorism, much of it can be attributed to an overall breakdown of society,
lack of infrastructure, and essentially no effective government or central authority to
enforce the rule of law, regulation and stability.
In addition to its threat to international interests, piracy threatens the overall well being of Somalis. For example, there have been instances of ships unable to distribute food to Somalia (Middleton 2010, 13). This ultimately puts the well being of Somalis who are in need of aid and food at risk.

Much of what seems to be driving piracy as an occupation is the opportunity to thrive and profit from ransoms from kidnapping crews and passengers on ships. In a U.S. Congress hearing, Dr. Martin Murphy of the Centre for Maritime policy noted that banning ransoms can provide a disincentive for pirates to take hostages and collect ransoms for their return (U.S. Congress, House of Representatives 2011, 63). This could be a viable option considering many experts believe this is a trigger for pirates and kidnapping. “Somali piracy is based on hostage taking for ransom” (Middleton 2010, 15).

Ultimately, we understand that while Operation Lindi Nchi was a Kenyan operation and intervention, the U.S. too has much at stake, and it is definitely in the interest of the United States to ensure the smoothness of the Kenyan intervention and assist as appropriate.

Immigration and Diaspora

The Untied States has a significant amount of Somali citizens, refugees and immigrants living in the United States. While the United States provides opportunities for Somalis, it has proven to be a significant burden and possible danger
for the welfare of the United States. As is the case in many developing nations, remittances play a large role in developing nations’ economies and are often earned by diasporas working abroad. It has been noted that many Somali workers in the United States have sent remittances to Somalia, and some of the funds are supporting terrorist groups, such as the Al-Shabbab (U.S. Congress, House of Representatives 2011, 81). There are some instances of Somali-Americans joining the Al-Shabbab (U.S. Congress, House of Representatives 2011, 81). The failure of the Somali state and heightened religious extremism has direct implications for the United States and world at large, given that many members of the diaspora have dual citizenship and are able to travel freely.

The bomb-making capability that al-Qaeda has, the expertise that they have there, is being combined with al-Shabaab’s recruits. And these recruits frequently have western passports. Many of them have U.S. passports. This is a quite deadly combination. (U.S. Congress, House of Representatives 2011, 7)

In other words, this is an imminent risk and one that needs to be addressed. There have been instances of Somali-Americans from Minnesota who side with the Al-Shabaab and join their forces (U.S. Congress, House of Representatives 2011, 3).

_Terrorism_

The threat of terrorism in Somalia is one of the most threatening effects of a dysfunctional government in Somalia. During the Congressional hearing held in July 2011, Congressman, Smith of New Jersey noted, “U.S. officials are concerned that al-
Qaeda and its allies in east Africa continue to pose serious threats. Al-Qaeda poses a direct threat against U.S. interests and allies in east Africa” (U.S. Congress, House of Representatives 2011, 2). While the Al-Shabab has yet to sponsor a terrorist attack against the United States directly, it is in the interest of the United States to take a more proactive role and control the terrorist activity in Somalia immediately to avoid even greater threats to U.S. national security.

**Humanitarian Assistance Programs**

The United States has been committed to assisting Somalia with its humanitarian crisis, spending millions of dollars towards the cause. According to a congressional hearing, “On the development and peace building side, in FY2011 Somalia received approximately $25 million in development support to assist our Dual Track approach…” (U.S. Congress, House of Representatives 2011, 10).

The money spent in Somalia is significant and imposes a burden on U.S. taxpayers. While humanitarian assistance funds in Somalia are a nice gesture from the United States, it would be more effective and helpful in the long run, if a proactive strategy is developed and a solution in the never-ending Somalia crisis is achieved.

Part of this solution should include a real diplomatic presence in Somalia to aid in many of the humanitarian efforts. With no central government in place and crime rampant, it is difficult to implement effective aid programs in Somalia. As noted in the congressional hearing assessing the situation in Somalia in 2011, “Many
other NGOs are also unable to operate safely in Southern Somalia and this lack of access has created a severe unabated humanitarian crisis…” (U.S. Congress, House of Representatives 2011, 19).

*United States Dual Track Strategy*

The United States Department of State has initiated what is known as a “Dual Track Strategy” towards Somalia. This strategy is intended to provide a more multi-pronged, well-rounded, sustainable approach to address the several crises that Somalia faces and fill in the various loopholes that exist in the U.S. foreign policy objectives towards Somalia.

Prior to the acceptance of the Dual Track Strategy, the United States initially engaged in a Single Track Strategy towards Somalia, which was a more narrowly focused, and somewhat incomplete in regards to the fundamental issues in Somalia. The main priories of the Single Track Strategy were to focus on underscoring the presence of Sheikh Sharif, to help propel the TFG (the main U.S. ally/backed government presence in Somalia), and to continue to support the African Union’s AMISOM mission in Somalia (Carson 2010).

The launch of the Dual Track Strategy towards Somalia signifies that the United States is finally ready to address Somalia in a meaningful way and that it is a priority for the United States government. U.S. Assistant Secretary of State for
African Affairs cemented these notions saying, “Somalia’s ongoing crisis is among our top concerns in sub-Saharan Africa today” and even described the failing state of Somalia as an “aggressive cancer” that “can no longer be ignored by the international community” (Carson 2010). U.S. Assistant Secretary of State for African Affairs, Johnny Carson, also acknowledged the imminent need for a stronger approach towards Somalia, while also noting that the situation in Somalia is not one that could be resolved overnight stating, “the problem has been twenty-two years in the making and it will take time to resolve” (Carson 2010).

Prior to the Dual Track Strategy towards Somalia, which was launched in early 2012, the strategy towards Somalia was somewhat disjointed and inconsistent. There was a lack of cohesiveness among leadership in U.S. foreign policy circles and it was widely acknowledged that change and improvement of U.S. strategy towards Somalia was needed. Jennifer Cooke, Sr. Official at the Center for Strategic and International Studies reinforced the sentiment stating, “disengagement is not an option” (Carson 2010).

Under the new Dual Track Strategy towards Somalia, there is a multi-level approach that includes, incorporating local partners, increasing more attention and resources towards peacemaking and combatting extremism, and attempting to fill the societal gaps that have arisen from a breakdown in society and Somali communities (Carson 2010).
The United States’ Role in the October 2011 Kenyan Intervention

The Kenyan decision to intervene seems to have been one that was made without significant U.S. involvement and influence. But, the ultimate truth is unknown as there have been several contradictory accounts concerning the United States’ contribution and connection to the Kenyan operation. It is without question that the United States would be slightly hesitant considering the outcome of the previous interventions in 1991 and 1992 and the lessons learned from that experience.

Despite conflicting accounts, it does appear as though the United States has assisted in certain areas and has played a more covert and undercover role; a sharp contrast from the US/UN intervention in the 1990s. In July of 2012, the Los Angeles Times reported that the United States has been training African troops to aid in the Kenyan intervention in Somalia (Cloud 2012). The media report notes, “The U.S. has been quietly equipping and training thousands of African soldiers to wage a widening proxy war against the Shabab, the al Qaeda ally that has imposed a harsh form of Islamic rule on southern Somalia and sparked alarm in Washington as foreign militants join its ranks” (Cloud 2012).

Before the Los Angeles article, it was quite unclear what role the United States was playing in the intervention, as many suspected that it would be nearly impossible for the Kenyans to be able to take such an undertaking on their own. The Los Angeles Times also reported that the United States is playing a more covert role
in order to avoid the “puppet” connotations that can often surround such assistance endeavors (Cloud 2012). In addition to supporting the effort with armed forces, the United States has also contributed to the effort in other direct ways. “The U.S. is supplying the African forces surveillance drones, ammunition, small arms, armored personnel carriers, night-vision goggles, communications gear, medical equipment and other sophisticated aid and training, documents show” (Cloud 2012).

In addition to helping to build the military capacity for regional forces to aid in the intervention effort, the United States is also providing financial incentives for turning in Al Shabab members and leaders (Gettleman 2012).

Twenty years later, the United States faces the same risks and concerns that ultimately destroyed prospects for a successful intervention in the early 1990s.
CHAPTER 3
KENYA’S DECISION TO INTERVENE: ANALYSIS USING JUST WAR THEORY

As the occupation of Somalia ensues, there are arguments on both sides of the spectrum, some arguing that the invasion of Somalia is ethical and morally justifiable on the grounds of just war theory, and that the Kenyan government has acted morally, and others concluding that Kenya’s decision was immoral and unethical to intervene with military force in Somalia. This section will address the proponents of the invasion who conclude that the Somali occupation by the Kenyan Government is indeed a morally justifiable action under just war theory.

The decision for Kenya to intervene in Somalia on some accounts was a very lengthy and strategic decision and the government had coordinated the preparation for the intervention for months prior to the actual invasion into Somalia in October 2011 (Gettleman 2011).

Just War theory has three essential components: *jus ad bellum*, *jus in bello* and *jus post bellum*. The *jus ad bellum* portion dictates that the intervening nation has just cause and reason to override the sovereignty of another state and intervene. The *jus in bello* aspect of Just War Theory mandates that after the decision to go to war has been made, the war must be fought ethically and morally, as will be discussed in the latter portion of this chapter. The third and last aspect of the Just War Theory, the
*jus post bellum* looks at the aftermath of intervention and how the intervening state helps reorganize the intervened state. This section will address all three aspects of the Just War Theory.

Michael Walzer, a contemporary Just War Theory expert, argues that Just War Theory is a dynamic theory that allows states and leaders an opportunity to truly measure the morality of decisions to go to war, which is why perhaps the ancient theory still serves as an asset to decision making in regards to wars and interventions. Michael Walzer notes:

> And here, I think, is the deepest cause of the theory’s contemporary triumph: there are now reasons of states for fighting justly. One might almost say that justice has become a military necessity. (Walzer 2002, 935)

Walzer also argues that the framework of Just War Theory allows for actors to incorporate justice and a holistic approach when making decisions to enter into and conduct war. Not only does it allow for this, but the structure of just war theory in many ways forces leaders to think critically about justice and closely examine scenarios in their entirety to ensure that decisions regarding war are taken seriously. Walter reiterates this point saying, “Justice still needs to be defended; decisions about when and how to fight require constant scrutiny, exactly as they always have” (Walzer 2002, 935). Using the framework and structure of Just War Theory, the unique and specific characteristics of the Kenyan decision will be assessed.
Jus Ad Bellum

As mentioned previously, one of the first and most crucial components of just war theory is jus ad bellum. This is a fundamental component of just war theory as a whole because it addresses one of the most important aspects of just war: ample cause and proper intentions. Policy and decision makers must address these points and answer them before claiming just cause and declaring that there is legitimate jus ad bellum. In the cause of the Kenyan intervention, much can be said regarding the jus ad bellum piece of the just war theory philosophy.

The major question at hand when approaching the jus ad bellum aspect of the Kenyan intervention begs the question of whether the intentions of the Kenyan government were proper, whether there was just cause for the intervention and if the military action was proportionate in regard to the conflict or issue itself and whether the Kenyans’ interests were truly altruistic or more self-concerned in nature.

Within the jus ad bellum philosophy lie several subcomponents that comprise the overall theory. The author of the article, Paradox of Just War notes that it is important, in this beginning stage, to ensure that there is “public declaration” (Calhoun 2011, 47). This essentially warns the opposition of the decision to go to war beforehand. Calhoun argues that this is critical because it ensures a sense of transparency and that, “tension is not merely due to a breakdown in communication’’
Kenya’s intervention in Somalia is an interesting one because the notion of state is somewhat absent in Somalia. There is no stable, central government; therefore, theoretically Kenya would have no viable authority to warn. Essentially, the government is comprised of a weak TFG that lacks control of the country, the terrorist group Al-Shabab and clan factions. Even so, Kenyans are obliged to give warning, as per just war theory.

In addition to giving proper warning, as an intervening state, Kenya is morally obliged to closely examine whether there is “reasonable prospect for success” (Calhoun 2001, 47). This aspect of jus ad bellum takes into consideration the value of adequate planning and organization and encourages states to assess whether the intervention or war can actually be successful. Given the prior history of interventions in Somalia by the United States and Ethiopia, it is very likely that the Kenyans acknowledged the shortcomings of previous interventions and intervened to defeat the clans and the Al-Shabaab and restore regional peace and stability.

Also crucial in the jus ad bellum stage is the acknowledgement that the intervention is truly a “last resort” and is fought with appropriate “proportionality” (Calhoun 2001, 48). In the case of Somalia, it is without question that the intervention was indeed necessary and very much the most viable option for Kenya to make. In addition, given the magnitude of the issues such as terrorism and piracy which have great risks and implications, it was absolutely necessary to intervene with military
forces as an attempt to gain control of the Somali crisis and address imminent life-threatening issues such as famine and starvation, terrorism and piracy among others.

While it may be difficult to get to the full truth regarding the intention of the Kenyan government, it is possible to address likely and conceivable reasons that may have been precursors to the Kenyan invasion in Somalia.

There is no question that the current state of despair in Somalia is on the world’s radar and has had undesirable affects on its neighbor, Kenya. The world has become increasingly aware of the growing threats of Somali violence and piracy that have affected the Horn and world as a whole as many of the issues have had significant consequences to neighbors and nations around the world. Mohamed Sahnoun, author of, *Somalia: The Missed Opportunities*, notes the following about internal conflicts, “Apart from their impact on the local population, such conflicts might present a serious threat to peace and security in entire regions of the world” (Sahnoun xi). Some of these issues have included terrorism, piracy, famine, food security issues and the overall breakdown of Somali society and heightened refugee and immigration tensions due to increasingly poor living conditions and violence in Somalia. These issues will be addressed, as they are likely precursors for Kenya’s decision to invade Somalia.
Terrorism

As mentioned in the introduction, Somali has been a failed state for the last few decades. Developmental indicators are dismal, violence is rampant and despite the years and dollars that have been dedicated to the region, it continues to be one of the most abysmal areas in the world and a growing cause for concern in the international community due to a growing threat of terrorism, increased piracy, kidnapping of aid workers, and famine.

The terrorism threat in Somalia continues to grow and be a source of angst and worry in the international community and a possible demonstrative cause for jus ad bellum. The Al Shabaab, an insurgency military group in Somalia, has been linked to Al-Qaeda (Cohn 2010, 2) A 2010 Council on Foreign Relations article highlighted the threat of terrorism in Somalia due to its lawlessness and anarchy, such that:

Its porous borders mean that individuals can enter without visas, and once inside the country, enjoy an almost complete lack of law enforcement…These aspects make Somalia a desirable haven for transnational terrorists, something that Al-Qaeda has tried to capitalize on before, and is trying again now. (Cohn 2010, 2)

Somalia has seen an evolution in regard to in-country terrorist groups and their growing power and influence. There is an Al-Qaeda presence in Somalia (NA The Kenyan Military Intervention in Somalia 2012). The Al-Qaeda-sponsored 1998 terrorist attacks against the Kenyan and Tanzanian embassies were one of the deadliest in African history and provided a clear signal to world leaders that the threat
of terrorism in Africa is real and is one that must be addressed. The Crisis Group report explains that the terrorist group, Al Qaeda was not only a part of the attack, but were the masterminds behind it noting, “Its Somali connections were instrumental in planning and executing the twin attacks, which together killed 225 and wounded over 4,000” (NA The Kenyan Military Intervention in Somalia 2012). Other terrorist attacks include the attacks against a luxury hotel in 2002 in Kenya, and another attack in 2010 in Uganda sponsored by the Somali based terror group, Al Shabaab for supporting the regional peacekeeping mechanism, African Mission in Somalia (NA The Kenyan Military Intervention in Somalia 2012).

The main threat that exists with terrorism in Somalia is the lack of order and law that make it a perfect breeding ground for terrorists and transnational groups. These items together brew a perfect storm which neighboring Kenya, Ethiopia and Uganda cannot avoid or ignore, as it poses a direct threat to their national security.

In the 1990s and early 2000s, the largest most influential terrorist group in Somalia was known as the al-Itihaad al Islaami (AIAI) (The Kenyan Military Intervention in Somalia 2012). The AIAI’s main objective is to create an Islamic state within the Somalia region and was responsible for many terrorist attacks in neighboring countries, such as Ethiopia (The Kenyan Military Intervention in Somalia 2012). In addition to Ethiopia bearing the brunt of the looming terrorist threat, Kenya too has dealt with its share of terrorist threats stemming from Somali terrorists.
After the 9/11 terrorist attacks at the World Trade Center in New York City, failed states and areas known as “safe havens” have been targeted and seen as threats to national and global security. Ken Menkhaus, an expert on Somali issues and terrorism, points out the lack of success in addressing the anarchy and potential breeding ground for terrorists in Somalia noting as follows:

Nowhere has the crisis of state collapse been as profound and prolonged—and as misunderstood—as in Somalia, which has gone without any functioning central government since January 1991. Numerous external attempts have been made to revive a central state; all have failed. (Menkhaus 2004, 8)

These several failed attempts have led to a sense of apathy towards Somalia from many nations and many nations around the world have either simply forgotten about Somalia or chosen to ignore the increasingly dire situation. On the other hand, terrorists and interstate groups have taken note and are beginning to take advantage of the “safe haven” that Somalia can provide rogue groups.

The threat of terrorism is ever-growing in Kenya also, due to the influx of Somali refugees, some of whom have allegiance with the Al-Shabaab and are becoming increasingly autonomous and becoming “a center of Shabaab recruitment and fund-raising.” (Menkhaus 2012, 4)

**Refugee Crisis in Kenya**

The refugee crisis in Kenya is serious and quite possibly one of the triggers for the armed intervention and even the United States has acknowledged the burden
placed on Kenya. Johnny Carson of the United States Department of State has stated, “Kenya has born the brunt of the Somalia refugee crisis” (Carson 2010). It is likely that this had a significant impact on Kenya’s decision to intervene. It is in Kenya’s interest to have a stable neighbor that is able to accommodate its own citizens and not be a burden to its neighboring countries, as Somalia has been to the Horn.

Piracy Concerns

Worldwide, it is known that Somalia is a major center of piracy. Piracy in Somali has been an ongoing issue and one that has not received the necessary attention and resources that are needed to address the issue. Off the coast of Somalia, ships have been attacked and innocent passengers have been attacked, and often killed. This is a transnational issue as pirates have attacked ships and vessels from many countries around the world, including ships belonging to the United States and other countries as well.

In the book, *The International Response to Somali Piracy*, one of the major highlights about piracy in Somalia is the lack of infrastructure and rule of law to enforce regulations and try offenders. Another issue with enforcing laws is many of them are unclear and even if found guilty, the prison system is sub-par and could not accommodate prisoners and provide proper living conditions for offenders (Guilfoyle 2010, 145-47).
More recently, it appears that Kenya has tried to gain control of the lawlessness and lack of enforcement of rule of law regarding piracy, as it has been attempting to try suspected pirates for their crimes in Kenya (Gatthi 2010, 416). However, this has brought about other serious issues and concerns regarding judicial authority and jurisdictional uncertainties.

The article, “Kenya’s Piracy Prosecutions,” highlights the frustrations that the Kenyan government has faced in trying to prosecute piracy cases in Kenya. Due to the international and multi-jurisdictional nature of piracy, it is quite unclear about which country has jurisdiction, where pirates should be tried. As evidenced in Kenya, part of the controversy stems from the element that they are perceived of as assuming a responsibility or task that others feel is not appropriate.

Kenyan courts’ assumption of jurisdiction over non-Kenyan pirates captured on the high seas by foreign forces may be seen in light of this new trend regarding international law. This trend may have laid the foundation for Kenyan courts to invoke customary international law to justify their assumption of such jurisdiction. (Gatthi 2010, 419)

This will likely continue to be a reoccurring theme in piracy prosecution moving forward, and will ultimately need to be addressed by the international community as a whole. The United Nations has indicated the need for some sort of boundary or international law framework for which to handle piracy or sea matters, but much is still left to be discussed and agreed upon in the international community, as has been demonstrated by the Kenyan trials of international pirates.
In addition to the obvious dangers and consequences of piracy in Somalia, it is important to highlight piracy’s effect on food security and famine in Somalia. A significant amount of aid has been diverted and citizen’s welfare is risked due to attacks and forced detours to avoid the Al-Shabbab (Norris 2011, 9). There are also legitimate concerns about providing direct or indirect aid to terrorists through aid. “…United States has imposed restrictions on the delivery of aid fearing that it would be diverted to Al Shabbab.” (Norris 2011, 9)

The above-demonstrated points fall in accordance with the jus ad bellum requirements. The Kenyan government had several legitimate reasons for why an intervention in Kenya was necessary; both on an altruistic and self-interest level.

On an altruistic level, Kenya had many reasons to use military intervention and intervene on a humanitarian level. As aforementioned, Somalia suffers from many humanitarian failures and has poor indicators in development and has suffered from food security and famine issues for the last several decades. Interestingly, on a more national-interest, self-interest perspective, Kenya also has legitimate cause for entering into war with Somalia and intervening with military force. Somalia has become a terrorist playground threatening the security of Kenyans and Kenyan economic interests, Somalia’s increasingly growing instability has led to an undesirable increase of Somali refugees in Kenya and a drain on Kenyan resources
and infrastructure, and last but not least, Somalia’s downfall is just an overall threat to the Kenyan well-being.

In accordance with Just War Theory, Kenya does not have any obligations to fulfill the jus ad bellum requirement with purely altruistic intentions. Though it may be admirable of Kenya, it is not necessarily required or mandatory. In the case of Kenya it appears that there were two motives. There were motives of altruism in the sense that Somalia’s citizens were living under dire, extreme circumstances. At the same time, being Somalia’s neighbor and having been directly impacted by Somalia’s failures, it was also in Kenya’s national self-interest to pursue an intervention in Somalia.

Now that we understand some of the precursors to the Kenyan decision, we are able to delve into the Kenyans’ thoughts about the intervention itself and the goals and objectives the Kenyans hoped would result from the intervention. The International Crisis Group furnished a report on the Kenyan Intervention that included many important details regarding the Kenyan thought process about the intervention and several outcomes the Kenyan government hopes to achieve from the intervention.
Jus in Bello

The Jus in Bello aspect of the Just War Theory addresses how nations and states that initiate military intervention should act while in war. The Jus in Bello piece of the theory regulates and provides an ethical framework for judging whether actions whilst in war are ethical or unethical. One of the fundamental aspects of the Jus in Bello theory is that the actions taken by the state initiating the war must be “proportional” and “non-combatants are immune from attack” (Calhoun 2001, 45).

The Kenyan intervention in Somalia is a relatively new conflict, and little is known in regard to its war practices. As the intervention progresses, whether it has complied with jus in bello will become much clearer and measurable.

Jus Post Bellum

The jus post bellum portion of the just war theory is the last stage of the morality metric. During the jus post bellum stage, the intervening state is required to provide a “restoration of a just order” (Amstutz 2008, 115). During the jus post bellum stage, Kenya will be required to help Somalia ensure that that a solid, effective government is installed, the breakdown in society has been overcome, and overall order is imparted. Given the failures of previous interventions held in Somalia, the success or failure of Kenya’s ability to complete jus pos bellum will be one of the most telling ways to ultimately determine if the intervention was fully moral.
As discussed in previous sections, Somalia has been invaded on numerous occasions, with none of the incursions resulting in jus post bellum successfully. What seems to be a common theme is: intervening forces enter, there is a stalemate, and the intervening forces decide to leave. This is likely why for the last two decades; Somalia has been at a standstill politically, economically and developmentally. Only time will tell if the Kenyans are successful in fully completing the jus post bellum stage of moral and just war.

For the sake of Somalis, the East African region and the international community at large, it is in the best interest of everyone if the just post bellum stage is fulfilled in its entirety to prevent further regression of the Somali state and repeated failed interventions.
CHAPTER 4
OPPOSING VIEWS TO JUST WAR THEORY AND POSSIBLE CHALLENGES AHEAD

From the analysis of the components of just war theory, it is clear that Kenya did have reason or cause to intervene in Somalia and that it did so within the confines of the just war theory metric.

Even so, the intervention did not go without criticism and disapproval from key members of the international community and leaders of religious groups. This section will identify and outline some of opposing arguments of just war theory, the incongruities between just war theory and religious teachings, pinpoint the likely challenges that the Kenyan’s may encounter in the future, and explain some of the failures thus far in the Kenyan intervention.

Pacifism

Pacifism is one of the most major arguments against the just-war theory tradition. Under the Pacifism framework, violence as a means of war is essentially never justified or acceptable as moral, even in cases of severe humanitarian crisis.

The pacifist approach prohibits the threat and use of force because, in accordance with a rule-base ethic, it assumes that violence can never be a morally legitimate means to provide national security or to secure moral goods such as human rights, international justice and peace.” (Amstutz 2008, 110)
Under the Pacifist outline, pure pacifists would deem the armed Kenyan intervention in Somalia as unethical and immoral. This is a sharp contrast from just war theory which holds that war can be ethical under certain circumstances if specific criteria are met (jus ad bellum, jus in bello and jus post bellum). However, the pacifist argument supposes that this is not moral and even if there is just cause it is absolutely immoral to engage in any violence or use force. Under pacifism the value of nonviolence and peace is higher than any other, so nations should never use force under any circumstances.

In lieu of force, under the pacifist model states are encouraged to use non-violent measures to address conflict and crises. With violence and force out of the question, it becomes essential that diplomacy and non-violent measures are undertaken and enforced.

In the case of Kenya and Somalia, pacifists would likely argue that it was immoral for Kenya to enter Somalia with the use of force, as it is not ethical to use force under the pacifism approach. As we know, the Kenyan-Somali conflict is multi-layered and complicated in nature.

Even with the violent nature of piracy and the destruction that it poses to Kenyan national security and safety, under pacifism engaging in force to address this issue would be immoral. Rather, pacifists would argue that Kenyan authorities should engage in non-violent measures to address the issue.
The main issue that this poses is, pacifists assume that “highest priorities are life and peace” and does not address how sometimes using force in extreme situations, such as Somalia, can actually preserve the very ideals that pacifists claim to defend.

Pacifism is also somewhat problematic because the pacifism structure works best when engaging two sovereign states with central and effective governments. In the case of Somalia, it has an ineffective government, and many of the issues lie with non-state actors such as terrorists, clans, pirates or rogue states that are not legitimate and are destructive to global security and or its people. Traditional means of nonviolence such as sanctions, diplomatic engagements, etc. would be inappropriate for such actors. Also, when such actors are using violence as their means, it becomes increasingly difficult to preserve the notion of non-violence, as states need to defend themselves against such actors.

While Pacifists may argue that the Kenyan intervention was immoral, it would be unrealistic and ineffective for Kenya to not use force as a means to intervene in Somalia due to the nature of the threats at hand and the nature of the actors involved.

Amoral Realism

Amoral realism is a somewhat more liberal perspective on the use of force, with pacifism being more conservative and just war being in the middle between pacifism and the amoral realism perspective. While pacifism suggests that war and
the use of force is never an option, amoral realism not only suggests that it is moral and acceptable, but also proposes that there are no limitations to war whatsoever, and that “morality does not constrain war” (Amstutz 2008, 111). This is a somewhat extreme perception of war in comparison with the pacifist and just-war theory perspective, in the sense that it suggests that, “…morality is silent in wartime, denying that moral limits exist on the conduct of war” (Amstutz 2008, 111). The Jus in Bello aspect of just war theory has a direct conflict with this premise, as Jus in Bello proposes that there are constraints and regulations regarding wartime behavior and morality regarding such behavior.

Under the amoral realism argument, is the cynical view (Amstutz 2008, 111). Under the cynical view, war is allowed and there are no moral limitations because they are seen as “subjective” and are irrelevant because, in the realists’ view, they believe overall goal and objective of war is to conquer and win regardless of the means (Amstutz 2008, 111).

Relating amoral realism to the Kenyan intervention, amoral realists would likely be divided over whether or not the intervention was moral and legitimate in the eyes of ethicists. Cynical amoral realists would likely view the intervention as moral because they do not believe in any moral limits on war and the use of force. If the Kenyans believed that war was in their interest, under the cynical perspective of amoral realism, they would be able to enter into Somalia with force without any
obligations to morals or ethics. Following the belief of cynical amoral realism, the ultimate goal of the Kenyans would be to win and be successful in the intervention despite what its original intent or reasons for pursuing the intervention may have been. If the Kenyan intentions were purely altruistic and unselfish in nature, in that they were acting on behalf of the interest of Somalia and Somalia only, it may be admirable, but it would be irrelevant in determining its morality, as there are no constraints under the cynical perspective of amoral realism. If the Kenyan intentions were mixed, being somewhat altruistic and somewhat self-interested, that too would be irrelevant, as morals have no place in the decision.

Holy War

The holy war perspective is distinguished by its affiliation with religion and “divine will” (Amstutz 2008, 111). This perspective too, does not have moral limitations in regards to the use of force because of its association with the “divine will” and ultimate prevailing of religious values and the religion overall.

If the Kenyan intervention is measured against the holy war position, it could be seen as immoral depending on the religious sect or group. For example, in Somalia, it is has been widely known and understood that one of the goals of the Islamic extremist groups, such as the Al-Shabbab is to instill Sharia law (Islamic law) and to push Islamic values and extremism into the mainstream, general society. The Al-Shabbab is known to have coordinated many terrorist attacks in Somalia and
Kenya and has connections to Al-Qaeda and is even connected and coordinating with terrorists Yemen. In the view of the holy war perspective, morals in regards to the use of force and limitations on wartime behavior are irrelevant as the ultimate goal is to fight on behalf of the religion, even if undesirable deaths or destruction could occur. In this case, it is possible that the Al-Shabbab could view the Kenyan intervention as a direct threat to Islam or their goal of instilling Sharia law in Somalia.

*The Legalist Perspective and Point of View*

Another method of determining ethics and morality in regard to war is the legalist paradigm (Walzer 1977, 118). The legalist perspective or paradigm is somewhat similar to the pacifist point of view in that intervention or invading another sovereign state is immoral and unacceptable, but not because it prioritizes peace and non-violence as an ethical priority. Rather, it prioritizes the notion of the state and states’ legal right to sovereignty, and values international order.

Under the legalist perspective, Michael Walzer argues, there is a fundamental observation that is particularly salient to interventions; specifically interventions based on humanitarian reasons. Walzer notes the following about the legalist paradigm, “Though states are founded for the sake of life and liberty, they cannot be challenged in the name of life and liberty by any other states” (Walzer 1977, 61). This directly contradicts interventions based solely human rights or other humanitarian bases.
The legalist paradigm also proposes that generally the use of force is only to be used in defense against other parties when they have exercised the use of force, or there is reason to believe that it is a possible threat and if it is used in any other circumstance it is viewed as “criminal” (Walzer 1977, 61). This is expressed when Walter explains, “Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act” (Walzer 1977, 62).

Though it is clear that the legalist perspective values these beliefs, it does somewhat lend itself to compromise and interpretation in a way that the pacifism perspective does not. Under the legalist paradigm, states do have the right to intervene in certain instances (as in just war theory) if certain criteria are met: there is a viable threat or if aggression or force has been used against that particular state. This is demonstrated when Walzer explains the following in regards to the legalist point of view, “Nothing but aggression can justify war” (Walzer 1977, 62).

In applying the legalist perspective to the humanitarian intervention in Kenya, it is unclear and somewhat uncertain if legalists likely would approve the intervention as being morally acceptable. While it is clear that acts of aggression have been taken against Kenya on several occasions through terrorist attacks, piracy incidents among others, it is not clear whether such attacks should be attributed to the Somali state itself or to actors (terrorists or pirates) who are not necessarily state-sponsored but are
able to conduct such activities due to the lack of state or governance. This is a complicated notion and one that seems to be a recurring theme as we discuss morality and state actors. Moving forward, it will be critical that we re-think diplomacy and even morality in a new age and time where the emphasis on the state is becoming devalued and the emphasis is more on individual actors or groups are more emphasized.

Ultimately, the legalist paradigm emphasizes the concept and notion of the state. In the case of Kenya, legalists could argue that because of the aggression of pirates or terrorists by individuals who were housed in Somalia or somewhat facilitated by the collapse of Somalia, it is therefore the Somali who is ultimately responsible and therefore deserving of intervention or the use of force. On the other hand as aforementioned, legalists could argue that the state and main government, which in this case would be the Somali TFG, cannot be held accountable for individual actors and is therefore under serving of armed interference.

*Religion and the Just War Theory Perspective*

One of the major issues between just-war theory and Islam is the sense that just war theory is foreign and seen as a “western concept” (Mirbagheri 2012, 128). This would essentially discredit the metric of just-war theory as well as the credibility of the overall theory itself. In the book, *War and Peace in Islam*, S.M. Farid Mirbagheri details some of the perceptions of just war in the Muslim community.
These beliefs and perceptions may essentially discredit the ultimate argument that the Kenyan intervention in Somalia was indeed moral, per the requirements and composition of just war theory.

According to Mirbagheri, not only is just-war theory closely associated with the West, it is also closely associated with Christianity and the Crusades (Mirbagheri 2012, 129). The Crusades, a series of wars fought between Muslims and Christians during the Middle Ages, is still a sensitive issue between Muslims and Christians today. Mirbagheri notes, “The concept of just war may also hint at the notion of holy war in Christendom, reminiscent of the Crusades” (Mirbagheri 2012, 129). It is quite likely that the mere association of just war with Christianity and the Crusades may completely undermine and delegitimize the credibility of just war theory and its ability to serve as a metric for just war within some in the Muslim community.

Other Criticisms of the Kenyan Decision

While it appears that though the decision-making process may have taken months, once the decision was made, it was acted on immediately and the world was given relatively short notice (The Kenyan Military Intervention in Somalia 2012). “Most of the region, including allies, seems to have been taken by surprise” (NA The Kenyan Military Intervention in Somalia 2012).

There are many challenges that lie ahead for Somalia, Kenya. One of these challenges is trying to maintain a tight grip on arms control and weapons possession.
Oftentimes, in crises and conflict, the offensive side places a significant amount of resources into the defense and security of its forces and troops. Though understandable and reasonable, this poses additional threats to security because often, weapons become unaccountable and become available to rogue entities (Rutherford 2008, 94). Rutherford describes this phenomenon during the 1991 armed intervention in Somalia by the United States noting as follows:

The flood of guns and other weapons into the hands of gunmen hired to protect international media and NGOs further heightened insecurity, not only among the Somali factions competing for contracts but also between the Somalis and the UN military forces. (Rutherford 2008, 94)

This threat is real and is one that needs to be thoroughly investigated and addressed as the intervention and conflict continues. The Somali, Kenyan and African Union forces will need to have a system in place to track weapons and be held accountable for missing weapons and individuals and groups who are in possession of weapons.

In addition to the threat of lack of arms control, is the threat of conflict between many of the different non-governmental entities that currently exist, and will be aiding in some of the relief efforts as a result of the current invasion. This will also likely be an important factor as the United States government has previously announced that working with local groups and non-government Organizations (NGOs) will be a part of its new Dual Track Strategy towards Somalia.
This served as a major issue during the United States and United Nations intervention in Somalia in the early 1990s. Rutherford, author of *Humanitarianism Under Fire*, notes the hostility that developed as a result of NGO conflict noting, “NGO hiring and firing practices also led to rising violence against NGOs, including several incidents that resulted in attacks on NGO staff, some of them fatal” (Rutherford 2008, 95). With the United States emphasizing its commitment to working with local groups and the attention that the Kenyan intervention has brought to Somalia, it can be expected that there will be an increasing number of humanitarian groups and NGOs working in Somalia. This is an important issue and one that will either have to be addressed by Kenyan and Somali leadership, so it does not exacerbate current conflict and violence in Somalia.

Another challenge and issue that will need to be addressed by Kenyan leadership is the public perception of the Somalis in-country, as there is a significant Somali population in Kenya that wants to be recognized and whose voices must not be forgotten. In August of 2012, a Kenyan Newspaper reported that there has been increased xenophobia in Nairobi (NA “Xenophobia, Fear Follow Nairobi Blast”). The article reports, “Grenade attacks on a pub and a bus stop in Nairobi, the Kenyan capital, which resulted in one death and several injuries, have left many living in fear, while Kenyan Somalis also feel they have become terror suspects by virtue of their ethnicity” (NA “Xenophobia, Fear Follow Nairobi Blast”).

58
Though the intervention has been rather recent, there are already several credible accounts of inappropriate behavior by Kenyan troops and other negative accusations. This has several possible consequences, none of them positive. It has the possibility of leading to a sense of illegitimacy of the intervention in the eyes of Somalis and the international community.

Another local newspaper has reported that the Kenyan intervention has exacerbated food security issues and poverty in Somalia (NA “Kenya; Somalia-A Risky Intervention”). The news story reported, “Kenya’s military intervention to target Al-Shabaab in Somalia is likely to worsen the plight of millions of food-insecure civilians and could increase popular support for the Islamic extremists, workers and analysts warn” (NA “Kenya; Somalia-A Risky Intervention”). This has resulted in an even larger flow of Somali refugees fleeing to Kenya, which has already been an existing issue for Kenya in recent years. The article goes on to note, “The food crisis has displaced hundreds and thousands of people, many of whom have crossed into Kenya to seek refuge in the world’s largest refugee complex” (NA Kenya; Somalia-A Risky Intervention). With the existing strains on Kenyan resources due to refugees, it is without question that as the intervention continues and more Somalis are displaced, many may look to Kenya for shelter and safety. However, the reality is that Kenya may not be able to accommodate the refugee inflow that could result from the increased violence and famine. The Kenyan government should create
a plan of action that aims to tackle this issue and develop a proactive approach in handling the famine crisis and continuing to provide resources and supplies to Somalis; especially in more violent areas close to the Kenyan border.
CHAPTER 5

CONCLUSION

This thesis has explored the moral arguments both for and against the armed humanitarian intervention in Somalia. While there are many viewpoints regarding the morality of the intervention and whether it is moral, it is clear that regardless of its morality, Somalia is at a standstill and is needs a path forward.

The Kenyan intervention has raised several questions and reinforced attention to the principles of just war theory. One of the most important themes of this essay is the importance analyzing war in a holistic and well-rounded perspective, as war is a serious matter.

All of the elements of just war theory: jus ad bellum, jus in bello and jus post bellum provide a well-rounded context for evaluating the necessity of armed interventions as well as providing a baseline and measurement for the ethics whilst in war and post war.

As we’ve analyzed the just ad bellum portion extensively, this section will focus on the importance of the jus in bello and jus post bellum aspects of the just war theory and the opportunity for the Kenyans to play a defining role in Somalia’s restoration. Using the example of the Kenyan intervention, it is my opinion that the just post bellum aspect will be one of the most telling in determining the morality of the intervention and the success of the overall intervention. What would distinguish
this intervention from previous interventions in Somalia would be the success of the jus post bellum aspect and piecing together a functional and operational Somalia. Knowing what we know about Somalia and its unique characteristics and history, I believe that through a detailed, comprehensive strategy, Kenya may be able to help save Somalia from more years of turmoil, civil unrest and the chaos that has been associated with it for the last several decades.

This in my opinion will be the most difficult, challenging aspect for the Kenyans in Somalia. Given that the intervention is still somewhat new and recent, it is hard to tell what the Kenyan plan is for the long term. However, so far it seems as though it is somewhat vague and unclear. This is troublesome and could possibly exacerbate the already fragile situation in Somalia. Somali expert Ken Menkhaus describes it best noting as follows:

If the first decade of the new millennium bears a single enduring political lesson, it is this: Intervention strategies that plan the war but not the peace will fail. Indifference to or wishful thinking about the crafting of a post-intervention political order guarantees disorder, and can leave both the occupied country and the intervening power worse off than before. (Menkhaus 2012, 3)

For the Kenyan intervention to be successful and completely moral, more attention will need to be drawn to the after-effects of the intervention and long-term sustainable peacekeeping and humanitarian efforts. Without such emphasis, the
intervention could possibly cause a regression in Somalia affairs and backfire against Kenya and other international players as well.

I believe for the Kenyan intervention to be successful, it will need to prioritize improving the perception of the intervention in the eyes of Somalis and Somali-Kenyans. This is an essential aspect to Operation Lindi Nchi’s success, because the difference between all failed interventions and Kenya’s intervention is the prior lack of emphasis on the long-term and jus post bellum. For just post bellum to be effective, it will be absolutely crucial that Somalis and the Somali diaspora are engaged in the intervention and on board. It is without question that Kenya does not have the resources to stay and police Somalia forever; no country does. Thus, it is essential for Kenya to engage Somalis and promote an organic movement of local Somalis solving Somali issues. Kenya needs to promote a sense of Somali inclusion in the intervention and promote Somali ownership for Somali problems and solutions.

Throughout the years, many different international players have intervened in Somalia, but no real progress has been made to date. I believe that for Somalia to truly move forward and become a peaceful and economically productive state, it must take hold of its issues and develop a movement within its own people to overcome the last several decades of societal failure. As Johnny Carson has said, “Somalis themselves must take the lead” (Carson 2010). This will build a more strong and
authentic platform for success and long-term acceptance by Somalis, which will ultimately be key.

However, this can only be achieved if the Kenyans take heed to the sensitivities and vulnerabilities of Somalia and work on making them less destructive. For example, one of the criticisms and perceptions of the TFG is its lack of inclusiveness for all groups and we know that clan divides in Somalia have been a major factor in war and conflict. Realizing this as part of the reality, the Kenyans should work with Somali stakeholders to identify ways and measures of being inclusive and prioritizing the incorporation of all players and stakeholders in the decision-making process and government structure.

Marc Gopin, an expert on conflict resolution and author of *Holy War, Holy Peace*, identifies a phenomenon that tends to appear in intra and inters-state conflict, known as “othering and exclusion” (Gopin 2002, 67). Under this phenomenon, groups isolate people whom they may view as different or outsiders. “The othering and exclusion can take on relatively mild forms, such as the need to separate from certain people and certain places without persecution or shunning any participation in another group’s celebrations, which involved a voluntary removal by a person or group from aspects of a surrounding culture or group” (Gopin 2002, 67). In the case of Somalia, one can draw parallels between this notion and the current state of conflict between clans and religious extremists.
Recognizing that this is an issue is the first step and the Kenyans may help facilitate this step, but Somalis will have to truly work towards defeating the notion of othering and becoming more unified and inclusive of all groups and clans. Gopin suggests that the notion of othering is extremely dangerous because it often shows itself in integral aspects of society including governance and politics. “Separatist othering then turns into prosecutorial othering, and sometimes separate education and culture become the hotbed for political regression” (Gopin 2002, 67).

In the case of Somalia, this has been one of the major issues with governance and building a society that is inclusive of everyone. Government cannot be seen as legitimate if it continually excludes members of the society from participating or undermines their ability to contribute. Because the idea of clanship is so closely tied to identity, the idea of a me versus you notion is entrenched in self, family, community, society and the country as a whole. Moving forward, it will be absolutely essential to properly handle this issue and in a truthful and productive manner, which will need to include the remake and makeover of Somali nationalism and identity.

To achieve this, I believe there needs to be a healing process and open dialogue to discuss grievances and how clan divides have impacted the division and lack of inclusiveness in Somali society and discuss how it can be overcome and how a path to the future can be forged.
To truly begin the peace process, the first step that Kenyans will need to complete is to capitalize on various forms of non-traditional diplomacy efforts towards Somalia. As mentioned previously, Somalia presents a non-traditional, more contemporary diplomacy issue that is appearing in many post-colonial areas around the world in areas such as Nigeria and Libya. What we see is an area consumed by intra-state conflict stemming from clan and tribal conflicts, religious extremists fighting for control and the elevation of non-state actors such as extremists and terrorists who cannot be tamed by traditional, old school diplomatic efforts, especially in regards to religion.

Given that part of the issue in Somalia is Muslim extremism, Kenya will need to devise more inclusive plan of engaging more moderate Muslims and including them in their intervention and long-term strategy. If Kenya is to instill long-term peace and resolution to Somalia’s conflict, it must understand the complex religious tensions and how this may affect the intervention and long-term stability.

One contemporary tool to meet the challenges that religion and religious differences bring is the utilization of faith-based diplomacy. Faith-based diplomacy capitalizes on the opportunity to use faith and religion not as a divisive force but as chance to bring people together and find a common ground. Former Secretary of State, Madeline Albright has said, “Faith-based diplomacy can be a useful tool for foreign policy” (Albright 2006, 78). She notes the capabilities of faith-based
diplomacy and the opportunity that it provides because of its known effect on people’s lives and belief systems explaining that religion often impacts “how people think, feel and act” (Albright 2006, 67).

In recognizing this, Kenya has the opportunity to be a leader in the movement to include religious dialogue and discussions in the realm of foreign policy and diplomacy in large-scale issues that could truly benefit from this more contemporary phenomenon. By engaging faith communities, Kenya can have the opportunity to have a greater reach in Somalia and perhaps avoid being seen as an outsider or foreign entity that disregards the faith that so many Somalis hold dear, but that has become politicized and used as a pawn for extremists to garner support for their cause. Marc Gopin reaffirms this notion suggesting that continued exclusion of groups and repeated efforts to highlight separateness are dangerous, noting, “In other words, exclusion and othering are a crass tool of power maintenance…” (Gopin 2002, 61).

Gopin also speaks of the opportunity to possibly dismantle such negative efforts and expose the dangers of the politicizing religion stating; “Religious figures are generally considered part of the problem, but not part of creative solutions by most people in the public policy arena” (Gopin 2002, 46).
This now brings the more modern question of, where do we go from here? The road to the answer to this question will require the imagination and efforts of multiple stakeholders, community leaders and as many people as possible.

As described in this essay, Somalia’s issues are multi-layered and require a truly multi-layered solution. I believe that while the Kenyan intervention was in many ways necessary, the emphasis in the intervention should be placed on empowering Somalis to restore governance and government legitimacy. As mentioned in this essay, one of the many reoccurring themes in the Somali struggle is a lack of effective and stable government.

Without governance, law-abiding citizens cannot be protected and rule of law will not be available to enforce laws. Rule of law and governance needs to be intact for violence and crime to be stabilized and brought down. With crimes such as piracy and kidnapping, it becomes increasingly difficult to have a functional society with successful business and development as people have no protection or faith that the rule of law can prosecute those who do not abide by it. It also leaves room for more chaos as it promotes a sense of instantaneous justice and lawlessness. One of the first steps towards promoting rule of law and governance is enhancing Somalia’s infrastructure and ability to combat piracy and related crimes. “…piracy needs to be crowded out using political and economic engagements in the areas of Somalia that host piracy operations, such as Puntland. Pirate rewards need to be decreased;
economic alternatives need to be increased. The main aim must be to change the incentives away from piracy and toward legitimate economic activity” (U.S. Congress, House of Representatives 2011, 62). By targeting the crux of the piracy and kidnapping issue, which seems to be the ransoms and financial profits, it will hopefully reduce the incidents and force such crimes out of Somalia.

It is important to recognize and distinguish that this should not be the sole responsibility of the Kenyans or the Kenyan government. This notion of empowerment must come organically from the Somali people themselves. In my opinion, an organic sense of empowerment will create the notion of legitimacy and acceptance from Somalis, which it is currently lacking.

While achieving this will not be easy, it is certainly possible. Currently, the TFG is supported by Ethiopia and the United States and Kenya (NA The Kenyan Military Intervention in Somalia 2012). This is also a contributing factor to Somalis viewing it as foreign or external. In addition to its perceptions, it has not delivered in terms of its effectiveness and ability to govern well in Somalia.

It will be critical for the Kenyans to address these issues as they are key in alleviating these perceptions, which now help terrorist and opposition groups such as the Al-Shabbab to garner support. The lack of inclusion and heavy support from international groups has been a hindrance to the TFG.
The TFG relied heavily on sustained international financial and military support but, like its predecessor, the TFG fell well short of serving as a national government. Instead power was concentrated in a narrow clan coalition, and the TFG was viewed as a client of Ethiopia. (Menkhaus 2009, 17)

For the Kenyan intervention to prosper, it must tread carefully in regard to clan divides and internal Somali politics. As described previously, Somalia’s history with clan politics and clan factions is substantial. It is must be taken seriously by the Kenyans and they must be sure not to take sides or partake too closely in such matters, as they are destructive, as evidenced in the failure of the TFG. Madeleine Albright, former U.S. Secretary of State, highlights the significance of this philosophy in civil disputes and noted the effect that it had on previous interventions in Somalia noting, “The lesson the UN drew from that calamity was to avoid ever again taking sides in a civil war” (Albright 2006, 55). It is absolutely critical, and the Kenyans need to devise a strategy for avoiding the crossfire between clans and internal factions while preserving the integrity of the mission and addressing clan frictions as one of the major aspects holding Somalia back from peace and stability, while managing to be inclusive. This has been an ongoing issue in the current intervention and should be a priority to the Kenyans.

Though the details remain murky, it appears the decision to intervene was made quickly, by a small group of people and without proper consultation, deliberation or preparation. This led to unnecessary diplomatic tension unclear
planning and goals, and avoidable delays and setbacks. (NA *The Kenyan Military Intervention in Somalia* 2012)

While it may not be possible for the intervention to be seen as moral or just by everyone involved, Kenya has the opportunity to possibly shape the Horn of Africa in a new direction and possibly be the changing force in transforming Somalia from the failed state that the world knows it to be. In leading the intervention, Kenya has essentially enlisted itself to serve as the region’s champion in a last-ditch effort to attain some closure to the Somali conflict. In doing so however, it will have to position itself in a manner to handle some of the controversial issues and tensions that predate this intervention and date back to centuries of mistrust and cold relations between countries in the Horn of Africa that have contributed to the crisis in Somalia, such as the relationship between Ethiopia and Somalia. Without some sort of functional and stable peace between Somalia and Ethiopia, it is doubtful that long-term peace in Somalia can be a reality.

There has been a long-standing insecurity and tension between Ethiopia and Somalia that includes religious tension and differences, border disputes and overall distrust. More recently and specifically, there is still lingering anger between Ethiopia and Somalia over the failed intervention in Somalia led by Ethiopia in 2006. And prior to the 2006 intervention, there was a history of Somalia hosting Ethiopian rebel groups and Somalia doing the same (Rutherford 2008, 6).
There needs to be a truce between Horn countries and an in-depth reconciliation process that delves into some of the historic, age-old issues that continue to disrupt any hopes for peace and stability in Somalia. The London Times reported that these old grudges are part of what continues to hold Somalia back.

Among the country’s ancient nomadic communities, historic rivalries over such matters as brides, water and cattle invariably were settled by henna-bearded elders, a form of government that long pre-dated the creation of the nation state. Before the modern world intervened and provided weapons such as the ubiquitous AK47, the system provided stability in a harsh environment. (Clayton 2012)

It is becoming increasingly clear that mutual distrust cannot be avoided until there is both internal reconciliation between clans and families and external reconciliation between Somalia, Ethiopia, Kenya and its other neighbors. Ideally, controversial issues such as the border dispute between Ethiopia and Somalia will be addressed, as well as other controversial issues between Horn countries. For long-term stable peace between Horn countries, it is critical that the contentious issues be discussed and brought to the forefront. Otherwise, there will continue to be a lingering sense of distrust between countries that facilitates a dysfunctional relationship that is ultimately to the detriment to all. This will require the effort of both a grassroots and grasstips campaign involving everyone from local citizens to the governments of the respective countries. Without this commitment, peace is not likely. In addition to the intrastate civil eruption in Somalia, much of it is fueled
internationally through proxy by neighboring countries, which exacerbates already existing civil and international tensions.

More attention has been focused on recent months on the suspected alliance between the Eritrean government and Somalia’s more militant contingent. Much of it is rooted in Eritrea’s drawn-out and bloody relationship with Ethiopia, whom it accuses of violently imposing its imperialistic agenda on minorities within and outside its borders. As part of an ongoing proxy war against Zenawi’s regime, Eritrea has been mobilising the resources of other groups in East Africa, including those in Somalia and among minority groups within Ethiopia. (Fry, 2011)

It is through the sense of inclusion and transparency that a peace process between Horn countries can be achieved and implemented in the years to come. Through the identification and acknowledgement of many unresolved issues of Horn states, we can began to delve into the many crises of the Somali state that have been affected by the lack of peace and relations between countries in the Horn of Africa. 

Final Thoughts and Recommendations for Operation Lindi Nchi and the Horn of Africa

As we can see, the issues of Somalia are deeply rooted and have a rich historical context. It is through the understanding of Somalia’s history, and the history of the region that we can begin to delve into long-term solutions to address them. With an understanding of the ethical frameworks to address the ethical dilemmas of intervention and an understanding of the nature of Somalia’s issues, it is
my opinion that the intervention led by the Kenyan government was indeed moral, in accordance with the widely accepted international norm of just war theory.

Though moral within the confines of just war theory, it is still important to note that many opposing views do not view the intervention as moral and consider it as an inappropriate overreach of government sovereignty or they may comprehend it to be immoral due to the inevitable violence and harm that it has caused. Even though moral through the lens of just war theory, it is still quite early to measure the outcome of the just post bellum effort to give a full analysis on whether the intervention as a whole is moral, I do believe that the intervention could be a step in the right direction for both Kenya and Somalia as well as the entire horn of Africa. Given the information on hand and the nature of the conflict, I have several suggestions for paving a way forward for peace and stability in Somalia and the rest of the Horn:

1. Kenya Will Need to Emphasize Jus Post Bellum in Operation Lindi Nchi

As we have seen in previous interventions held by the US and UN, the strategy for post-intervention can be just as, if not more crucial than conducting the intervention itself. In the case of Somalia, there have been many interventions sponsored by regional and international stakeholders. For the Kenyan and any other intervention to be successful in Somalia, there must be a heavy emphasis placed on the restoration of order after the intervention. If not, there is a tendency for things to regress or worsen. This will be the final, ultimate test of the success of Operation Lindi Nchi.

2. Facilitation of Internal Peace and Reconciliation

As discussed throughout this paper, clan divides and factions have been a part of Somalia’s past and continue to be a part of Somalia’s present. If it continues to be a part of Somalia’s future, it can serve as a destructive force. With the listing of local
leaders and representation from all groups and clans, a thorough peace and reconciliation process must be launched. There is significant history and a past full of distrust and competition that is entrenched in Somalia’s culture and society. The notion of “othering” is persistent in Somalia and it will need a solid restructuring and open dialogue to facilitate a more inclusive environment that replaces the notion of “me versus you” and “them”. Moving forward, it will be essential for Somalia to take steps to address its internal factions and to build a whole Somalia; one that is inclusive of everyone and that does not rely on clan divides and factions.

3. Facilitation of External Peace and Reconciliation

While Somalis may be to blame for some of the internal struggles, there is no doubt that its neighboring countries have also played a role in the sustained conflict in Somalia. With different countries hosting their adversaries’ insurgencies, it is impossible to be rid of extremism, destructive rebel groups, anarchy and instability. All countries in the region will need to commit to not supporting disruptive insurgencies such as the al-Shabaab in Somalia. If Somalia is trying its best to promote peace and stability, its neighbors should do the same. If not, Somalia will continue to circle around instability. The international community can also play a role in enforcing this notion, as the support of terrorist groups is in violation of UN law. The international community should hold countries accountable for hosting or supporting terrorist groups and insurgencies as they not only destroy prospects for regional security but also destroy prospects for international peace and security as well.

4. The Kenyans Must Utilize Innovative Diplomatic Tools

As aforementioned, the role of non-state actors in Somalia is significant because the government has been more or less absent in the last several decades. Thus, the Kenyans will need to use non-traditional, diplomatic tools such as faith-based diplomacy to engage stakeholders, such as the al-Shabab and facilitating conversation with clan groups and leaders. The Somalis have grown accustomed to the absence of government and centralized power. The Kenyans must recognize and understand that this is the reality of the Somali society, and realize that engaging all stakeholders (including non-traditional actors), will be the key to restoring jus post bellum in Somalia.
5. Kenya Should Engage the Somali Diaspora and Somali-Kenyans

As mentioned, the Somali-Kenyan population is significant, and they will be a key audience during the intervention. Many Somali-Kenyans may reside in Kenya, but pledge a special allegiance to Somalia. Kenya must realize that its actions in Somalia are going to be closely monitored and critiqued. To maintain peace and stability in its own borders, Kenya must be sure to take heed to the Somali-Kenyan population and closely monitor any reports of xenophobia or clashes between Somali-Kenyans and other groups in Kenya.

In addition, as remittances play a key role in the Somali economy, Kenyans should play close attention to remittances and ensure that monies are not being used to support the al-Shabaab and other extremist groups, that could destroy jus in bello and just post bellum efforts.

6. The Kenyans Should Take a Moment to Look Back

The failed UN/US intervention offers an exemplary case study about what can go wrong in an intervention. The Kenyans should study the failures of the United Nations and the United States, and avoid making similar mistakes.

7. The US and Kenya Will Have to Tread Carefully

As discussed in previous chapters, perception is significant in Somali culture and identity. We know that previous interventions failed because of it. As we have seen in previous circumstances, Somalis do not tend to gravitate towards foreign intruders, and are very keen on defending their independence. The Kenyans will need to adopt a way of incorporating Somalia organically into the intervention and the jus post bellum portion. This will likely prove to be challenging, but it essential in obtaining Somali approval and peace in the long-term. Because the US is assisting Kenyan efforts, it will be important for both the US and Kenya not to appear that they are simply intruding for the sake of their own interests or desires, but for the sake and interests of Somalis. The US and Kenya will fare better if they are able to lead the dialogue surrounding this possible perception; especially before the al-Shabaab and other extremist groups are able to influence Somalis views. The intervention has the vulnerability of becoming a politicized issue by the Al-Shabaab that is used to recruit and garner financial and political support. It is absolutely crucial for Kenya and the US to undermine this notion by promoting local, native Somalis to be the face of the new Somalia, creating the notion that Somalis are solving Somali, local issues.
This paper has addressed some of the moral and ethical dilemmas facing humanitarian intervention, and the intervention led by Kenya in 2011. As demonstrated, there are many moral and ethical questions that arise from such interventions, and the decision to intervene is not one that should be taken casually.

While it was ethical to intervene through the perspective of just war theory, there are competing arguments that interventions are never morally justified. This paper only examined the moral argument surrounding Kenya’s decision to intervene; not the jus in bello or jus post bello aspect of the intervention. As time elapses, the world will have a better understanding about the jus in bello and jus post bello successes or failures. In the meantime, Kenya hopes for a successful intervention that will give Somalia the push to move in the right direction and rid itself of the abysmal reality that has prevailed for the last several decades.

The true test will rest in Kenya’s ability to learn from the mistakes and failures of the previous interventions, take heed of the importance and nuances of Somali culture and history, and incorporate these factors into an organic, Somalia-inspired peace process leading to a reconstructed Somalia built on the principles of inclusion, peace and stability.

If successful, Kenya will have achieved what has been seemingly impossible. As the world observes, the Kenyan intervention is setting precedent and paving the
way for the future of humanitarian interventions in conflict-ridden countries, such as Somalia.
REFERENCE LIST


