1990

Congress Makes U.S. Foreign Policy; Somalia: A Case Study

Sam Gehdenson

United States House of Representatives

Follow this and additional works at: https://digitalcommons.wcl.american.edu/auilr

Part of the International Law Commons

Recommended Citation

Available at: https://digitalcommons.wcl.american.edu/auilr/vol5/iss4/2

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.
CONGRESS MAKES U.S. FOREIGN POLICY
SOMALIA: A CASE STUDY

Congressman Sam Gejdenson*

INTRODUCTION

Ironically, in a time of scarce resources to solve problems either at home or abroad, neither the Executive nor Congress have found it easy to reassess and reduce foreign aid as part of a systematic process of integrating human rights concerns into United States foreign policy. When, in the case of an ally, human rights abuses escalate and political and economic conditions deteriorate into anarchy, the U.S. often continues to operate on a business-as-usual schedule, often to the bitter end of a long and painful regime.

The impetus for policy change frequently emanates from Congress.

* Sam Gejdenson (D-CT) is the Chairman of the Subcommittee on International Economic Policy and Trade, House Committee on Foreign Affairs of the United States House of Representatives. I wish to acknowledge the invaluable contribution of Helene Kaufman, without whose assistance and insights this article could not have been written.

1. See LAWYER’S COMMITTEE FOR HUMAN RIGHTS, HUMAN RIGHTS AND U.S. FOREIGN POLICY REPORT AND RECOMMENDATIONS 11 (1988) [hereinafter LAWYER’S COMMITTEE FOR HUMAN RIGHTS REPORT] (describing legislation which bars United States security assistance to governments engaging in a “consistent pattern of gross violations of internationally recognized human rights” unless the Executive cites “extraordinary circumstances” to justify assistance, “significant improvements” in the country’s behavior, and that refusal would adversely affect United States foreign policy); see also id. at 12 (stating that Congress generally hesitates to review funding legislation that continues to provide aid to governments known to be engaged in human rights violations); see also id. at 19 (discussing the minimal impact of legislative restrictions on aid to countries where human rights violations occur. See generally Sec. of State & Sec. of Treasury, Eleventh Annual Report Submitted to Congress in Response to Title VII—Human Rights—of the International Financial Institutions Act (Public Law 950118, as amended) (reviewing procedures that the United States follows when it provides aid to countries with records of human rights violations).
One example is the U.S. relationship with Somalia, where Congress succeeded in effecting a change in U.S. foreign policy, despite initial opposition by the Executive Branch. By blocking economic aid to Somalia and by forcing the Executive Branch to acknowledge the tragic human rights situation there, Congress successfully persuaded the Executive Branch to integrate human rights concerns into the policy process, reassess U.S. foreign policy toward a particular country, and scale back resources to a failing dictator.

I. BACKGROUND

Somalia was created when the British Somaliland Protectorate and the United Nations Trusteeship territory of Somalia became independent and merged on July 1, 1960. Somalia is located on the Horn of Africa, bordering Ethiopia to the East and South. One of the least developed countries in the world, Somalia has a per capita annual income of U.S. $280. Some seventy-five percent of the country’s approximately 5.8 million people are pastoral nomads. The majority of the population of Somalia is divided into four main clans: the Darod, Hawiye, Isaak, and Dir.

General Siad Barre seized power in a bloodless coup in 1969 and proceeded to replace the civilian government with a “scientific socialist state.” Barre suspended the constitution, dismantled the parliament and the supreme court, and outlawed political parties. The new government established a close relationship with the Soviet Union and viewed the United States as an imperialist enemy. Somalia maintained friendly relations with the Soviet Union for several years, until Ethiopia, with Soviet assistance, defeated Somalia in the Ogaden War.

The Ogaden region of Ethiopia was, and continues to be, the subject

2. AMNESTY INTERNATIONAL, SOMALIA, A LONG-TERM HUMAN RIGHTS CRISIS 4 (1988) [hereinafter SOMALIA HUMAN RIGHTS CRISIS].
3. Id.
5. SOMALIA HUMAN RIGHTS CRISIS, supra note 2, at 4-5.
7. Id. at 129.
8. Id. at 130.
of intense hostilities between Ethiopia and Somalia. The war with Ethiopia originated from the long-held desire of Somalis to reunite the historic territory of the Somali people. Fighting broke out in 1964 between the two countries, with Ethiopia supported by Kenya, and Somalia supported by the Soviet Union. In 1977, however, the Soviet Union reversed its alliance with Somalia. In March 1978, the Ethiopians, supplied and assisted by the Soviet Union and Cuba, defeated Somalia.

The United States has, since 1978, become Somalia's principal ally. The United States considers Somalia to be of strategic importance, in part, to its proximity to the Persian Gulf and its air and naval facilities at the Port of Berbera. The Soviet-built port and air facilities at Berbera and the capital of Mogadishu are also considered critical, especially as forward and rear deployment areas for operations in the Persian Gulf and the Straits of Hormuz.

Under the leadership of General Barre Somalia has developed one of the worst human rights records in the world. Additionally, the disaster of the Ogaden War exacerbated clan rivalries. While the Barre government crushed a significant coup attempt in 1978, opposition groups have continued to fight against the regime and today represent a serious and growing challenge to General Barre. Given the relentless and
ever-increasing litany of human rights abuses and General Barre's alienation from the majority of the populace, most analysts believe that his regime will soon fall.\textsuperscript{21}

There are many causes for the chaos and anarchy that now envelop Somalia. To understand the problems plaguing that country today it is first necessary to understand the impact of Somali nationalism, the radical shifts in superpower politics on the Horn of Africa, and the persistent pattern of gross human rights violations that have characterized the Barre regime over the last twenty years.\textsuperscript{22} These elements contributed both to the United States' development of friendly relations with Somalia, and the later efforts to withdraw U.S. support.

A. SOMALI NATIONALISM

Historic Somalia was divided by European colonizers into five territories: British and Italian Somaliland, Kenya, Djibouti, and part of Ethiopia.\textsuperscript{23} Appeals to nationalism brought about the events that led to independence, and the continuing desire to reunite all the peoples of historic Somalia.\textsuperscript{24} Most notably, Somali independence heightened the nationalistic fervor for claims to the Ogaden region, and led to the con-

\textsuperscript{21} See \textit{INTERNATIONAL SECURITY COUNCIL, A STRATEGIC SURVEY}, supra note 9, at 18 (noting that the SSDF and SNM opposition to the Barre government originated in conflicts arising from clan rivalries).

\textsuperscript{22} See \textit{INTERNATIONAL SECURITY COUNCIL, A STRATEGIC SURVEY}, supra note 9, at 19 (suggesting that a change in the Somalian government is imminent); Kaplan, \textit{The Horn: No Dilemma in a U.S. Blast at Somali Ruler}, Wall St. J., Oct. 23, 1989, at A15 (stating that the Barre regime is disintegrating quickly); Feldman, Somalia's U.S.-Backed Regime is Weakening, Defector Says, Christian Sci. Monitor, Apr. 4, 1989, at 7 (quoting a Somali defector who suggested that a military coup was not far off); See also \textit{To Save Somalia}, The Times (London), Aug. 18, 1989, at 11 (noting that the majority of Somalis are against Barre and that the only people in Barre's confidence are his family members who hold the key governmental positions); Perlez, \textit{Report for U.S. Says Somali Army Killed 5,000 Unarmed Civilians}, N.Y. Times, Sep. 9, 1989, at 1, 5 (quoting a State Department official who described Somalia as in "a state of disintegration" and further asserted that the government had lost much if its influence over the country).

\textsuperscript{23} See infra notes 36-73 and accompanying text (discussing Somalia's human rights record). See \textit{generally SOMALIA HUMAN RIGHTS CRISIS}, supra note 2 (detailing Somalia's violations of human rights and presenting evidence about the Somalian government's brutal treatment and execution of political prisoners and its inequitable laws governing the detention and trial of political prisoners); \textit{BUREAU FOR REFUGEE PROGRAMS, WHY SOMALIS FLEE} (1989) [hereinafter \textit{WHY SOMALIS FLEE}] (presenting Somali refugee accounts of the Somalian government's treatment of citizens, including descriptions of brutal torture, execution, rape, and other acts of violence).

\textsuperscript{24} Id.
flicts with Ethiopia in an effort to repatriate the nearly two million Somali inhabitants of that region. The Somali war on Ethiopia led to a break up of the Somalia-Soviet alliance and paved the way for the United States to play a greater role in political developments on the Horn of Africa.

B. SUPERPOWER POLITICS IN AFRICA

After the break between Somalia and the Soviet Union, the United States forged an alliance with Somalia in an attempt to counterbalance the growing Soviet presence in other areas of the Horn. Ironically, the United States-Somalia relationship started under the tutelage of the Carter presidency, an administration heralded for its concern for human rights. The United States Rapid Deployment Force was formed at that time and resulted in Somalia's elevation to a strategic ally. The importance of an American presence in the Horn of Africa served to justify the administration's involvement with Somalia, despite Carter's hesitance to identify with Barre's human rights policies. It was not until the Reagan Administration, however, that U.S.-Somali relations became significant. Once again, the U.S. stressed the Cuban threat as the justification for its backing of the Barre regime.

U.S. academic experts have raised fundamental questions about the necessity of maintaining access to the Berbera naval and air facilities in northern Somalia. Originally acquired in response to the Soviet inva-

25. Id.
26. See Rosati & Schraeder, supra note 18, at 3-5 (providing a detailed account of American strategic interests and military facilities in the Horn of Africa). The authors state that the United States has three foreign policy goals in Somalia: containing Soviet-Cuban advances by supporting United States allies in the region; acquiring military outposts to strengthen its presence in the Indian Ocean; and promoting private enterprise and capitalist development. Id.
27. Keller, supra note 6, at 130.
28. Id.
29. Laitin, supra note 17, at 206.
30. Id. at 206-07; see also Campbell, Libya, Mercenaries Aiding U.S.-Supported Somalia, Atlanta J. & Constitution, Oct. 6, 1988, at 1A, 4A (noting that the Reagan Administration wanted to continue its presence in Somalia in 1988 and that the United States' primary interest there was the "strategic naval facility at Berbera").
31. See Summary: Congressional Roundtable Discussion on Reassessing United States Policy Toward Somalia, Before the Comm. on Foreign Affairs, 100th Cong., 2d Sess. 1 (1988) [hereinafter Roundtable Discussion] (noting a United States official's statement that the fighting in Somalia reduced the significance of United States military access at Berbera). At the same time Somalia has turned to other countries for military assistance. See Greenfield, Barre's Unholy Alliances, AFR. REP., Mar.-Apr. 1989, at 65, 67-68 (documenting President Siad Barre's efforts to obtain military support from Libya, South Africa, Egypt, and the role of white Rhodesian mercenaries in the civil war).
sion of Afghanistan, the eruption of the Iran-Iraq conflict, and the per-
ceived Soviet expansion in the northwest Indian Ocean, Berbera’s cur-
rent strategic importance has drastically diminished. The cooling of
tensions on the Horn, coupled with a shift away from rigid anti-western
ideology in South Yemen and Ethiopia, help assure the U.S. of both
naval and air access to bases that permit the smooth operation of the
U.S. Central Command (the Rapid Deployment Force). As one au-
thor suggests, the U.S. has an opportunity to maximize its position on
the Horn of Africa because of the drastically diminishing Soviet pres-
ence in Ethiopia and should, consequently, sever its connection with the
notorious Barre regime.

C. HUMAN RIGHTS

For years, Somalia has been well known for persistent and gross
human rights abuses. Documented accounts include attacks by the gov-
ernment on innocent refugee women and children. The State Depart-
ment has received frequent reports of such human rights abuses by So-
mali police as arbitrary arrest and detention without trial, and
summary trial by an untrained court. According to the State Depart-

32. See Keller, supra note 6, at 132 (arguing that the facility at Berbera never
became significant). The facility has less than twelve employees and serves mainly as a
storage facility. Id. United States officials refer to the base only as a “contingency”
facility. Id.

33. See Kaplan, supra note 21, at A15 (pointing out that the Soviet-backed
Mengistu regime in Ethiopia began to look to the United States for aid as its position
weakened); see also Perlez, Ethiopia’s President Looks Forward to Better U.S. Rela-
tions, N.Y. Times, Nov. 28, 1988, at A1 (quoting Ethiopian president Mengistu Haile
who said he looked forward to improved relations between the United States and Ethio-
pia during the Bush administration).

34. Kaplan, supra note 21, at A15. See also Bukalov, Somalia: The Heirs of Punt,
NEW TIMES (Moscow), Feb. 28-Mar. 6, 1989, at 16 (quoting Ahmed Mohamed Adan,
the Secretary of the Somali Ministry of Foreign Affairs, who said that “Soviet-Somali
relations are still far from exhausted”).

35. See, e.g., WHY SOMALIS FLEE, supra note 22, at 21 (reporting that women and
children comprised 41% of the victims of 26 Somali army attacks on civilian
villages).

1A (discussing Deputy Assistant Secretary of State for Refugee Assistance Kenneth
Bleakley’s reports of civilian bombings in Somalia). Colin Campbell of the Atlanta
Journal & Constitution has written several articles detailing the Somali government’s disregard for human rights. See Campbell, supra note 31, at 1A (noting political
instability in Somalia, shipments of weapons to the Somali government, and re-
porting the Somali government’s murder and other abusive tactics); see also Campbell, Somalia: An Old Story for U.S., Atlanta J. & Constitution, Oct. 22, 1988,
at 1A (describing the Barre regime, detailing an interview with Siad Barre, and dis-
cussing the reports of organizations about the Somali government’s human rights
ment’s 1987 report on human rights practices, recurring credible reports “indicate that methods of torture include submersion in water, electric shock, placing prisoners in contorted positions for extended periods, severe beating[s], wounding with knives, and rape.” Moreover, the government also severely constricts civil liberties.

Other organizations, such as the Human Rights Watch and the Lawyers Committee for Human Rights, are more vehement in their criticism of the regime’s dismal human rights record. In a joint critique of the above State Department document, they report that a pro-government bias leads the State Department to distort facts and to omit a discussion of vital issues.

While human rights groups report frequent and continuing human rights abuses, the government of Somalia continues to deny the litany of documented reports of brutal human rights violations. Mahomed A. Mahomed, speaking for the Somali Embassy in the United States, maintains that Somalia has “a good human rights record, which we are very proud of, and invite anyone who wants proof of that to visit Somalia anytime and see for himself.” These protestations are repeatedly countered by human rights groups, such as Amnesty International in its 1988 report.
Amnesty International concluded that violations have persisted since the Barre regime took power, and that human rights abuses have increased in the 1980s. Amnesty International reports cover all aspects of the legal system, documenting a stunning number of arbitrary arrests and detentions as well as the horrendous and systematic torture of political prisoners. Somali Law No. 54 of 1970 prescribes a mandatory death penalty for "exploiting religion, for creating national disunity or subverting or weakening state authority." A special court system, with almost no basic safeguards, hears all security cases. For years, military police tracked and incarcerated potential dissidents and other innocent bystanders, and documented reports exist of physical abuse of those incarcerated.

Human rights conditions deteriorated drastically in May 1988 when a civil conflict erupted. After a rapprochement between Somalia and Ethiopia in the early months of 1988, the Somali National Movement (SNM) was no longer welcomed in Ethiopia. The SNM is closely tied to the northern Isaak clan, which is the largest minority group in Somalia and has faced considerable discrimination by the Somali government for the last two decades. On May 27, 1988, SNM units returned to northern Somalia and stormed the town of Burao, assassinating a local commander and several government officers. The SNM also attacked Hargeisa, Somalia's second largest city, near the end of May 1988.

The government forces responded with savage, indiscriminate slaughter. Hundreds of civilians were killed. Hundreds were jailed, many

rights abuses have taken place in Somalia for over 20 years).

42. Id.
43. Id. at 2-4, 7-12, 33-45.
44. Id. at 23.
45. Id. at 22.
46. Id. at 14-15.
47. WHY SOMALIS FLEE, supra note 22, at 61; see also Reported Massacres and Indiscriminate Killings in Somalia: Hearing Before the Subcomm. on Africa of the Comm. on Foreign Affairs, 100th Cong., 2d Sess. 16 (1988) [hereinafter Hearings] (statement of Aryeh Neier, Vice Chairman, Human Rights Watch) (stating that prisoners were tortured in order to obtain confessions for anti-government activities).
53. Burkhalter, supra note 48, at 23.
without being charged. The rural economy was destroyed as government forces killed livestock, poisoned wells, and engaged in extensive artillery bombardments. Expatriates leaving the area of Hargeisa told of massacres, summary executions, and indiscriminate killings of civilians. The State Department's Bureau of Refugee Programs, contracting a study of human rights issues during this and the subsequent eleven month period, reported that the Somali army engaged in systematic assaults on unarmed civilians in the northern part of the country, leaving more than 5,000 dead. The report, endorsed by the State Department, left no doubt that the Barre regime was using brutal force against unarmed civilian noncombatants in retaliation against the SNM. The report also documented, through interviews with eyewitnesses, government methods of torturing and sometimes killing civilian prisoners.

In early 1989, in response to international pressure, several hundred prisoners were released from jail—including some of the long-term political detainees. By July 1989, however, renewed violence broke out. Troops in the capital fired on demonstrating Muslims protesting the assassination of Bishop Salvatore Colombo, the Vatican's representative in Somalia. At least 450 people were killed, 1,000 injured, and 2,000 arrested in the first few days. On July 16, a group of Isaak men were massacred. The New York Times quoted a State Department official who described Somalia as being in a state of "disintegration." The official reported that the government had lost control of most of the country, that clan rivalry had taken the upper hand, and that

54. WHY SOMALIS FLEE, supra note 22, at 60. See also Henry, A Massacre in Somalia Shifts U.S. Policy, Wash. Post, Feb. 19, 1990, at A21 (stating that thousands were killed in the city of Hargeisa in 1988).
55. Burkhalter, supra note 48, at 23.
56. Id.
57. Id.
58. WHY SOMALIS FLEE, supra note 22, at 61. See also GAO REPORT, supra note 20, at 6-7 (detailing the vast destruction in the city of Hargeisa).
59. WHY SOMALIS FLEE, supra note 22, at 61. The report went on to assert that "the Somali Armed Forces appears to have engaged in a widespread, systematic and extremely violent assault on the unarmed civilian Isaak population . . . when neither resistance to these actions nor danger to the Somali Armed Forces was present". Id. at 60.
60. See Burkhalter, supra note 48, at 23 (giving a concise analysis of how Congress intervened and effectively forced the Somali government to take some limited actions with respect to human rights and the release of some political prisoners).
63. Id.
64. Perlez, supra note 21, at A5.
65. Id.
"[i]t's a situation of everyone for themselves." 66

As a result of the civil war in the north, more than 300,000 Somalis have walked across the border into Ethiopia. 67 One barometer of the seriousness of the plight of the civilians in the north is that they chose to take refuge in Ethiopia, a country racked by its own internal drought and bloodshed. 68 Food, water, shelter, and medicine are all inadequate in the refugee camps run by the United Nations High Commission for Refugees (UNHCR) in this desolate corner of Ethiopia. 69 Even under these harsh conditions, the refugees report that they are unwilling to return to Somalia under current circumstances. 70 Another estimated one million or more people have been reported to have been displaced in Somalia. 71 Reconstruction of the north cannot seriously be contemplated without some form of political settlement.

II. THE U.S. EXECUTIVE'S RESPONSE—BUSINESS AS USUAL

U.S. foreign policy toward Somalia has uniformly ignored the institutionalized nature of human rights violations by the Siad Barre regime. Even with the litany of abuses documented in the north during the civil war in May 1988, 72 the Reagan Administration operated on a program of business as usual. The Administration repeatedly pressed the Congress to release more economic aid in the face of mounting evidence of a persistent pattern of gross human rights violations. For example, at the height of the civil conflict in 1988, the Administration consciously decided to send U.S. rifles and ammunition directly into the north; not surprisingly, they were used by the government against its

66. Id.
67. Id. Statistics on the exact number of Somalis who have become refugees in Ethiopia vary. A conservative estimate is 300,000. See Lembede, supra note 40, at A34 (stating that 400,000 refugees have fled to Ethiopia); ROUNDTABLE DISCUSSION, supra note 31, at 4 (stating that 350,000 Somalis fled from Somalia to Ethiopia); GAO REPORT, supra note 20, at 2 (stating that 350,000 Isakas have fled to Ethiopia while others have fled to other countries); WHY SOMALIS FLEE, supra note 22, at 1 (estimating that 300,000-500,000 refugees have fled to Ethiopia).
68. Perlez, supra note 21, at A5.
69. Statement of Stephen Morrison, Staff Member, Subcommittee on Africa of the House Foreign Affairs Committee (Nov. 1988).
70. WHY SOMALIS FLEE, supra note 22, at 65.
71. Ismail Hurreh, member of the Central Committee of the Somali National Movement, Coalition for Peace in the Horn of Africa Meeting, March 1989. The Government of Somalia reported that there are about one million displaced persons in Somalia, although the composition of the displaced remains unsubstantiated by any fully reliable source.
72. See supra notes 48-66 and accompanying text (describing the war torn north and the abusive policies of the Barre regime).
own citizens. U.S. military communications assistance also proved helpful in boosting Somalia’s combat support in the civil war against the people of the north.

The dramatic deterioration of the political and economic situation in Somalia further undermined human rights practices in Somalia and expanded the affiliation of the victims to other clans beyond the Isaak. The Administration, however, refused to act. In another example, the Administration knowingly continued to permit the Somali armed forces to distribute U.S. food donations with complete disregard for the legal restrictions on providing food to armed refugees. The U.S. responded to the conflict by requesting more bilateral economic aid from Congress, not less. In the multilateral donor community, the Administration encouraged the convocation of a “support group” of international donors to obtain millions in aid to repay the Somali government’s interest arrearages to the International Monetary Fund, thereby sustaining a failing dictator who had alienated his population through indiscriminate slaughter.

Within one week of the July 1989 massacres, the State Department asked for permission from Congress to provide $20 million to the Barre regime. Time and time again, both the Reagan and Bush administrations continued to press for more aid to Somalia. Although the amount of actual aid provided to Siad Barre never reached the levels promised by the Reagan Administration, the amount of aid was ex-

---

73. GAO REPORT, supra note 20, at 7-9.
74. See Campbell, supra note 30, at 4A (describing the assistance provided by United States military personnel to repair Somali government military communications facilities).
75. See Feldman, Somalia’s US-Backed Leader Shaken, Christian Sci. Monitor, June 28, 1989, at 8 (noting that most clans are unhappy with the Barre regime); see also Doing it the Army Way in Africa’s Horn, U.S. NEWS & WORLD REP., July 24, 1989, at 32, 37 (noting that from a regional perspective, reduction in aid and the shift in superpower policies and alliances are causing major political problems for military leaders on the Horn).
76. See U.N. Withholds Aid in Somalia Dispute, N.Y. Times, Jan. 28, 1989, at A4 (noting that the United Nations is withholding food aid from Ethiopian refugees in Somalia because of Somalia’s use of these people for military operations).
77. See INTERFAITH FOUNDATION & INTERFAITH ACTION FOR ECONOMIC JUSTICE, U.S. SECURITY ASSISTANCE TO DEVELOPING COUNTRIES 18, table 6 (1988) [hereinafter INTERFAITH] (establishing that military and economic aid go hand in hand in the allocation of U.S. aid resources).
78. A meeting between House Foreign Affairs congressional staff and Treasury Department officials in August 1989 confirmed that the Administration was still seeking resources to help repay Somalia’s interest arrearages and to meet prior expectations to complement Italian and other donor aid for such purpose.
79. Burkhalter, supra note 48, at 23.
80. See Henry, supra note 54, at A21 (noting that the United States has been the primary supplier of economic and military assistance to Somalia since 1978).
tremely high, relative to other countries—especially for parts of the African continent. Somalia received over 25 percent of all U.S. economic support funds for Africa (excluding Egypt).81 This percentage is even more impressive when one considers that the entire African continent has a population of 630 million people compared to Somalia's estimated population of 5.8 million.82 The Administration justified the high aid levels to Somalia relative to other countries by citing Somalia's strategic geographic placement and the importance of contingency U.S. military facilities there.83

The State Department has almost no institutional mechanisms for integrating human rights concerns into U.S. foreign policy formulation and even fewer means of reassessing and modifying existing U.S. policy when human rights abuses attain crisis proportions. Strengthening executive leadership in human rights is thus more important than implementing bureaucratic or systems improvements. If the Administration places limited emphasis on human rights, no bureaucratic tinkering can remedy the absence of a "kinder, gentler"84 advocate at the top of the

81. See INTERFAITH, supra note 77, at 12 (listing Somalia among the 20 countries that received the most aid in 1988). In general, the United States provides economic support funds to countries that it recognizes as having particular economic, political, or security significance. Id. at 8. Economic support funds are generally provided in the form of cash transfers, import programs, or projects. Id. The United States government provided $25 million in economic support funding to Somalia in 1988. Id. at 120. In contrast, Egypt received $820 million. Id. The United States provides economic support funds to nine African countries. Id. at 140.

82. See SCIENTISTS AND HUMAN RIGHTS, supra note 4 (confirming that Somalia has a population of approximately 5.8 million); See also THE POPULATION INSTITUTE, TOWARD THE 21ST CENTURY 2 (1988) (stating that Africa's 1988 population was 630 million and that it grows 3.1% annually).

83. See Pytte, The Horn of Africa: Congress is Using Aid as a Lever to Protest Rights Abuses, 47 CONG. Q. WEEKLY REP. 1132 (1989) (stating that the Reagan Administration wanted to continue military assistance to Somalia to maintain the United States' position in the Horn of Africa). In comparison, some economists and policy makers argue that the Somali government's economic reform program justifies the high level of aid funding from both bilateral and multilateral sources. See, e.g., AGENCY FOR INTERNATIONAL DEVELOPMENT, SOMALIA PROGRAM APPROVAL DOCUMENT (1988) (stating that the United States Agency for International Development's justification for approving $21 million in aid to Somalia in 1988 was to assist the country in building a resource base to enable it to sustain long-term economic development). Others suggest, however, that United States aid contributes to Somalia's poor economic condition. See Food Aid Undermining Grain Production in Somalia, WORLD BANK NEWS, Mar. 10, 1988, at 3 (suggesting that food aid to Somalia has encouraged Somalia's economic decline by forcing food prices down and giving Somalian farmers little incentive to produce food). The General Accounting Office also criticized the food aid program to Somalia, but said it was unsuccessful because food did not reach intended beneficiaries. GENERAL ACCOUNTING OFFICE, FAMINE IN AFRICA, IMPROVING EMERGENCY FOOD RELIEF PROGRAMS 16 (1986).

government.

When human rights considerations are not integrated into the United States' budget and policy deliberations, policy tends to remain undisturbed—even in the face of dramatic deteriorations in human rights practices. In the case of Somalia, it appears that the Executive Branch had collected information on serious human rights violations by the Somali military but chose to ignore the facts when faced with important budgetary decisions.85

Human rights is the functional responsibility of the Bureau of Human Rights and Humanitarian Affairs (BHRHA).86 The BHRHA produces Annual Country Reports on the human rights situation in foreign countries.87 The BHRHA Annual Country Reports, applauded for their insightful and generally objective country reporting, from the outside appear to have an inadequate impact on integrating human rights concerns into foreign policy and foreign aid determinations. Although the State Department issues the Annual Country Reports, these reports are seldom used in policy deliberations or in resource allocation and other budgeting procedures.88

United States ambassadors sometimes seem to view their role as interpreters and defenders of their host countries. In Somalia, the United States Ambassador maintained the appearance of defending the regime to Congress in the face of accumulating evidence of President Siad Barre's personal knowledge of the massacres.89

candidate George Bush's speech accepting the Republican Party's presidential nomination, in which he stated his desire for "a kinder, gentler nation").

83. See REAGAN'S HUMAN RIGHTS RECORD, supra note 39, at 233 (asserting that the United States delivered military assistance to Somalia when it possessed incontrovertible evidence that the Somali government continued to perpetrate widespread human rights abuses). The Executive Branch has exhibited no intention of linking military and economic determinations to the protection of human rights. Id.

84. See LAWSY COMMITTEE FOR HUMAN RIGHTS REPORT, supra note 1, at 4 (stating that Congress established the Bureau of Human Rights and Humanitarian Affairs (BHRHA) in 1976 to ensure that human rights concerns are treated systematically and analyzing the human rights responsibilities of the Executive Branch and Congress).

85. See id. at 4 (asserting that the BHRHA remains unable to incorporate human rights issues into United States foreign policy and claiming that the BHRHA lacks the institutional structure for consistently addressing human rights issues at a sufficiently high level).

86. See id. at 5-7 (arguing that although the Annual Country Reports expose human rights violations, the State Department fails to formulate country-specific programs for improving human rights).

87. See REAGAN'S HUMAN RIGHTS RECORD, supra note 39, at 238 (noting that United States Ambassador Crigler, who became Ambassador to Somalia in 1987, does not manifest much concern over the Somali human rights situation). The United States Embassy in Somalia does not protect victims of human rights abuses, confront members of the opposition, nor provide the United States with information on the human
The Treasury Department has unequivocally relinquished the human rights function to the State Department, yet it continues to argue for its primary institutional responsibility for World Bank and other international lending functions. The Treasury Department has yet to even seriously question a World Bank loan to Somalia or reassess its justification for disbursing millions of dollars in program lending within one month of the July 1989 massacres. 90

The Defense Department does not seem to distinguish between sending military assistance for legitimate security functions and granting military aid for use against civilian populations. The unclassified General Accounting Office report of U.S. military aid, initiated because of congressional human rights concerns, thoroughly documented the limited importance of human rights in making the decision to ship aid during the civil war. 91 Administration officials do not appear concerned that United States military assistance to Somalia was never intended for the maiming and killing of Somali civilians.

Ironically, the Executive Branch has, by default, relegated the human rights monitoring function to the United States Congress, 92 yet chastises both the House of Representatives and the Senate for micromanagement and unnecessary earmarks. Even in the face of concerted Executive Branch opposition, however, Congress may succeed in formulating a sound, moral, and completely acceptable U.S. foreign policy.

III. THE CONGRESSIONAL ROLE IN U.S. FOREIGN POLICY TOWARD SOMALIA

Given Somalia's remarkable record of human rights abuses, the lack of Executive Branch initiative to limit foreign aid is inexplicable. 93

90. See Burkhalter, supra note 48, at 23 (noting that the World Bank approved a $70 million package in July 1989 and the State Department requested $20 million for Barre's regime).

91. See GAO REPORT, supra note 20 (reporting the results of interviews with Somali refugees in Ethiopia and their accounts of human rights violations during May and June 1988).

92. See LAWYER'S COMMITTEE FOR HUMAN RIGHTS REPORT, supra note 1, at 5 (affirming that the Executive Branch lacks an official mechanism for integrating human rights concerns into its own decision-making process). Since there is no formal structure for addressing human rights concerns within the executive departments, the Executive Branch relies excessively on the BHRHA for the formulation of United States human rights policy). Id.

93. See Rosati & Schraeder, supra note 18, at 2 (commenting that the United States continued to assist the radical governments in power in Nicaragua, the Philippines, and Haiti as a result of the United States' reactive foreign policy and lack of
until Congress began to take an active role in shaping foreign policy toward Somalia did a shift in economic aid practices begin. Congress was successful in changing U.S. aid practices, in part, because determined Congressmen from a variety of Committees became personally involved and fought for the release of accurate and objective information on the intolerable human rights situation in Somalia.

During 1988 and 1989, Congress initiated a series of actions that changed the course of U.S. policy toward Somalia. Many in Congress questioned the Reagan Administration's policy of continuing to provide economic and military aid to Somalia even at the height of the civil conflict in that country. In July 1988, the Africa Subcommittee of the House Committee on Foreign Affairs held a hearing on human rights in Somalia. This was the first in a series of human rights hearings, briefings, conferences, and other congressional actions by members of Committees and Subcommittees on Banking, Appropriations, the Human Rights Caucus, and the Select Committee on Hunger, among others.

In September 1988, in a letter to then Secretary of State George Shultz, a group of Congressmen wrote: "First and foremost, we need a thorough human rights report done by an objective professional, using interviews with the refugees that would provide some indication of the seriousness of the human rights situation in Somalia." The Congressmen recommended that the State Department suspend economic and

---

94. See generally Hearings, supra note 47, (presenting the testimony of representatives from Human Rights Watch, the African Affairs section of the State Department, and a former Agency for International Development contractor in Somalia). Since 1987, Congress has required the Executive Branch to inform the House and Senate Appropriations Committees before disbursing assistance to Somalia. Pytte, supra note 83, at 1133. While concern about the situation in Somalia was evident prior to the hearings themselves, the testimony of the administration and outside experts galvanized opposition to Somali assistance in the House and led to a series of congressional letters to Secretary of State George Shultz and later Secretary of State James Baker. See infra notes 95-96, 113 and accompanying text (discussing the letters sent to Secretaries of State Shultz and Baker). The hearing also generated General Accounting Office reports on Somalia. See GAO REPORT, supra note 20, at 1 (stating that the GAO Report was in response to congressional requests). Nevertheless, the congressional hearing raised more questions than it answered.

95. Letter from Thirty Congressmen to Secretary of State George P. Shultz (Sept. 8, 1988) [hereinafter Congressional Letter] (requesting the State Department to issue a report reevaluating United States foreign policy in Somalia). The letter highlighted the grim human rights abuses by the Somali military, the inadequacy of the care for Somali refugees in Ethiopia, and the use of United States military procurement against the civilian population. Id. at 2. Unfortunately, the State Department did not agree to the recommendations and continued to press for aid. See supra note 79 and accompanying text (presenting State Department requests for more assistance to Somalia in 1989).
military assistance to Somalia until a thorough reassessment of United States foreign policy was completed in light of the alleged human rights abuses.\footnote{96} In November 1988, a congressional seminar was held to reassess United States policy toward Somalia.\footnote{97} During that seminar, over one hundred congressional staff and outside experts, including staff members of the House Foreign Affairs Committee and House Committee on Appropriations, raised further questions about the validity of United States foreign policy on the Horn, particularly in Somalia. They voiced concern that United States strategic interests in Somalia were at risk given the lengthy conflict in the north and the unstable political climate.\footnote{98} Others suggested that our strategic interests needed to be reassessed in view of dramatic transformations in Somalia's military and political conditions.\footnote{99} Participants in the seminar also urged that United States policy should focus on promoting human rights and political stabilization, because these would ultimately further United States strategic interests.\footnote{100} Some argued that strategic interests should include not only access to military facilities, but also political and economic stability.\footnote{101} Finally, others commented that even if the Executive Branch continues to define strategic interests solely in military terms, the value of foreign military facilities is directly linked to a stable political and economic environment.\footnote{102}

During 1988, the House and Senate put a joint moratorium on United States assistance to Somalia.\footnote{103} Subsequently, the House Sub-

\footnotesize{96. See Congressional Letter, \textit{supra} note 95 (advising the State Department to suspend aid to Somalia until it issues a report evaluating human rights abuses and allows international relief agencies to enter Somalia to assist all victims).}

\footnotesize{97. See generally \textit{Roundtable Discussion}, \textit{supra} note 31 (summarizing the congressional conference); see also Gejdenson, Leland, Wolpe Sponsor Nov. 15 Conference on Somalia, News from Sam Gejdenson, Media Advisory (Nov. 10, 1988) (announcing the agenda for the congressional seminar). The Foreign Affairs Committee summary of the Roundtable Discussion includes the names, affiliations, and telephone numbers of the participants. Notably, the State Department and the Department of Defense steadfastly refused to participate in the seminar. J. Kramer, The U.S. in Somalia: Applying the Trickle-Down Theory to Human Rights and Foreign Policy 12 (Dec. 12, 1988) (unpublished paper for Professor D. Abernathy at Stanford University) [hereinafter The Trickle-Down Theory to Human Rights] (stating that no State Department officials attended the congressional seminar). See Congressional Letter, \textit{supra} note 95, at 3 (criticizing United States foreign policy in Somalia for being too ambiguous and in need of reassessment).}

\footnotesize{98. \textit{Id.} at 4.}

\footnotesize{99. \textit{Id.}}

\footnotesize{100. \textit{Id.}}

\footnotesize{101. \textit{Id.}}

\footnotesize{102. \textit{Id.}}

\footnotesize{103. \textit{Roundtable Discussion}, \textit{supra} note 31, at 2; Keller, \textit{supra} note 6, at 127,
committee on Africa presented a compromise on funding that would disburse part of the aid from fiscal year 1987 and withhold the remainder of the funds until the Somali human rights situation improved.\textsuperscript{104} In April 1989, Congress allocated additional fiscal year 1987 funds in response to the release of over two hundred political prisoners in early 1989.\textsuperscript{105} The funds, however, were never sent to Somalia. Additionally, Congress decided to maintain the moratorium on 1988 and 1989 economic and military aid until the human rights situation further improved.\textsuperscript{108} Congress, thus successfully halted the delivery of United States Economic Support Funds to Somalia despite repeated requests from the Executive Branch. Indeed, as late as August 1989, in a meeting with congressional aides, Treasury Department officials were still bemoaning the lack of United States funding to repay the Somali government's interest arrearages to the International Monetary Fund.\textsuperscript{107}

Meetings with Somali officials and the Administration prompted further re-examination of the role of the United States in Somalia's civil conflict. For example, the Somali prime minister visited with Congress and further undermined the Somali government's position by implying to the Congressmen present that his government had not received Libyan arms. In fact, the State Department had already substantiated allegations that Somalia had received arms from Libya.\textsuperscript{109}

\textsuperscript{132} (reporting that Congress began withholding over $55 million in economic aid to Somalia in the summer of 1988); \textit{The Trickle-Down Theory to Human Rights, supra} note 97, at 11 (asserting that the House and Senate withheld approximately $60 million in economic aid to Somalia in 1988).

\textsuperscript{104} \textit{Roundtable Discussion, supra} note 31, at 2; \textit{see also} Lembede, \textit{supra} note 40, at A34 (reporting that the United States delivered $42.5 million in economic aid to Somalia in fiscal year 1988, including $6.5 million in military assistance).

\textsuperscript{105} Pytte, \textit{supra} note 83, at 1133 (reporting that Congress disbursed $15 million of fiscal year 1987 funds because of human rights improvements).

\textsuperscript{106} \textit{Id.} (stating that the House Appropriations Committee decided in April 1989 to continue withholding $36 million in economic assistance from fiscal years 1988 and 1989 in addition to withholding $2.5 million in military funds from fiscal year 1989).

\textsuperscript{107} Meeting of officials of the Treasury Department with congressional staff members from the House Foreign Affairs Committee and the House Banking Committee. Treasury Department officials informed those present that the $15 million "compromise" funding for the IMF interest arrearages had never been paid. These funds were meant to complement the resources the Italian government committed to help the government of Somalia repay its interest arrearages to the IMF. Even if the $15 million had been released, it is unclear how the needed total resources for the IMF interest arrearages would have been paid, since no additional resources would have been available. \textit{See also International Security Council, A Strategic Survey, supra} note 9, at 30 (reporting that Somalia's debt service is over $150 million per year and that Somalia needed approximately $70 million in debt relief per year in 1987 and 1988).

\textsuperscript{108} \textit{See also} \textit{Reagan's Human Rights Record, supra} note 39, at 234 (citing reports that Libya delivered at least two planeloads of weapons to the Somali government in September 1988 and a shipment of lethal nerve gas in October 1988).
Finally, in August 1989, a year after Congress requested a study on the human rights situation in Somalia by an independent consultant, the State Department issued a report synthesizing the results of 252 interviews with Somali refugees. The document confirmed the shocking human rights violations that Amnesty International, Human Rights Watch, and the National Academy of Sciences, among others, had reported. With its endorsement of the report, and faced with mounting evidence of deterioration in the human rights, economic, and political situation, the State Department reversed its former position. It allocated elsewhere the major bilateral economic support funds designated for Somalia, and halted military aid.

In November 1989, all of the eight Foreign Affairs Subcommittee Chairmen, along with thirty-nine other Congressmen, sent a letter to Secretary of State James Baker commending him for his decision to reassess United States policy toward Somalia. The United Nations High Commissioner for Refugees also halted its food aid program for refugees in the northern part of Somalia. The African Development Bank reportedly suspended its program as well. Unfortunately, the World Bank has continued to provide some aid, although after disbursing the first tranche, the second tranche of the major World Bank loan has been on hold. The United States, even under mounting pressure from Congress, has yet to argue for a reexamination of the World Bank...
lending portfolio. United States policy with respect to bilateral and multilateral lending to Somalia appears to have been inconsistent at best, duplicitous at worst.

IV. RECOMMENDATIONS

The process by which human rights concerns are integrated into United States foreign policy within the Executive Branch must be substantially revised. For example, the Inter-Agency Group on Human Rights and Foreign Assistance (Inter-Agency Group) must be revitalized and restructured. For eight years, the Reagan Administration made a mockery of the entire process by rendering the Inter-Agency Group powerless to accomplish its stated mandate. The Inter-Agency Group has no power unless the State Department itself explicitly grants it, and many Agency representatives have ceased to participate entirely. The Inter-Agency Group should publish a “watch list” of countries that the United States considers serious violators of human rights, which would subject those nations to restrictions under the 1975 Harkin Amendment to the Foreign Assistance Act of 1961. The Amendment states that countries that systematically violate human rights may not receive aid unless “such assistance will directly benefit the needy people in such country.” Congress established identical limits on foreign assistance in the Food for Peace Program in 1977 and the Economic Support Funds provision of the Foreign Assistance

116. Meeting with Treasury Department officials, August 1989. In fact, the Administration has indicated that human rights violations need not affect United States policy with respect to multilateral lending that focuses on needy people.

117. See LAWYER'S COMMITTEE FOR HUMAN RIGHTS REPORT, supra note 1, at 5 (noting that the Carter Administration created the Inter-Agency Group to coordinate United States human rights policy among the numerous government departments that administer programs affecting human rights).

118. See id. at 5 (asserting that the Inter-Agency Group lost its effectiveness after President Carter left office).

119. See id. (stipulating that currently only the State and Treasury Departments and the Agency for International Development participate in the Inter-Agency Group, whereas initially the Departments of Defense, Agriculture, Commerce, and Labor and the National Security Council participated in the Group as well). The absence of relevant executive departments and agencies and the junior position of the Executive Branch officials that do participate prevent the Inter-Agency Group from achieving its policy-making objectives. Id.

120. See Foreign Assistance Act, 22 U.S.C. § 2151n(a) (1988) (providing that the United States may not grant aid to countries which consistently violate internationally recognized human rights practices); LAWYER'S COMMITTEE FOR HUMAN RIGHTS REPORT, supra note 1, at 19 (noting that Congress restricted aid to countries engaging in gross human rights violations in the Foreign Assistance Act’s amendment commonly known as the Harkin Amendment).

Act. These limits have been ineffective, however, because the Administration has defined almost every aid project as directly benefiting the needy. If the Executive Branch believes that no countries have a "consistent pattern of gross" human rights violations, it has no basis for halting or even re-examining U.S. policy on bilateral or multilateral aid. It is no accident that the responsibility for human rights has fallen squarely on the Legislative Branch, because the Executive Branch has effectively abrogated its responsibility to make human rights decisions. Insiders suggest that the Bush Administration has no interest in strengthening the human rights interagency process, especially with respect to decisions on U.S. assistance levels.

Everyone argues that foreign aid is scarce; Americans are told there is no money for worthwhile projects at home. Congress has successfully demonstrated to the Administration that aid should be provided only when it can be used responsibly. Somalia is one instance where Congress has exercised moral leadership and protected long-term U.S. interests in the Horn of Africa. Now, Congress and the Administration need to work together to assure that World Bank lending conforms to the same criteria for responsible program spending as U.S. bilateral aid.

The Administration's reluctance to reassess U.S. policy toward Somalia provides a sobering lesson for those concerned about a "kinder, gentler" U.S. foreign policy. Both the interagency human rights review process and the human rights systems within agencies such as the Departments of Commerce and Defense require reinforcement if human rights concerns are to be incorporated into the Executive Branch's foreign policy decision-making.

Congress, unfortunately, with its crowded agenda, can intervene only sporadically to assure that human rights considerations are integrated into U.S. policy. The history of successful Congressional oversight of and impact on U.S. policies toward Haiti and the Philippines attests to the difficulties involved. The complexities of the human rights issues are themselves self-evident. The U.S. foreign policy process within and between the Executive Branch and Congress often confounds and defeats the well-intentioned pragmatist at either end of Pennsylvania Avenue. In the case of Somalia, the Congress, after repeatedly prodding the Executive Branch, helped create a more realistic foreign policy that will further United States regional interests while simultaneously

122. Lawyer's Committee for Human Rights Report, supra note 1, at 19.
maintaining the United States' reputation as a nation capable of assuming a leadership role in promoting human rights.