

No More Hills Ahead?

The Sudan's Tortuous Ascent to Heights of Peace

Emeric Rogier

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Foreword

This is the first issue in the Clingendael Security Papers, a series of occasional papers published by the Netherlands Institute of International Relations *Clingendael*. The Security Papers' series serves as an outlet of the *Clingendael Security and Conflict Programme* (CSCP).

This publication, 'No More Hills Ahead? The Sudan's Tortuous Ascent to Heights of Peace', launches the Security Papers' Series by analysing the peace process of one of Africa's longest lasting conflicts. The paper is part of a series of reports from a larger project on Resolving Intractable Conflicts in Africa, executed by the Conflict Research Unit at the request of the Netherlands Ministry of Foreign Affairs. The author, Emeric Rogier, provides a thorough analysis of the peace process and the resulting agreement. He concludes that the peace agreement provides no final settlement for the Sudan's conflicts but merely opens a highly fluid transition period with a greatly uncertain outcome. A peaceful and united Sudan will require moving beyond the north-south paradigm, and broadening the scope and support base of the agreement in order to make it really comprehensive. This will require sustained, well-thought, and well-coordinated international engagement.

The research activities of the CSCP focus on a broad variety of issues related to international security such as strategic and defence studies, terrorism and new security threats, national and international security policies, and international conflict management and resolution. The *Conflict Research Unit* (CRU) of the CSCP runs special projects with a focus on issues such as

stability assessments, reform of the security sector, post-conflict reconstruction and democracy assistance. The geographical focus of this research is mainly on Africa. Clients of the CSCP and its specialized unit and centre are ministries of interior, defence and foreign affairs (both in the Netherlands and abroad), NGOs and other international organisations. In addition to research, the CSCP and CRU also provide customised training programmes for professionals in the field of security management and policy, as well as development cooperation. In a joint venture with the Netherlands Organization for Applied Scientific Research (TNO), the CSCP also harbours the *Clingendael Centre for Strategic Studies* (CCSS). The CCSS aims to provide strategic analyses combined with cutting-edge technological expertise in the field of international security. Its work focuses on concept and doctrine development, defence and security technology, and operations research and simulation games.

Copies of the paper can be ordered from cscp@clingendael.nl

Prof. Dr. Rob de Wijk

Director, Clingendael Security and Conflict Programme

Glossary of Abbreviations

AJMC	Area Joint Military Committee
AMIS	African Union Mission in Sudan
AU	African Union
CJMC	Ceasefire Joint Military Committee
CPA	Comprehensive Peace Agreement
CPC	Ceasefire Political Commission
CPMT	Civilian Protection Monitoring Team
CRU	Conflict Research Unit
CSIS	Center for Strategic and International Studies
DDR	Disarmament, Demobilisation, Reintegration
DoP	Declaration of Principles
DRC	Democratic Republic of the Congo
DUP	Democratic Unionist Party
FFAMC	Fiscal and Financial Allocation and Monitoring Commission
FoNM	Friends of the Nuba Mountains
GNU	Government of National Unity
GoS	Government of Sudan
GoSS	Government of Southern Sudan
HIPC	Heavily Indebted Poor Countries
HRW	Human Rights Watch
ICC	International Criminal Court
ICG	International Crisis Group
IGAD	Intergovernmental Authority for Development

IMF	International Monetary Fund
IPF	IGAD Partners Forum
JDB	Joint Defence Board
JEM	Justice and Equality Movement
JIU	Joint Integrated Unit
JLEI	Joint Libyan-Egyptian Initiative
JMM/JMC	Joint Monitoring Mission / Joint Military Commission
LRA	Lord's Resistance Army
MDTF	Multi-Donor Trust Fund
NCP	National Congress Party
NDA	National Democratic Alliance
NIF	National Islamic Front
NMRD	National Movement for Reform and Development
NPC	National Petroleum Commission
NRDF	National Reconstruction and Development Fund
NRF	National Revenue Fund
OAG	Other Armed Group
PDF	Popular Defence Forces
PNC	Popular National Congress
SAF	Sudanese Armed Forces
SANU	Sudan African Nationalist Union
SLM/A	Sudan Liberation Movement/Army
SPA	Sudan Peace Act
SPDF	Sudan People's Defence Force
SPLM/A	Sudan People's Liberation Movement/Army
SPLA-United	Sudan People's Liberation Army-United
SRSG	Special Representative of the Secretary General
SSDF	South Sudan Defence Forces
SSIM/A	Southern Sudan Independence Movement/Army
SSLM	South Sudan Liberation Movement
SSRDF	South Sudan Reconstruction and Development Fund
UN	United Nations
UNDP	United Nations Development Programme
UNMIS	United Nations Mission in Sudan
USAID	United States Agency for International Development
VMT	Verification Monitoring Team

Executive Summary

The present study was undertaken in the framework of the research project ‘Resolving Intractable Conflicts in Africa’, which focuses on international conflict management and resolution strategies. This paper provides a thorough narrative and analysis of the Sudan peace process – or the Sudan’s ‘tortuous ascent to heights of peace’ to use John Garang’s words – from the failed peace attempts of the early 1990s to the signing of the Comprehensive Peace Agreement (CPA) in January 2005.

The Sudan has been at war with itself for almost 40 of its 50 years of existence. The first chapter provides a concise conflict history, from the eruption of the Sudan’s first war on the eve of independence to the failure of the 1972 Addis Ababa Agreement and the intensification of the second war after the 1989 NIF *coup*.

Although the Sudan is the largest African country and one of the most heterogeneous in the continent, it is argued that the civil wars were not rooted in population diversity but in exclusive governance. The Sudan’s first and second wars are therefore similar in some of their causes, in particular the Sudanese government’s failure to honour its commitment on southern autonomy. While in 1956 southerners were not granted the special arrangements that they had been promised, in 1983 they had removed from them what they had been conceded eleven years earlier under the Addis Ababa Agreement. Thus, power-sharing issues were central to both wars.

However, the second war differed from the first and appeared even more intractable in several respects. The seizure of power in Khartoum by radical

Islamists in 1989 resulted in further polarization and complexity by prompting 'cross-border' domestic alliances and intensifying internationalization. While the first war definitely was a north-south conflict, the second did not remain confined to the limits of the south but gradually spilled over into other parts of the Sudan, thereby suggesting that the conflict should be viewed as between the centre and the periphery. Finally, the growing importance of oil as a means and an end for waging war added to the apparent intractability of the conflict.

The second chapter examines the various peace initiatives on the Sudan, focusing first on the failed regional attempts of the 1990s and examining then the post-'9/11' developments leading to the signing of the Machakos Protocol in 2002. It concludes that both the IGAD and the Libyan-Egyptian initiatives were driven by the mediators' national interests. As a consequence, the proposals did not result from the search for a compromise solution but merely reflected their respective sponsors' bias towards either party. Not only were these proposals then unlikely to be mutually agreed upon – since one side had alternatively nothing to gain – but by engaging in competing peace initiatives, the mediating countries from the region may actually have exacerbated the conflict.

In the aftermath of 11 September 2001, domestic and international factors and calculations converged to create a context that was more conducive to ending the Sudan's second war. Much isolated and loathed a dozen years after the military *coup*, and driven by self-preservation, the ruling Islamist party perceived a peace agreement with the SPLM/A as a means to rejuvenate itself, stay in power and quietly benefit from increasing oil revenues. Faced with its own limitations, John Garang's SPLM/A no longer hoped for a military victory, but wished to capitalize on its increased political weight to negotiate a favourable peace deal. Most importantly, '9/11' events contributed to creating a new bilateral dynamic between Khartoum and Washington. Holding the key to the Sudan's international reintegration, the Bush administration used its considerable leverage on the Sudanese government, not only with respect to counter-terrorism issues but also to bring the civil war to an end. Interestingly, the United States further played the multilateral card and was instrumental in stimulating involvement from other countries. A key difference, and a decisive factor of success, between the peace attempts of the 1990s and the efforts launched from summer 2001 onwards therefore lay in the significantly higher level of international involvement.

The third chapter is devoted to the 'Naivasha process' – that is, the 30-month negotiation cycle leading from the Machakos Protocol to the signing of the Comprehensive Peace Agreement. It seeks to evaluate the effectiveness of a range of on-site monitoring mechanisms set up in the course of the process, as well as the impact of various political initiatives taken abroad to bring

pressure to bear on the Sudanese government and to curb oil exploitation, namely the Sudan Peace Act and the campaign for capital market sanctions. Although none of these initiatives, examined separately, seemed to have made a crucial contribution to the peace process, overall, sustained international engagement and scrutiny undoubtedly helped the process of negotiations.

Far from being a formality, the post-Machakos negotiations went through constant ups and downs, however. This chapter also reports on the conduct, dynamics and phases of the negotiations, and analyses the growing impact of the crisis in Darfur, which erupted in 2003. The GoS played on both grounds simultaneously, using the IGAD process as a cover for its repressive policy in Darfur. In so doing, Khartoum managed to create great confusion within the international community, which failed to reject the terms of the blackmail. As explained in detail, international actors focused alternatively on Naivasha and Darfur in a largely inconsistent and ineffective manner, which reflected the Sudan's highly contrasted and disconcerting situation, but also inherent tensions and contradictions of the international system.

After 30 months of discussions, the government of the Sudan and the SPLM/A nevertheless managed to reach agreement on most key issues at the core of the so-called north-south conflict. The fourth chapter provides a detailed commentary of the CPA, and the resulting interim arrangements in the field of governance (including in the Three Areas), security and wealth-sharing. This commentary is intended to explain the parties' initial positions, the terms of the solution agreed upon, as well as the potential implementation hurdles that may already be foreseen.

The CPA undoubtedly represents a historic achievement, in that it brings an end to Africa's longest running conflict, provides for a fair settlement of the southern conflict by addressing legitimate grievances of the southern Sudanese, and might trigger a virtuous dynamic through fostering political, and therefore policy changes at the centre. For the time being, however, the CPA fails to be 'comprehensive' in its representation, since it is restricted to two parties that have granted themselves the lion's share of power until at least general elections are held, or in its substance, since it addresses unconvincingly the Three Areas and overlooks the conflicts in Darfur and eastern Sudan. In fact, the CPA provides no final settlement for the Sudan's conflicts but merely opens a highly fluid transition period with a greatly uncertain outcome. Building a peaceful and united Sudan will require moving beyond the north-south paradigm, and broadening the scope and support base of the agreement in order to make it really comprehensive. Arguably, these objectives cannot be reached without sustained, well-thought, and well-coordinated international engagement.



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Introduction

*We have reached the crest of the last hill
in our tortuous ascent to heights of peace...
There are no more hills ahead of us:
I believe the remaining is flat ground.*

On 26 May 2004 in Naivasha, Kenya, John Garang de Mabior, Chairman of the Sudan People's Liberation Movement/Army (SPLM/A), welcomed with these words the conclusion of a political settlement to the war that his movement and the government of the Sudan (GoS) had waged for 21 years.¹ It is usually estimated that the Sudan's war killed at least two million people, uprooted four million more (the largest internally displaced population in the world) and forced more than half a million others to flee to neighbouring countries.² Particularly vicious and deadly, this protracted war, often referred to as Africa's longest running conflict, also seemed never-ending, partly because it was rooted in the dual – in fact, plural – identity of Africa's largest country. Making peace in the Sudan was seen as an impossible job, at best, and many who tried failed badly.

This paper provides a thorough narrative and analysis of the Sudanese peace process – or the Sudan's 'tortuous ascent to heights of peace', to use Garang's words – from the failed peace attempts of the early 1990s to the

1) Quoted in IRIN, 'SUDAN: Government, Rebels Sign Landmark Protocols', 27 May 2004.
2) Notwithstanding the human cost of the conflict in Darfur.

signing of the Comprehensive Peace Agreement (CPA) in January 2005. It builds partly on interviews held in Khartoum, Nairobi and Naivasha in October 2003 and October 2004.³

This study was undertaken in the framework of the research project ‘Resolving Intractable Conflicts in Africa’, which was designed and executed by the author from March 2003 to July 2005 with the support of the Netherlands Ministry for Foreign Affairs. This project focused on international conflict management and resolution strategies, namely the role of external governmental actors – regional and international organizations and individual governments – in the coming about of peace agreements. It is based on a comparative analysis of three cases (the Democratic Republic of the Congo, Sierra Leone and the Sudan) that share key characteristics deemed typical of ‘intractable conflicts’. These are: *i*) the weakness or collapse of the state in conflict; *ii*) the proliferation of warring parties; *iii*) the development of a resource-based war economy; *iv*) the existence of regional linkages; and *v*) apparent resistance to peacemaking efforts.⁴ The ‘intractable conflict project’ aimed to draw policy lessons that are pertinent to the effectiveness of international mediation in African conflicts. For the sake of comparative analysis, each case was studied on the basis of a common methodological framework that outlined a series of analytical steps and research objectives.⁵ The basic idea was to relate the failures of the past to more recent achievements and to analyse the conditions and policies that allowed for progress to be eventually made. This methodology is reflected in the structure of the present report.

The first chapter provides a concise history of the conflict(s), from the eruption of the Sudan’s first war on the eve of independence to the failure of the 1972 Addis Ababa Agreement and the intensification of the second war after the 1989 NIF *coup*. This historical overview seeks to highlight the causes of the conflict, the war-perpetuating factors and key stakeholders, thereby clarifying the conflict environment in which mediators had to operate.

The second chapter examines the various peace initiatives on the Sudan, focusing first on the failed regional attempts of the 1990s and examining then the post-‘9/11’ developments leading to the signing of the Machakos Protocol in 2002. This chapter seeks to explain the ups and downs of the IGAD peace

3) The author is extremely grateful to Dr Domenico Polloni for his insightful remarks on an earlier version of this study. All possible errors of fact or interpretation remain the author’s responsibility.

4) See the final report of the project by Emeric Rogier, *Rethinking Conflict Resolution in Africa: Lessons from the Democratic Republic of the Congo, Sierra Leone and Sudan*, Occasional Paper, Clingendael Institute, The Hague, July 2004, p. 13.

5) The country studies on Sierra Leone and the DRC were published as CRU working papers in July 2003 and September 2004 respectively. Complete references are found in the Bibliography.

initiative in particular, by disentangling the respective impact of contextual factors on the one hand, and of peacemakers' strategies on the other. The assessment includes a review of US policy on Sudan under both the Clinton and Bush administrations.

The third chapter is devoted to the 'Naivasha process' – the 30-month negotiation cycle leading from the Machakos Protocol to the signing of the Comprehensive Peace Agreement. It seeks to evaluate the effectiveness of a range of on-site monitoring mechanisms set up in the course of the process, as well as the impact of various political initiatives from abroad to bring pressure to bear on the Sudanese government and to curb oil exploitation, namely the Sudan Peace Act and the campaign for capital market sanctions. In addition, this chapter reports on the conduct, dynamics and phases of the negotiations, and analyses the growing impact of the crisis in Darfur.

Finally, the fourth chapter provides a detailed commentary of the CPA, and the resulting interim arrangements in the field of governance (including in the Three Areas), security and wealth-sharing. This commentary is intended to explain the initial positions of the parties, the terms of the agreed solution, as well as potential implementation hurdles that may already be foreseen. In particular, the lack of inclusiveness of the misnamed comprehensive peace agreement is discussed in the conclusion.

In sum, this paper provides a first storyline of the Sudanese peace process. On this basis it draws key lessons in the realm of contemporary peacemaking and sheds light on a number of peace implementation challenges that international actors interested in the Sudan will soon face.

Chapter 1

The Sudan: A State of War

The conflict in Sudan is usually portrayed as ‘a civil war between the mainly Muslim north and the animist and Christian south since independence in 1956’.⁶ This is an oversimplified and therefore largely inaccurate description. First, the war in Sudan has not continued unabated since independence, but stopped between 1972 and 1983. Although too short, this peaceful interlude should not be overlooked, as the failure in implementing the Addis Ababa peace agreement triggered the second war and would hang twenty years later over the peace negotiators. Second, while the first war definitely was a north-south conflict, the second war did not pit Muslims against Christians and animists, but more exactly a small ‘Arab’ elite against the rest of the Sudanese population, including Muslim ‘blacks’.⁷ Since the 1989 military *coup* staged by the National Islamic Front, the conflict pitted the Islamist government and a set of southern breakaway factions against a loose alliance of military and political groups representing not only Christians and other southerners, but also ‘Arab’ and ‘black’ Muslims from the north, east and west of the country.

6) http://news.bbc.co.uk/2/hi/middle_east/country_profiles/820864.stm

7) As stressed by Gérard Prunier, ‘the perception that the Sudan is torn between Christians and Muslims is untrue. The real conflict in the Sudan today is not between a Muslim north and a Christian and animist south, but between the approximately 30 per cent of the population who are Arab-identified and everyone else’, in Prunier, ‘The Sudan: A Successfully Failed State’, in Robert I. Rotberg (ed.), *State Failure and State Weakness in a Time of Terror*, World Peace Foundation, Cambridge MA, 2003, p. 110.

Simultaneously, the conflict expanded geographically beyond the strict borders of the south to areas included in the administrative north. Third, neighbouring and other foreign countries have, as it is often the case, been instrumental in fuelling these so-called ‘civil wars’, either by supporting and supplying one of the parties or, remarkably, by promoting competing peace initiatives.

The Sudanese conflict, in a word, is highly complex and this complexity has fuelled various interpretations: a ‘war of visions’ between the riverain north and the south rooted in racism, slave trade, and British ‘Southern policy’, and later spread to other marginalized areas (Francis Deng); a conflict resulting from the economic exploitation of the periphery (including but not limited to the south) by the centre (Niblock); a war over leadership fought since independence by the Sudan’s divided elites and everlasting political figures (Sadiq al-Mahdi, Mirghani, Turabi, Garang). In fact, these views should be seen as more complementary than conflicting since each captures a part of truth.⁸ Through a concise history of the two wars, this chapter seeks to provide the essential pieces of the Sudan’s puzzle.

I. The Sudan’s First War

The Sudan is unique in several respects: the sole African state not to be the product of European colonialism, but colonialism by Ottoman Egypt, the Sudan is also one of the few African countries to be torn by a conflict of self-determination. Perhaps this is because the largest African state and one of the most heterogeneous never succeeded in shaping a common identity.

1) A Few Features of the Sudanese State

The Sudan’s population is one of the most diverse of the African continent. Given the long history of racial mixing, differences are not racial but rather cultural-linguistic. Two main fault lines distinguish between ‘Arabs’ (30 to 40 per cent of the population) and ‘non-Arabs’, and between Muslims (70 per cent) and non-Muslims (30 per cent including 5-10 per cent Christians).⁹

8) For more on these views, see Francis M. Deng, *War of Visions: Conflict of Identities in the Sudan*, The Brookings Institution, Washington DC, 1995; Tim Niblock, *Class and Power in Sudan: the Dynamics of Sudanese Politics 1898-1985*, State University of New York Press, New York, 1987; Mansour Khalid, *The Government They Deserve: The Role of the Elite in Sudan’s Political Evolution*, Kegan, London and New York, 1990.

9) The term ‘Arab’ should be used between quotation marks as there is only one pure Arab group in the Sudan: the Rashaida, who settled in the East in the 1870s (and since then took up arms against the government...). The other ‘Arab’ groups are mixed to various degrees – but less so in the central Nile Valley than in Darfur or Kordofan.

Since these two dividing lines do not exactly coincide, three main groups can be identified.¹⁰ The first group is made of the 'Arabs', who speak Arabic and profess Islam and live in the north of the country. The second group includes Muslims of black African descent, mostly settled in the western part of the Sudan (Darfur); on the opposite eastern side, the Cushitic Beja are also Muslims, but are neither 'Arabs' nor 'African blacks' and therefore constitute a separate sub-group. Thirdly, the south of the Sudan is inhabited by Nilotic Christians and populations with indigenous beliefs. These groups differ radically in their daily life and cultural practices. They are also strongly territorialized, although non-Muslims and two million southern Sudanese do live in the northern part of the country.

This cultural heterogeneity can be explained by the vastness and therefore encompassing nature of a territory about the size of Western Europe, and thus by the circumstances in which the current borders of the country were drawn. These borders derive in part from the limits of Ottoman Egyptian expansion, which started from 1821 onwards. The core of the Turkiyya was the Nile valley, Blue Nile and Kordofan, however; it did not include the present southern regions of Equatoria and Upper Nile, and only managed to establish loose control over Bahr el Ghazal shortly before its falls. Likewise, the Mahdist state (1883-98), which overthrew the Turco-Egyptian regime, had virtually no control over the south outside a few main garrisons. In fact, the Sudan's present boundaries were drawn in the early 20th century when Britain reoccupied the territory under the guise of the Anglo-Egyptian condominium and concluded a series of border agreements with its French, Italian, Ethiopian, and Belgian competitors. To the despair of the southerners, who fought against both Ottoman presence and control from the Mahdist state, the south was therefore included into the Sudan by the British who already acted in concert with Egypt to protect Egyptian interests over the Nile's flow. The same applies to the Darfur sultanate, which lost its independence just before the Mahdiyya, secured it again with the defeat of the Mahdi in 1898, but was conquered by the British and incorporated into the Anglo-Egyptian Sudan in 1916.

Formally part of the Sudan, the south was nevertheless administered as a separate entity until 1947. It was only when they started to envision the country's independence that the British amended their policy with a view to reincorporating the south into the Sudan. This change resulted from another deal between the two former colonial rulers, according to which Egypt promised to allow the United Kingdom to keep control of the Suez canal, while the UK committed not to separate the south from the north of the Sudan, which Egypt hoped to annex as a whole. In the end, the British lost control of the Suez Canal in 1956, the Sudanese 'Arab' leadership refused to join Egypt, but the Sudan remained a single entity. The state of the Sudan

10) Prunier, 'The Sudan', p. 110.

was thus ‘created in error’ argue those who do not see any ground – language, culture, not even a common colonial history – to justify its current borders.¹¹

The fact is that colonial rulers arbitrarily and hastily drew the limits of the future Sudanese state but hardly contributed to unifying its territory or giving its very diverse population a sense of nationhood. Under Ottoman occupation, the Sudanese state never focused on economic development, less so on service delivery. Rather, it was a pillage state (as connoted in the expression *al-hukum*) whose *raison d’être* was to levy taxes and strip assets, particularly through slave trade: ‘Ottoman Egyptian power in the Sudan created a pattern where pillage (of men, cattle, and mineral resources) was seen as the normal way for the *hukum* to raise money’.¹² Later on, the British did not show much more commitment to developing a territory that they had colonized for purely strategic purposes – that is, to keep their colonial rivals, notably the French, out of the area. As a result, the Sudan was largely left to its own devices and very loosely administered by London to the benefits of Egyptian and a few Sudanese clerks who only but confirmed the *hukum* pattern. Furthermore, Britain’s Southern policy could only reinforce the gap between the north and the south, since it was intended to *prevent* integration and preserve the latter from the Arabic and Islamic influences of the former.¹³ Until less than a decade before independence, the British indeed saw the south as a buffer where English values and Christianity could be preserved, and which could eventually become a separate entity or could be integrated into British East Africa. In the late 1940s, a new policy was undertaken aiming at accelerating political and economic development in the south, thereby enabling southerners to be equal to northerners at independence. However, decades of colonial neglect and earlier practices of exploitation meant that the southern Sudanese lagged too far behind the northerners in education, economic development and involvement in the Sudan’s administration for this policy to be effective.¹⁴

To conclude, the colonial legacy was particularly heavy to bear at independence. The Sudan’s borders delineated a country that had hardly constituted a single entity. Its various groups of people were neither tied by

11) Prunier, ‘The Sudan’, p. 112.

12) Prunier, ‘The Sudan’, p. 109.

13) On the British ‘Southern’ policy, see *inter alia* Douglas H. Johnson, *The Root Causes of Sudan’s Civil Wars*, International African Institute with James Currey, Oxford / Indiana University Press, Bloomington and Indianapolis / and Fountain Publishers, Kampala, 2003, pp. 11-15; Francis Mading Deng, ‘Negotiating a Hidden Agenda: Sudan’s Conflict of Identities’, in William I. Zartman (ed.), *Evasive Peace: Negotiating an End to Civil Wars*, The Brookings Institution, Washington DC, 1995, p. 80.

14) On development disparities in the Sudan before 1947, see Johnson, *The Root Causes of Sudan’s Civil Wars*, pp. 16-17. Parts of Darfur, the Nuba Mountains and Blue Nile were not much advanced, it should be noticed. The population in eastern Sudan also had little access to education because of loose British control in rural areas.

any sense of nationhood, nor commonly agreed notion of what constitutes the country's identity, but rather were divided by ancient patterns of exploitation and slave-raiding by northerners against southerners. There was no modern political structure on which to build a viable and legitimate state. Finally, development disparities meant that southerners and other peripheral populations lacked any real or potential voice in the direction of the country's affairs.

2) Genesis and Dynamics of the Civil War

States usually do not fail because of their population's diversity, but when this diversity is badly reflected in governance. In the case of the Sudan, negotiations on independence, which took place against the background of deep-rooted asymmetrical relations between the north and the south, did not bode well for a peaceful future for the country. By choice and by necessity, given the southerners' lack of political organization, the British negotiated independence with an almost exclusively 'Arab' national movement. As a result, the Sudan gained independence as an 'Arab' country and the Sudanese 'Arab' intelligentsia was made the representative of a much more heterogeneous population. This 'Arab' elite was full of the deep-seated notion of *hokum* – meaning that control of the state was contended for purposes of self-promotion and self-enrichment, not to implement policies – and had a high esteem of itself as the vanguard of the country: 'a huge rift was created when the Sudanese "Arabs" decided that they embodied the truth, the heart, the core, the soul, and the reality of the Sudan, rendering all others second class'.¹⁵ In line with this self-perception, the 'Arab' elite of the post-colonial governments claimed to unify the country through centralization and assimilationist policies, and did not take long before monopolizing all economic and political power.¹⁶

Simultaneously, the southerners were alarmed by the pace of events. As mentioned above, the south was hardly involved in the political process leading to independence. When the Juba conference was convened in 1947 with delegates from both the north and the south to discuss their future, the British (under pressure from Egypt and the northerners) had already decided on Sudanese unity and no other options were considered. Reconvening in Juba in October 1954, the southern Sudanese leadership then resolved to vote for independence of the Sudan.¹⁷ This decision was highly qualified, however, according to a dialectic that would reappear in subsequent peace talks: the

15) Prunier, 'The Sudan', p. 110.

16) Deng, 'Negotiating a Hidden Agenda', pp. 80-81.

17) The southern Sudanese leadership included then members of political parties, tribal chiefs and representatives of the southern diaspora in Khartoum (Johnson, *The Root Causes of Sudan's Civil Wars*, p. 27).

south should either be granted an autonomous status within a federal system or exert its right to self-determination, including the right to become independent from the north.¹⁸

In the meantime, southerners were worried by the massive infiltration of northerners into government structures in replacement of British officials on the eve of independence. The increasing number of northerners, not only in Khartoum but also in the south, as administrators, teachers, and senior officers in the army and the police fuelled fears of domination and colonization. It is in this context that in August 1955, even before independence was officially proclaimed, a mutiny broke out that is widely regarded as the beginning of the Sudan's first war, although the conflict really escalated over the following years. Soldiers of the Equatorial Corps, whose British officers had been replaced by 'Arab' officers, mutinied when they feared they would be disarmed and transferred to the north. Those mutineers who fled into the bush and neighbouring Uganda would later form the core of the first southern guerrilla movement (called 'Anyanya' after a type of poison).

The immediate effect of the mutiny was to accelerate, rather than delay, independence, as the British government, which refused to send its own troops to put down the mutiny, was further anxious to withdraw. As a result, the Sudan became independent on 1 January 1956, only endowed with a temporary constitution that remained silent on two major issues: the secular or Islamic character of the state; and its federal or unitary nature.¹⁹

Southerners wanted the Sudan's dual identity to be recognized and protected through federalism. While they had been given assurance that their demand for autonomy would be granted due consideration during post-independence discussions, their three delegates were outvoted in the 46-member constitutional committee appointed by the legislative assembly in September 1956, and the federal option was discarded.²⁰ This was the first of the 'too many agreements dishonoured' that contributed so much to the southerners' mistrust towards Khartoum over time.²¹ Instead of federalism, the military government of General Abbud (who seized power in November 1958) pursued a policy of Arabization and Islamization in the south which, added to repressive activities against churches and political activists, increased opposition to the north and stirred up the incipient conflict.²² In the early 1960s, political figures and students joined with former mutineers in neighbouring Uganda to constitute an exiled political movement, called the

18) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 27.

19) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 30.

20) Deng, 'Negotiation a Hidden Agenda', pp. 85-86.

21) The expression is quoted after the famous book of Abel Alier, former President of the regional government of South Sudan, *Southern Sudan: Too Many Agreements Dishonored*.

22) Johnson, *The Root Causes of Sudan's Civil Wars*, pp. 30-31.

Sudan African Nationalist Union (SANU), with Anyanya as its military arm. SANU's proclaimed goal was self-determination for the south (an understatement for secession since it was assumed the south would vote for independence if it was given the choice), but such an objective did not attract much support throughout Africa at the time.

In October 1964 following demonstrations in Khartoum, General Abbud stepped down and was replaced by a civilian caretaker government. As often in the Sudan's history, political developments in Khartoum have an immediate effect on the conflict in the south by closing or opening (as in this case) an opportunity for peace. But as is also often the case, such opportunities may trigger disputes among southerners as to their ultimate goal and strategy. Thanks to the resumption of civilian rule, southerners were thus allowed to form a new political party in Khartoum, the Southern Front, whose leader, Clement Mboro, was appointed minister of the interior in the civilian government. Simultaneously, southern exiles were invited to return to the Sudan to participate in the Round Table Conference convened in 1965 to tackle the southern problem. However, the exiles divided themselves between those who abandoned self-determination and rallied a federal solution (they formed SANU 'Inside' following William Deng) and those who stuck to the original secessionist goal (SANU 'Outside' whose leaders, Aggrey Jaden and Joseph Oduho, returned to Uganda). During the following years, these differences were aggravated by internal leadership issues that plagued the southern rebellion and caused Anyanya factions to fight each other. At the 1965 conference, both factions (each assuming its best outcome would win) nevertheless agreed to advocate holding a plebiscite to let the people of the south decide. However, most northern delegates refused any kind of self-determination, reasserted their Arab-Islamic agenda, and were mainly interested in the upcoming elections. The victory of the sectarian parties, which found themselves under growing pressure from the Islamic Charter Front (Muslim Brotherhood) to promulgate an Islamic constitution, put an end to the prospects opened earlier that year.²³

The war in the south intensified as much as it became internationalized. In the second half of the 1960s, the Sudan's civil war was embroiled in the conflicts of the Middle East: trained in Uganda and with bases in Ethiopia, Anyanya's troops received substantial financial and training support from Israel, while Khartoum turned to Egypt and Arab countries and benefited from increasing financial Soviet assistance.²⁴ These alliances were reinforced

23) In the national constitutional committee formed in 1968, SANU and Southern Front's demands for devolution of powers to regional government and against the Islamic constitution were outvoted by sectarian-based parties (Deng, 'Negotiating a Hidden Agenda', pp. 86-88).

24) International Crisis Group, *God, Oil and Country. Changing the Logic of War in Sudan*, Africa Report N°38, January 2002, p. 11.

further after a group of communist and socialist officers in the Sudanese army, led by Colonel Jaafar Nimairi, seized power in Khartoum on 25 May 1969. While Nimairi brought the Sudan into the Arab federation, Israeli support to Anyanya and Soviet support to Khartoum both reached their peak. Yet the end of the Sudan's first war was closer than it appeared.

The Ending of the First War

Again, leadership change in Khartoum proved instrumental in modifying the course of the war. A month after coming to power, Nimairi announced a new approach to the conflict by proclaiming socialism (instead of Islamism) for the whole country and outlining a policy of granting autonomy to the south. Hence, he appointed a southern communist, Joseph Garang (no relation to John), as Minister for Southern Affairs. For a number of reasons, however, these intentions took time to materialize. First, the southern movement was somewhat caught by surprise and was still too plagued by internal divisions to formulate a coherent response. Second, Nimairi himself was reluctant to engage in direct talks with the rebels. Third, an avowed communist, Garang was not the most suitable intermediary between Khartoum and the south as he inspired much distrust in the southerners (whom he distrusted as well). While southerners had demanded constitutional guarantees for years, Garang advocated development and elimination of economic inequalities as the south's solution.²⁵

The domestic context changed radically after Nimairi was in turn subject to a *coup* attempt by communist members of the government. The *coup* failed and Nimairi ordered a massive purge of communists, in which Garang was executed. Consequently, however, Nimairi found himself bereft of the support of both the traditional Muslim parties (that he had chased from power) and the communist faction that he had earlier relied upon. Having alienated both his right and his left, Nimairi was strongly induced to expand his power base by concluding an agreement with the south. Actually, this is a fundamental principle of Sudanese politics that northerners (and southerners as well) seek allies from 'the other side' to fight their own-brother enemies – hence the formation of 'cross-border alliances'. In the present case, the southern movement then appeared in a better position to respond to Nimairi's overtures, thanks to the unification efforts made within the previous two years by a southern commander, Colonel Lagu. Using Israeli support as an inducement, Lagu managed to unite under his command a number of provincial Anyanya commanders and to form the Southern Sudan Liberation Front (later renamed Movement – SSLM) to which exiled politicians were subordinated. This newly found cohesion increased temporarily the guerrillas' military strength and would later prove invaluable in peace negotiations.

25) Deng, 'Negotiating a Hidden Agenda', p. 91.

These internal factors were linked to international developments. The abortive communist *coup* and its aftermath severely strained Khartoum's relations with the Soviet Union, until the latter finally ceased all support to the former. Therefore, Nimeiri was further pushed to consider the peace option and began to improve his government's relations with its most hostile neighbours. In the course of 1971, Nimeiri concluded two bilateral agreements with his Ethiopian (Haile Selassie) and Ugandan (Idi Amin) counterparts, by which each signatory committed to cease supporting the other's rebel movement. The subsequent expulsion of Israelis from Uganda had devastating effects on Anyanya's war capacities,²⁶ which was also therefore induced to consider entering in peace negotiations.

In short, the internal and international context radically changed within two years and provided both parties with strong interests for a peace settlement. The prospects for peace were further improved by the appointment, in replacement of Joseph Garang, of Abel Alier as Minister for Southern Affairs and therefore as leader of the Sudanese government's mediation team. A member of Nimeiri's previous cabinet, Alier was above all a prominent leader of the Southern Front, 'a southerner whose modesty, loyalty and commitment to a peaceful resolution had been tested, ... a man who had considerable respect and trust across the political spectrum'.²⁷ Unlike Garang, Alier enjoyed the rebels' confidence and immediately recommended that Nimeiri open direct negotiations with them. However, while Alier's role undoubtedly facilitated reaching an agreement, it also reduced the talks almost to a south-south dialogue and therefore played against the settlement's sustainability.²⁸

3) Terms and Failure of the 1972 Addis Ababa Peace Agreement

Negotiations between the government and the SSLM took place in February 1972 in Addis Ababa under the auspices of Ethiopian Emperor Haile Selassie and the Organization of African Unity. The subsequent agreement was ratified on 2 March 1972 by Nimeiri and Lagu and later incorporated in the permanent (and secular) constitution that was approved in 1973. The agreement provided in particular for the creation of a southern region whose first government was led by Abel Alier. While granting for the first time since independence an autonomous status to the south, these provisions did not really match with the goals for which southerners had fought, or with the demands that they formulated at the opening of the negotiations.

26) ICG, *God, Oil and Country*, p. 11.

27) Deng, 'Negotiating a Hidden Agenda', p. 11.

28) Deng, 'Negotiating a Hidden Agenda'.

Terms of the Settlement

As head of the SSLM, Colonel Lagu managed to convince southern politicians and Anyanya factions to accept the government's precondition to negotiate a settlement within the framework of a united Sudan. This decision stemmed from the lesson drawn from the Round Table Conference of 1965 that southern disunity could only weaken the delegation's negotiating position. It was also based on the realization that, exhausted and bereft of Israeli support, the SSLM was not powerful enough to claim self-determination. At Addis Ababa, the SSLM delegation nevertheless proposed a full federal structure for the Sudan, dividing the country between a northern and a southern region with a single federal government. Since the government's delegation rejected the notion of a northern region, the peace agreement ultimately provided only for a central government and a southern regional government. Furthermore, the latter's autonomy was significantly qualified by the central institutions. For instance, the southern government had no competence for economic planning, or legislative right regarding mining resources that could potentially be discovered in the future.²⁹

As regards security issues, the SSLM had proposed likewise establishing one army per region in addition to a third national one to which both regions would contribute. The government rejected this option and only accepted that equal numbers of southern and northern soldiers be deployed in the south. While most southerners expected the two armies to remain separate for at least five years, within this timeframe Anyanya units were ultimately incorporated in the Sudanese armed forces without the number of northern soldiers being decreased accordingly. The region therefore gradually lost its self-defence capacity. Furthermore, many of these former Anyanya officers were then retired or purged and a number of former soldiers were transferred outside the south.³⁰ These transfers caused an increasing number of southern soldiers to mutiny in the early 1980s and to join in Ethiopia the Anyanya-2, which had been formed as early as 1975.

Nimairi's Abrogation of the 1972 Agreement

Initially, however, the Addis Ababa agreement provided Nimairi, as he expected, with a solid southern base of support. It is thanks to this support, in particular to the role played by southern troops based in Khartoum, that the Sudanese president could survive two successive *coup* attempts – in September 1975 by officers from Darfur and Kordofan who wanted for their region the same privileges granted to the south, and in July 1976 by former prime minister Sadiq al-Mahdi supported by Libya. These attempts also

29) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 40.

30) Johnson, *The Root Causes of Sudan's Civil Wars*, pp. 40-42.

showed how narrowly the peace process was based in the north. In fact, the peace agreement was supported by no other northern political force but Nimairi. Nimairi therefore reached the conclusion that he was, once again, politically isolated in his own side, and more seriously threatened from the sectarian political parties and the Muslim fundamentalists than from the southerners.³¹ Accordingly, the military dictator, who had earlier tried to emulate Nasser by crushing Islamist groups, announced a policy of national reconciliation (*mussalla al-wataniya*) with all religious opposition forces. Sadiq al-Mahdi was invited to return from exile and his brother-in-law, Hassan al-Turabi, leader of the Muslim Brothers, was released from prison and later appointed attorney general. A number of opposition leaders, including religious fundamentalists, were appointed to prominent government positions.

The *mussalla* enabled the regime to survive, but it marked a reneging of its principles and offered radical Islamists the opportunity to get closer to power and infiltrate state machinery.³² It also marked the beginning of the peace agreement's unravelling. Whether the Democratic Unionist Party, the Umma Party or the Muslim Brothers, the northern religious parties did not feel bound to an agreement signed against their will by a military dictator, and deplored most of its provisions – which were said to foster southern separatism and were perceived as an obstacle to proclaiming an Islamic state. Hence, they did not rest until the Addis Ababa agreement was de facto abrogated. Northern parties campaigned even more strongly against the south's status as the region was endowed with significant resources such as water, fertile soils, minerals and, as discovered in the late 1970s, oil. Controversy and manipulation over resource issues eventually caused the collapse of the agreement and the resumption of hostilities.

The first controversial issue related to an old concern for Khartoum and neighbouring countries like Egypt: the control of the Nile waters. In 1977, the government announced the construction of the Jonglei canal, which aimed at increasing the volume of water available in the north by diverting the waters dispersed through the great central swamps. However, the decision was taken without proper consultation with the southerners, or regard for their interests. In effect, the Jonglei canal displaced communities and deprived them from grazing land – until its construction was interrupted by the war that it contributed to trigger.³³

The discovery of oil in the south by Chevron in 1979 – that is, after the peace agreement – had even more serious political repercussions. In the immediate aftermath, pressure mounted from the north to abolish Addis

31) Deng, 'Negotiating a Hidden Agenda', p. 93.

32) On the rise of the Muslim Brotherhood, see Prunier, 'The Sudan', pp. 116-118.

33) Interestingly, the Jonglei canal was the topic of the Ph.D. dissertation in agricultural economics of a certain John Garang (Prunier, 'The Sudan', p. 116).

Ababa provisions granting financial autonomy to the south.³⁴ In November 1980, a bill redrawing the southern region's (external) boundaries was instigated by Turabi in the new national assembly, placing the oilfields of Bentiu inside the north. The ensuing confrontation between the southern regional government and the national assembly was adjudicated by Nimairi who then confirmed the borders agreed upon in Addis Ababa. Yet Nimairi eventually revised the (internal) administrative organization of the south in such a way as to remove the oilfields from Juba government's jurisdiction. In so doing, the government not only wanted the exploitation of resources located in the south to benefit the north but also aimed at preventing the south from becoming too prosperous and therefore powerful. However, the unilateral decisions taken by Khartoum could only fuel southern perceptions of spoliation and age-old exploitation by the north.

Reorganization of the south, it is true, was called for by certain southern leaders, including Lagu, who stigmatized the remoteness of the Juba government as a cause for economic retardation and advocated instead 'decentralization for development'.³⁵ At the time, decentralization was also being implementing in the north. For Nimairi, however, it was essentially a means for neutralizing the south. The Sudanese President therefore removed those southerners, like Alier, who feared that the creation of smaller regions would reduce the political power of the south. In October 1981, after the regional assembly rejected his proposals to divide the south, Nimairi dissolved that body and dismissed Alier's government. Ultimately, in June 1983, Nimairi abolished the Southern Region and established instead three smaller regions (Bahr el Ghazal, Upper Nile and Equatoria) endowed with much less power, particularly in financial matters, than the former. A new province, called ironically 'Unity', was created around the oilfields of Bentiu.³⁶ Simultaneously, Arabic was declared the official language in the south instead of English and control of the armed forces in the south was transferred to the central government.

These decisions, which amounted to a unilateral abrogation of the Addis Ababa agreement, infuriated the south and may be seen as the real causes of

34) According to the peace agreement, the regional government could levy a corporation tax on non-government-controlled factories in the region and tax the profits from export of products from the region. These provisions inevitably fueled controversy as to the location of the oil refinery to be built by Chevron (Johnson, *The Root Causes of Sudan's Civil Wars*, p. 46).

35) This position also reflected frustration with the perceived domination of the regional government by the Dinkas, while the war had been fought mostly by Equatorians.

36) The governor of each of the three regions was directly appointed by Nimairi, whereas the president of the former Southern Region's high executive commission was elected by the regional assembly and confirmed by the Sudanese president. In the new regions, taxes were to be remitted to Khartoum for redistribution while they were directly raised by the Southern Region (Johnson, *The Root Causes of Sudan's Civil Wars*, p. 55).

the Sudan's second war. While the imposition of *sharia* law all over the country in September 1983 caused many southerners to join the SPLM/A, it occurred *after* the foundation of the southern movement in July 1983 in Ethiopia and in fact after the beginning of the Sudan's second war.

II. The Sudan's Second War

The Sudan's second war started just like the first one with the mutiny, in January 1983, of southern soldiers from the 105th battalion, who resisted orders to be transferred to the north. Troops from the Sudanese army stationed in Juba were then sent by Khartoum to quell the mutiny. However, instead of following orders, government army officer Colonel John Garang encouraged the mutinies and led the rebellion against Khartoum.³⁷ The abolition of the Southern Region a few months later prompted further mutinies and desertions of southern soldiers, who formed the bulk of the Sudan People's Liberation Army, which was established in July 1983 in Ethiopia. The Sudan's first and second wars are also similar in some of their causes, in particular the Sudanese government's failure to honour its commitment to the autonomy of the south. While in 1956 southerners were not granted the special arrangements that they had been promised, in 1983 they had taken back from them what they had been conceded eleven years earlier. Thus, power-sharing issues are central to both wars. However, a few features also distinguish the second war and made it even more intractable than the previous.

First, while the issue of national identity had earlier been a factor of conflict, the imposition of *sharia* as the source of law and Arabic as the official language in a country composed of 30 per cent non-Muslim and almost 70 per cent 'non-Arabs' could only exacerbate the Sudan's 'conflict of identities'.³⁸ Second, the control of natural resources, in particular oil reserves, became a prominent feature of the second war, not only as a political issue lying behind the abrogation of the Addis Ababa agreement, but also as a key element in the belligerents' military strategy. Third, the conflict has been prosecuted with particularly brutal tactics, such as slave raiding, forced displacement of civilian population, indiscriminate aerial bombings and use of food as a weapon, which have further reinforced divisions within the country and made the prospects of reconciliation less likely each day.³⁹ Fourth, the war

37) According to Johnson (*The Root Causes of Sudan's Civil Wars*, p. 61), Garang had planned the defection of the battalion to the guerillas.

38) After Francis Deng's expression.

39) See, among other reports, ICG, *God, Oil and Country*, pp. 115-149. It is widely considered that the Sudanese government bears the greatest, though not exclusive, responsibility for these war tactics and the human rights' abuses committed in the war.

this time did not remain confined to the limits of the south but gradually spilled over into other parts of the country, thereby corroborating the view that it not only reflects a 'southern problem' but a wider 'Sudanese question'. Finally, the seizure of power in Khartoum in 1989 by radical Islamists resulted in further polarization and complexity by prompting unlikely domestic alliances and intensifying internationalization.

1) The Politics of War

The SPLM/A, the New Sudan, and Southern Disunion

Calling itself a liberation army, the SPLM/A was not a separatist but a socialist movement. It did not intend to 'liberate' the southerners by reconquering autonomy status or by establishing an independent state, but aimed to recast the country into a 'New Sudan' that would reflect the diversity of the population and ensure all groups equal access to economic and political power. This platform was consistent with the view that the Sudan's problem was not 'the south', but rather the centre – and the way the country has historically been dominated by a single group of people at the expense of all the others. Consequently, the SPLM/A was fighting to end the southerners' (and others') oppression from Khartoum. Unity, secularism and socialism were seen as inseparable objectives, since secularism would guarantee respect for differences and socialism would ensure reduction of inequalities in a common framework. In the end, the objective of a New Sudan would be reached through the gradual socialist transformation of the country. For a few years, this Marxist rhetoric would be raised by Nimeiri, the US administration and opponents to Mengistu to dismiss the SPLM/A as a communist organization.

Beyond ideology, there were other several tactical benefits for the SPLM/A in stating unity rather than independence as its ultimate goal. First, the SPLM/A's immediate objective – overthrowing Nimeiri – entailed concluding the broadest tactical alliance possible with all potential opposition groups. The southern movement therefore wished to broaden its power base by appealing to other regions and sectors of Sudanese society that had their own grievances against Khartoum but would have been reluctant to adhere to a separatist platform. Second, fighting for independence would have likely alienated the SPLM/A's main external supporter, Ethiopia, which was by then struggling with its own separatist movement. Finally, the southerners were well aware of the absence of geographical barriers along the south's boundaries, as a consequence of which the south's best line of defence could be seen in Khartoum rather than in Juba.⁴⁰

40) Johnson, *The Root Causes of Sudan's Civil Wars*, pp. 63-64.

While the SPLM/A thus had valid motives to opt for unity, its leaders nevertheless found it difficult to convince their followers of the sincerity and relevance of this objective. A number of militants saw unity only as a tactic, while others wanted first a demonstration of the northern parties' willingness to make concessions before committing fully to a united state. Thus, 'southern independence remained an unspoken or even coded option'.⁴¹ As long as separation was not completely discarded as an option, however, there remained within the movement a potential for internal dissensions, which would be consistently exploited by successive Sudanese governments.

Since the eruption of the second war, the southern movement was deeply divided between the SPLM/A, founded in 1983, and Anyanya-2, established a few years earlier by veterans of the previous rebellion. Beyond the conflict of generations, there were substantial differences between the two groups: despite their failure to reach that objective, Anyanya-2 leaders stuck to the goal of independence and were vilified by the SPLM/A, which was willing to position itself as a progressive force, as reactionaries aiming mainly to secure positions in a future southern government. Whereas there were initially Dinka and Nuer commanders on both sides, the competition gradually took on an ethnic dimension. The SPLM/A was perceived to be dominated by the Dinka (John Garang's group) while Anyanya-2 recruited mostly among the Nuer. Ethiopia's support for Garang (and his non-separatist agenda) eventually tipped the balance in favour of the SPLM/A, into which most Anyanya-2 troops were incorporated by 1988. However, a few Anyanya-2 units also joined Nimairi and formed the first pro-governmental militia. Khartoum's strategy of supplying southern militias and waging war by proxy therefore started as early as under Nimairi and would be continued, after his fall in 1985, by all successive governments.

The Fall of Nimairi and the Missed Peace Opportunity

Nimairi was overthrown in April 1985 by a popular uprising in Khartoum caused by the war in the south, continuous political repression and a collapsing economy. He was replaced by his defence minister and commander in chief, Abd al-Rahman Suwar al-Dahab, who led the Transitional Military Council until elections were held in 1986. In the meantime, Garang held discussions with representatives from the National Alliance for National Salvation, the heteroclite coalition of political parties and professional organizations that had led the opposition movement to Nimairi. Held in March 1986 in Koka Dam, Ethiopia, these discussions resulted in a declaration proposing a roadmap towards the settlement of the conflict in the south, including the convening of a constitutional convention to address the

41) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 65.

'basic problems of Sudan'.⁴² The Koka Dam Declaration was signed by delegates from the Umma party, but critically not endorsed by the other two religious parties – the Democratic Unionist Party (DUP) and Muslim Brotherhood/National Islamic Front (NIF). The expectations raised by the Declaration were thus soon to be disappointed after elections were held (before a constitutional convention could be convened) and won by the sectarian parties (Umma party, DUP and NIF in this order). Committed to the establishment of an Islamic state in the Sudan, the election winners were opposed to regional autonomy in the south and not ready to make substantial concessions.⁴³ Leading the coalition government made of the Umma and DUP parties, prime minister Sadiq al-Mahdi dropped his previous commitment by rejecting Garang's request to repeal the September Laws. The Koka Dam declaration thus remained a dead letter until its context became more conducive.⁴⁴

The absence of political accommodation resulted in further intensification of the conflict in the late 1980s, mainly to the benefits of the SPLM/A. The rapprochement with Anyanya-2 and significant support from external backers (Ethiopia, Eritrea, Uganda and Cuba) enabled the rebellion eventually to take control of two-thirds of the south, including the former three provincial capitals (Torit, Bor and Nasir). By contrast, the Sudanese government could see the state coffers irreversibly emptying and was losing grip on the military with successive defeats. John Garang, for his part, reached the conclusion that in spite of its military effectiveness the rebellion could not win the war but could use its strong position to obtain favourable terms of agreement. Contacts intensified during the second half of 1988 between DUP parliamentarians and the SPLM/A, culminating in November 1988 with DUP leader Muhammad Uthman al-Mirghani and John Garang signing an accord largely inspired from the Koka Dam Declaration. The council of ministers first refused to endorse this agreement, causing the DUP to withdraw from the governing coalition. However, under considerable pressure from the army and northern public opinion, Sadiq al-Mahdi announced his intention of seeking a settlement with the southern rebels and formed a new coalition government including the Umma party, the DUP and NIF.⁴⁵ Substantial progress was then made towards a peace settlement: in April 1989 the DUP-

42) Other steps included the lifting of the state of emergency, the repeal of the September laws and the adoption *ad interim* of the 1956 constitution (amended to incorporate the regional government). All military pacts between the GoS and other countries would be also abrogated. Johnson, *The Root Causes of Sudan's Civil Wars*, p. 72.

43) Interestingly, however, the National Islamic Front could already at the time envisage a federal system in which individual regions would chose to be governed by *sharia* or not (but it was then opposed to seeing the old Southern Region reconstituted). See Johnson, *The Root Causes of Sudan's Civil Wars*, p. 80.

44) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 71.

45) The NIF had joined the cabinet in April 1988.

SPLM/A agreement was endorsed by the council of ministers and the national assembly; in May 1989 a ceasefire was declared for one month and the state of emergency was lifted; in June 1989 the SPLM/A and government delegations agreed to freeze the implementation of Islamic laws and abrogate all military pacts concluded by the Sudan with Egypt and Libya. Peace was around the corner.

Yet, the prospect of an agreement that would have qualified their goal of an Islamic state in the Sudan was unacceptable for the 'hard-line supporters of Arabic supremacy'.⁴⁶ In protest against the official endorsement of the DUP-SPLM/A accord, the NIF left the government immediately afterwards. On 30 June 1989, three days before a government delegation's planned trip to Addis Ababa for peace talks, a radical Islamist faction of the army led by Brigadier General Umar al-Bashir committed a *coup* and installed the National Islamic Front in power. The new government not only renounced the incoming agreement but declared a state of emergency and established an Islamist dictatorship. In July 1989 the constitution was suspended, parliament and political parties were dissolved, and newspapers, trade unions and strikes were banned. A new chapter amounting to a third war had opened.

The Islamist Coup and Intensification of the Conflict

Since 1989, the Sudan has therefore been ruled by a political movement that seized power by force in order to prevent the signing of a peace agreement perceived as a betrayal to the Islamic cause, and to ensure the expansion of the Arab-Islamic agenda that lies at the core of the conflict. Accordingly, the new regime intensified the war (which was merely referred to as a *jihad* against southern 'pagans') and undertook, as part and parcel of the same agenda, to support Islamist militants throughout the region – and the world.⁴⁷ For his part, John Garang, who was dismissed as a communist and an agent of Ethiopia, refused to recognize Bashir as president, forged ties with northern opposition parties, and stepped up military efforts.

In 1991, however, the SPLM/A's position and the broader course of the war were dramatically altered by three quasi-simultaneous developments. First, the GoS concluded crucial alliances with the Ethiopian People's Revolutionary Front and above all with Iran's President Rafsandjani who saw the Sudan as a bridgehead for exporting his fundamentalist revolution in Africa. The Sudanese government thus benefited from Iranian oil shipments

46) Prunier, 'The Sudan', p. 118.

47) As emphasized by Gérard Prunier: 'The new team in power in Khartoum had a very clear objective: to spread militant Islamism to Black Africa ... For these people, there was no difference between the civil war in the south of Sudan and subversion in the adjoining countries', in 'Sudan's Regional War', *Le Monde diplomatique*, February 1997, p. 2, <http://mondediplo.com/1997/02/02sudan>.

and Iran's agreement to guarantee payments to China, Sudan's principal arms provider. Tehran further equipped and trained the Sudanese armed forces, and helped establish paramilitary militias, the Popular Defence Forces (PDF).⁴⁸ Iranian military assistance enabled the government to retake the initiative at a critical moment for the SPLM/A.⁴⁹ Second, the southern guerrilla was seriously destabilized by the fall of Mengistu in May 1991, which deprived it of its main rear bases and primary supplier in military and non-military goods. The change of regime in Addis Ababa also triggered the dramatic evacuation of 200,000 Sudanese refugees who had been living under the SPLA's protection in camps near the Upper Nile border. Third, the ensuing crisis and overall weakening of the movement generated renewed internal dissensions. While John Garang exerted considerable control over the SPLM/A's hierarchy and had managed to prevent (by force if needed) factionalism within the movement, the 1991 crisis stimulated his opponents to contest his 'dictatorial' leadership and 'suicidal' strategy. During the summer, a first scission resulted in the formation of the SPLA-Nasir faction, created largely with Nuer support by two SPLA zonal commanders in Upper Nile, Dr Riek Machar and Dr Lam Akol. The re-emergence of factionalism had dramatic repercussions by contributing to the government's military successes, by compelling the SPLM/A to revise its political objectives, and last but not least by fuelling intertribal fighting between Dinka and Nuer groups (as well as among Nuer sub-groups). During most of the 1990s, the two factions invested more time and energy fighting each other than combating the government. This fratricidal confrontation seemed to corroborate Khartoum's propaganda that the war in the Sudan resulted from southern tribalism and did not reflect a nationwide problem. In fact, the Sudanese conflict was characterized by an increasing complexity.

2) The Domestic Players: The Sudan's Civil War(s)

The coming to power of the NIF in 1989 and the quasi-collapse of the SPLM/A in 1991 prompted a complete reconfiguration of the Sudanese conflict across two broadly defined sides. On the one hand, the remainder of Garang's SPLM/A took the lead of a loose coalition of opposition to the

48) The PDF were made up of existing tribal militias (in particular Nuer-based armed groups fearing Dinka domination) and of 'Arab' ethnic groups in Darfur and Kordofan.

49) According to Don Petterson, US ambassador to the Sudan from 1992 to 1995, the relationship between the two countries may not have been as closed as usually perceived, however, be it only because of a basic incompatibility between Iran's Shia and the Sudan's Sunni religious persuasion. The Sudanese used to deplore what they regarded as a meagre level of military and economic support, while the number of Iranian advisers, technicians and propagandists in the Sudan seems to have been fairly exaggerated in the Western media. See Don Petterson, *Inside Sudan: Political Islam, Conflict and Catastrophe*, Westview Press, 2003 (updated), p. 52.

Islamist regime – the National Democratic Alliance (NDA) – which included beyond the south other marginalized areas of the country and northern opposition parties in exile. On the other hand, the Islamist government established links with southern breakaway factions used as surrogates to wage the war. Thus, reality on the ground greatly differed from the common perception of a conflict between a Muslim north and a Christian south. What follows is a presentation of the key stakeholders and how they evolved during the 1990s.

The Opposition Forces

SPLM/A-Mainstream

The summer 1991 putsch attempt on Garang was opposed by nine out of thirteen SPLM/A leaders, who met in Torit and condemned the dissidents. Since this day, the majority branch of the rebellion has been referred to as the SPLA-Torit faction and, after the loss of this town in July 1992, as SPLA-Mainstream.⁵⁰ Whereas it represented the orthodox and historic movement, the SPLM/A had to adopt a new policy orientation that marked a breach with its core principles and commitment to a united Sudan. First, the Nasir-faction's proclaimed goal of independence for the south – at a time when the Sudan was firmly controlled by Islamists – was likely to create a considerable stir and to appear a more attractive goal than a united Sudan. Second, weakened as it was by the internal split and the loss of Mengistu's support, the SPLM/A no longer had the means to achieve its ambitions. Hence, the movement was compelled to lower its objective of restructuring the state and admitted that, along with a united and secular Sudan, several other options could form the basis of a settlement, including a confederal arrangement, an association of two sovereign states and self-determination.⁵¹ The broadness of this range of options, however, cast doubt over the SPLM/A's real objectives.

The National Democratic Alliance

While losing followers from within the movement, the SPLM/A was nevertheless able to find new allies outside the south. In response to Bashir's *coup* and authoritarian rule, the various opponents to the Islamist regime formed as early as 1989 the National Democratic Alliance, which gathers political and military groups from all over the country around the SPLM/A. It is less a united national opposition than a heteroclite coalition with multiple interests, but its members committed themselves to a concerted campaign to overthrow the Islamist regime. The SPLM/A has always constituted the bulk of the NDA army, but was supplemented in the late 1990s by two well-

50) Since the designation 'mainstream' fell into disuse after 1994, reference will continue to be made in this text to 'SPLM/A'.

51) Deng, 'Negotiating a Hidden Agenda', p. 95.

organized rebel groups: the Beja Congress and the (less effective) Sudan Allied Forces.⁵² The military operations conducted by these groups in the eastern Sudan, along the Eritrean border, illustrate the gradual extension of the conflict beyond the south.

The Other Marginalized Areas

For various reasons, the culturally heterogeneous regions of the centre/north of the Sudan have developed a growing sense of alienation from the 'Arab' centre. This evolution first relates to the issue of land.⁵³ A number of laws adopted from the early 1970s through to the early 1990s undermined the control of local authorities over the resources of the land on which the local populations use to rely. Simultaneously, the reorientation of the national economy towards heavily capitalized export agriculture dispossessed local people to the benefit of merchants enjoying access to central power. Generally speaking, the ruling parties in Khartoum have therefore been perceived as less and less responsive to the concerns and grievances of both Muslim and non-Muslim populations across the country. This perception crystallized as the social services and communication networks gradually disintegrated and was further reinforced after 1989 as the NIF regime claimed to 'spread the light' of Arab culture through the entire country and imposed its own restrictive reading of Islam. In the end, alienation from the 'Arab' centre caused various groups to be sympathetic to and fight alongside the SPLM/A. In return, the rebellion started to refer in its communiqués to 'the south and other marginalized areas'. These areas included regions bordering the south, such as Abyei, Southern Blue Nile and the Nuba Mountains, but also the north-eastern Red Sea and Kassala states, where the Beja people took up arms against the central government. Further illustrative of the Sudan's shifting political borders and complex conflict dynamics was the failed attempt of Daoud Bolad, a former Muslim Brother from Darfur who became SPLA commander, to rally his Fur tribesmen against the NIF regime in 1991. The insurrection was short-lived but pointed to the NIF's shrinking power base, attested Garang's endeavour to reach out to 'non-Arab' communities on the fringes of northern Sudan, and also heralded Darfur's future tragedy – in particular with respect to the regime's brutal response.⁵⁴ All in all, that several

52) The Sudan Alliance Forces (SAF) are composed of secular northern politicians and intellectuals. The Beja Congress represents a group of traditionally marginalized people from the north-east.

53) Johnson, *The Root Causes of Sudan's Civil Wars*, pp. 130-132 and 139.

54) Born in 1952 into a Fur family with connections to the Umma party, Daoud Yahia Bolad became an Islamist activist – in particular, as chairman of Khartoum University's Student Union – but broke with the NIF in 1989 when the GoS appeared to be supporting Darfur 'Arab' tribes against 'African' groups. The insurgency he led as commander of SPLA's Darfur division was eventually defeated by the (already) joint response of the Sudanese army and local Arab militias. Bolad was imprisoned by the region's military governor,

regions within the north rebelled against Khartoum and many ('black') Muslims fought alongside the SPLM/A contributed to blurring the classical north-south paradigm.⁵⁵

DUP and Umma Party

Forced into exile after the 1989 *coup*, the formerly ruling sectarian parties also entered into opposition with Khartoum and concluded in the framework of the NDA a partnership with their southern ex-foes. However, this alliance of necessity was only based on the lowest common denominator: antipathy for the Bashir regime. Beyond a vague commitment to overthrow the government and restore 'democracy', it denoted no common understanding on the terms of a sustainable settlement of the war. Instead, mistrust has persisted between the 'partners': the SPLM/A has always suspected the northern parties of wanting to use its military strength to overthrow Bashir, while the religious parties have remained sceptical as to the SPLM/A's commitment to a united Sudan and have found themselves at odds with the notion of a secular state.⁵⁶ The status of Islam has therefore remained a divisive factor. In 1991, however, as the split within the SPLM/A put forward the issue of self-determination, the Umma party and DUP came to realize that their inflexibility on the question of state and religion could ultimately precipitate the south's secession. The Umma party therefore reached the conclusion that the only alternative option to this worst-case scenario was to offer the south a secular and decentralized state. In this spirit, the NDA adopted in June 1995 the Asmara Declaration, which stressed the necessity of basing a future political system on a multi-ethnic and multi-religious society while endorsing the right of self-determination for the south (that is, choosing between the options of confederation/federation and independence). The Asmara Declaration therefore marked, with some ambiguities, the sectarian parties' approval of the Declaration of Principles (DoP) put forward under IGAD auspices in 1994.⁵⁷ In 2000, however, the NDA was weakened by the defection of former prime minister and leader of the Umma party, Sadiq al-Mahdi, who returned to Khartoum (but remained in opposition). The NDA's lack of cohesion no doubt explains why the alliance has been unable to challenge seriously the Islamist government.

Colonel Al-Tayeb Ibrahim, better known as 'Iron Bar'. Accused of treason, he died in unexplained circumstances before his trial.

55) A relatively large part of the Nuba peoples, more than half of the Southern Blue Nile population, and the vast majority of the Beja people are Muslims. 'Arabs' are a minority in all these areas. As Johnson emphasizes (*The Root Causes of Sudan's Civil Wars*, p. 133), there is no contradiction for the NIF in killing Muslims in the name of Jihad since the NIF declares its Muslim opponents are non-Muslims.

56) ICG, *God, Oil and Country*, p. 18.

57) See chapter 2.

The Government Side

The GoS

In spite of efforts to transform itself from a military to a civilian government, the government of the Sudan has remained one of the most repressive regimes in Africa. General Bashir was elected president in 1996 and again in 2000, but both elections were boycotted by all the other political parties and allegedly manipulated. Opponents have been consistently repressed and marginalized. Lacking wide popular support, the government relies on a powerful and well-organized security apparatus that was gradually built since the NIF started to infiltrate state structures under Nimeiri. Furthermore, the GoS has used religion as a mobilizing force, both within and outside the borders of the Sudan. Internally, the NIF 'repackaged the old themes of Arab domination into a more attractive, radical Islam guise'.⁵⁸ Externally, the regime supported Islamist groups in neighbouring countries, fundamentalists in Algeria, and the Iraqi occupation of Kuwait. Khartoum was also established as a base for militant Islamist internationalism: radical movements and terrorist organizations such as Osama Bin Laden's al-Qaeda were provided with a safe haven and logistical aid in return for financial support.⁵⁹ As a result of its repressive policies and Islamist activism, the GoS became an international pariah. In 1996, the United Nations imposed sanctions on the Sudan for alleged connections to the assassination attempt on Egyptian President Mubarak.⁶⁰

The Turabi Factor

By the end of the decade, modest political reforms were initiated by Hassan al-Turabi, the NIF founder widely seen as the *éminence grise* of the GoS, who calculated that limited liberalization would encourage opposition parties to join the government and improve the regime's image abroad. Turabi restored some civil liberties, released a few political prisoners and, most importantly, undertook to empower the national assembly (of which he was the Speaker) at the expense of the presidency. Perceiving the threat, President Bashir put an end to the experiment in December 1999 by removing Turabi, disbanding the parliament and declaring a state of emergency. Turabi formed a breakaway party in July 2000, the Popular National Congress (PNC), but was ultimately arrested in February 2001. This important break within the ruling party (itself

58) Prunier, 'The Sudan', p. 122.

59) Sudanese officials used to underline that Bin Laden was 'just doing business' in the Sudan. True, he established some 30 companies. According to Ambassador Petterson (*Inside Sudan*, p. 116), however, he also worked hard at strengthening al-Qaeda, forging ties with other terrorist organizations, and training his fighters in explosives and weapons' use. The Sudanese authorities helped him arrange the trips of his men and the shipments of weapons.

60) See chapter 2.

renamed National Congress in 1998) was driven by personal, tactical, as well as ideological differences. Turabi claimed to democratize and de-Arabize Islam to the benefit of all populations of the Sudan, especially the marginalized. In his view, Islam needed to genuinely reach out to the Sudan's 'black' majority and the country needed to be restructured accordingly. Turabi was also a powerful international Islamist voice, with ambitions for Islamic revolution throughout Africa and the Middle East. By contrast, Bashir was attached to the traditional view of the Sudan as the possession of an Arabized elite. This elite felt threatened by Turabi's new agenda and accused him of racism and of politicizing ethnicity. After the split, the charismatic Turabi was followed by students and regional party cells whereas the security elite, in line with the self-interested conception of the Sudan, remained with Bashir.⁶¹ At about the same time, the government slightly relented on its fundamentalist rhetoric. Although this evolution was ascribed to Turabi's removal, it also relates to the regime's economic performance and in particular to the exploitation of oil.

Oil

The pursuit of oil wealth had not only become the GoS's priority but has allowed it to cut links with terrorist Islamist organizations whose financial support was no longer needed. Additionally, oil development in the late 1990s has provided the government with a significant strategic advantage in the war against the south. Since oil began to flow in the Sudan in 1998, the GoS was indeed able to double its military expenditure within three years.⁶² In other words, oil has happened to be the government's best ally in the war – a role previously played by SPLM/A breakaway factions.

SPLA Breakaway factions

Throughout the 1990s, Khartoum's war strategy was to stimulate and support southern breakaway factions in pursuit of two compatible objectives: a) weakening the southern rebellion; and b) waging the war by proxy. Thus, the SPLA-Nasir faction was supplied in military equipment by Khartoum after it broke with the mainstream during summer 1991. While Garang therefore perceived the dissent as a result of Khartoum's manipulation (and not of his

61) See Alex de Waal, 'Tragedy in Darfur', posted on *Sudan Tribune* website, 13 October 2004. The split explains the future division of roles in the Darfur conflict between the Justice and Equality Movement (JEM), claiming to represent Darfur 'African' tribes and linked with Turabi, and the Sudanese government, whose reaction was driven by the so-called 'security clique'. See below, chapter 3.

62) ICG, *God, Oil and Country*, p. 102. According to Human Rights Watch, 60 per cent of the US\$ 580 million received in oil revenue by Khartoum in 2001 was spent in purchasing foreign weapons and developing a domestic arms industry (HRW release, 26 November 2003).

own authoritarianism), Machar seemed to have considered this alliance as purely tactical support against the Torit faction.⁶³ Paradoxically, however, the SPLA-Nasir was allied with and fully dependent on the government of the state from which it pretended to separate. For years, the faction leaders struggled with that contradiction, which caused further dissensions and eventually cost them their credibility. Not only were these splinter groups fully dependent on Khartoum, but Khartoum deceived them more than once. What follows is a brief chronology of this gradual demise.

- January 1992: The GoS and the SPLA-Nasir hold talks in Frankfurt, which result in a joint statement presented by Lam Akol as committing Khartoum to the self-determination of the south. In fact, the statement referred to the right of the southern Sudanese to choose a constitutional status according to their aspirations ‘without ruling out any option’.
- February 1994: Riek Machar tries to regain some credibility by rededicating himself and his movement to full independence. The SPLA-Nasir (which had become SPLA-United in March 1993) is renamed Southern Sudan Independence Movement/Army (SSIM/A). Expelled for collusion with the government, Lam Akol renames his own faction SPLA-United.⁶⁴
- January 1995: Machar dismisses from the SSIM two commanders (William Nuyon Bany and Kerubino Kwanin Bol) who enter the service of the government.
- April 1996: Khartoum and the SSIM sign a political charter which reaffirms the unity of Sudan and *sharia* as a source of legislation, but promises a referendum for southerners to ‘determine their political aspirations’ at the end of an unspecified period. With Machar lacking sufficient control on his own units to bring them over to the government, the charter fails to halt the SPLM/A’s military resurgence. On the contrary, the NDA carries out successful operations in the east.
- April 1997: In response to NDA’s successes, and with a view to institutionalizing its links with SPLM/A splinter groups, the GoS signs the Khartoum Peace Agreement with Machar’s SSIM, Kerubino Bol’s SPLM/ Bahr el-Gazal group, and four other little known groups. The agreement incorporates and specifies the principles of the charter, promising in particular a referendum on unity or secession for the south after four years. A Coordinating Council for Southern States is created,

63) Johnson, *The Root Causes of Sudan’s Civil Wars*, p. 99

64) Differences soon appeared within the Nasir faction between Riek Machar, who seemed convinced that the goal of independence would enable them to attract most SPLM/A members and thereby break with the GoS, and Akol, whose more realistic assessment of the situation led to claim an autonomous status rather than full independence (Johnson, *The Root Causes of Sudan’s Civil Wars*, p. 112).

whose presidency is awarded to Machar; Kerubino is made deputy president (until he defects again to the SPLM/A in January 1998). Machar's SSIM/A and other southern military groups merge into the South Sudan Defence Forces (SSDF).

With hindsight, however, it appears that the government committed itself to a referendum only because it was under military pressure. Its main concern was to weaken the SPLM/A and use the security provided by southern militias to develop the oil industry, but it had no intention of keeping its promise even though this commitment was enshrined in the 1998 constitution.⁶⁵ Furthermore, the wording of the agreement was subject to many interpretations and in practice the powers devolved to the southern states were highly qualified by federal control.⁶⁶

The Khartoum agreement ultimately collapsed in 1999 because none of the benefits promised to the southern signatories (including a regional government, development initiatives and a referendum) ever materialized. Further fragmentation and confusion ensued, as some Nuer commanders remained allied with the government, others rejoined SPLA and some others stayed inbetween.⁶⁷ In addition, SSDF warlords started to contend for control of oil resources in Unity province. In the end, Machar found himself without an army and followers, and left Khartoum in 2000.⁶⁸

To sum up, the government's strategy of manipulating southern warlords was fairly efficient in undermining the SPLM/A's military effectiveness and exposing the south's political contradictions. By exacerbating and highlighting tribal divisions, the GoS also aimed at concealing the north-south, or rather the centre-periphery, dichotomy. Eventually however, this policy may have contributed to reinforcing John Garang's authority, who remained the only untainted, hence credible, rebel leader and finally regained the support of many disillusioned dissidents. Furthermore, the SPLM/A was able, after the critical loss of Mengistu's support, to find new allies in the region. The role of neighbouring countries, some of which were both parties to and mediators in the conflict, significantly altered the military balance and added further to the intractability of the situation.

65) Articles 137-138. The GoS accepted simultaneously the IGAD Declaration of Principles (see chapter 2).

66) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 124.

67) ICG, *God, Oil and Country*, p. 135.

68) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 125. Machar then formed the Sudan People's Defence Force (SPDF), which later merged with the SPLA (see chapter 3).

3) The External Players: The Sudan's Regional War

The war in the Sudan has been referred to as 'an undeclared regional war'.⁶⁹ Most of the country's neighbours have indeed been involved in the conflict, directly or indirectly, on one side or the other and sometimes on both sides alternatively. To an extent, this is no surprise: very rare are actually the so-called 'internal conflicts' without external interferences. Given the symbolic issues at stake in the case of the Sudan – an 'Arab' versus 'African' conflict of identity – such internationalization was almost inevitable. However, the modalities of the process differed somewhat between the two wars. While the Sudan's first war was embroiled in the web of alliances knotted around the Arab-Israeli conflict, by contrast the regionalization of the second war is largely the result of the Islamist government's subversion policy.⁷⁰

SPLM/A's External Supports in the 1990s

During most of the 1990s, the SPLM/A could count on the support of three countries, which were prompted by Khartoum's aggressive stance to align with the Sudanese opposition.

Ethiopia

While Mengistu had been instrumental in developing the SPLA's military capacity, his overthrow (with the support of Khartoum) by Meles Zenawi and the Ethiopian People's Revolutionary Democratic Front (EPRDF) in 1991 initially put an end to the Ethiopian support to the SPLM/A.⁷¹ From 1992 onwards, however, the NIF undertook to mobilize all groups' discontent with Ethiopian ethnic federalism, starting with the Oromo and continuing later with non-Ethiopian Muslim minorities such as the Somalis. In return, the Ethiopian government embarked on active cooperation with the Sudanese opposition in exile, already well established in Eritrea. The bilateral relations between Khartoum and Addis Ababa reached a low point in 1995 when an Egyptian terrorist assisted by Sudanese intelligence services tried to assassinate Egypt's President Mubarak in the Ethiopian capital. Much embarrassed, the Ethiopian authorities then stepped up support to the SPLM/A.

69) Prunier, 'Sudan's Regional War'.

70) On the regional dimension, see Prunier, 'Sudan's Regional War'; David H. Shinn, *Sudan and Her Neighbours*, ISS Situation Report by invitation, 7 March 2003; John Young, 'Sudan's Changing Relations with its Neighbours and the Implications for War and Peace', unpublished paper.

71) Similarly, Ethiopian support for SPLM/A during the 1980s was in part a response to the Sudan hosting the Eritrean Liberation Front (ELF), the Eritrean People's Liberation Front (EPLF), the Tigray Peoples' Liberation Front (TPLF) and other armed Ethiopian groups.

Eritrea

Relations between Eritrea and the GoS also gradually deteriorated after the NIF *coup* and were eventually broken in 1994 upon Eritrea's initiative. While Khartoum supported the insurgents from the Eritrean Islamic Jihad, Asmara provided continuous support to the NDA (hosted in the premises of the former Sudanese embassy) and helped in projecting NDA forces across its border into eastern Sudan.

Uganda

Since the coming to power in 1986 of Yoweri Museveni, who had known John Garang for years, Uganda proved to be the most loyal and continuous supporter of the SPLM/A, and a most welcome one after the loss of the rebellion's rear bases in Ethiopia in 1991. Conversely, Kampala long accused Khartoum of supporting its Ugandan opponents, such as the Lord's Resistance Army (LRA), the Nile West Bank Liberation Front, and the Allied Democratic Forces (ADF). Bilateral relations were broken by Museveni in 1995 after the GoS bombed the Ugandan territory.

The support of Ethiopia, Eritrea and Uganda to the SPLM/A reached its peak in the mid-1990s when the three countries became part of the US 'frontline states' strategy, which was intended, in exchange for limited US military assistance, to contain and pressurize Khartoum. This strategy was, however, put to an end when the Ethiopia/Eritrea war broke out in 1998. From then on, the two belligerent parties were prompted to search for a rapprochement with the Sudanese government either to obtain or to prevent their enemy from gaining Sudanese support, which could prove a decisive advantage. Addis Ababa finally won the game and built a mutually benefiting alliance with Khartoum at the expense of the NDA. The Sudan and Eritrea concluded in 1999 a bilateral deal by which each signatory promised to end support for the other's opposition groups, but mutual recriminations have continued to characterize their bilateral relations, with Khartoum accusing the Eritrean government of supporting NDA operations in eastern Sudan and Asmara accusing the Sudan of forming a hostile alliance with Ethiopia and Yemen. In the same vein, Uganda and the Sudan signed a protocol in March 2002 that allowed Ugandan forces to execute limited incursions against LRA within the Sudan – Operation 'Iron Fist' – and diplomatic relations were fully re-established in January 2003. However, suspicions remain on both sides that support of some kind continues to each party's rebel groups.

GoS's External Supports in the 1990s

The government of the Sudan never had (official) military allies in the region but has long relied on Iran's military and economic support and provides itself with military products in China. Within the region, Egypt and Libya have, overall but with variations, shown themselves to be politically sympathetic to the Sudanese government.

Egypt

For historical reasons, the Egyptians have a propensity to think of the Sudan as part of their backyard. But their relation to this country is also shaped by two issues of vital interest. The first is access to the Nile river resources on which 95 per cent of the Egyptian population is said to depend. Consequently, Egypt is strongly opposed to a possibly independent south Sudan, whose authorities would make another stakeholder to bargain with and might even try to divert the flow of the river. The second national interest is the development of fundamentalism in the Sudan. Fearing radicalization of groups within the Egyptian territory, the Cairo government wants a united, but also moderate and cooperative Sudan. In that regard, Bashir's administration was long seen as a bastion of extremism and bilateral relations reached a nadir in 1995 after the assassination attempt on President Mubarak. However, Egypt had mixed feelings about efforts to isolate Khartoum, fearing that this would lead the NIF to develop closer links with radical movements and concerned that weakening the regime might serve SPLM/A's purpose. Since then, Egypt's policy has shifted (like others) from isolation to engagement. Relations gradually normalized by the end of 1999 owing in particular to Bashir's breakup with Turabi.

Libya

Erratic and unpredictable, Muammar Qaddafi has intermittently supported both the GoS and the southern rebellion. Until the fall of Nimairi, the Libyan leader long provided financial support to the SPLM/A, presumably on the grounds that it was a 'revolutionary' organization (otherwise it also represented a non-Muslim African group aiming to overthrow a Muslim and 'Arab' regime). Since then, Qaddafi has positioned himself against the self-determination of the south and has worked to improve both Libya's relations with President Bashir and its image of potential peacemaker. He therefore mediated between the Sudanese and Ugandan government and, as explained below, along with Mubarak he promoted the Joint Libyan-Egyptian Initiative, whose main characteristic was to be short of any promise of self-determination for the southerners.

Chad

President Idriss Déby was brought to power in December 1990 with Khartoum's support, after launching a successful offensive against Hissène Habré from the Sudanese territory. Although the Chadian government has not intervened in the south, it has remained allied with the Sudanese government even after the outbreak of the crisis in Darfur.

Overall, the most, if not only, neutral country in the region with respect to the Sudan's war has consistently been *Kenya*. Since Kenya's independence in 1963, the Kenyan authorities have managed to keep cordial relations with the Sudan while the Kenyan population tends to be sympathetic towards the

SPLA. And while the Kenyan territory has been used for decades as the launching pad of relief assistance towards the Sudan, the Nairobi government has often been at the forefront of peace diplomacy.

Conclusion

The Sudan has been at war with itself for three-quarters of its existence as an independent state. However, this protracted conflict is not, or not only, rooted in the cultural and religious divide that seems to characterize the country. In fact, these differences have become factors of conflict inasmuch as they have been, paradoxically, overlooked by a fraction of the population for which the country's identity could not be dual or multiple but should necessarily match with their own. Northerners have, historically, identified the Sudan with Arabism and Islam and sought to unify the country along these lines, despite the opposition of non-Muslims, southerners, peoples from various marginalized areas, and some liberal northerners. This assimilationist approach has prompted in return the southerners to promote secularism – and not Christianity which is the religion of a minority – as the best means of ensuring pluralism, religious freedom and equality. Yet, these conflicting identities may not have fuelled over four decades of war in the Sudan had they not further coincided with long-established patterns of political exclusion and economic exploitation. The formation of these 'horizontal inequalities' in the Sudan – as Frances Stewart has termed inequality among (identity) groups in the political, economic or social fields⁷² – has been aptly brought to light by Douglas Johnson:

*The structural divide between Muslim and pagan peoples established in Sudan by the end of the nineteenth century was not solely religious. It was a divide that encompassed participation in or exclusion from state activities and the degree of access to economic activities, fostered or protected by the state. To the extent that the divide was territorial, identifying those who lived within state boundaries and those who lay beyond them, it also came to be perceived as racial. Those fully participating within the state increasingly identified themselves with Arab lineages, while at the same time identifying those who lived outside the state not only as unbelievers, but as slaves, or as enslavable ... The pattern established during the Turkiyya, whereby religion and racial origins influenced access to political power and economic opportunities, has intensified since independence in the mid-twentieth century.*⁷³

72) Frances Stewart, *The Root Causes of Conflict: Some Conclusions*, Working Paper Number 16, Queen Elizabeth House, University of Oxford, June 1998.

73) Johnson, *The Root Causes of Sudan's Civil Wars*, p. 75.

The continued domination, in spite of promises received to the contrary, of the southern Sudanese in the newly-independent Sudan lies at the source of the first war. Although they differed somewhat on the framework and modalities, the southerners claimed to have their identity and interests recognized and protected, and to be given the opportunity to develop their region and control the matters directly affecting them. Their grievances were partly responded to in the 1972 Addis Ababa Agreement which granted the south a regional autonomy status – and with it an eleven-year respite in the Sudan's deadly history. The 1972 peace agreement was concluded as a result of both internal and international developments that left the belligerent parties isolated, exhausted and bereft of external support. However, it was too narrowly based to prove sustainable. Critically, the Addis Ababa agreement was neither signed nor supported by influential religious-based northern parties, for which its provisions were anathema to their conception of the Sudan as an Islamic state. Within a few years, these parties played the role later encapsulated in conflict studies of 'the peace spoilers'. At their instigation, the Addis Ababa agreement was *de facto* abrogated and Islamic law was promulgated *de jure* as the source of legislation throughout the Sudan, thereby opening a new chapter of violence.

A number of lessons concerning the requirements for peace in the Sudan may nonetheless be drawn from the failure of the Addis Ababa process. Key contextual conditions have first to be met for the overall situation to be more conducive to peace: belligerent parties are likely to conclude a peace deal provided only that they perceive signing as being in their interest, for example by offering an exit strategy from a difficult political and/or military situation. In that respect, neighbouring and foreign countries may be influential by contributing to the belligerents' war effort or on the contrary by cutting off support. Furthermore, a sustainable peace agreement for Sudan should be comprehensive enough as to the substance (grievances at the origins of the conflict should be adequately addressed) and the representation (the terms of the settlement should be agreed upon by the widest number of stakeholders). Undoubtedly, the difficulty lies in reuniting such a broad consensus on substantive and far-reaching provisions. The task is even harder as the second war was not a mere repetition of the first but was made seemingly more intractable for a number of reasons.

First, the very failure of the 1972 agreement would linger. Having experienced deceit through a number of 'dishonoured agreements', southerners lost all confidence in the northerners. Consequently, they are likely to be extremely suspicious in future peace negotiations – with respect, for instance, to all kinds of self-government arrangements – and to demand strong enforcement guarantees.

Second, different from the first war, which was mainly fought over constitutional issues (power-sharing arrangements and the status of religion), the control of natural resources in the south figures prominently among the causes of the second war. In particular, oil has complicated the search for

peace by providing (mainly the GoS) additional financial means to wage the war and by raising the stakes: maintaining the unity of the Sudan and keeping control of the oil fields became primary objectives of the government while independence seemed an even more attractive option for southerners.

Third, the Sudan's second war has not remained confined to the south but has expanded to various other 'marginalized areas' of the country – as a consequence of which the north-south dichotomy seems largely outdated. This raises the question as to whether and how these multiple wars, which are separate as well as interlinked, can be addressed and settled within a single process/framework.

Fourth, the failure of Addis Ababa underscores the need for a broadly-based peace process. Since 1989, however, the Sudan has been ruled by a political party that was instrumental in this failure and seized power, by force, to prevent the signing of another peace accord and to safeguard 'Arab' supremacy in the Sudan. In other words, the former peace spoilers have come to power. Throughout the 1990s this political configuration contributed to renewed factionalism in the south (as a result of Khartoum's divide-and-rule strategy) and to greater interference from neighbouring countries (in response to the NIF's pan-Islamic policy).

Fifth, beyond factionalism, the southern rebels' ambiguity as to their own goals and aspirations may contribute to the intractability of the war. While ambiguity may be constructive, the lack of clarity contributes to creating differing expectations and complicates the designing of a workable solution.

Finally, beyond the SPLM/A's shifting agenda, the conflict has evolved over time from (negotiable) grievances that could be met through an autonomous arrangement to a more ambitious (and hardly negotiable) agenda of redefining and restructuring the state: 'by demanding the redefinition of the nation, the SPLM has gone beyond asking for fairness in the distribution of goods to contest the soul or the heart of the nation; that contest has zero-sum implications'.⁷⁴

74) As stressed by Francis Deng, 'Negotiating a Hidden Agenda', p. 95.

Chapter 2

A Peacemaking Battlefield

The NIF's *coup d'état* of June 1989 ruined, as was intended, all internal efforts at peacemaking. The new regime cancelled the DUP-SPLM/A accord on the grounds that the right of the majority population to live under *sharia* law could not be compromised. Although official meetings were held between the new rulers and the SPLM/A in Addis Ababa in August 1989 and in Nairobi in December 1989, the status of *sharia* remained a stumbling block for any negotiation.⁷⁵ From 1991 onwards, however, several African leaders, prompted by the apparent collapse of the SPLM/A and concerned about the regional implications of the war, invested again in mediation efforts. The first objective of this section is to review those external attempts and analyse why, until the signing of the Machakos Protocol in July 2002, they failed to produce any agreement between the two main belligerent parties. The second objective is to identify the key factors, actors and policies, which enabled, at the turn of the century, replacing the negotiation process back on track.

I. The Traffic Jam of Regional Peace Initiatives

Throughout the 1990s, peace initiatives were successively – but unsuccessfully – launched by African countries or organizations, namely

75) Ann Mosely Lesch, *The Sudan: Contested National Identities*, Indiana University Press, Bloomington and Indianapolis / James Currey, Oxford, 1998, pp. 167-170.

Nigeria in 1992-1993, IGAD in 1994-1997, and Egypt and Libya in 1999-2001. Although they provided building blocks towards the final settlement, these efforts first resulted in a 'traffic jam of peace initiatives', which complicated instead of facilitating the resolution of the conflict.⁷⁶

1) Nigerian Initiatives

Nigerian President Ibrahim Babangida launched a peace initiative in 1992 in the hope that the breakup and ensuing weakening of the SPLM/A would facilitate the conclusion of the negotiations.⁷⁷ By contrast, Khartoum was not interested in a negotiated settlement since it expected a military victory and anticipated instead playing the southern factions against each other. The government's delegation refused to discuss security issues and uttered an assimilationist vision of the Sudan, according to which Arabic would anyhow become the unique language in the country and Islam would equally spread southwards. This left little to negotiate. Khartoum was willing to discuss minor adjustments of the federal system but rejected totally a referendum for the south that would have included an option for secession. The government's hard stance combined with Nigerian mediation efforts had the effect of inducing the two southern factions to finally accept merging into a single delegation and put greater emphasis on self-determination. Nevertheless, the SPLM/A-Mainstream still opted for a secular and decentralized Sudan as its preferred outcome, while the Nasir group claimed full independence for the south. And the GoS was anyhow too confident of its impending military victory to concede to either of the two factions.

A second series of talks (Abuja-II) were held a year later in the Nigerian capital. The SPLM/A-Mainstream was this time the only participating rebel movement, but was even weaker militarily. It nevertheless reiterated its programme for transforming the Sudan into a secular and democratic confederation (with two entities): were this vision to be rejected by the rulers, all marginalized people (including in the Nuba Mountains and Southern Blue Nile) should vote on confederation or separation. Khartoum rejected both options and proposed instead power-sharing and balanced development within a federal framework. In addition to the referendum issue, the talks collapsed because of fundamental differences over the issue of the separation of state and religion, and on the political system, socio-economic policies, and security arrangements during the interim period. These were to remain contentious issues for many years to come. Meanwhile, the government held separate discussions with the SPLM-United in Nairobi, which concluded with

76) Quoted from ICG, *God, Oil and Country*, chapter 6.

77) On the Nigerian peace initiative, also called Abuja-I and Abuja-II, see Lesch, *The Sudan*, pp. 172-179.

a joint (and vague) communiqué similar to the one adopted earlier in Frankfurt.⁷⁸

In short, the SPLM/A was so weak that clinging to unreachable objectives remained its only *raison d'être*, while the GoS was too confident in the success of its war strategy by proxy. But the Nigerian initiatives also probably failed because the mediators unrealistically hoped to benefit from this strategic imbalance instead of seeking to transform it into a more conducive setting. In that regard, the lack of international involvement to bring pressure to bear on the stronger, rather than weaker, party was critical.

2) The IGAD Peace Initiative

By contrast, the process launched by the Intergovernmental Authority for Development (IGAD) from 1994 onwards reflected a greater multilateral involvement and a more – possibly excessively – committed approach. IGAD was founded in 1986 in Djibouti (where it is still based) by the host country, Kenya, Ethiopia, Somalia, the Sudan and Uganda. Eritrea joined on independence in 1993. The initial objective of the organization, as spelled out in its original acronym (IGADD), was to focus on drought and development issues. However, under the impulse of the so-called ‘new leaders’ who came to power at the turn of the 1990s in several East African countries (in particular Uganda, Ethiopia and Eritrea), IGAD became gradually involved in peacemaking activities, focusing first on Somalia and, after US intervention in Mogadishu, on the Sudan. This transformation fitted well into the post-Cold War thinking, emphasizing the role of regionalism and regional organizations in fostering peace.⁷⁹ The creation in 1994 of the ‘Friends of IGADD’ – a group of Western donors later renamed IGAD Partners’ Forum – marked international recognition of the organization’s new role.⁸⁰ In 1996, IGAD dropped the ‘D’ for drought and adopted conflict prevention and resolution as a top priority. Ironically, however, IGAD’s efforts at resolving the conflict in Sudan then seemed to have reached complete stalemate.

The regional organization did not get involved in the Sudan’s conflict only because it was in fashion. Chaired by Kenya, the IGAD initiative was supported by Uganda, Ethiopia and Eritrea, three of the Sudan’s neighbours concerned about the negative repercussions of the war. Whereas the GoS presumed that Ethiopia and Eritrea were well disposed since they had been assisted by the NIF in overthrowing Mengistu, the three countries were increasingly worried about Khartoum’s support to Islamist groups in the

78) See chapter 1.

79) As stressed by Abdelwahab El-Affendi, ‘The Impasse in the IGAD Peace Process for Sudan: The Limits of Regional Peacemaking?’, *African Affairs*, 2001, 100, p. 583.

80) The first friends of IGADD included Australia, Canada, Italy, the Netherlands, Norway, the United Kingdom and the United States.

Horn. Hence, before applying the US strategy of that name, the future ‘frontline states’ tried to mediate in the Sudan’s conflict with a view to countering the NIF’s destabilizing policy and containing political Islam in the region.⁸¹ Driven by these motives, they showed during the four rounds of talks held in 1994 a highly proactive conception of their role. As to the form, they did not limit themselves to helping the parties in working out the terms of a compromise, but circulated their own proposal, later known as the Declaration of Principles (DoP).⁸² As to the substance, the mediators did not seek a middle-ground option between the parties’ positions but showed strongly supportive of two principles advocated by the SPLM/A: self-determination and secularism. There were clear reasons for that. First, Eritrea championed the application of the right of self-determination from which it was born the year before. Second, secularism was seen as an antidote to political Islam and a possible way towards overthrowing Khartoum’s Islamist regime.

Directly drawn from the SPLM/A’s platform, the DoP was built on the same articulation put forward by the southern delegation during the Abuja-II talks and qualifying the right to self-determination: unless the Sudan was transformed in a secular and democratic state recognizing and accommodating its society’s diversities, the people of the south should have the option to determine their future, including independence through a referendum.⁸³ Thus, while the Nigerian mediation had prioritized unity and rejected self-determination if that meant secession of the south (for fear of setting a dangerous precedent for Nigeria itself), the IGAD mediation team took a radically opposed view by which unity was *conditional* upon secularism, and short of this condition, the south would have the right to secede.⁸⁴

The DoP was presented as a basis for resolving the conflict in the Sudan, but had both virtues and vices. On the one hand, the logics it was based on probably offered the best chance of maintaining the Sudan’s unity. As realized by the Umma party and other NDA partners at about the same time, reforming the Sudan and integrating the south were necessary steps to curtail the latter’s secessionist tendencies. The DoP further implied that the right to self-determination should be seen as a legitimate claim, and granted as such, when the group concerned is subjugated to systematic discrimination and persistent exclusionary policies.

81) As suggested by Abdelwahab El-Affendi, ‘The Impasse in the IGAD Peace Process for Sudan’, p. 586.

82) This proposal was submitted after the second meeting was adjourned in May 1994, while the parties stuck inflexibly to the positions adopted at Abuja.

83) IGAD Peace Initiative, Declaration of Principles, Nairobi, 20 July 1994 (referendum envisaged in point 4).

84) Lesch, *The Sudan*, p. 182.

By qualifying the right to self-determination to such political, and not legal, criteria, conditioning in return the supposedly absolute sovereignty of the state, IGAD's Declaration of Principles conveyed a ground-breaking message of universal and potentially revolutionary value. For the time being it was unsurprisingly fully endorsed by the SPLM/A. The DoP was weakened by a serious shortcoming, however: there was no chance that the Sudanese government would accept it. The choice given to the GoS was indeed limited to secession or secularism. But in the early 1980s, the NIF had manoeuvred to abolish the southern regional government and re-establish central control on natural resources in the south; and in the late 1980s, it had staged a preventive *coup* to safeguard, *inter alia*, the Islamic character of the Sudanese state and spread Islam throughout Africa. In other words, for the ruling party neither the unity of the Sudan nor the Islamic state were negotiable. It rejected the DoP completely.⁸⁵

After the collapse of the talks, the IGAD process stalled for three years. Both sides tried to reinforce politically and militarily – the SPLM/A by strengthening its links with NDA partners (the 1995 Asmara Declaration), the GoS by seeking a deal with southern splinter groups (the 1996 Political Charter and 1997 Khartoum Peace Agreement). Since the three leading countries allied militarily with the SPLM/A during this period, the IGAD process was inevitably perceived by Khartoum as a biased and hostile initiative. Nevertheless, the IGAD countries tried in the meantime to secure international support, which was granted through the Partners' Forum.

Under intensified regional pressure from the frontline states and their US sponsor, and faced with a series of military setbacks, the Sudanese government returned in 1997 to the negotiating table and then accepted, not without reservations, the Declaration of Principles as a basis for further discussions. With hindsight, however, it appears that the government's move was merely tactical and forced by events, but did not mirror any evolution on substance. Thus, the GoS back-pedalled as soon as the situation improved, in particular when the frontline states went to war against each other (Ethiopia and Eritrea) or shifted focus elsewhere (Uganda in the DRC).⁸⁶ From then on, the Sudan was solicited, not stigmatized, by its neighbours and began to reintegrate itself into the region without having to make peace with the south.⁸⁷

During the subsequent rounds of talks on the implementation of the DoP, serious differences persisted between the two delegations – especially on the duration of the interim period (two to four years), the nature of interim

85) The talks also collapsed on ceasefire issues: the GoS pressed for a rapid move to a ceasefire while the SPLM/A wanted the ceasefire to be part of a comprehensive agreement.

86) ICG, *God, Oil and Country*, p. 156.

87) The US bombing of a pharmaceutical factory in Khartoum on 20 August 1998 also proved counter-productive by increasing international sympathy for Khartoum. See below.

institutional arrangements (confederal/federal), the areas where a referendum should be held (the south only or the other marginalized areas as well), and the separation of state and religion. These were long to remain issues of contention. However, overconfident that the mutual acceptance of the DoP would significantly smooth the negotiations, the mediators were unable to structure the talks so as to avoid deadlocks.⁸⁸ After three rounds of discussions held in October 1997 and May 1998 in Nairobi and in August 1998 in Addis Ababa, the talks were interrupted again until July 1999.

The mediators then had to accept, reluctantly, proposals made by IGAD partners to improve the process. A permanent secretariat was established, a special envoy to the committee chairman was appointed, and three levels of negotiations were created: ordinary plenary meetings; joint sub-committees; and informal discussions. In July 1999, the delegations agreed to create two sub-committees dedicated respectively to the structures of governance in a new united Sudan (points 1-3 of the DoP) and to interim and ceasefire arrangements (points 5 and 6).⁸⁹ Yet, the parties remained inflexible as military operations, fuelled by oil development, intensified. After an ultimate meeting at Lake Bogoria in Kenya in October 2000, there would be no further IGAD-sponsored talks until July 2002 in Machakos.

3) The Joint Libyan-Egyptian Initiative

Meanwhile, another and concurrent peace initiative saw the light of day, as much driven by the national interests of its promoters as the IGAD process. The Joint Libyan-Egyptian Initiative (JLEI) reflected in fact an Arab view on the Sudan peace process and in particular Arab countries' concerns at the limited participation of northern parties (reduced to the NIF), the perceived domination of the process by African countries, and correlatively the exclusion of a historically interested neighbour: Egypt. The Egyptians resented even further their marginalization as they had, historically as well, opposed the possible separation of the south from Khartoum and the IGAD process seemed precisely to be encouraging this outcome. Hence, the JLEI should essentially be seen as an attempt to checkmate IGAD's emphasis on self-determination.⁹⁰ This does not mean, however, that its promoters fully aligned with the GoS. Egypt has always feared that a radical change in the Sudan might threaten access to the Nile's waters (such as a north-south split, a Somalia-style collapse or a non-Arab government), but is equally concerned with Islamic fundamentalism as professed by the NIF. Therefore, Egypt is opposed to restructuring the Sudan, but not to containing or even changing the Islamist government.

88) Abdelwahab El-Affendi, 'The Impasse in the IGAD Peace Process for Sudan', p. 588.

89) Abdelwahab El-Affendi, 'The Impasse in the IGAD Peace Process for Sudan', p. 591.

90) On the JLEI, see ICG, *God, Oil and Country*, pp. 160-165.

Started in 1999, the Joint Libyan-Egyptian Initiative in 2001 delivered only a written proposal consistent with these views. It was a declaration in nine points, more remarkable for its omissions than its fairly vague contents. In particular, the proposal excluded all reference to self-determination and secularism but stressed the need to preserve the Sudan's unity and envisaged *inter alia* 'recognizing Sudan's diversity', 'establishing a decentralized government', and 'forming an interim government'. Khartoum could not reject a proposal far more sensitive to northern concerns, and therefore agreed to it unconditionally, although the expected formation of a transitional government probably was a cause for concern. The SPLM/A accepted it too but with reservations amounting to a rejection.⁹¹ Still, the rebel movement was widely criticized in the south for having made this step. At the end of the day, however, the Libyan-Egyptian proposal was just a reversed DoP, offering the government the exact opposite of what IGAD had provisioned for the SPLM/A. Short of any ground for compromise, both initiatives ended up in failure.

Concluding Assessment of the Regional Peace Attempts

A key problem in international conflict management relates to the fact that the potential mediators, especially in the case of governments, are likely to be driven by national interests rather than a genuine commitment to peace. Hence, the outcome that such mediators promote may be more consistent with their own interests than suitable for providing a workable solution to the conflict. In other words, the effectiveness of an international mediation is likely to be spoiled by the same factors required to prompt intervention.

In the case of the Sudan, both IGAD and the Libyan-Egyptian initiatives were driven by national interests, as a consequence of which the proposals made did not result from the search for a compromise solution but merely reflected their respective sponsors' bias towards either party. (This also applies to Nigeria, which rejected the Sudan's possible partition for clearly self-centred reasons.) Not only were these initiatives then unlikely to be mutually agreed upon – since one side had alternatively nothing to gain – but taken together these proposals may have contributed to deepening the rift between the north and the south. Indeed, the JLEI offered a potential basis for crystallizing consensus among northern parties at the expense of the NDA, while most southerners were likely to approve IGAD's emphasis on self-determination. Thus, by engaging in competing peace initiatives, the mediating countries from the region might actually have exacerbated the conflict.

91) In August 2001, the SPLM/A declared that it would not be 'a party' to an initiative that did not incorporate the separation of state and religion, the right of self-determination, and an interim constitution with interim government (ICG, *God, Oil and Country*, p. 163).

This competition also underlines a shortcoming of the IGAD process in which participation was reduced to the two main belligerent parties. Although it gradually gained international recognition, the IGAD process has always been criticized for being too narrowly based and was therefore prone to competition from other initiatives like the JLEI. On the other hand, the IGAD proposal was the only one of the two that could potentially tackle the causes of the conflict. Aiming basically at preventing self-determination of the south and maintaining the status quo amid minor arrangements, the Libyan-Egyptian initiative by no means addressed the Sudan's structural problem – that is, the imposition of an Arab-Islamist theocracy on a multicultural and multireligious nation. By contrast, the IGAD initiative aimed to redress the country's historical inequalities and imbalances, thereby addressing the causes of the conflict. This consistency may explain why, despite its shortcomings, partisanship and repeated failures, the IGAD initiative has persisted over years and even gained international legitimacy. In any case, the IGAD mediation has contributed to creating a climate more sympathetic to the south's concerns and objectives while the Sudanese government became at the same time an international pariah. The DoP in particular has provided legitimacy to the claim of self-determination, thereby exerting heavy pressure on Khartoum.

Another lesson from the IGAD's experiment is also that redressing asymmetry in a country may hardly be achieved without the consent of the central government. Contrary to Nigeria, which gambled on SPLM/A weakness, from the rejection of the DoP onwards the IGAD countries undertook to bring pressure to bear on Khartoum. This strategy succeeded in bringing Khartoum to the negotiation table after three years, but the IGAD 'mediators' then failed to include any convincing incentive in their proposal. Although the GoS was bound to make the greatest concessions given its dominant position, it was unlikely to sign an agreement from which it had nothing to gain. The Sudan's unity was set as a priority in the DoP, but this unity was qualified by secularism and threatened by a potential referendum. In other words, the strategy of the 'frontline states' was temporarily effective in bringing Khartoum to the negotiating table, but insufficient in having the GoS sign a peace deal.

As suggested above, this failure results from the IGAD mediators' partisanship. Being both party and third-party, the frontline states lost all leverage on the government. This is the reason why an effective mediation usually requires a division of labour between (powerful) external actors using carrots and/or sticks to induce the parties to move, and a mediator building on the newly conducive context to broker an agreement.

To conclude, several lessons may be learned from the peace attempts of the 1990s, which highlight a number of requirements for effective international mediation. In addition to contextual factors such as the military balance and the extent of factionalism that undoubtedly impact on the parties' willingness and capacity to negotiate, an effective mediation would entail: i)

working out creative solutions that may reach compromise while responding to legitimate grievances; ii) eluding competing and mutually undermining peace initiatives; iii) ensuring domestic support by opening participation as relevant; iv) making peace an attractive necessity by using carrots and sticks in chorus; and v) securing international support to raise legitimacy, share tasks and provide enforcement guarantees. In broad terms, such a strategy started to take shape by the end of 2001.

II. The Road to Machakos

In mid-2001, the prospects for peace in Sudan seemed fairly remote. Already undermined by the Joint Libyan-Egyptian Initiative, the IGAD process was further challenged by unilateral (but vain) efforts launched respectively by Eritrea (which left the IGAD talks in 2000) and by Nigeria (President Obasanjo acting through the auspices of the Millennium Action Plan). Both initiatives came to nothing, however, and only served to intensify the ‘traffic jam of peace initiatives’ while the IGAD process seemed largely in limbo.⁹² Yet in July 2002, the SPLM/A and the government of the Sudan signed in Machakos, Kenya, under the auspices of IGAD, a protocol on the most outstanding issues and on which previous talks had faltered. This most significant breakthrough in nineteen years of war can be explained by three sets of factors: first, a new context created by the 11 September 2001 terrorist attacks as well as internal military and political developments; second, a new diplomatic process characterized by greater international involvement; and third, new proposals crafted by a qualified mediation team on the basis of previous initiatives.

1) A New Context: The ‘9-11’ Effect

The terrorist attacks of 11 September 2001 dramatically impacted on the bilateral relationship between the US administration and the GoS, thereby creating the environment in which a new international peace effort saw the light.

The International Context: US Policy on the Sudan Before and After ‘9/11’

The ‘9/11’ terrorist attacks in New York and Washington were perceived by the government of the Sudan as a risk and an opportunity. As one of the seven states accused by the United States of sponsoring international terrorism and host of the mastermind of the attacks between 1991 and 1996,

92) For more details on unsuccessful Eritrean and Nigerian efforts, see ICG, *God, Oil and Country*, pp. 165-168.

Khartoum feared to be further stigmatized, if not directly targeted by potential US-led retaliation action.⁹³ However, the GoS also saw '9/11' as a chance to improve its relationship with Washington and end its international isolation by changing lists and enrolling in the war against terrorism. Likewise, the new setting induced the recently installed Bush administration to revise US policy on the Sudan and remove it from the stalemate that had been reached. To understand these changing dynamics, it is useful to recap the main features and results of Bill Clinton's policy on the Sudan.

Clinton's Policy on the Sudan

The NIF's military *coup* of 1989 brought into play the act of Congress banning US bilateral aid (except for humanitarian assistance) to any country whose democratically elected government has been forcibly overthrown. However, this was a mechanistic application of US legislation, not a policy decision. In fact, the US administration was not unhappy with the removal of Sadiq al-Mahdi – whose close relationships with Iran and Libya were little appreciated – and was not especially alarmed with the new regime, which was initially supported by its Egyptian ally.⁹⁴ (The same applies to the British government, whose intelligence services allegedly assisted in toppling al-Mahdi over his links with Tripoli).

Relations really became antagonistic following a number of actions and policies ascribable to Khartoum in 1991-1993, including: gross violations of human rights, the harbouring of terrorists, the backing of Iraq during the Gulf war, growing ties with the Islamic Republic of Iran, the brutal prosecution of the war in the south, the summary execution of four USAID employees in Juba in 1992, and recurrent obstacles made to relief delivery.⁹⁵ When the Clinton administration came to power in 1993, the Sudan was therefore increasingly perceived in Washington as a destabilizing factor in the Middle East and Africa, and as a threat to US personnel and interests.⁹⁶ The new team also inherited from the previous administration's commitments to the new governments in Eritrea and Ethiopia. This said, the Sudan was then far from the top of Clinton's foreign policy agenda. Apart from being a nesting ground for Islamic terrorist organizations, the Sudan was of no real strategic

93) The six other states were: Cuba, Iran, Iraq, Libya, North Korea and Syria.

94) See Roland Marchal, 'Le facteur soudanais, avant et après', *Critique internationale*, N°17, October 2002, p. 48. One may add that the US has not always been that defiant towards radical Islam. During the Cold War, the US clandestinely supported the various national branches of the anti-communist Muslim Brothers (and provided aid to various movements fighting Mengistu) until they realized, after the fall of the Berlin Wall, that these militants were as anti-Western as anti-communist (Prunier, 'Sudan's Regional War').

95) See Petterson, *Inside Sudan*, pp. 168-169 and 246-247.

96) Yehudit Ronen, 'Sudan and the United States: Is a Decade of Tension Winding Down?', *Middle East Policy*, Vol. IX, N°1, March 2002, p. 95.

interest to the US since the end of the Cold War.⁹⁷ Although the prosecution of the war in southern Sudan generated outrage over time from various lobby groups (Afro-American anti-slavery militants, Christian activists, human rights' defenders and humanitarian workers), there was little reporting on the conflict in the US media. The American public was therefore not (made) interested in seeing the United States play an active role in the Sudan. And after the debacle in Somalia, a direct intervention in the Sudanese civil war would have been opposed both by the public and Congress.⁹⁸ All together, these parameters – causes of concerns and constraints on action – translated into a policy of isolation and containment against the Sudanese government that escalated over the decade. The main landmarks of this policy are the following:

- 1993: Invoking 'evidence' that its territory is used as a sanctuary for terrorists and 'credible reports' that militant extremists are trained in the Sudan, the US administration officially designates the Sudan 'a state sponsor of acts of international terrorism'.⁹⁹
- 1996: Following intensive lobbying by the US and Egypt, the United Nations Security Council approved resolution 1044 of 31 January 1996 and calls upon the government of the Sudan to extradite three Egyptian nationals suspected of carrying out the assassination attempt against President Mubarak. More generally, the GoS is also demanded to desist from (and is therefore accused of) assisting, supporting and facilitating terrorist activities, and giving shelter and sanctuaries to terrorist elements.¹⁰⁰ Three months later, acting under Chapter VII of the UN Charter, the Security Council effectively imposes diplomatic and travel sanctions for non-compliance with the previous resolution.¹⁰¹ With all countries in the world compelled to reduce their diplomatic presence in the Sudan and to restrict travel to or through their territory of all Sudanese officials and militaries, the Sudan actually becomes an international pariah. In November 1996, the US administration

97) Until 1995, Bin Laden himself was regarded by the US as an important financier of, but not directly involved in, terrorist organizations (Petterson, *Inside Sudan*, p. 117).

98) Petterson, *Inside Sudan*, p. 82.

99) According to Ambassador Petterson (*Inside Sudan*, p. 117), terrorist organizations present in Sudan included Abu Nidal Organization, Hizbollah, Palestine Islamic Jihad, Egypt's al-Gama'at al Islamiyya, the Islamic Resistance Movement (Hamas), and others from Algeria, Eritrea and other countries.

100) Resolution 1044 (1996), par. 4.

101) Resolution 1054 of 26 April 1996, par. 3. The Security Council also imposed a ban on international flights by Sudan Airways (Resolution 1070 of 16 August 1996) but according to the CSIS Task Force (see below) it was not implemented.

announces that the three ‘frontline states’ (Eritrea, Ethiopia and Uganda) would receive ‘non-lethal’ military equipment worth US\$ 20 million.¹⁰²

- 1997: Acting this time unilaterally, the US administration imposes a trade embargo against the Sudan and a total asset freeze against the Sudanese government. These measures are taken in response to Khartoum’s continued support for international terrorism, efforts to destabilize governments, and poor human rights’ record, which all constitute an ‘unusual and extraordinary threat’ to the national security of the United States.¹⁰³
- 1998: A fortnight after the terrorist attacks against the US embassies in Kenya and Tanzania, the United States launches on 20 August 1998 a cruise missile attack on ‘terrorist-related facilities’ in Sudan, in particular a pharmaceutical factory controlled by an enterprise to which Osama Bin Laden was said to be a substantial contributor. The US operation is supposed to be both retaliatory (as Khartoum is accused, despite its denials, of involvement in the terrorist attacks) and pre-emptive – since the targeted pharmaceutical factory is suspected of manufacturing chemical weapons on behalf of a terrorist network. However, the US administration has never been able to prove its allegations. As a result, the US strikes trigger widespread condemnation around the world while the GoS manages to mobilize domestic opinion and portray itself as a victim rather than a trouble-maker.
- 1999: Concerned with the growing role played by Egypt and Libya, the US administration tries to revitalize the IGAD process and appoints a new special envoy to the Sudan, Harry Johnston. At the same time, a debate is launched within the US as to whether food aid should be supplied to the SPLM/A or not (finally not).
- 2000: Signs of possible relaxation between the two countries seem to appear after Bashir removed Turabi and engaged in reconciliation attempts with neighbouring countries. The Clinton administration does not go further than re-establishing a limited diplomatic presence in the Sudan, however.¹⁰⁴ Rather, the US opposes the Sudan’s candidacy for a seat at the UN Security Council and impedes the resumption of ties between Khartoum and international financial institutions.

102) Although it was the three states’ own decision to launch military operations against Khartoum, the US provided assistance, presumably in the hope that this would, together with SPLM/A action and northern armed opposition, trigger the overthrow of the regime.

103) US Department of the Treasury, Office of Foreign Assets Control, *An Overview of the Sudanese Sanctions Regulations: Title 31 Part 538 of the US Code of Federal Regulations*.

104) In February 1996, American staff were withdrawn from the US embassy in Khartoum for security reasons, but the embassy was never closed.

These increasingly tougher measures towards the Sudanese government ran throughout Clinton's two mandates with no less hostile political stances, such as routine condemnations of the Khartoum regime, travels of American representatives into the south of the Sudan, and ostensible meetings of high-level US officials with Sudanese opposition groups in East Africa (including two meetings between Secretary of State Madeleine Albright and John Garang). Contrary to speculations, however, it seems that US support to the SPLM/A has never been coupled with financial and logistical assistance but has remained moral and political (which nevertheless represented an important achievement for a rebel movement in search of international legitimacy and long seen with scepticism by the US because of its Marxist past and human rights' record).¹⁰⁵ Despite this limitation, Clinton's policy on the Sudan can be summarized as a policy of increasing defiance and confrontation. How effective was this policy in meeting the administration's goals in general, and in furthering the prospects for peace in particular?

The effectiveness of Clinton's policy was assessed and severely criticized by the Centre for Strategic and International Studies in a seminal report dated February 2001.¹⁰⁶ Although the web of sanctions put in place by the Clinton administration actually contributed to isolating Khartoum, the CSIS Task Force estimated that this policy 'made little headway in ending Sudan's war, reforming Khartoum, or ameliorating Sudan's humanitarian crisis'. The problem is, however, that it is not overwhelmingly clear that these were Clinton's policy goals. In fact the US administration has kept a permanent ambiguity over its objectives and demands to Khartoum, thereby rendering the ultimate assessment a flimsy exercise. In 1994, for instance, Secretary of State Madeleine Albright set as pre-conditions for the Sudan's rehabilitation that the Sudanese government improves its human rights' record, reaches a peaceful settlement to the war, and stops supporting terrorism.¹⁰⁷ Yet neither the Security Council resolutions nor Clinton's executive order on unilateral US sanctions reiterated the demand on the resolution of the conflict as a pre-condition for lifting the relevant sanctions. In other words, a chief reason why the containment policy did not allow headway in ending the war may well be that ending the war was only, as stressed by the CSIS Task Force, a 'distant secondary objective'.¹⁰⁸ In broader terms, the ineffectiveness of Clinton's policy on the Sudan results from the fact that it did not match the ends with the means. The US administration seems to have pursued multiple goals simultaneously (regime change, internal reform, war termination and cessation of support to international terrorism) without clearly setting its

105) ICG, *God, Oil and Country*, pp. 18-19.

106) *US Policy to End Sudan's War*, Report of the CSIS Task Force on US-Sudan Policy, Washington DC, February 2001, co-chaired by Francis M. Deng and J. Stephen Morrison.

107) Ronen, 'Sudan and the United States', p. 97.

108) CSIS Task Force, p. 5.

objectives and devising a strategy accordingly. Despite speculations that it was plotting to overthrow the Sudanese government, it seems that the administration was divided over the issue and not convinced that the northern religious parties could make a much better alternative to the NIF.¹⁰⁹

Acting unilaterally from 1997 onwards, including by resorting to force, the US administration gradually appeared as inflexible as the Bashir regime. Paradoxically, Washington's isolation policy led to US self-isolation and ultimately played to Khartoum's advantage. Not only had the Sudanese government no difficulty in bypassing US trade restrictions and obtaining weapons from China, the former Soviet states and other arms dealers, but it succeeded in normalizing relations with its neighbours at the moment when the US administration faced criticisms for its inadequately justified bombings. Furthermore, American policy was used by the Khartoum regime to mobilize domestic opinion against what it portrayed as a 'conspiracy against Islam' and to deflect attention from internal problems.¹¹⁰

In sum, Clinton's policy on the Sudan was largely ineffective in moving Khartoum to change policies, less so in paving the way for peace negotiations with the southern rebellion.¹¹¹ But as Petterson explains, 'the Clinton administration could not see its way clear to take a different approach in its interaction with a government it regarded as brutal and totally untrustworthy'.¹¹² However, this policy had a crucial longer-term benefit in providing the successor administration with significant leverage. The Sudanese government was indeed well aware that only Bush could undo what Clinton had done and put an end to its pariah status.

Bush's Policy on the Sudan

For several reasons, the Sudan was to be high on the Bush administration's agenda. First, the American public had gradually become more aware of the war in the Sudan and the egregious human rights' abuses it generated. In particular, the issue of slavery began to attract increased attention when NGOs such as Christian Solidarity International undertook (much controversially) to buy the freedom of slaves from their marauders. Simultaneously, the war was portrayed as a brutal anti-Christian campaign by certain lobby groups that, like the Christian Right, were part of Bush's core

109) Marchal, 'Le facteur soudanais, avant et après', pp. 49-50.

110) Ronen, 'Sudan and the United States', p. 100.

111) It is true that the Sudanese government took a few symbolic measures intended to demonstrate its commitment to stop supporting terrorism that can be ascribed to Clinton's policy (handing over international terrorist Carlos to the French authorities in 1994 and the invitation to Bin Laden to leave the country in 1996). However, oil development at the end of the 1990s seems to be the key factor explaining the distance eventually taken by the government with terrorist groups.

112) Petterson, *Inside Sudan*, p. 247.

constituency and that urged the new administration to do something in the Sudan – especially in the run-up to elections. Public awareness of the Sudan’s human tragedy was further raised by the Talisman controversy, after the name of this Canadian oil company whose operations in the Sudan were said to contribute to prolonging the war and causing forcible displacement of civilian populations.¹¹³ Oil is precisely the second factor of attention on the Sudan. The new team in power in Washington and the oil companies closely linked to it were following up with great interest oil development in the Sudan, which could both provide an alternative source of supply and business opportunities. Finally, already before 11 September 2001, the Sudan was to remain a focal point in the fight against international terrorism.

These three parameters – domestic pressure, oil and terrorism – were to ensure the US’s continued interest in the Sudan, and ultimately trigger US involvement in peace efforts. However, the Clinton policy’s lack of effectiveness generated debate as to how the new administration should deal with the Sudanese rogue state. Two major policy options were discussed: further containment or renewed engagement. In short, proponents of the first option, among which were active US congressmen and some officials within the Bush and Clinton administrations, pressed for toughening the punitive measures against Khartoum, such as imposing capital market sanctions against foreign companies doing business in the Sudan and providing non-lethal aid to the NDA. By contrast, other voices such as the CSIS Task Force recommended breaking with Clinton’s ineffective sanctions’ policy and designed an alternative ‘hard-nosed strategy’, according to which the Bush administration was recommended to: focus on the single overriding objective of ending the war; pursue this goal through a multilateral strategy; move the process beyond the stasis of regional initiatives by establishing an international nucleus with core partners such as Norway and the UK; enhance carrots and sticks that influence both parties (such as articulating prospects of reintegration and oil development for Khartoum, and qualifying international support for the south); base negotiations on IGAD’s Declaration of Principles while promoting interim arrangements based on the ‘one Sudan, two systems’ formula.¹¹⁴ The CSIS Task Force further suggested a number of concrete steps that the new administration would actually take, such as appointing a special envoy, holding bilateral negotiations with the GoS on terrorism, expanding USAID activities in the Sudan, lifting UN sanctions, and linking unilateral US sanctions with progress of the peace process.¹¹⁵ Interestingly, the 52 participants in the Task Force included Bush’s future assistant secretary of state for African affairs, Walter H. Kansteiner III. It is therefore probably no coincidence that the Task Force’s salient

113) On the campaign for capital market sanctions, see chapter 3.

114) CSIS Task Force, pp. 10-11.

115) CSIS Task Force, p. 12.

recommendations eventually found expression in the Bush administration's Sudan policy.¹¹⁶ Both Kansteiner and his superior, Secretary of State Colin Powell, placed high priority on the Sudan and convinced President Bush that the United States should engage in an international effort to end the war.¹¹⁷

Initially, however, the new administration's policy on the Sudan seemed to hesitate between two options. President Bush's appointment of USAID administrator Andrew Natsios as US Special Humanitarian Coordinator for the Sudan in May 2001 could be regarded as a response to public indignation at the brutality of the war. However, the nomination of Senator John Danforth as special envoy for peace on 6 September 2001 indicated an interest in addressing not only the symptoms of the war but in bringing it to a possible end. Although the level and scope of US engagement in peacemaking efforts was still uncertain (it was precisely Danforth's mandate to evaluate what the US contribution might be), this decision marked an important first step.

Danforth's appointment five days before 11 September 2001 testifies that the US peace efforts in the Sudan were not triggered by the terrorist attacks only. Undoubtedly, however, the attacks reinforced the rationale for US engagement in the Sudan – which had hosted their chief organizer, had been a hub of international terrorism for years and was strategically located at the crossroads of the Middle East and East Africa. 11 September not only justified renewed US interest in the Sudan but also created the opportunity to revise US policy. Washington could no longer content itself with containing Khartoum, but required the Sudanese government to cooperate actively on terrorism. In return, the GoS was eager to re-establish links with the United States in order to escape any possible American retaliation action and accelerate the Sudan's international reintegration. Hence, the '9/11' events contributed to creating a new bilateral dynamic as a consequence of which Washington was induced to engage constructively in and with the Sudan, and Khartoum was more responsive to external demands. In other words, the overall context became appropriate for the CSIS strategy to materialize effectively.

The relevance of the Task Force's key recommendation – focusing on ending the war as a primary objective – may have appeared with greater clarity after '9/11'. Fostering peace would indeed not only help reducing human rights' abuses and provide business opportunities to the oil industry; it may also serve counter-terrorism objectives by restoring law, order and democracy in a former terrorist sanctuary, and eventually contribute to sidelining the

116) As remarked by Ambassador Petterson (*Inside Sudan*, p. 238), who also participated in the Task Force.

117) Petterson, *Inside Sudan*, p. 239.

Khartoum regime. In sum, peace could potentially transform a sponsor of international terrorism into a stable and friendly state.¹¹⁸

While human rights' activists may have feared that the imperatives of the war against terror would supersede the requirements for peace – for instance, if the US administration showed hesitancy in pressurizing peace negotiations on a Sudanese government that cooperates fairly well on terrorism – these fears seem not to have been confirmed, at least with regard to the south.¹¹⁹ In fact, the level of domestic mobilization on the war in the south precisely helped reduce the risk that the quest for peace would be sacrificed to counter-terrorism. Instead, Bush repeatedly stressed to the GoS that 'ending its sponsorship of terror outside Sudan [was] no substitute for efforts to stop war inside Sudan'.¹²⁰ The reluctance of the US administration to trade one objective for the other even led it to creating interlinkages between issues where there were none before. Managing policy agendas has also proved a matter of electoral timing, however: the Bush administration showed itself to be uncompromising on human rights' abuses just before elections, but far more concerned with security issues, and therefore open to intelligence ties, after.

The position adopted by the United States on 28 September 2001 when the UN Security Council lifted the sanctions taken in 1996 against Khartoum well illustrated the new parameters of US policy on the Sudan. Voted by fourteen of its fifteen members, Resolution 1373 (2001) followed Khartoum's acceptance to extradite the three wanted suspects for the assassination attempt on Egypt's President Mubarak and to ratify the international conventions against terrorism. The United States abstained from voting, however, arguing that the suspects had yet to be handed over (while acknowledging that they were probably no longer in the Sudan) and

118) As Assistant Secretary of State Kansteiner emphasized: 'ending the conflict in Sudan will contribute to regional stability in the strategic Horn of Africa'. It will also 'contribute to the evolution of a more moderate Sudanese government and complement efforts to obtain cooperation against terrorism', in 'Peace, Conflict and Mediation in Africa: An Historic Opportunity in Sudan. Remarks to the Heritage Foundation, Washington DC', 22 November 2002.

119) In the case of Darfur, however, the publication by the *Los Angeles Times* in April 2005 of an article revealing a close intelligence partnership between Khartoum and Washington fuelled allegations that the US administration eventually decided to prioritize these ties over the resolution of the conflict.

120) Quoted in ICG, *Dialogue or Destruction? Organizing for Peace as the War in Sudan Escalates*, Africa Report N°48, 27 June 2002, p. 11. Kansteiner was unambiguous as well: 'some have speculated regarding the relationship and potential trade-offs among our three objectives: achieving a peace deal, cooperation on terrorism, and ensuring unrestricted humanitarian access ... We have made clear that the Sudanese government must deliver on all three objectives if there is to be normalization in our relationship. We will not trade one for the other' (remarks to the Heritage Foundation).

recognizing Khartoum's substantial progress in cooperating on terrorism issues. In fact, given Khartoum's compliance, the Bush administration could not oppose the lifting of sanctions. It was also well aware of the limitations of Clinton's confrontational policy and was rather eager to win the cooperation of the Sudanese government on terrorism issues. But the US representative also referred in his statement to the continuing war in southern Sudan, thereby establishing a link between sanctions and peace efforts that did not exist when the latter were imposed.¹²¹ This link was rather dubious since new conditions were created just as the government had complied with the previous ones. It was not very consistent policy either since the GoS was not rewarded by the US when complying with demands on terrorism but could expect being removed from the list of states sponsoring terrorism when signing a peace agreement. Nevertheless, this development illustrates an increasing focus on the war in the south (as recommended by CSIS) and the Bush administration's willingness to keep leveraging Khartoum in that regard. In the end, UN sanctions were lifted but Khartoum got the message that US sanctions were conditioned to progress in peace efforts. For various reasons, the Sudanese government began precisely to envisage a peace settlement as an option.

Internal Developments and Peace Interests

In concomitance with the geopolitical shift created by '9/11' events, internal military and political developments led the two main belligerent parties to consider seriously, though for different reasons, that making peace might well serve their respective interests.

The GoS's Peace Interests

After '9/11' the Sudanese government was by and large, despite internal tensions between hardliners and more moderate elements, eager to normalize relations with the United States and to demonstrate commitment to fight international terrorism. Khartoum was aware that its rehabilitation would also be assessed against its handling of the southern question, but then precisely had additional motives in considering the option to end the war in the south.

Contrary to expectations, the revenues drawn from oil exploitation enabled the Sudanese government to double its military expenditures but did not allow it to gain a critical advantage or inflict a decisive victory on the rebellion. While the government intensified military operations in the south and pursued a 'scorched earth' policy, causing forcible displacements of tens of thousands of civilians to gain access to oil resources, the rebellion held its

121) *Explication du vote des Etats-Unis au Conseil de sécurité par M. James Cunningham, représentant permanent adjoint des Etats-Unis auprès des Nations Unies au sujet du Soudan*, <http://usinfo.state.gov/regional/af/security/french/f1100202.htm>.

ground and resisted – sometimes scoring impressive military victories such as the temporary seizure of Raga, a fortified GoS base in south-west of the Sudan in October 2001. Worse even, the SPLM/A counter-attacked by targeting oil installations and disrupting oil exploitation, thereby creating an environment of personal insecurity and economic unpredictability much disliked by foreign (Western, if not Asian) oil companies.¹²²

These military developments had three additional implications. First, its conduct of the war caused the Sudanese government to face increasing international opprobrium, with negative implications for its quest for rehabilitation. Second, the rising number of human losses combined with the lack of tangible results allegedly generated a certain war fatigue within the army and criticisms towards the government, which encountered mounting difficulties finding and sending new recruits to the battlefield.¹²³ Third, although absorbed by oil revenues, the massive military expenditures aggravated the country's fiscal and economic problems to a level that may ultimately backlash in popular discontent. At US\$ 21 billion in 2001, the weight of external debt limited economic growth and would not be relieved as long as the continuation of war prevented the Sudan from meeting the criteria set out in the HIPC initiative.¹²⁴ Meanwhile, the socio-economic situation was seriously deteriorating in the north in a way that highlighted the failure of the government to fulfil the core of its mission and deliver basic services. As described by the International Crisis Group in April 2002, 'unemployment among university graduates is upward of 70 per cent, loans for small businesses are extremely hard to secure, medicine and medical services are increasingly expensive or scarce, some civil servants and pensioners have not been paid in parts of the country for months, and schools have been closed in many areas for equally long periods because teachers have also not been paid'.¹²⁵

All these problems could potentially be solved through a single solution, however: the Sudanese government signing a peace agreement with the SPLM/A that would provide a much isolated and loathed regime with a new political ally and that would enable it to exploit in suitable conditions of safety the major and still unexploited oil reserves further in the south.

122) After initiating exploration and the development of oil fields, Chevron pulled out as early as in 1984 following attacks by the SPLA. On the increasing role of Asian oil companies, see below in chapter 3.

123) ICG, *God, Oil and Country*, p. 27.

124) The HIPC initiative is a debt relief scheme sponsored by the World Bank and the International Monetary Fund for Heavily Indebted Poor Countries.

125) ICG, *Capturing the Moment: Sudan's Peace Process in the Balance*, Africa Report N°42, 3 April 2002, p. 5.

The SPLM/A's Peace Interests

While the GoS had several causes for concern, the SPLM/A became in early 2002 stronger than it had been for many years. In January 2002, John Garang signed a reconciliation agreement with his brother enemy Riek Machar, by which the latter's SPDF rejoined the SPLA troops. This accord had major implications in putting an end to the ten-year Dinka-Nuer fratricidal confrontation and in boosting the strength of southern forces – which immediately tried to translate this advantage on the ground by renewing attacks on oil installations. A few months later, the SPLM/A concluded another agreement with the northern Muslim Sudanese Allied Forces, which too accepted to merge under Garang's leadership. This web of alliances reinforced the SPLM/A's military position but was constituted at the price of certain political ambiguity. As a result of the first agreement, Garang was indeed expected to put greater emphasis on the self-determination – if not independence – of the south as the ultimate objective of the rebellion; yet, in the framework of the second agreement, he committed himself again to a united 'New Sudan'. The subsequent accord that Garang signed separately with Turabi's PNC reinforced his stature of national opponent but did not contribute to lifting this persistent ambiguity.

Overall, the growing unity and military strength of the opposition to Khartoum contrasted with the deteriorating position of the government of the Sudan. However, John Garang also faced limitations, which induced him to envisage negotiating a favourable peace deal as a more realistic and desirable option than pushing for a final victory. First, the southern leader was aware that oil revenues would ever provide the GoS with a long-term military advantage. The SPLA had the manpower and morale, but the government constantly improved its equipment. Second, Garang was uncertain of regional support and could see with some worry the rapprochement between Uganda and the Sudan, as illustrated by the protocol signed by the countries in March 2002. Third, Garang was sensitive to the popular pressure for peace and to the political benefits that he could draw from a peace agreement, which would increase his domestic stature both in the south and nationwide.

In the aftermath of 11 September, 2001, domestic and international factors and calculations therefore converged to create a context that was potentially conducive to ending the Sudan's second war. Undoubtedly, there remained immense obstacles to peace. As a result of the government's determination to expand oil exploitation at all cost and the increasing cohesion of opposition forces, the conflict actually reached its deadliest phase in nineteen years during the dry season of the first semester of 2002.¹²⁶ Nevertheless, a peace opportunity was then also seized upon by external actors.

126) ICG, *Dialogue or Destruction?*, p. 1.

2) A New Process: The Danforth Initiative

A key difference – and a decisive factor of success – between the peace attempts of the 1990s and the efforts launched from summer 2001 onwards lies in the significantly higher level of international involvement. The progress made towards a comprehensive settlement of the Sudan's conflict are to an important extent ascribable to Kenyan President Moi's determination to revitalize the IGAD process and his decision to appoint to that effect Lieutenant-General Lazarus Sumbeiywo as his Special Envoy and chief mediator.¹²⁷ In 2001, however, the IGAD initiative still enjoyed some international legitimacy as the historical forum for substantive negotiations but was considered with much hostility by the Sudan's Arab neighbours and, after eight years of fruitless efforts, was no longer taken in earnest by the Sudanese parties themselves. Therefore, international engagement was needed to create leverage on the parties and grant the process a higher level of seriousness. Besides General Sumbeiywo's unanimously praised mediation skills, the IGAD process would probably not have succeeded without the support granted by the international community and in particular by the United States.

Danforth's 'Tests' with Hindsight

The appointment of Senator Danforth as President Bush's Special Envoy for Peace in the Sudan was a timely manifestation of renewed interest for the situation in southern Sudan. However, this decision augured no substantial involvement from the United States and the White House per se, since Danforth's mandate was limited to probing the Sudanese parties' readiness to negotiate and to recommending subsequently whether it would be worthwhile and wise for the US administration to engage in peace efforts. To that effect, the US Special Envoy developed four humanitarian proposals to test the parties, to 'challenge them politically while at the same time reduce the suffering of the Sudanese'.¹²⁸

The first test consisted in engaging the parties to agree on a ceasefire in the Nuba Mountains, an area isolated from international assistance, which would pave the way for a comprehensive relief and rehabilitation programme. This proposal built in fact on previous efforts made by US Special Humanitarian Coordinator Andrew Natsios who had begun negotiations with

127) Sumbeiywo was previously appointed Kenyan special envoy for the Sudan in 1997-1998.

128) *The Outlook for Peace in the Sudan: Report to the President of the United States from John C. Danforth, Special Envoy for Peace*, released by the Office of the Press Secretary, The White House, 26 April 2002, <http://www.state.gov/p/af/rls/rpt/10150pf.htm>.

the government of the Sudan on a special US bilateral relief flight to opposition areas of the Nuba Mountains.¹²⁹

The second test aimed at compelling the parties to recurring periods of military stand down in certain areas (days and zones of tranquillity), during which medical assistance would be provided to needy Sudanese. In particular, eradication campaigns would be undertaken for three diseases (polio, guinea worm and bovine rinderpest) that could be eradicated were the affected areas and communities not isolated by the war.

Thirdly, a proposal was made to prevent deliberate (aerial) attacks against civilians and civilian targets. The number of such attacks in southern Sudan (often perpetrated by government bombers and helicopters) had increased dramatically within the previous years, from 65 confirmed bombings in 1999 to 195 in 2001.¹³⁰

The fourth and final proposal related to the issue of slavery. Although it denied the existence of such practice, the GoS was accused of encouraging it by arming and using as military auxiliary forces some tribal militias from the western Sudan (called *Murahaleen*), which were allowed to plunder and raid villages and abduct and enslave civilians in exchange for their work. As a test, Danforth challenged Khartoum to strengthen and make effective its own anti-slavery commission and requested both parties to facilitate the work of a US-led international mission of eight eminent persons who were mandated to investigate the issue of slavery in the Sudan.

Although the Danforth appointment was praised as ‘the highest-level commitment to supporting peace in the Sudan that any administration in Washington has made’, the wisdom of the humanitarian tests as measures of political will and preconditions before engaging in peace efforts was questioned.¹³¹ First, it was recalled that ‘nearly every diplomatic venture undertaken in the past 15 years ha[d] begun with a humanitarian initiative’.¹³² The Danforth proposals were therefore less innovative than they appeared and again dealt with humanitarian – that is, symptomatic – issues instead of

129) The first humanitarian flight approved by the GoS to SPLMA areas in the Nuba Mountains actually took place on 30 August 2001, a few days before Danforth’s appointment. In developing his proposals, Danforth relied on aid workers who were very experienced with Sudan, such as Andrew Natsios and Roger Winter, who headed then the US Office of Foreign Disaster Assistance. On access to the Nuba Mountains in particular, see http://www.usaid.gov/locations/sub-saharan_africa/sudan/nubamtns.html.

130) According to USAID, http://www.usaid.gov/locations/sub-saharan_africa/sudan/bombardment.html.

131) Both comments by the ICG’s Africa programme co-director, John Prendergast, respectively in *God, Oil and Country*, p. xv; and ‘Senator Danforth’s Sudan Challenge: Building a Bridge to Peace’, CSIS *Africa Notes*, N°5, January 2002.

132) Prendergast, ‘Senator Danforth’s Sudan Challenge’, p. 4. In 1995 Jimmy Carter also had proposed a ceasefire to facilitate a campaign against guinea worm and immunize children against polio (Lesch, *The Sudan*, p. 185).

moving directly to the fundamental ones. Second, although reflecting a seemingly minimalist agenda, the initiative was perceived as bearing great potential for failure: instead of helping to build confidence, the tests could fail owing to the level of mistrust accumulated over nineteen years of war or could be used by hardliners as opportunities to spoil emerging peace prospects. Additionally, the parties could find it hard at this stage to relent on certain key military tactics, such as the bombing of civilians by governmental helicopters and SPLM/A's attacks on civilian targets such as oil installations. Third, and correlatively, the tests were seen as misplaced, since failure to pass them may have illustrated the parties' reluctance to lose a military advantage but would not necessarily have meant that they were not interested in negotiating a settlement. In that regard, assessing 'ripeness' may require carrying out a sound analysis of the stakeholders' political and military positions rather than developing humanitarian tests. The Danforth proposals could therefore have led to misreading the parties' intentions and, had Washington rigidly stuck to its preconditions for getting engaged, may have caused the US administration to miss a peacemaking opportunity.

To sum up, the US was perceived as engaging too timidly in peace efforts and giving too much room to the parties and possible spoilers, to the risk of losing the moment. Whereas the parties' commitment would have arguably been increased by resolute US involvement, the Danforth initiative suggested that the US engagement was to be determined by the parties' demonstrated goodwill, meaning that the warring parties themselves were therefore put in a position to decide whether or not to move the peace process forward. The US administration's lack of audacity seemed further illustrated by Danforth's statement that the US would not come up with a new American peace plan, but only play a catalytic (not a leading) role.

Although a number of these criticisms were well grounded, it should be recalled that Danforth's mandate was negotiated during summer 2001 – that is, before 11 September and other important developments within the Sudan dramatically modified the context of the peace efforts. Until then, the American cautiousness was fairly understandable in view of the protracted character of the conflict and the extent of failed mediation attempts. Furthermore, most of the reservations inspired by the Danforth initiative ultimately failed to be validated in the new context created by '9/11' and its aftermath. On the one hand, the two parties were more inclined to play Danforth's game as they actually began to consider seriously negotiating an end to the war and were sensitive to US involvement in that respect. This means that the Danforth initiative was served by the context. On the other hand, the US administration did not fail to identify the emerging window of opportunity and to complement the humanitarian tests with adequate political analysis. Thus, the administration refrained cleverly from withdrawing at the first setback but instead took on engaging the parties in a process, thereby getting itself gradually more involved. In this sense, the Danforth initiative helped to make the most of the new context and to bridge the preliminary

tests to a real peace process. By late March 2002, just before Danforth was expected to issue his recommendation on US engagement, both the Sudanese government and the SPLM/A had agreed to the four points, although not all four had been implemented yet.

The establishment of a ceasefire in the Nuba Mountains is no doubt the most successful of the four proposals initiated by Danforth. Initially, however, both the SPLM/A, which feared that such a measure would freeze the military situation and set a precedent for an expanded ceasefire, and the GoS, which intended to undertake a significant dry season offensive and to continue obstructing relief assistance, were reluctant to the idea. Nevertheless, the two parties accepted a 30-day temporary truce that enabled humanitarian relief in the area for the first time in years. In mid-January 2002, the two sides further agreed to an internationally monitored ceasefire in the Nuba Mountains, renewable every six months.¹³³ The agreement provided the basis for the deployment of the Joint Monitoring Mission (JMM) and the establishment of the Joint Military Commission (JMC) – the former reporting to the latter.¹³⁴ Happening in a region long isolated from international assistance and whose populations had been said to be almost threatened with extinction, the ceasefire offered a most welcome respite for the Nuba and was seen as a possible model for the rest of the Sudan. However, violence against civilians continued further in the south.

In spite of various contacts from November 2001 to January 2002 between the US administration and each warring party to compel them to the proposal, civilians and humanitarian objects continued being targeted (including less than a week after Danforth's first visit). Things changed significantly in February 2002, however, after a governmental helicopter attacked a food distribution site in Bieh and killed over twenty awaiting women and children. Faced with unanimous international condemnation, the Sudanese government was compelled to accept Danforth's proposal on the protection of civilians and agreed to the setting up of another international verification mechanism dedicated to that effect. Likewise, the SPLM/A later committed itself to refrain from targeting civilians and non-civilian objects.¹³⁵

133) *Nuba Mountains Ceasefire Agreement*, 19 January 2002, Buergenstock, Switzerland. The two parties had agreed to the proposal in December 2001, during the visit of a US mission led by Jeff Millington. Subsequent negotiations were held in January 2002 in Switzerland, under Swiss chairmanship, with Swiss and American facilitators, to decide on the verification procedure.

134) The JMM/JMC is usually referred to just as the JMC. For additional details, see chapter 3.

135) *Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement to Protect Non-Combatant Civilians and Civilian Facilities from Military Attacks* (31 March 2002). Interestingly, the two parties disagreed on whether to consider the oil installations as civilian facilities (as the GoS requested) or not (the SPLM's position). Finally, it was decided that the international monitors would determine on a case-by-case basis. See Human Rights Watch, *Backgrounder on the Danforth Report*, 16 May 2002.

Although the verification mission – later renamed Civilian Protection Monitoring Team (CPMT) – took a long time to start operations and then faced many criticisms, its establishment was a significant step in the Sudan’s particularly deadly conflict. It would provide outside scrutiny of the war’s tactics and practices, and would further engage both the warring parties and the sponsoring countries in peace efforts.¹³⁶

Within the framework of the anti-slavery initiative and through an agreement mediated by Danforth, the two parties also accepted to facilitate and support the visit of an international mission of inquiry organized by the US State Department with US, British, Norwegian, Italian and French eminent persons. Although of a different nature than the previous two monitoring mechanisms, the mission was the first ever internationally endorsed field investigation into the practice of abduction and forced servitude in both GoS- and SPLM-controlled areas. In spite of well-known reservations on this issue (in particular from the Sudanese government), the mission reported no obstruction from the parties but expressed gratitude at being permitted to visit militarily sensitive regions and given access to officials at the highest levels.¹³⁷ In parallel, the governmental anti-slavery commission was brought under the direct control of the Sudanese president. Although a more efficient way of reducing slavery would be to stop allowing pro-government militias to abduct and enslave civilians (a pattern confirmed by the investigation), this decision was intended (and perceived) as a gesture of goodwill.

By contrast, the implementation of the ‘days of tranquillity’ proved more difficult than anticipated, according to Danforth, as a consequence of ‘bureaucratic misunderstandings on the part of implementing donors’ as well as interferences from the warring parties – the GoS trying to control supplies going to rebel areas, and the SPLM/A refusing UN flights that originated in or flew over government-controlled territory. As stressed by human rights’ defenders, however, less confusion would have surrounded implementation of this proposal had the parties been demanded to provide unrestricted access for humanitarian aid. At the time when Danforth reported to President Bush, only the bovine rinderpest programme had been completed.

In his report on the outlook for peace in the Sudan, Senator Danforth concluded that in spite of difficulties encountered with the latter proposal and the need for continuous follow-up, the parties had successfully passed the tests: ‘both sides have shown that it is possible to agree on contentious issues and to permit international monitoring of the implementation of their agreements’.¹³⁸ Danforth further ascertained that the two parties wanted the

136) For additional details on the CPMT, see chapter 3.

137) *Slavery, Abduction and Forced Servitude in Sudan*, Report of the International Eminent Persons Group, 22 May 2002, Khartoum.

138) Danforth, *The Outlook for Peace in the Sudan*.

conflict resolved, though on their own terms. Another lesson he drew, however, related to the 'essential importance of outside intermediaries', without which any of the various agreements reached upon his initiative would probably not have seen the light. The point is that would-be mediators are conversely reluctant to get involved in peacemaking unless they perceive reasonable prospects for achieving results. At this incipient stage, the Sudan's peace process therefore illustrated the subtle but potentially self-defeating interaction between belligerents and peacemakers who need mutual inducements from each other to engage in peace efforts. In that regard, the monitoring mechanisms promoted by Danforth constituted an important achievement, as they not only were intended to compel compliance from the parties, but also prompted concrete on-site involvement from the US and other Western countries. As Danforth suggested, it would then be harder for those governments 'to turn a blind eye to the suffering and injustice that is the reality in Sudan'.¹³⁹

The Multilateral Card

Initially, Danforth's refusal to come up with a separate American peace plan might have been interpreted as a sign of irresolution. This position seemed also inconsistent as the US Special Envoy expressed support to both the IGAD and the Joint Libyan-Egyptian initiatives although they had proved unworkable and mutually undermining. With hindsight, however, it appears that Danforth's reluctance 'to be coming in from the outside as the know-it-alls' was a wise attitude.¹⁴⁰ First, it was actually much more important to try to bridge differences among the Sudan's neighbours and to urge them jointly to support peace efforts. To that end, and simultaneously with the humanitarian tests, Danforth paid visits to the Egyptian, Kenyan and Ugandan presidents, which were followed up on by the US State Department and the White House. Although differences remained, the message was conveyed that Sudan's neighbours were expected to play a constructive role. In addition, as the Machakos Protocol eventually illustrated, finding a compromise solution between the radically opposed DoP and Libyan-Egyptian proposal was not such an unrealistic goal. Second, it was a much more effective strategy for the US administration to stimulate a multilateral peace effort than to promote its own unilateral roadmap. As emphasized by Danforth, 'exaggerated differences in approaches between the United States and Europe have had an impact upon the Sudanese to the detriment of efforts to encourage peace'.¹⁴¹

139) Danforth, *The Outlook for Peace in the Sudan*.

140) *Special Briefing on Senator Danforth's Travel to Sudan*, Washington DC, 27 November 2001.

141) Danforth, *The Outlook for Peace in the Sudan*.

The IGAD Partners forum, which gathered Western countries interested in supporting IGAD peace efforts on the Sudan, was indeed divided over the best way of exerting pressure on the parties: European members promoted ‘constructive engagement’ with Khartoum through dialogue and incentives; whereas the United States favoured sustained pressure on the GoS until peace negotiations proved conclusive. Ultimately, the EU conditioned full resumption of cooperation upon the signing of a peace agreement in December 2002 only.¹⁴² Be it a cause or a consequence of these tactical differences, the IGAD Partners Forum’s agenda was reportedly largely peripheral, centred around funding and support activities instead of aiming at placing political pressure on the parties.¹⁴³ The exploitation of oil resources constituted another contentious issue on the two sides of the Atlantic since European countries, particularly the French and German governments, were accused of ‘dialoguing’ with Khartoum with the sole aim of securing business opportunities in the energy sector, while US oil companies were prohibited from investing in the Sudan.¹⁴⁴ Finally, Western countries were themselves as divided as the belligerent parties on certain key issues at the heart of the conflict: the British government has historically been supportive of a united Sudan, while the Norwegians show great sympathy for the southerners’ cause, and the US administration has no consolidated view on this issue.¹⁴⁵

Since a broad and coherent international involvement was needed to support the Kenyan mediation team, increase leverage on the parties, and incidentally share the costs of peace activities, Danforth visited Europe (as well as Canada) to seek support from the British, Dutch, Norwegian, Italian as well as Swiss governments. Although his initiative initially raised mixed feelings and differing views persisted among Western countries (just as

142) While cooperation with Sudan was suspended in March 1990 because of concerns about lack of respect for human rights and democracy, and because of the civil war, in November 1999 the EU and the GoS engaged in a formal political dialogue aimed at addressing these issues as well as terrorism and the Sudan’s relations with its neighbours. While US assistance to the Sudan was limited to humanitarian aid, the EU released over 400 million euros of (non-humanitarian) suspended funds in support of the dialogue. In December 2001 the two parties agreed to continue the dialogue towards gradual normalization of their relations, subject to implementation of the Sudanese government’s commitments in the areas of human rights, good governance and the rule of law, and to progress in the peace process. Although limited and conditional, this resumption was seen as untimely and inconsistent with the US’s harder line.

143) ICG, *God, Oil and Country*, p. 168.

144) The political dialogue, it was noticed, was initiated by the EU the very year that the Sudan began to export oil. In the 1980s, the French consortium Total/Fina/Elf was granted a concession of 120,000 square kilometres in the south but undertook no activity because of the war.

145) US views actually differ per agency concerned. Senator Danforth’s strong preference for unity (as expressed in *The Outlook for Peace*) was not fully shared by USAID.

between the countries from the region), a multilateral peace strategy gradually took shape. Most governments cited above contributed in various ways to the peace effort (notably through sending field monitors). Moreover, the US, the UK and Norway, later referred to as the 'troika', became close observers of the peace talks and played as such a critical role.¹⁴⁶

To conclude, the Danforth appointment may have initially appeared at first sight as a fairly modest effort and his four humanitarian tests as a rather oblique way of getting to the crux of the matter. As regards substantive issues, the Special Envoy of the US President may have refrained from reproving *a priori* the secession of the south as an option since his position infuriated the SPLM/A and this was a crucial issue to be solved by the parties.¹⁴⁷ He was also criticized for elevating freedom of religion above other basic rights.¹⁴⁸ Nevertheless, the Danforth initiative proved in retrospect timely and instrumental in engaging the Sudanese parties all together, the United States and other relevant external actors in a shaky but promising peace process.¹⁴⁹ Although he later played less prominent responsibilities, it is fair to say that Danforth performed the catalytic role that he envisioned for his government and contributed to the materialization of the hard-nosed multilateral strategy advocated earlier by the CSIS Task Force.

3) The Machakos Breakthrough

Within a few weeks of Senator Danforth issuing his positive recommendation to the US president, General Sumbeiywo convened a first technical meeting at Karen (Nairobi) from 2 to 5 May 2002, in which the two warring parties were invited to agree on an agenda for peace talks. As a next step, a conference was convened from 18 June 2002 onwards under the auspices of IGAD in Machakos, Kenya. Contrary to previous IGAD-led talks, Sumbeiywo had envisioned a more hands-off approach to the negotiations, based on sustained rather than sporadic discussions and a discrete timeline

146) British and Norwegian efforts were enhanced by the personnel commitment of each country's minister for international development, Clare Short and Hilde Frafjord Johnson respectively. Italy later joined the troika. On the role of these observers in the negotiations, see further chapter 3.

147) Danforth promoted an *internal* conception of self-determination, short of the option of secession, which would mean 'ensuring the right of the people of southern Sudan to live under a government that respects their religion and culture'. See Danforth, *The Outlook for Peace in Sudan*, p. 6. His statements damaged the SPLM/A's confidence in his efforts (USAID then had to provide guarantees that all options could be negotiated) but boosted the GoS, which believed that the US was moving towards its position.

148) See Human Rights Watch, 'Sudan: Danforth Peace Initiative Progress', HRW Press release, 15 May 2002.

149) Shortly after Danforth submitted his report, US diplomatic presence in Khartoum was increased through the appointment of Jeff Mellington as resident *chargé d'affaires*.

with specific deadlines.¹⁵⁰ Furthermore, the IGAD chief negotiator was supported by envoys from Eritrea, Ethiopia and Uganda, and for the first time by international observers representing the United States, the United Kingdom and Norway, as well as Italy. Although they disagreed initially on the modalities of their participation – unable to appoint a single envoy, the troika members finally sent one each – the representation of these extra-regional countries was unprecedented and contributed significantly to reasserting the value and seriousness of the IGAD process.

Yet the context in which the talks started did not seem very conducive. Simultaneously, fighting escalated on the ground as a consequence of the dry season's offensive that the GoS had launched, apparently to push the SPLA below the traditional north-south line.¹⁵¹ In addition, there had been no serious discussions on substantive issues before convening the conference. On the contrary, the positions seemed to harden on the crux of the matter: self-determination. However, both the military operations and the uncompromising rhetoric might have been triggered by the prospect of the talks and the parties' willingness to improve their negotiating position. Eventually, the Machakos conference ended up on 20 July 2002 with a landmark agreement.

The Machakos Protocol endorsed a historical compromise that can be summarized as follows: *sharia* for the north; self-determination for the south. Under the terms of the agreement, the SPLM/A accepted that *sharia* would remain at the source of legislation in the northern Sudan, while the south would be ruled by a secular administration. In exchange, Khartoum accepted an internationally monitored referendum to be held at the end of the six-and-a-half-year transition period in which 'the people of South Sudan' will either confirm the unity of Sudan by voting to adopt the system of government established under the peace agreement or vote for secession. Above all, the parties agreed to 'give unity a chance' – that is, to promote unity as the most desirable outcome of the referendum.

Undeniably, the Protocol marked a breakthrough. It is true that the Sudanese government had previously recognized the right of the south to self-determination in several documents (such as the DoP and the Khartoum agreement in 1997, and the 1998 constitution). However, the GoS only conceded that principle under heavy military pressure and never in a way that compelled it to compliance. In effect, the relevant provisions were never implemented. By contrast, the Machakos Protocol was concluded between the two main belligerent parties directly, and was given an international exposure that would make it harder for the signatories to backtrack from its provisions. Furthermore, the Protocol uses far more concrete and operational language: whereas the DoP stated the theoretical right of the southerners to

150) ICG, *Dialogue or Destruction?*, p. 9.

151) ICG, *Dialogue or Destruction?*, p. 5.

self-determination *in the event* that inclusive governance structures are not set up in Sudan, the Machakos Protocol entitles the southerners to assess the arrangements established by the peace agreement and to decide accordingly whether or not to secede. Finally, the agreement was remarkable as it endorsed the parties' mutual renouncement of their respective historical aims: the Islamization of southern Sudan on the one hand; the secularization of the entire country on the other. They necessarily had strong motives for doing so.

Both the SPLM/A and the ruling National Congress had a common incentive for reaching a compromise, with the conviction that delivering peace to the Sudan would enable them to dominate Sudanese politics for the years to come.¹⁵² Besides, each had additional motives and their own grounds for satisfaction. Khartoum's signing was widely interpreted as a survival decision. As explained above, the Sudanese government envisioned ending the war as the best way of prolonging its political existence, normalizing relations with the United States, unlocking international development assistance and debt relief, and expanding oil exploitation. Khartoum was also under growing pressure from the western Sudan where the Darfur Liberation Front (renamed SLM/A in 2003) had started to organize itself and launched its first attacks against police posts and army garrisons. Self-determination was a high price to pay, but the ruling party understood that the SPLM/A would never accept an agreement short of this clause. In addition, the referendum was scheduled at the end of a fairly long transition period and, if actually held, may not automatically translate into the south voting to secede – as the GoS was keen to emphasize to its constituency. For its part, the SPLM/A opened the negotiations under strong pressure from most southerners who were expecting an independence referendum and it was therefore satisfied with being able to meet that demand. This provision further constitutes a strong enforcement guarantee, as the Sudanese government appreciates what the consequence may be should it fail to comply with the agreement. Although the southern delegation had wished for a far shorter transition period, it obtained at least that the implementation of the agreement is evaluated at mid-point by a dedicated Assessment and Evaluation Commission. While the SPLM/A gave up its long-standing demand for secularism throughout the entire country (a non-starter for the Islamists), the southerners obtained exemption from *sharia* for about 20 years after its imposition.

In short, the Machakos Protocol was a milestone, in that a long-considered improbable compromise solution was finally found between radically opposed views. Many question its wisdom, however, since its inherent territorial 'logic', so to say, means that *sharia* will apply to Christians in the north but not to Muslims in the south, and may ultimately trigger the division of the Sudan. Machakos was also but the first step towards the end of

152) ICG, *Sudan's Best Chance for Peace: How Not to Lose It*, Africa Report N°51, 17 September 2002, p. 3.

the conflict. Rounds of negotiations were further needed to work out the details of the compromise and transform the framework agreement into a comprehensive settlement. Outstanding issues on the agenda related to security, power-sharing, and wealth-sharing arrangements during the interim period, as well as the status of the three contested areas of Abyei, the Nuba Mountains, and Southern Blue Nile. Discussions promised to be difficult as the negotiating parties agreed to ‘prioritize unity’ but largely disagreed on the best way of achieving this objective.¹⁵³ Each side further included hardliners dissatisfied with the Machakos Protocol and pressing for extreme positions. On Khartoum’s side, some religious scholars and hardline army officers were said fiercely to oppose the Protocol because they disagreed with what they perceived as a relegation of *sharia* and/or mistrusted the SPLM/A as a negotiating partner.

In the south, the promise of an independence referendum was warmly received but certain field commanders claimed that the same possibility should be given to the Three Areas (either by including them in the south or by organizing separate votes). Concerns were also expressed regarding the protection of minorities, the devolution of greater powers to the states and the broader democratization of the country. The prospect of the SPLM/A monopolizing power in the south during the interim period also raised fears from certain civil society organizations and human rights’ activists. In view of the Protocol, northern opposition parties that were allied with the SPLM/A under the NDA umbrella also questioned whether Garang was still committed to a united and democratic Sudan. Likewise, marginalized people from the Nuba Mountains and Blue Nile gave a lukewarm welcome to the Protocol, in which they saw a first sign that the SPLM/A was giving away its commitments towards them. These reservations reflected a widely shared concern about the bilateral format of the IGAD process, which only involved the two main belligerent parties. As a result of this limited participation, excluded stakeholders feared being neglected during the talks and/or marginalized in the post-conflict political dispensation. Although the negotiating parties, in particular the SPLM/A, represented indirectly certain political and ethnic groups, the lack of inclusion remained a permanent criticism about the IGAD process and a potential threat for the agreement’s sustainability.¹⁵⁴

Outside the Sudanese political scene, the Machakos Protocol and the referendum clause triggered mixed reactions. Through the voice of Senator Danforth, the US administration had expressed preference for the unity of the Sudan but seemed ready to show flexibility on the issue of self-determination if peace requires. For Washington, the conclusion of an agreement was more

153) These disagreements are explained at length in chapter 4.

154) This issue is discussed further in chapter 4.

important than its actual terms.¹⁵⁵ Other interested parties, such as Libya's president Qaddafi, accepted the stipulations of the Protocol as the choice of the Sudanese. Far more worried and angered were the Egyptian leaders, for which the Machakos Protocol seemed to pave the way for their most feared prospects: a) the secession of the south (whereas, in particular after Danforth's statements, Cairo had hoped that this option would be blocked by the US); b) an Islamist regime entrenched in power in the north. Egypt, it is true, was fairly isolated in its fears, especially in Africa. Nevertheless, much remained to be done towards reaching a comprehensive and broadly based agreement that could create the conditions for a sustainable peace in the Sudan. The next chapter will examine whether and how these obstacles have been overcome.

Conclusion

The Machakos Protocol resulted from three main factors that profoundly altered the context in which the IGAD talks were held. First, the factionalism that had plagued the southern rebellion for years started to recede by the end of the 1990s. Consequently, the SPLM/A grew stronger while the Sudanese government's 'peace from within' strategy of co-opting and supplying splinter groups began to show its limits. Second, the GoS's eagerness to break with its pariah status made it more responsive to external demands and pressures, particularly after '9/11' prompted Khartoum to distance itself quickly from the 'Axis of Evil'. Thirdly, the United States' involvement made a critical difference. Holding the key to the Sudan's international reintegration, Washington had considerable leverage on the Sudanese government. The important point is that the US administration used that leverage not only with respect to counter-terrorism issues but also to bring the civil war to an end. Khartoum was therefore made well aware that improvement of bilateral relations would be conditional upon the progress of the peace process. Conversely, acts of non-compliance with Danforth's proposals (as verified by the monitoring mechanisms on the ground) would be regarded by the US government as indications of bad faith in the peace process, which in turn would prevent normalization of bilateral relations. At the same time, the Sudanese government could also expect, in the context of the changing relationship between Khartoum and Washington, the US administration to balance its influence on the SPLM/A leadership. In a key position between the warring parties, the Bush administration also played (unexpectedly perhaps) the multilateral card and was instrumental in stimulating involvement from other countries. Differences of approach between the US and the EU might have impinged on the effectiveness of this multilateral

155) Justice Africa, *Prospects for Peace in Sudan Briefing*, June-July 2002.

strategy by lessening the pressure on Khartoum. However, the role played by (not so) 'observer' countries also illustrates that in the absence of transatlantic consensus, a reasonable degree of cooperation among a core group of willing nations may be an equally effective, and maybe more realistic, device. In spite of the parties' apparent commitment, there is no doubt that a sustained international involvement was still needed after the signing of the Machakos Protocol to keep the process on track.

Chapter 3

The Naivasha Process

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The initial strategy of the IGAD mediators was to lock the parties into a timetable with strict deadlines and with clear international backing. This strategy had worked pretty well until the signing of the Machakos Protocol and was expected to serve the negotiations as effectively over the remaining issues. It seemed furthermore that with the historical compromise reached in Machakos on the self-determination of the south, the toughest nut had been cracked. In a way, the parties only had left to agree on the 'details'. The main concerns of the international actors sponsoring the talks were therefore: 1) that the process keeps running until its successful conclusion; and 2) that the provisions negotiated by the parties are consistent with the principles accepted before. External actors therefore focused mainly on the context of the negotiations (and improved or added in that respect mechanisms aiming at keeping the process on track) while the parties were expected to concentrate on the outcome. Yet the Naivasha process (named after the Kenyan town where most of the negotiations took place and most agreements were signed) proved far more lengthy and laborious than expected. The Comprehensive Peace Agreement was finally signed in January 2005, 30 months after the Machakos Protocol. Three main factors can be suggested to explain these protracted negotiations. First, the mechanisms that were established in support of the talks may have helped to keep the process on track but hardly impacted on its speed or fruitfulness. Second, the 'details' upon which the parties had to agree were, as any negotiator knows, where the devil is, thereby requesting much time and attention from the delegations. Finally, the crisis in Darfur grew gradually to tragic proportions, created increasing confusion and

perplexity among international actors, and almost caused the negotiation process to abort.

I. In Search of Effective Compliance Mechanisms

The seizure of Torit by the SPLA in September 2002 and the government's subsequent suspension of its participation in the talks reminded that, despite the landmark agreement reached in Machakos, war was still going on in the field. In the absence of an understanding to freeze operations, each side was tempted to make the best use of its military power in order to increase its weight in the negotiations and strengthen its positions on the ground before the eventual signing of a ceasefire agreement. The risk was obvious, however, that continued fighting would ultimately derail the negotiation process. Thus, the embryonic trust that had seemed to emerge between Garang and Bashir when they met in Uganda just after the Machakos Protocol had been rapidly destroyed by the Torit affair.

In October 2002, two separate (and very different) monitoring mechanisms intending to keep the process on track were therefore put in place. First, the parties concluded an agreement to suspend hostilities, whose implementation was to be observed by the Verification and Monitoring Team (VMT) under the auspices of IGAD. Second, the US Congress adopted the Sudan Peace Act, which requested the US president to report on the negotiations and to take appropriate measures in the case of lack of progress. The first initiative was based on mutual consent and created an additional on-site monitoring mission to the existing JMM and CPMT. The second initiative was more coercive and partial in nature since it threatened the GoS with sanctions; it was not agreed upon by the warring parties but ascribable to outside actors and linked to NGO campaigning against oil exploitation in the Sudan. An assessment of these initiatives' respective impact on the peace process is attempted below.

1) The JMC, CPMT and VMT: The Sudan's UFOs

For all as necessary as it appeared, the signing of a comprehensive ceasefire had been historically considered by the SPLA as the last, not the preliminary, step of the peace talks. The rebellion intended this way to exert continued leverage by showing its capacity to sustain the war; it also feared that a ceasefire would only be used by the Sudanese government to reinvest oil revenues and develop its own arsenal. After the GoS had recaptured Torit, a compromise was brokered under the auspices of IGAD by which the parties agreed merely to suspend hostilities and ensure a military stand down of their forces. The agreement aimed to 'create and maintain an atmosphere conducive throughout the negotiations without prejudice to the future disengagement and redeployment of forces, or to the security arrangements

for the interim period'.¹⁵⁶ Notwithstanding the previous agreement signed for the Nuba Mountains, this Memorandum of Understanding (MoU) represented the first real effort since 1989 to bring the military confrontation to a halt. Yet it was not immediately successful.

By way of the 'period of tranquillity' called for in the agreement, from late December 2002 until early February 2003 Khartoum instigated serious fighting in Western Upper Nile's oilfields through its affiliated militias. This offensive was consistent with the government's proven strategy of clearing oil areas through indiscriminate attacks on the civilian population and its long-standing tactic of co-opting southern militias, both to wage war by proxy and to undermine attempts at southern reconciliation. Khartoum also possibly had in mind to test the mediators' resolve about compliance with the newly signed MoU.¹⁵⁷

Precisely these developments shed light on a serious shortcoming of the agreement on the cessation of hostilities, which did not foresee any on-site monitoring body. By way of follow-up, the MoU merely requested that IGAD mediators establish a 'channel of communications' between the parties. This weakness was addressed in a new round of talks held in February 2003 in Karen, Kenya. Under strong international pressure, the parties then agreed to pull back from any locations occupied in violation of the MoU and to allow the establishment of a Verification and Monitoring Team (VMT) of the ceasefire.¹⁵⁸ Composed of international monitors and representatives from the parties, the VMT was mandated to investigate any complaint filed by either party and was given free access to travel in any relevant area.¹⁵⁹ Its reports were notified to the MoU Channel of Communications Committee, which could eventually make them public. Furthermore, the parties were compelled to inform the MoU Committee of the identity and location of their own forces and affiliated militias, and to notify it in advance of all troop movements. Although it proved unfortunate that such a monitoring mechanism had not

156) *Agreement of Cessation of Hostilities*, Machakos, 15 October 2002. The parties were committed to retaining current military positions, refraining from any offensive military action, ceasing laying landmines, refraining from occupation of new areas, ceasing to supply all areas with weapons and ammunition, refraining from any acts of violence or other abuse on the civilian population, and freezing media propaganda against one another.

157) See ICG, *Sudan's Oilfields Burn Again: Brinkmanship Endangers the Peace Process*, Africa Briefing, 10 February 2003; and Justice Africa, *Prospects for Peace in Sudan Briefing*, February 2003.

158) *Addendum to the Memorandum of Understanding on Cessation of Hostilities between the Government of Sudan (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A)*, Karen, Nairobi, Kenya, 4 February 2003.

159) Headquartered in Nairobi, the VMT was staffed by representatives of ten countries: Eritrea, Ethiopia, Italy, Kenya, the Netherlands, Norway, the Sudan, Uganda, the United Kingdom and the United States. VMT patrols typically consist of a leading international monitor, a monitor from each of the two parties, and a monitor from an IGAD member state.

been foreseen earlier, the international reaction to the government's military offensive was (as after the Bieh incident) salutary. Demonstration was thus made that, despite the signing of the Machakos Protocol, the parties could not be left to their own devices but still needed thorough international scrutiny.

Added to the already existing JMM/JMC and CPMT, the creation of the VMT nevertheless created some confusion – not only for outsiders but among the parties themselves – over the significance, competence and chain of command of these monitoring bodies, which somewhat resembled unidentified flying objects floating over the Sudanese territory. The following review is intended to clarify the picture.

The Joint Monitoring Mission/Joint Military Commission (JMM/JMC)

The JMM/JMC was established in the Nuba Mountains upon Senator Danforth's initiative. A key feature of the monitoring structure was to include teams of representatives of the parties in the field as well as in the decision-making. Thus, the Joint Monitoring Mission typically consisted of mixed patrols of one international, one GoS and one SPLA monitor. It was tasked with assisting in the disengagement and redeployment of the combatants and with observing compliance with the ceasefire (through patrolling, investigations and reporting on complaints), all over an area of 80,000 km² (the size of Austria). The JMM reported to the Joint Military Commission (JMC), itself composed of three representatives from each party and three neutral members appointed by participating foreign countries. The role of the JMC was to determine whether ceasefire violations were committed and to provide a dispute resolution mechanism.

The mission started to operate in March 2002, initially with fifteen (unarmed) monitors under the command of Norwegian Brigadier General Jan Erik Wilhelmsen. The funding and monitors were provided by a group of twelve European and North American countries, called the 'Friends of the Nuba Mountains' (FoNM).¹⁶⁰ The JMC reported to the chair of this group, the British ambassador in Khartoum, William Patey.

The JMM/JMC is widely regarded as a success since no clashes occurred after the signing of the ceasefire agreement and complaints from both sides steadily declined over time.¹⁶¹ The military détente induced some 150,000

160) The Friends included the USA, the UK, Norway, Switzerland, Sweden, Denmark, the Netherlands, France, Germany, Belgium, Canada and Italy. Ultimately, the JMM/JMC included 38 international staff (15 nationalities) and 34 national monitors. See *Facts and Figures JMM/JMC*.

161) As of January 2005, three years after its creation, the JMM/JMC had investigated 483 complaints, of which 135 had been awarded as ceasefire violations. See JMM/JMC Media Release, 'JMM/JMC: A Role Model for Future Peace Support'.

people to return to the region and enabled the JMM/JMC to engage in a number of humanitarian and rehabilitation operations. The UN agencies on the ground, coordinated by UNDP in the framework of the Nuba Mountains Programme for Advancing Conflict Transformation, seized the window of opportunity and consolidated their presence on both sides of the frontline. The active involvement of the parties in monitoring an agreement that they had fully agreed upon is seen as one of the chief reasons for the success of the operation. Yet, the 'Friends' that sponsored this arrangement have also been criticized for failing to provide the political oversight and for failing to play the 'watchdog' role that would likely have avoided a number of misunderstandings and incidents from occurring.¹⁶² Furthermore, the ceasefire in the Nuba Mountains benefited from the support of both signatories, but had a side-effect by prompting the two parties to reposition their forces for operations in the oilfields, resulting in hostilities and attacks on civilians further in the south.

The Civilian Protection Monitoring Team (CPMT)

The CPMT was initiated by and remained under the control of the US Department of State as part of the agreement signed in March 2002 to protect civilians from military attack. Consisting of US staff only (with no representatives from the warring parties), provided by a private US professional services company, it was based in Khartoum and had at its disposal an antenna in Rumbek, the capital of the SPLM-controlled Bahr el Ghazal region. Established in September 2002 only, the CPMT finally attained full operational capability two months later.

Its personnel was then said to be lacking, with few exceptions, knowledge and experience of the Sudan and to be fulfilling its mission from a military, rather than human rights', perspective – a criticism that may be ascribable to the professional background of the monitors. The CPMT was also criticized for limiting itself to monitoring activities, whereas a more proactive attitude of seeking information and contacts and mapping positions on the ground was deemed suitable.¹⁶³ Finally, it was also accused of political expediency through presenting findings that would prevent accusations of partiality.¹⁶⁴ Still, the CPMT had the merit of existing. In particular, the team played a critical role during the January 2003 crisis by documenting the responsibility of the Sudanese government and allied militias for military actions in Western

162) See the remarks by analyst Paul Murphy at <http://www.irinnews.org/webspecials/sudan/nubaceasefire.asp>.

163) See Justice Africa, *Prospects for Peace in Sudan Briefing*, February 2003, p. 2; and IRIN, 'Sudan: Problems and Progress with Civilian Protection', 9 April 2003.

164) Interview with former CPMT staff member, Khartoum, October 2004.

Upper Nile.¹⁶⁵ Later on, the CPMT confirmed that GOS militias systematically destroyed dozens of villages in the Shilluk Kingdom and caused the displacement of thousands of civilians.¹⁶⁶

By the end of 2004, the CPMT had investigated and reported on about 70 cases of alleged human rights' abuse. In April 2004, the US Department of State – under which auspices it was created – asserted that the CPMT 'has provided a modality for verifying reports of attacks that did not exist in the previous history of the conflict. Since it became operational, there has been a reduction in attacks against civilians'.¹⁶⁷ While the CPMT's investigations shed light on human rights' abuses and Khartoum's persistent resort to destabilization tactics in the south, these findings triggered little reaction, however. Furthermore, the CPMT was not able, due to the GoS's obstruction, to substantiate the multiple open source reports of numerous abuses by government-backed militia in Darfur. To conclude, while the CPMT provided a much-needed monitoring tool focused on civilian protection, its effectiveness was limited by its own weaknesses and its potential was not fully exploited.

The Verification Monitoring Team (VMT)

The VMT was the latest established monitoring mechanism and for a number of reasons it did not fulfil all its promises either. First, according to the addendum to the MoU, the VMT and the CPMT were intended to function in tandem with the former drawing from the expanded human and material resources of the latter as needed.¹⁶⁸ This pragmatic arrangement proved more

165) See CPMT, *Final Report: Military Events in Western Upper Nile, 31 December 2002 to 30 January 2003*, Khartoum, 6 February 2003. The CPMT's reports are made public and available at <http://www.cpmtsudan.org>.

166) Violence erupted in the once peaceful Shilluk Kingdom (Central Upper Nile) after in October 2003 SPLM/A-United chief commander Lam Akol decided to rejoin the mainstream SPLA. The Sudanese army brought Nuer commanders of the SSDF from outside the area in support of the pro-government faction of SPLM-United led by James Othou. These militia members, reportedly transported on government barges and escorted by gunboats, then launched a campaign of violence against dozens of Shilluk villages, which were systematically destroyed, causing the displacement of thousands of civilians. See ISS/ASAP, *Insecurity in South Sudan: A Threat to the IGAD Peace Process*, ISS Situation Report, 8 June 2004, pp. 4-5; and IRIN, 'Sudan: Fighting Escalating in Shilluk Kingdom', 19 March 2004; from the CPMT, see *Report of Investigation No. 36: Fighting in the Shilluk Kingdom and Killing of Civilians*, 19 April 2004.

167) *Sudan Peace Act: Report to Congress*, released by the Bureau of African Affairs, 21 April 2004.

168) CPMT's and VMT's international monitors were mostly civilians in both cases, with some members having a military background. Like the JMC, the VMT in addition comprised representatives from the parties.

paralysing than mutually reinforcing, however, as it generated controversy with the parties concerning each team's respective responsibilities.¹⁶⁹ With monitors changing hat according to the needs, the GoS actually accused the CPMT of undertaking the duties of the VMT by verifying alleged violations of the cessation of hostilities. In response, Khartoum stopped issuing the notifications enabling the CPMT teams to travel.¹⁷⁰ Whether the Sudanese government acted in bad faith or felt genuinely deceived, the addendum should have either stipulated clearly that the team monitors were fully interchangeable or specified the conditions in which the teams could draw on one another.¹⁷¹

Second, contrary to the FoNM-sponsored JMC and the US-led CPMT, the VMT was placed under the authority of IGAD, and specifically under the command of Lt. General Sumbeiywo and the IGAD secretariat for peace in the Sudan. This distinctive feature might contribute to explaining the difficulties encountered by the verification team, since neither the IGAD council nor the IGAD peace secretariat were experienced or equipped to run this kind of field mission. As a result, IGAD and the VMT relied mainly on one person, Lt. Gen. Sumbeiywo (furthermore so, as the team itself experienced four changes of leadership within eight months). Despite his military record and widely praised qualities as a negotiator, Sumbeiywo was perhaps not the most suitable candidate at the time, however, as his involvement in the peace talks did not enable him to control the VMT as fully as he would have wished himself.¹⁷² This contradiction may explain why the VMT remained a fairly small mission – especially compared to the size of its area of responsibility.

The third source of the VMT's difficulties derives from the previous two. Discussions with and among the parties over the tasking and composition of the VMT, as well as bureaucratic and diplomatic hurdles, all contributed to undermining the confidence of the donors and delaying the disbursement of funds.¹⁷³ Yet donors' reluctance to invest in the VMT could only aggravate its problems. From May to October 2003 the VMT was therefore restricted to

169) Not only did the two teams share personnel and aircraft, but they initially had a similar name: in the agreement establishing it, the CPMT was designated 'verification mission'. In article 4 of the addendum, reference is indeed made to the verification and monitoring missions (plural).

170) IRIN, 'Sudan: Monitoring Team Grounded for a Month', 7 April 2003.

171) Later on, it was the turn of the VMT to be 'grounded', as Khartoum denied granting a visa to two Eritrean members. Although the government was entitled to oppose the recruitment of any given national (article 3 of the addendum implied that personnel not coming from the observer countries had to be agreed by the parties), the IGAD Council took a different view and the Eritrean monitors were finally incorporated in the team.

172) Interview with VMT staff member, Nairobi, October 2003.

173) Interview with VMT staff member, Nairobi, October 2003. See also, IRIN, 'Sudan: Monitoring Team Resuming Work', 29 October 2003.

conducting investigations because it lacked funding, manpower and logistics. By then, over 70 cases of alleged violations remained pending, while the Channel of Communications Committee (to which claims were filed and the VMT was to report) ceased to meet from July 2003 on. As the parties had not proved very cooperative during the early meetings, Lt. Gen. Sumbeiywo was indeed reluctant to convene the Committee for fear of jeopardizing the trust created in the negotiations. In fact, to all intents and purposes the VMT began to be operational when the parties reached agreement on security arrangements for the interim period. This leads to the thinking that the VMT contributed less to the peace process than it benefited from it.¹⁷⁴

Finally, the VMT was hindered by a weakness of the MoU on the cessation of hostilities, which did not specify whether and how the change in political affiliation of militias would impact on the status of the territory under their control. In late 2003 and early 2004, it happened twice that formerly GoS-affiliated southern militias redefected to the SPLM/A.¹⁷⁵ In both cases, the GoS refused the view that the given territory would pass to the other side's control, while the SPLM/A felt that a change in political affiliation would mean a change in status of territory. The decision to switch sides therefore caused serious infighting. Although it denied involvement and argued, as ever, that the fighting was a mere manifestation of inter-tribal killings, the Sudanese government backed the rump factions, thereby instilling further violence. In April 2004, the CoC Committee met again and the VMT could finally conduct its own investigations into developments in the Shilluk Kingdom. It confirmed the campaign of violence launched by forces allied to the GoS against civilians.¹⁷⁶

Concluding Assessment of the Monitoring Mechanisms

To conclude, the assessment that can be made of the monitoring mechanisms' contribution to the Sudan's peace process is mixed. All three mechanisms have faced difficulties in starting up operations, yet performed

174) At the time, the VMT planned to double its monitoring teams from two to four (with four people each) and to expand its activities beyond investigation to mapping, liaising with local commanders, monitoring troop movements and confidence-building. It was also expected to play a stopgap role pending the deployment of a UN peacekeeping operation. Interview with VMT staff member, Nairobi, October 2003.

175) In October 2004, as mentioned above, the SPLM/A-United chief commander rejoined the mainstream SPLA. Similarly, in early 2004 in Western Upper Nile, two senior commanders of the South Sudan Independence Movement (SSIM), Tito Bihl and James Leah, defected to the SPLM/A. While they were followed by most of their fighters, the rump left under the command of Peter Dor received strong backing from the Sudanese army. See ISS/ASAP, *Insecurity in South Sudan*; and IRIN, 'Sudan: Fighting Escalating in Shilluk Kingdom', 19 March 2004.

176) IGAD secretariat, press release, 19 April 2004.

better later on. Of the three, the JMM/JMC is usually presented as a ‘success story’, illustrated by the military quietness in the Nuba Mountains since the entry into force of the ceasefire agreement. By contrast, the CPMT and VMT did play an important investigative role, but their very activity testifies to the persistence of attacks on civilians and renewed military activities in their areas of operations. It would be tempting, therefore, to contrast the successful locally owned, consent-based, and internationally supported JMM/JMC with the failed US-led, military-oriented, and parachuted CPMT. However, the ‘success’ of the JMC may be less ascribable to the inherent merits of this mechanism (since the VMT too was based on mixed monitoring) than to the readiness of the parties to freeze hostilities in the Nuba Mountains and to concentrate their forces on oilfields further in the south. In other words, the success of the JMC may have been achieved at the expense of the CPMT/VMT. Hence, there may be other lessons to draw from these experiments than simply replicating the JMM/JMC system of shared responsibility in the future.

First, international scrutiny, as materialized through the monitoring mechanisms, was indispensable and gradually taken seriously by the parties. However, the roles, responsibilities and *modus operandi* of these monitoring mechanisms should be clearly defined with them in order to avoid controversy and obstructionist tactics.

Second, small missions can be effective even in big countries, provided that logistics and politics follow. Put differently, effectiveness is less a question of size than operational flexibility and political backing. In the latter regard, donor support might be as crucial as the cooperation of the parties – and may actually help overcome resistance from the parties. Yet donors tend to wait for the engine to start up on its own before providing the fuel. Such a wait-and-see attitude is even more counter-productive when the mechanisms in question result from a crisis response and require immediate follow-up. While donors’ reluctance to invest in vain is understandable, supporting a peace process entails taking risks – as problems might not necessarily be solved if action is taken, but will surely persist otherwise.

Third, mixed national/international monitoring may help provide a sense of ownership, reinforce consent and build confidence both between the parties and with third parties. Incidentally, it can also compensate for limited human resources. However, it would be a dangerous misinterpretation to believe that security issues in (post-)conflict settings, in particular in the Sudan, can simply be addressed through consent-based mechanisms and ‘local ownership’. Such an approach may suffice to ensure compliance when, for whatever reasons, the parties are committed (as in the Nuba Mountains), but is bound to fail when they are not (and there are reasons to question the GoS’s commitment to peace in southern Sudan).

In reality, and this is the final lesson, all three mechanisms were criticized for lacking ‘teeth’. No procedure was in place to compel compliance other than reminding the agreed commitment, and no sanction was foreseen other

than international condemnation. Even though the parties committed themselves with their full consent – and could therefore be expected to live up to their commitments more strictly than otherwise – the level of mistrust lingering between the belligerents after two decades of war would have justified more stringent mechanisms. Short of this, the various agreements were extended as regularly as they were violated. The lack of appropriate international response to documented violations in the south meant that the GoS in particular felt free to continue instilling violence in the Shilluk Kingdom, and acted even more brutally in Darfur. Until the signing of the Naivasha agreement, the threat of sanctions generated by the mobilization of NGOs and US congressmen was not implemented.

2) The Threat of Sanctions

The GoS offensive of January 2003 in the oilfields had highlighted the dual role of oil as a peace factor and a source of conflict. Although the prospect of increased oil revenues counted among Khartoum's motives for considering a peace settlement, in the meantime the Sudanese government did not relent on its twin strategy of developing oil exploitation through military force and financing military effort through oil revenues. Conversely, the oil sector was seen by peace activists as Khartoum's Achilles' heel. Sanctions were recurrently recommended by NGOs as well as the US Congress, both to curb the war-perpetuating role of oil exploitation and to bring pressure to bear on the GoS. An assessment of NGOs' efforts is provided below, before an examination of the Sudan Peace Act to which they are linked.

The Campaign for Capital Market Sanctions

It was not long after the Sudan began exporting oil in 1999 that NGOs and human rights' defenders based in North America and Europe became mobilized on the link between oil exploitation, human rights' abuses and the continuation of the conflict.¹⁷⁷ Although the Sudanese government incurred most of the criticisms for being chiefly responsible for human rights' violations, oil companies doing business in the Sudan also became targeted. Charges against them were double: 1) oil companies were accused of exacerbating the war by providing the GoS with oil revenues that were later absorbed in the war effort; and 2) oil companies were said to be complicit in the forcible displacement campaigns of civilians, which were carried out by the GoS (with their money) in order to clear oil-producing areas (and further expand business opportunities). In response, oil companies would deny that

177) To date, the most comprehensive examination of this link was provided by Human Rights Watch, *Sudan, Oil and Human Rights*, November 2003, accessible at <http://www.hrw.org/reports/2003/sudan1103/>.

vast areas had been depopulated and argue instead that the population around oil facilities has increased because of greater security from rebel attacks and the presence of some amenities. Nevertheless, the Canadian-based company Talisman became the privileged, though not exclusive, target of Canadian NGOs urging it to withdraw from the Sudan and pressuring its shareholders to sell their shares in protest against ‘fuelling’ war in the country.

Human rights’ activists were joined in campaigning by other American pressure groups, which were concerned that US companies were barred from doing business in the Sudan since the unilateral sanctions imposed by the Clinton administration in 1997, while non-US companies could, and did, freely undercut the unilateral economic embargo. As a result, the impact of the sanctions was largely undermined and US companies were penalized in vain. Those concerns resulted in the proposal for capital market sanctions that consisted of barring foreign companies involved in business activities in the Sudan from raising funds in US capital markets. Proponents of such sanctions therefore lobbied the US Congress to have the relevant provisions enacted.¹⁷⁸ They obtained a first victory when the Sudan Peace Act (SPA) – a piece of legislation first introduced in Senate in 1999 and again in 2000 by Congressmen advocating a tougher stance against Khartoum – was finally passed in the House of Representatives in June 2001 together with an amendment actually barring ‘guilty’ oil companies from being listing or trading on the US stock exchanges. While the Act had to be approved in the same terms by the two Houses, the Senate bill that passed did not provide for capital market sanctions, however. Furthermore, the US administration (whether under Clinton or Bush) had consistently opposed such measures, arguing that it would create a precedent for political interferences in US capital markets. Lobbying firms in Wall Street were, it is true, also vigorously opposed. President Bush eventually threatened to cast a veto if the version common to both Houses included sanctions against oil companies. Interestingly, Bush was caught between the oil lobby (which feared a precedent to be set) and others of his supporters who were among the United States’ most vociferous critics of the NIF regime. The former ultimately won the game. Reintroduced in 2002, the Sudan Peace Act was approved by the assembled Congress devoid of any provision against foreign oil companies (although ten days later Bush extended for another year the sanctions put in place by his predecessor).¹⁷⁹

While the expected legislation was finally not approved, the threat of it was nevertheless a source of concern for oil companies. By and large, the campaign for capital market sanctions generated enormous pressure on the oil industry and the financial community. Oil firms that were considering

178) On this campaign, see HRW, *Sudan, Oil and Human Rights* (section on ‘The United States: Diplomacy Revived’); and Petterson, *Inside Sudan*, pp. 245-246.

179) See next section.

engaging in the Sudan were made aware (if needed) of the 'political risk' while those already involved experienced it fully. In 2002-2003, yielding to public pressure, the major Western companies present in the Sudan (Canada's Talisman, Sweden's Lundin Petroleum and Austria's OMV) sold most of their interests and pulled out or significantly reduced their activities. Although other considerations entered into their calculation (such as long-term profitability in a risky environment), public pressure was a key element in the decision of these companies to cease or suspend operations in the Sudan. In other words, public condemnation ultimately superseded the sanction of capital markets.

The market economy is such, however, that Western companies' assets in the Sudan were not lost for all. With no exception, Western-based corporations were all replaced by Asian state-owned companies that were much less sensitive, and indeed subject, to the pressure of domestic watchdogs.¹⁸⁰ The Sudanese government, for its part, hardly saw the difference but received basically the same level of funding. From this perspective, the 'victory' over Talisman and others seems much qualified: in reality, European and North American NGOs succeeded in extending to Western oil companies a prohibition made previously to US firms exclusively, but failed to curb the Sudan's oil-based war economy. The conclusion may well be that sanctions, even more so when they should be universally applied, are almost inevitably bound to failure since they will most likely be circumvented by a state (or non-state) actor pursuing its own interests. In the case of the Sudan, the role of 'sanction spoiler' was played by China in particular. A permanent member of the UN Security Council, China could veto any attempt at imposing UN sanctions in relation to oil exploitation in the Sudan, so as to preserve both its oil industry's interests and good relationship with Khartoum. (In return, Khartoum needed China's investments and political cover.)¹⁸¹ Furthermore, unilateral sanctions against the Sudan could be seen as in the interests of Beijing (as well as Kuala Lumpur and New Delhi), since political or legal restrictions on Western corporations enabled Asian national companies to consolidate their position in the Sudan's oil sector.¹⁸² It appears in fact that these companies, whose expertise and financial means hardly stand comparison with European and North American firms, invest in risky or prohibited countries where

180) Thus, Lundin Petroleum sold its 40 per cent interests in Block 5A to the Malaysian company Petronas (but retained its 24.5 per cent in Block 5b); Talisman sold its oil interests in Western Upper Nile to a subsidiary of India's national oil company; and Austria's OMV sold its assets to India's Oil and Natural Gas Corp (ONGC Videsh Ltd). The other major player is China National Petroleum Corporation (CNPC).

181) Thus, the UN Security Council impose targeted sanctions on Sudan in March 2005 (Resolution 1591) but these measures are not related to oil exploitation.

182) China and Malaysia together comprise over 60 per cent of the consortium developing the oil industry. See ICG, *God, Oil and Country*, p. 68.

competition with Western counterparts is much lower.¹⁸³ Hence, for China and a few others, the continuation of the conflict seems more profitable than the signing of a peace agreement – be it only because Khartoum would probably then renegotiate the oil contracts with serious competitors.

At first sight, public campaigning against oil exploitation in the Sudan seems to have been more effective in hurting Western companies' interests (to the benefits of Asian ones) than the Sudanese government's. However, the NGOs' mobilization also had more constructive, though indirect, effects on the peace process. First, it undoubtedly contributed to raising awareness and attracting (media) attention on the Sudan's conflict and the fate of hundreds of thousands of civilians expelled from their home. Second, public campaigning might not have resulted in diminishing the Sudanese government's oil revenues but further undermined its credibility and increased external pressure – at a time when Khartoum was precisely seeking rehabilitation. Third, NGOs failed to convince the US administration to endorse the relevant legislation but the threat of capital market sanctions nevertheless remained floating for some time on oil companies and the GoS, and provided US officials with an additional means of pressure on Khartoum. Finally, although it did not include penalty on oil companies, the Sudan Peace Act was refashioned to bring pressure to bear on Khartoum and can also be partly ascribed to Western NGOs. But it is true that it constituted a controversial, and not necessarily efficient, initiative.

The Sudan Peace Act

Signed by President Bush on 21 October 2002, the Sudan Peace Act aimed to support an 'internationally sanctioned peace process' – an expression that could mean both international endorsement and the resort to sanctions. The version finally approved was much watered-down since it excluded both sanctions on oil companies and material support for the SPLM/A. The Act was nevertheless directed without ambiguity against the government of the Sudan.¹⁸⁴ It requested the US president to submit a six-monthly report to the US Congress assessing whether *both* Sudanese parties were 'negotiating in good faith'. In view of the follow-up measures foreseen in case of negative assessment, however, it is quite clear that only the GoS was in the Congressmen's line of sight. Thus, should Khartoum be found to have not negotiated in good faith, or 'unreasonably interfered' with humanitarian efforts, sanctions would be invoked, by which the US administration could: continue obstructing IMF/World Bank loans to the Sudan; downgrade or suspend bilateral diplomatic relations; take 'all necessary steps' to deny the

183) ICG, *Dialogue or Destruction?*, pp. 12 (footnote 57) and 15 (footnote 73).

184) French diplomats would refer to it as a 'machine of war' against Khartoum; interview in Naivasha, October 2003.

Sudanese regime access to oil revenues; and press the United Nations Security Council to approve an arms embargo against the Sudanese government (and only the government).¹⁸⁵ On the other hand, if the US president estimated that the SPLM/A delegation was not engaged in good faith negotiations, southerners would not have faced any consequences – but the GoS would have been spared from sanctions.¹⁸⁶ As a further indication of partiality, the Sudan Peace Act did not provide for direct support to the rebellion but authorized increased assistance worth US\$ 100 million expenditure per year in ‘areas outside government control’ (that is, SPLM/A-held areas) in support for civil administration, communications infrastructure, education, health and agriculture.

Unsurprisingly, Khartoum described the legislation as ‘a hostile, biased and religiously motivated bill’ because it ignored atrocities committed by the rebels and excluded the possibility of sanctions against them.¹⁸⁷ Actually, the Sudan Peace Act echoed the voice of the US-based anti-Khartoum coalition consisting of certain congressmen (practising Christians indeed) and pro-SPLA lobbies (including USAID), which continued to advocate a harsh stance against the GoS that was far from the ‘constructive engagement’ by then opted for by the US State Department (and earlier by the CSIS Task Force).¹⁸⁸ Thus, the Act reflected much more continued infighting in Washington than it indicated a new shift in the US administration’s policy. Thereby, it was perhaps less a help than a hindrance for the US State Department.

First, the SPA appeared as a constraint on the executive in the conduct of US policy. The US State Department wanted to keep the broadest room to manoeuvre, especially in such a subtle and complicated exercise as peace negotiations, and therefore disliked the seemingly binding character of the Act.¹⁸⁹ Although the subjective nature of the assessment requested to the president (measuring the parties’ ‘good faith’ for instance) gave him some freedom, the White House deemed necessary to recall the non-compulsory nature of the SPA, which would otherwise infringe upon presidential powers in foreign affairs.¹⁹⁰

185) *Sudan Peace Act*, Public Law 107-245, 21 October 2002, section 6, par (2). Once taken, these sanctions could be suspended if the GoS resumed negotiations.

186) Interestingly, the Clinton administration’s stance was much similar at the opening of the Rambouillet peace conference on Kosovo in 1999 (although the sanctions were even more severe in that case): if Serbia was found responsible for blocking the agreement, it would be bombed; if the Albanian delegation was found responsible, Serbia would not be bombed.

187) Quoted in IRIN, ‘Sudan: Negotiations on Security Continue’, 11 September 2003.

188) See chapter 2.

189) Interview with US official, Nairobi, October 2003.

190) *Déclaration présidentielle*, 21 October 2002, <http://usinfo.state.gov/regional/af/security/french/f2102206.htm>. The White House also recalled the right of the executive to retain certain information as deemed necessary.

The Sudan Peace Act posed the second potential problem of misleading the SPLM/A by conveying the notion of unlimited US support for the rebellion. This not only created diplomatic hurdles – the US Congress approved additional funds for opposition areas just as the State Department had invited the two delegations to Washington – but could have proven counter-productive in inducing overconfident southerners to harden their stance in negotiations. Thus, after the Sudanese government’s rejection of the Nakuru draft framework in July 2003, Senator Danforth deemed it necessary to notify the southern delegates that they too would have to show flexibility.¹⁹¹

This said, for being unfriendly to Khartoum, the Sudan Peace Act was less aggressive than it appeared. Of the four types of sanctions evoked, none seemed to give the GoS extra reason to be alarmed: international loans were already blocked by the US; downgrading bilateral relations seemed hardly compatible with the necessities of the counter-terrorism strategy; the warning on oil revenues was unspecified and unconvincing given the failure to implement capital market sanctions; and imposing an arms embargo required Russian and Chinese agreement at the UN Security Council. By and large, the threat was therefore more symbolic than real.

Whether he knew the threat was largely empty or acted himself ‘in good faith’, President Bush made several assessments of the parties’ engagement in peace talks which, despite the slow pace of the negotiations and the deteriorating situation in Darfur, were all positive. The first ‘presidential determination’ of 21 April 2003 was challenging, seeing that, since the adoption of the SPA, fighting had been instigated again by the GoS in the oilfields. Nevertheless, the two sides had subsequently agreed to the creation of the VMT and talks were continuing, albeit imperfectly. Furthermore, the US Special Envoy, the international observers, the IGAD mediator and the parties themselves all expressed support for and confidence in the negotiations.¹⁹² Meeting in Kenya on 2 April 2003, Garang and Bashir even raised the prospect of a comprehensive agreement by 30 June 2003. In short, this presidential determination was positive owing to general confidence in the course and conclusion of the peace process.

Six months later, in October 2003, there was still no final settlement but tensions had lessened in the field (at least in the south); five rounds of negotiations had taken place; John Garang and vice-president Taha were having direct talks and had already agreed on interim security arrangements. Sanctions stipulated in the Sudan Peace Act then seemed superfluous; the presidential assessment was again positive. As a sign of growing impatience and in order to push the parties towards conclusion, however, this

191) Interview with US official, Nairobi, October 2003.

192) *Memorandum of Justification Regarding Determination Under the Sudan Peace Act*, The White House, Washington DC, 21 April 2003.

determination was only for another three months instead of six.¹⁹³ In January 2004, the parties missed the deadlines again, yet were given another extension until 21 April 2004.

The third presidential determination of April 2004 was probably the most difficult to make as the overall situation was by then very much contrasted and serious doubts were raised about the commitment of the parties, in particular the GoS. On the one hand, the parties had made substantial progress since the previous assessment in concluding a framework agreement on wealth-sharing, accepting the US's compromise proposal on Abyei, and resolving most issues on the other two contested areas. They were also said to have solved many key issues related to power-sharing arrangements for the interim period. On the other hand, the US Department of State did not conceal strong disappointment that no agreement was reached yet and questioned the goodwill of the parties with tough words:

*The difficult and stagnant pace reveals a minimalist approach by both sides that is manifest in an exercise of zero-sum tactical maneuvers and results in tentative progress. Indeed, frequent promises of flexibility and compromise are hampered by a dedication to self-preservation by both sides that hinders the prospect that the best formula for peace will emerge for the people of Sudan ... Our confidence is waning that the mutual courage necessary for such an ultimate outcome will be forthcoming.*¹⁹⁴

Furthermore, the involvement of the Sudanese government in attacks and atrocities committed by GoS-affiliated militias in Malakal (Upper Nile) and in Darfur strongly suggested that Khartoum was actually *not* committed to achieving peace throughout the Sudan. As Senator Danforth candidly expressed, the violence in Darfur 'raise[d] serious questions about the government's commitment to abandon its practices of the past and begin a new chapter of resolving conflict through peaceful means'.¹⁹⁵ In short, there was then little evidence to contend that the GoS was negotiating in good faith. Nevertheless, the presidential determination was once again positive out of the beliefs that: a) the peace talks were at the final stage and had to be brought to conclusion; and b) resorting to sanctions against Khartoum would have compromised this outcome by putting a premature end to US engagement in the peace process.

To an extent, subsequent developments validated the US president's position. A few weeks later, the parties finalized negotiations in Naivasha on

193) *Sudan Peace Act Presidential Determination*, US Department of State, Fact Sheet, 22 October 2003.

194) *Memorandum of Justification Regarding the Sudan Peace Act Presidential Determination*, Bureau of African Affairs, 21 April 2004.

195) *Assessment from the President's Special Envoy for Peace in Sudan*, Sudan Peace Act, Bureau of African Affairs, 21 April 2004.

outstanding political issues (protocols on power-sharing and the Three Areas), thereby increasing expectation that peace was, this time, very near indeed. After agreement was found on the toughest issues, the remaining negotiations on the implementation and ceasefire modalities did not seem to pose great difficulties. Whereas the crisis in Darfur cast shadows over the Naivasha protocols and fuelled suspicion about the ruling party's real intent, the so-called north-south agreement was given priority. Its finalization was actually seen as imminent, central to the restoration of peace in Sudan, and likely to facilitate the resolution of the conflict in Darfur by providing a template. Although it meant the GoS was committing 'genocide' in the west and was simultaneously negotiating 'in good faith' with the south, the fourth presidential determination of October 2004 was positive.¹⁹⁶

To sum up, developments in Malakal and Darfur gave grounds to estimate that the GoS did not negotiate in good faith – that is, with a view to achieving sustainable peace throughout the Sudan. If the White House had followed the letter of the Sudan Peace Act – what it was advised, but not obliged, to do – there was enough evidence to activate the provisions for renewed US sanctions. However, the US administration was reluctant to make this step for several reasons. First, despite their lengthiness, the negotiations were never interrupted and made regular progress, suggesting that peace was 'around the corner'. This belief made the US unwilling to risk breaking the dynamics. Second, activating the SPA provisions was not seen as a way to foster peace efforts by bringing greater pressure to bear on Khartoum; it was equated with terminating US efforts for peace in the Sudan, and in fact putting an end to the peace process itself. However, there was no perceived alternative way than supporting the peace process. Third, the US government was, like the international community as a whole, blackmailed by Khartoum over Darfur. The US feared that punishing the GoS for the atrocities committed in Darfur would induce the GoS to harden its stance in Naivasha, and therefore would compromise the signing of the comprehensive peace agreement.

In the final analysis, it may be argued that the SPA created a greater constraint on the US than the Sudanese government. The White House was itself put under pressure as it was requested to report publicly every six months on its policy dilemmas, and to justify difficult choices. The wording of the presidential determination illustrates these circumvolutions: since it was hard to assert that Khartoum was negotiating in good faith, the President would argue instead that 'negotiations should continue' and that 'the US should remain engaged' – two points to which no one could really object.

Was the White House right not to activate the SPA? On the one hand, the eventual signing of a peace settlement in January 2005 suggests that it was

196) *Memorandum of Justification Regarding the Sudan Peace Act Determination*, United States Department of State, 22 October 2004.

wise to give peace a chance. On the other hand, the lack of significant reaction to Khartoum's wrongdoings may have undermined US credibility and fuelled the GoS's feeling of impunity. There must be some relation if, in the meantime, the situation in Darfur became invariably worse.

At a more general level, the SPA illustrates how tricky it is to use sanctions in the framework of a negotiation process. Sanctions may be resorted to before the opening of peace talks in order to demand cessation of brutal actions and/or compel parties to negotiate; they may also be used to induce parties to return to the negotiation table after a withdrawal or break up. When parties are actually engaged in peace talks, however, sanctions appear superfluous when things seem to be moving in the right direction and unwise when not. Put differently, sanctions are more a conflict-management than a conflict-resolution tool. By means of illustration, President Bush never made a negative determination in the course of the negotiation process, but signed on 23 December 2004 the Comprehensive Peace in Sudan Act, which recommended sanctioning the GoS for its genocidal policy in Darfur.¹⁹⁷ By then, the US administration no longer feared compromising the Naivasha agreement that was about to be signed. Since then, however, Washington has been accused of softening its stance on Khartoum in order to safeguard the fruitful relationship between US and Sudanese intelligence agencies. Elected for a second term, Bush no longer needs to agitate the Darfur issue for internal reasons but can focus again on security and be as lenient to Khartoum as counter-terrorism demands.

Conclusion: Assessing Impact

Taken separately, none of the various initiatives examined above seemed to have made a crucial contribution to the peace process. The monitoring mechanisms were long to become operational and then failed to prevent renewed fighting and attacks on civilians. The campaign on capital market sanctions made much ado about little thing as the GoS continued drawing benefits from foreign oil companies. The Sudan Peace Act was more a symbolic than a real threat to Khartoum and proved ultimately embarrassing for the US Department of State rather than the Islamist government. However, assessing impact also entails considering – or, acknowledging the well-known limits of counter-factual analysis, trying to envisage – what the situation would have been without each of the initiatives, their respective weaknesses put aside. For instance, it is quite clear, as demonstrated *before* the establishment of the VMT, that some kind of international presence on the

197) S.2781, *Comprehensive Peace in Sudan Act of 2004*. The bill also authorized US\$ 200 million in aid for the deployment of more African peacekeepers in Darfur and US\$ 100 million to support the implementation of the comprehensive peace agreement. Upon signing, President Bush reiterated that the Act's provisions could only be advisory.

ground was needed to promote restraint and provide impartial adjudication. (One should remark in that regard that the GoS ceased engaging in aerial bombardment in the south, but did so in Darfur where international attention was less sustained.) Without NGOs' mobilization, forcible displacement campaigns would have continued unabated in oil-rich areas, with the world's indifference and the complicity of (Western) oil companies. Lastly, although the most disputable initiative, the Sudan Peace Act at least reminded President Bashir of the determination of Washington's anti-NIF lobby and its attempt at having the Bush administration taking a harder stance against Khartoum.

These examples also mean that assessing impact requires differentiating between the tangible effects, the concrete results of a given initiative and its political significance. In the case of the Sudan in particular, with a government aspiring so vividly to international rehabilitation, messages may be more important than technicalities. To be sure, adequate planning, funding and management are always welcome, but deficiencies of this nature do not necessarily jeopardize political effectiveness. This is also the reason why, to conclude, the various initiatives should be regarded as a whole rather than separately. Not only is it fairly tricky to differentiate the political impact of each, but a broader view might be more adequate to assess overall coherence. At first sight, the contradiction seems striking between the weaknesses of the monitoring bodies and the excesses of the SPA. In a way, this difference illustrates the difficulty in peace processes of designing the right approach, of finding the middle ground between cooperative and coercive options. In the end, however, building up initiatives might be a way of reaching this balance, provided that they tend towards the same goal and convey a similar message. In the case of the Sudan, most initiatives *meant* sustained international engagement and scrutiny, and this undoubtedly helped the process of negotiations.

II. The Negotiation Process

After the signing of the Machakos Protocol, the parties had yet to find agreement on the power-sharing, wealth-sharing and security arrangements during the interim period as well as the status of the three contested areas. They did so in the course of a fairly hectic and seemingly never-ending negotiation process during which they missed several 'deadlines' (30 June 2003, 20 January 2004, etc.) suggested to or by them. Far from being a formality, the post-Machakos negotiations went therefore through constant ups and downs. Before coming to the crux of the matter – the terms of the settlement – a brief account is provided of this process, which can be analysed into three different phases. The first, and little fruitful, phase runs from the resumption of negotiations in October 2002 to Khartoum's rejection of the Nakuru draft document in July 2003. The second phase is characterized by

the two leading figures' engagement in face-to-face talks and the subsequent reaching of two framework agreements on security arrangements (October 2003) and wealth-sharing issues (January 2004). The third phase runs over the year 2004 until the signing of the CPA in January 2005 and is marked with increased interference from the Darfur conflict.

1) The First Negotiation Phase: Turning in Rounds

For being a landmark agreement, the Machakos Protocol had caught everyone by surprise (including its own signatories) and left intact significant differences on substance. The deal resulted from mutual concessions, but denoted no common vision on the future of the Sudan. Instead, each party remained suspicious of the other's real commitment to building a new united Sudan. The country's Islamist leadership found it still difficult to give up the benefits of exclusive governance and envisage a real partnership with the southerners, thereby fuelling the view that it had not yet reneged on its 'Arab'-dominated conception of the Sudan. Since it distrusted the GoS, the SPLM/A tried conversely to secure a maximum of guarantees that were perceived at best as endangering unity, at worse as preparing for independence and anyhow raised the GoS's doubts that the SPLM/A leadership was genuinely interested in unity.

The negotiations were not only hampered by relentless mistrust, but also by important differences in political culture that surfaced from history. Having experienced a number of 'dishonoured agreements', notably the 1972 peace accord, the SPLM/A granted attention to every detail and sought to make the text unalterable through built-in safeguards. Steeped in politics, the GoS delegation aimed in contrast at avoiding irreversibility, preserving room to manoeuvre, and broadening its political base.¹⁹⁸ In short, the devil was seen in too few details for some, and in too many for the others. Over time, the negotiations were held at a level of precision and sophistication never reached before, however.

Lastly, the peace talks were held by influenced hardliners from both sides, disgruntled with the Machakos compromise. On the governmental side, vice-president Ali Osman Mohamed Taha, foreign minister Mustafa Ismail, and deputy foreign minister Mutrif Sadiq were said, in 2002-2003, to disapprove of the Protocol (before its signing they had not been consulted) in contrast with the 'pro-peace' presidential adviser Ghazi Salah el Din. On the rebel side, John Garang had to take into account the frustration of field commanders and other long-standing southern separatists who did not subscribe to the goal of unity, were concerned with the duration of the interim period, and/or wanted more guarantees of southern autonomy. Those radical

198) Justice Africa, *Prospects for Peace in Sudan Briefing*, September 2002 and October 2003.

groups exerted constant pressure on each delegation in order to limit further concessions to the maximum.

The second round of discussions of the revitalized IGAD process (and the first one after Machakos) took place from 14 October to 18 November 2002. The parties agreed to cease hostilities (following the Torit affair) and signed another Memorandum of Understanding devoted to aspects of structures of government by which they committed themselves to general principles of power-sharing and to holding elections (at an undetermined date and level) during the interim period.¹⁹⁹ Discussions were then suspended until 23 January 2003 because of Ramadan and presidential elections in Kenya. Despite President Moi's defeat, Kenya's role in the negotiations remained unchanged as, upon US insistence, the newly elected President Kibaki confirmed Sumbeiywo in his functions.²⁰⁰ Nevertheless, the talks began to be held in a different format. Until then, the parties responded to the mediator's proposals and made their points, but hardly had any direct contact. This kind of proximity talks minimized the risk of 'negative interactions' between old foes, but did not help build trust and could possibly generate misunderstandings.²⁰¹

During the third round, direct negotiations started to materialize in the framework of working groups on power- and wealth-sharing issues chaired, for the first time, by the parties themselves. This phase ended in early February 2003 with the signing of two additional documents regarding the creation of the VMT and points of agreement on power-sharing and wealth-sharing.

The fourth round of talks took place from 8 until 16 April 2003 and focused on security issues. In the meantime, parallel discussions (that is, outside the framework of IGAD) had been initiated in early March 2003 at Karen on the last topic not yet touched upon: the three contested areas.

The fifth phase began with the signing of a partnership agreement on administrative arrangements for the transitional period and ended with the launching of an 'holistic approach'. Lt. General Sumbeiywo justified the introduction of this new change in the negotiation format as follows: 'When you are a driver, you will not be good enough if you continue driving in the same gear from start to finish. Otherwise it will be monotonous. I also come from a profession where two principles are very important. Flexibility and an

199) *Memorandum of Understanding between the Government of Sudan (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A) on Aspects of Structures of Government*, Nairobi, 18 November 2002.

200) Later on, the US administration showed impatience with the slow pace of negotiations and encouraged face-to-face talks as a means to sidelining Sumbeiywo; interview with US official, Nairobi, October 2003.

201) Justice Africa, *Prospects for Peace in Sudan Briefing*, October 2002.

element of surprise'.²⁰² Beyond the fear that negotiations might drag on otherwise, the new strategy was also intended to facilitate compromises by linking the 'baskets'.²⁰³ 'The holistic approach is about looking at everything in totality. There are many areas in which the parties have not agreed on and we have bracketed some of these issues which might be used by the parties to trade off one thing for another. But they cannot agree to trade off without knowing what is in it for them in this context'.²⁰⁴ A likely consequence of this approach was to step up top leaders' involvement in the process, since 'some of the issues of trade off [would be] decided at a much higher level than on the table'.²⁰⁵ Incidentally, the ground was therefore being prepared for the face-to-face talks that Garang and Taha eventually engaged in.

Although promising on paper, the 'holistic approach' did not result in the long hoped breakthrough but in a rather unexpected breakdown. At the opening of the sixth round on 6 July 2003 in Nakuru, the mediator's plan was to submit a compromise text addressing all issues (but the security arrangements and the Three Areas) whose details were to be worked out by the delegations during the subsequent three weeks. Even though the document was drawn from the parties' stated positions, it apparently came as too big an 'element of surprise' – to use Sumbeiywo's terms – especially as concerned the Sudanese government. While the southern delegation accepted it as a basis for discussion, Khartoum rejected vehemently the draft as unbalanced, biased and far removed from the Machakos Protocol. President Bashir even invited the IGAD mediators to 'go to hell' and, should they not come up with an alternative, to 'dissolve the document in water and drink it'.²⁰⁶ What then was so indigestible to Bashir?

In Khartoum's view, the draft was unbalanced because it addressed southern concerns exclusively, in a manner harmful to the unity of the Sudan and, therefore, contradictory to the Machakos Protocol. According to the GoS, power-sharing provisions limited the role of the Sudanese president and national government in the south while giving much power to the regional southern government and failing to address linkages between the two.²⁰⁷

202) IRIN, 'Interview with Lazarus Sumbeiywo, Chief Mediator in the Peace Talks', 30 May 2003.

203) The term 'basket' refers to the three sets of issues discussed within the framework of the former Conference on Security and Cooperation in Europe (now OSCE).

204) IRIN, 'Interview with Lazarus Sumbeiywo.

205) IRIN, 'Interview with Lazarus Sumbeiywo.

206) Quoted in 'Going to Hell?', Comment by John Prendergast and David Mozersky in *The Observer*, 24 August 2003.

207) The GoS further objected that power-sharing provisions restricted 'inclusiveness' to southern participation at the centre but omitted non-SPLM representation in the regional southern government. See *Comments and Remarks of GoS Delegation on Draft Framework for Resolution of Outstanding Issues Arising Out of the Elaborations of the Machakos Protocol and Other Important Issues*, 11 July 2003.

Likewise, wealth-sharing provisions made the Bank of Southern Sudan 'look like an independent entity' whereas it was supposed to be only a branch of the central bank; security arrangements provided for two separate armies during the interim period instead of a single united National Armed Force; and, last but not least, the status of Islam in the capital city was put into question and a 'sharia-free enclave' in Khartoum seemed to be suggested. In short, in the GoS's reading of the Nakuru draft, the Sudan would be run by two separate administrations during the interim period – an incongruous way, if any, of promoting its unity.

Here lay the heart of the matter: how to define the right road to unity? For Khartoum, prioritizing unity entailed (re-)unifying the country and building strong national institutions with limited decentralization. The SPLM/A argued instead that giving unity a chance supposed reducing separatist tendencies by meeting the southerners' legitimate demands. The Nakuru draft was largely based on this logic, which hurt the GoS in several ways. Being in the dominating position, the Sudanese government was bound to make the greatest concessions; striving for perpetuating the unity of the Sudan, it was unwilling to pay too high a price for it, however. Khartoum's reaction to the Nakuru document also reflected a problem of political positioning. Although it expected credit for delivering peace, the ruling Islamist party feared being challenged for concessions made at the negotiation table, and losing part of its constituency to the benefits of Turabi's PNC or the traditional opposition parties. From this perspective, accepting provisions such as a secular Khartoum – reportedly the last straw that broke the camel's back – was perceived as political suicide. Thus, the GoS tried to present the Nakuru draft as a charter for separation in order to appear as the leading defender of the Sudan's unity.²⁰⁸ Finally, Khartoum's reaction revealed a problem of timing: President Bashir then became aware of the extent of concessions to be made (this came indeed as a 'surprise') and realized that he had not prepared its constituency for this type of outcome. Thus, despite a seemingly irrevocable position, the GoS probably appreciated that it would ultimately have to accept provisions like the Nakuru draft, but wanted them to be as unspecific as possible and it needed extra time to make that step.

2) The Second Negotiation Phase: Face-to-Face

Had it yearned to escape this outcome, Bashir had anyhow nowhere to go. Resuming hostilities in the middle of the rainy season and with increasing military pressure from insurgents in Darfur was not an option. Khartoum tried well to build domestic support for the rejection of the Nakuru draft, and sought to engage Egypt and the Arab League in playing a mediation role. However, regional and international support for the IGAD process then

208) Justice Africa, *Prospects for Peace in Sudan Briefing*, July-August 2003.

excluded any exit strategy from, or alternative option to, IGAD-led negotiations.

The talks resumed in mid-August 2003 in the Kenyan town of Nanyuki but stalled on procedural grounds – the SPLM/A insisting negotiating on the basis of the Nakuru draft; the GoS opposing it. The idea of face-to-face discussions, which had been tried without success by President Obasanjo in 2002, was therefore relaunched by Kenyan foreign minister Kalonzo Musyoka. On the Sudanese government's side, vice-president Ali Osman Taha volunteered. Widely seen as a hardliner in Khartoum and abroad, he presumably saw an opportunity to win a victory over his primary rival, presidential adviser Ghazi, and to accelerate his (international) rehabilitation.²⁰⁹ John Garang, who had not attended any session so far, accepted in his turn. From early September 2003 on, the two principals met on the banks of Lake Naivasha and engaged in dozens of hours of face-to-face talks, almost getting out of any mediation.²¹⁰

This new change of format had important implications on the conduct of the negotiations. First, the influence of hardliners was reduced since, on the government's side at least, they were directly involved in the person of Ali Osman. Second, the two leaders allegedly became accustomed to one another and built a relationship of mutual confidence that helped work out compromise solutions. Third, the face-to-face talks drastically restricted the role of outsiders. With the parties meeting at their convenience and setting themselves the agenda, the IGAD mediation team found itself mechanically marginalized, though it remained at the disposal of the two delegations. For their part, Western observers no longer attended the talks but they remained in regular (phone) contact with the parties and continued monitoring very closely the progress of the negotiations.²¹¹ These observers played informally a much more active role than their status suggested, but with mixed results – actually, they differ in the very assessment of the impact they had. Some would say that they exerted a positive influence behind the scenes by helping the parties to understand and get acquainted with each other, thereby contributing gradually to reducing the need for intermediaries. Others allege that the observers' role faded away as the parties realized that they had different agendas and tried to influence either or both delegations accordingly. In any case, the high-level talks enabled the US, as holders of the key political leverage, to play an increased role. In October 2003, Colin Powell visited the Simba Lodge in Naivasha to encourage the parties to finalize the agreement.

209) In November 2003 Ghazi resigned, or was dismissed, probably as a result of unsuccessfully competing with Ali Osman Taha over internal leadership issues. The departure of the former confirmed the latter's rise.

210) The two leaders continued to be supported by the thematic committees established earlier for power-sharing issues, wealth-sharing issues and the Three Areas respectively.

211) Interviews in Nairobi and Naivasha, October 2003.

By then, the negotiation process had become actually owned by the parties and made tangible progress. The framework agreement on security arrangements, the first agreement negotiated directly without any external assistance or interference, was signed in September 2004. On this occasion, the peace process was proclaimed 'irreversible' by the two sides. Subsequently, an SPLM/A delegation made a historic visit to Khartoum, the first of this kind since the eruption of the second war. In January 2004, another landmark agreement on oil revenues and other wealth-sharing issues was also concluded. However, the face-to-face talks highlighted further the bilateral format of the IGAD talks, which were perceived as exclusive in nature and generated for that reason much gnashing of teeth. By no coincidence, the conflict in Darfur took tragic proportions and put the so-called irreversible process at serious risk.

3) The Third Negotiation Phase: The Shadow of Darfur

The people of Darfur are all Muslims, 'black' and indigenous Africans even though they see themselves as divided.²¹² The ethnicity of the region's various groups is not based on any discernable racial or religious difference, but on two parameters – language and occupation – which somewhat overlap. Darfur's pastoralists therefore usually claim 'Arab' descent and speak Arabic, whereas the region's sedentary agriculturalists are generally composed of 'non-Arab' or 'African' ethnic groups, such as the Fur, Massalit, Tama, etc. As elsewhere throughout Africa, conflicts over access to land were not unusual between Darfur's 'Arab' nomads, who use to migrate southwards during the dry season, and the Fur farming communities. Incidents used to be solved through negotiation and customary law. By the late 1970s, however, increased desertification and poverty exacerbated competition over resources, and the introduction of weapons and the collapse of the police force owing to the government's neglect made these disputes more frequent and violent. Simultaneously, the confrontation between 'Arab' and Fur communities took on a political dimension, with the former complaining about their marginalization in the Fur-dominated local administration and the latter and other 'African' groups protesting against the Sudanese government's abandonment of the region and pro-'Arab' bias. Instead of addressing the conflict, the NIF government inflamed tensions by siding further with and arming the 'Arab' tribes.

212) As stressed by Alex de Waal, 'Tragedy in Darfur'. On the genesis of the Darfur conflict, see also from de Waal, 'Counter-Insurgency on the Cheap', *London Review of Books*, Vol. 26, N°15, 5 August 2004.

The Outbreak of Conflict in Darfur

The roots of the Darfur conflict date back well before the Naivasha talks. Previous large-scale fighting had pitted the ‘Arabs’ and the Fur in 1987-1989 and the ‘Arabs’ and the Massalit in 1994-1996, while the SPLM/A had tried to exploit these tensions by supporting an expedition in 1991 by the former Islamist and prominent Fur member Daoud Bolad.²¹³ It would seem, however, that the so-called north-south negotiations had a catalytic effect in inducing Darfur-based rebels to take up arms and have their grievances addressed as well. Launched in February 2003, the insurgency was led by two distinct armed groups – the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) – both claiming to respond to the government’s marginalization of their people and region. While the SLM/A’s political agenda closely resembles that of Garang’s united, reformed and secular ‘New Sudan’, JEM has alleged links with Turabi’s Popular Congress but holds a more radical view about the need for the marginalized people all over the Sudan to ally against the policies of the central government.²¹⁴ The two wings reflect the two main political labels from which Darfur’s ‘non-Arab’ communities could choose since the late 1980s.²¹⁵

In April 2003, the SLM/A launched a surprise attack on al-Fashir, the capital of north Darfur, temporarily seizing control of the airport and destroying several government aircraft and helicopters. While the SPLM/A had never threatened the north militarily, the Khartoum government realized the seriousness of the threat posed by Darfur’s rebellion. In contrast with southern Sudan, Darfur is less distant from Khartoum, is inhabited mainly with Muslims (the NIF’s supposed constituency), and is the native region of about half of the Sudanese military (which may explain why Khartoum was not fully confident in its regular forces and used militias as proxy forces). If successful, Darfur’s insurgency could set a precedent for other marginalized areas of the north and anyhow threaten the regime’s very existence. Owing to these considerations, the GoS was determined to defeat its challengers at all cost and send a clear message that no further concessions than those already agreed with the south would be made. Excluding any kind of political solution, Khartoum responded to the rebellion in the most brutal way.

213) See above, chapter 1.

214) In 2000, shortly after the NIF’s historic split, Darfurian Islamists under Turabi’s leadership produced the *Black Book*, a confidential pamphlet detailing Darfur’s underrepresentation at the federal level and the Sudan’s political and economic domination by three riverine tribes since independence. Although a confidential publication, the ‘Black Book’ caused a considerable stir and testified to the NIF’s eroded legitimacy in northern Sudan proper. It also marked a step further in the country’s ethnic polarization.

215) See Alex de Waal, ‘Tragedy in Darfur’.

It is widely documented that, despite its denials, the GoS recruited militias among nomadic or semi-nomadic groups of 'Arab' origin, especially those groups without attributed land and/or recently arrived from Chad and possibly West Africa and attracted by the prospects of gaining loot and access to resources. These GoS-affiliated militias, usually referred to as 'Janjaweed', and the GoS military forces then jointly embarked on a 'scorched earth' campaign combining looting, arbitrary killings, gang rape and the burning and destruction of numerous villages by land forces and aerial bombardment. Attacks were well coordinated between government aircrafts and gunship helicopters terrorizing the population, and large groups of Janjaweed militias on horse or camelback who raided villages. Numerous reports of crimes against humanity, war crimes and other serious breaches of international humanitarian law perpetrated primarily by GoS forces and militias have ensued.²¹⁶ Attacks on civilians were widespread, deliberate, and systematic and targeted especially the civilians belonging to the same ethnic groups as the rebels, in particular the Fur, the Zaghawa, and the Massalit. Whether it aimed at destroying the support base of the rebellion or at establishing 'Arab' prevalence in Darfur through meeting the long-standing demands by landless semi-nomadic Arabs for land to settle, the 'scorched earth' campaign suggested the intent to eliminate in whole or in part the targeted groups from the areas under attack. While the estimated death toll is highly disputed and ranges from 60,000 to 400,000, over 2 million people were forced to flee their home, including about 200,000 who sought refuge in Chad. The conflict also had a strong polarizing effect by inducing many of these groups to identify themselves as 'African' in opposition to their 'Arab' attackers.²¹⁷

Darfur and Naivasha: Conflicting Priorities

The conflict in Darfur erupted in February 2003 and interfered with IGAD negotiations in two ways. On the one hand, the insurrection added military and political pressure on Khartoum to conclude a deal with the southerners before other marginalized regions/people from the north undertook to voice their demands and shoot their way to the negotiation table. For this reason, the Darfur insurrection was initially welcomed and supported (politically as well as logistically it seems) by the SPLM/A, until the southern leadership became increasingly concerned about its negative impact on the IGAD process. On the other hand, Khartoum's response to the insurgency indicates that elements from the ruling elite were greatly unhappy with the course of

216) See in particular the *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General pursuant to Security Council Resolution 1564 of 18 September 2004*, as well as reports by Human Rights Watch and International Crisis Group.

217) Human Rights Watch, *Targeting the Fur: Mass Killings in Darfur*, 24 January 2005, p. 5 (footnote 8).

the negotiations and the extent of concessions made, in their view, to the SPLM/A. For the security officials surrounding Ali Osman Taha, it was out of the question to concede even more power than had already been given away. Instead, the vice-president was expected to wipe out the Darfur rebellion and deter other insurgencies.²¹⁸ From then on, the GoS played on the two grounds simultaneously and used the IGAD process as a cover for its repressive policy in Darfur. In so doing, Khartoum managed to create great confusion within the international community, which failed to reject the terms of the blackmail. The tragedy unfolded in three acts, during which international actors focused alternatively on Naivasha and Darfur.

Act I: Priority to Naivasha

In the months after it flared up, the rebellion in Darfur was merely seen as a localized conflict on the margins of the mainstream ‘north-south’ negotiations and attracted therefore hardly any attention. Few anticipated that the skirmishes on the Chadian border would take such tragic proportions. The first warnings of a looming disaster were issued in November-December 2003 after the government’s counter-attack failed to dislodge the rebellion but already caused serious human rights’ abuses. A ceasefire mediated by Chadian President Idriss Déby had little effect on the ground and eventually collapsed mid-December. However, international actors (in particular, the US, the UK, and Norway) were uncertain about how to react – the composition and leadership of the rebellion remained unclear as well – and opted for a low profile. While a peace deal between the GoS and the SPLM/A seemed imminent, the troika members estimated that the situation in Darfur would be best addressed *after* the signing of the comprehensive peace agreement since the CPA would provide a template and pave the way for the establishment of a government of national unity including Garang. In effect, this approach expanded the government’s room to manoeuvre. Khartoum took advantage of these conditions of impunity to *delay* the talks and continue its offensive in Darfur. Thus, the negotiations were suddenly adjourned in January 2004 to allow the GoS delegation to perform the Islamic pilgrimage to Saudi Arabia and, after resumption, the discussions reached deadlock over arrangements for the Three Areas and the status of Khartoum.

This delaying tactics enabled the GoS to hold its positions on the ground in Darfur and in the negotiations with the SPLM/A. These were short-term benefits for which Khartoum paid a high price, however. Not only did the GoS fail to defeat the rebellion, but its actions contributed to internationalizing the conflict and triggered widespread reprobation. High-level UN officials – including UN resident humanitarian coordinator in Khartoum, Mukesh Kapila, in March 2004, and Kofi Annan in April 2004 – paralleled the situation in Darfur with the genocide perpetrated ten years

218) Alex de Waal, ‘Tragedy in Darfur’.

earlier in Rwanda. At this stage, Darfur and Naivasha began to be granted equal attention, although not equal treatment. Since international actors were still concerned with preserving the IGAD process and feared that pressurizing Khartoum might put it off track, condemnation remained rhetorical and did not translate into any meaningful action. Nevertheless, Khartoum accepted the deployment of an African Union force to monitor the ceasefire that was signed on 8 April 2004. Furthermore, the GoS was aware of losing all of the international credits that it had sought and actually drawn from its engagement in peace efforts with the south. At the end of May 2004, the signing of the protocols on power-sharing and the Three Areas marked the resolution of all of the remaining political issues between Khartoum and the SPLM/A.

Act II: Priority to Darfur

The conclusion of the peace protocols generated a feeling of relief but also growing concern as to their possible implementation in the context of continued violence in Darfur. Combined with a public outcry on human rights' abuses, this concern made it possible for Darfur finally to reach the top of the international agenda. The issue had now to be solved *before* the implementation of the Naivasha agreement could start. During summer 2004, international action on Sudan was therefore almost entirely devoted to Darfur, as shown by the adoption of two successive resolutions by the UN Security Council.²¹⁹ Although acting under Chapter VII of the UN Charter, the Security Council took half-hearted measures, however. An arms embargo was imposed on the rebels and the Janjaweed militias, but did not apply to the Sudanese government; the GoS was demanded to disarm the militias, but in the case of non-compliance, the UN Security Council only threatened to 'consider' possible sanctions. The possibility of imposing a no-fly zone over Darfur, sending troops to the region, or referring the situation to the International Criminal Court was, at the time, not even envisaged.²²⁰ In September 2004, through the voice of US Secretary of State Colin Powell, the US government was the first, and only, government to label the violence in the western Sudan as 'genocide'. Yet no obligation to act seemed to be inferred from such qualification, which emerged probably not by coincidence in the run-up to US presidential elections.

Actually, resolute international action was hampered by three main factors. First, the IGAD process had not reached its conclusive end, since the parties had yet to agree on the implementation modalities of all six documents signed by then. Thus, the same old concern that aggressive measures might cause the GoS to pull out was still there – and indeed kept alive by the GoS

219) Security Council Resolutions 1556 of 30 July 2005 and 1564 of 18 September 2004.

220) As mentioned above, an international Commission of Inquiry on Darfur was nevertheless established under resolution 1564 (2004).

which, in July 2004, rejected IGAD efforts to conclude negotiations on the pretext that it was too busy with Darfur.²²¹ Second, it was also feared – a fear equally instilled by Khartoum – that sanctions might prove counter-productive and even cause the collapse of the Sudanese state.²²² The fall of the NIF regime was, apparently, a more terrifying prospect than the crimes against humanity for which the same regime was held responsible. Finally, international consensus was anyhow lacking for taking stringent measures. For various lucrative or ideological reasons, at least four members of the UN Security Council (China, Russia, Pakistan and Algeria) and a number of other Arab and African countries were opposed to the coercive measures against Khartoum that were advocated by the US administration, and showed more generally reluctant to ‘foreign intervention’ in the region. Thus, although Darfur was ‘prioritized’ for some time, neither the situation there nor the Naivasha talks made any progress. Actually, the Darfur region seemed to be slipping into a state of anarchy. Hence, the new sense of urgency was to save what could still be saved and to refocus on the IGAD process before it possibly fell into decay.

Act III: Re-focus on IGAD

The new shift of priority went along with a change of strategy. Since sanctions did not garner international consensus and the objective was to secure Khartoum’s signing, positive inducements were preferred to negative ones. Holding a special session in Nairobi on 18-19 November 2004, the UN Security Council enacted a resolution that failed to condemn, less so punish, the Sudanese government for non-compliance with earlier demands and commitments (especially reining in the militias and bringing the perpetrators of human rights’ abuses to justice). Instead, emphasis was put on the peace dividends (development assistance and possible debt relief) that the parties would gain from finalizing the IGAD talks.²²³ In the same vein, the Joint Assessment Mission (JAM), led by the GoS and SPLM/A under close UN/World Bank supervision, to plan for ‘post-conflict’ reconstruction and recovery was boosted by high-level international support. The GoS and the SPLM/A committed themselves to concluding talks on implementation modalities before the New Year and, this time, they stuck to deadlines. On 9

221) ICG, *Sudan’s Dual Crises: Refocusing on IGAD*, Africa Briefing, 5 October 2004, p. 2. It was the second time, after Khartoum’s rejection of the Nakuru draft in August 2003, that Lt. Gen. Sumbeiywo doubted whether the negotiations would succeed.

222) A senior British official was quoted as saying: ‘the alternative to this not very lovable regime is not a more lovable regime, it’s a failed state’. US officials would continue: ‘if you explode the government, you’re left with pieces like Somalia; you’re left with the real serious hardliners; you get rid of the peace fraction’, in ‘Spinning on the Edge’, *Africa Confidential*, Vol. 45, N°19, 24 September 2004, p. 3.

223) Security Council Resolution 1574 of 19 November 2004.

January 2005 in Nairobi the parties signed the Comprehensive Peace Agreement. This historic achievement had a price, however. Using once again the ‘window of impunity’ created by renewed focus on the CPA, Khartoum undertook a series of ‘road clearing operations’ in Darfur, which included de facto coordination with militias and involved not only clearing roads but burning and looting villages up to 20 km on each side.²²⁴

Over more than a year, the Sudanese government thus managed to play international concerns off against each other.²²⁵ Instead of addressing Darfur and Naivasha sequentially and at the exclusion of one another, a more holistic approach was needed in order to address the two situations in a round. Likewise, consistent pressures needed to be exerted on the Sudanese government for it to show simultaneously restraint in Darfur and constructive spirit in Naivasha. To be fair, this is easier said than done, especially since the international community, as embodied by the UN Security Council, lacked, again, the collective will required to address situations of such seriousness.

In the cat and mouse game played since the Darfur conflict erupted, it remains to be seen who will get the final word. Contrary to its expectations, the Sudanese government was not immediately rewarded for finalizing the IGAD talks. As after the conclusion of the peace protocols in May 2004, the signing of the CPA released Western nations from the fear of compromising peace talks through tough action on the GoS. Therefore, at the end of a complex diplomatic process, the UN Security Council approved two additional resolutions – one threatening with targeted sanctions any individuals held responsible for committing human rights’ abuse and obstructing the peace implementation process, and the other referring the situation in Darfur to the International Criminal Court (ICC).²²⁶ However, it is likely that the Sudan’s top leaders will continue fooling the international community and will show themselves indispensable to the implementation of the CPA in order to deflect punishment. In that regard, the Oslo donors’ pledging conference of March 2005 was seen as a positive signal for Khartoum, although a few countries, including the US, have made development assistance conditional upon the resolution of the crisis in Darfur. Beyond this, it is unclear whether the CPA will facilitate a solution to the conflict in Darfur, or whether Darfur will cause the CPA’s implementation process to derail.

224) *Report of the Secretary-General on the Sudan*, S/2005/68, 4 February 2005, par. 9.

225) As put by ICG, *Sudan’s Dual Crises*, p. 3.

226) Security Council Resolution 1591 of 29 March and 1593 of 31 March 2005, respectively. No sanctions related to oil exploitation were approved, however.

Conclusion

The Sudan's complex case illustrates in the extreme the dilemmas that peacemakers face, in particular the difficulty of finding the right mix between cooperative and coercive approaches.

Initially, the Sudan peace process was revitalized after the '9/11' attacks made clear to the US and to the Sudanese governments the potential benefits of engaging constructively in finding a settlement to the war in the south. At the time, US involvement seemed to make a difference in and of itself, and Khartoum showed itself to be fairly forthcoming. In spite, or because of, calls from Washington hawks for tougher action, the US administration did not see the need for more stringent or coercive measures. Although more effective monitoring mechanisms would have been needed on the ground, after Machakos the peace negotiations actually progressed regularly, albeit slowly. At one point, the parties even appeared to run their own show in Naivasha's Simba Lodge, without any external assistance.

After the conflict in Darfur escalated, the picture became blurred. The troika members began to question the GoS's real commitment to the peace process, and wondered what their own response should be. Actually, the vision of a Sudanese government calling for peace and prosperity in the south and repeating massive crimes in the west of the Sudan was troubling. It also raised a serious dilemma: whereas choosing between cooperative or coercive approaches usually depends on the parties' forthcoming or obstructing behaviour, the Sudanese government proved both (fairly) cooperative in Naivasha and totally uncooperative in Darfur. In addition, Khartoum was expected to make positive steps (which usually entail positive inducements) but also qualified for punitive measures. Since the GoS could not be disentangled in two pieces, any move was therefore bound to appear either too strong (with respect to the IGAD process) or too weak (with regard to ethnic cleansing in Darfur).

If international policy on the Sudan seemed inconsistent, this is partly because the situation throughout the Sudan was highly contrasted and disconcerting. This is not the only reason, however. Unlike a number of other African countries, the Sudan appears on the international policy agenda in many respects – as an Arab-dominated country in Africa, an oil producer, a state sponsor of terrorism, a base for political Islam, a case of state failure, a theatre ground for regional/UN peacekeeping operations, and recently as the first ever situation referred to the ICC by the UN Security Council. Accordingly, the Sudan raises considerable international interest(s) – both in the singular and plural forms – a feature that does not necessarily help peacemaking efforts. While the lack of international involvement often contributes to making certain (African) conflicts even more intractable than they are perceived to be – as the limitations of IGAD mediation in the 1990s showed – the international constellation around the Sudan after the Darfur conflict erupted eventually proved not conducive to peace efforts. As the

possibility of coercive measures floated, in particular oil-related sanctions, countries such as China and Russia, which had looked at the Naivasha process with indifference or benevolence until then, began to pay much closer attention to Western involvement in Sudanese matters. With all its five permanent members having stakes in the Sudan, and under pressure from other governments driven – quite paradoxically – by Arab nationalism or by Africanism, the UN Security Council proved unable to agree on the right course of action. The involvement of the African Union introduced a further element of dissonance and complexity by raising the challenge to coordinate two negotiation channels under two different mediating bodies, as well as the respective monitoring missions on the ground. To sum up, the Khartoum government concentrated again international attention, as in the 1990s, because of its wrongdoings. Playing well on conflicting views and interests, it was no longer isolated, however. In 2005, the Sudan had, in a way, reintegrated the (cacophonous) concert of nations.

Chapter 4

The (Un-) Comprehensive Peace Agreement

After 30 months of discussions, the government of the Sudan and the SPLM/A managed to reach agreement on most key issues at the core of the so-called north-south conflict. The Comprehensive Peace Agreement (CPA) signed in Nairobi, Kenya, on 9 January 2005 comprises the various accords that have been successively reached in the course of the IGAD process, namely the Machakos Protocol (20 July 2002), the Agreement on Security Arrangements (25 September 2003), the Agreement on Wealth-Sharing (7 January 2004), the Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States, the Protocol on the Resolution of the Conflict in Abyei Area, and the Protocol on Power-Sharing (all three signed on 26 May 2004). The CPA also includes two annexes, signed on 31 December 2004, in which the parties proclaimed a permanent ceasefire and detailed the implementations modalities of each separate agreement. The CPA is intended to establish and put to test a new governance system in the Sudan. As stipulated in the Machakos Protocol, at the end of the six-year interim period – that is, in January 2011 – the people of the south will decide whether they want these provisional arrangements to become permanent or to separate from the Sudan.

This chapter presents the resulting arrangements in the field of governance (including in the Three Areas), security and wealth-sharing. This commentary is intended to explain the initial positions of the parties, the terms of the solution agreed upon as well as the potential implementation hurdles that may already be foreseen. Actually, as specific as it may be with regard to the south, the peace agreement may lack the nationwide dimension

that would make it genuinely comprehensive. The CPA indeed resulted from a bilateral process that was consistently criticized for being restricted to the two main warring forces and, by implication, too narrowly focused on the north-south dimension of the conflict. The Darfur conflict resonated as a denial that proxy representation in the IGAD process satisfied the non-participants and a warning that conclusive discussions in Kenya may not necessarily usher in a new area of peace and stability in the Sudan. These criticisms are discussed in the conclusion to this chapter.

I. Power-Sharing Arrangements

While the Machakos Protocol recognized the southerners' right to self-determination, the GoS and the SPLM/A agreed to promote the Sudan's unity as the most desirable outcome of the referendum. The trouble is that they largely disagreed on the best way to do so. For the SPLM/A, unity would best be served if made attractive to the south. Hence, the southerners should be guaranteed never again to be subjugated by Khartoum, and should be given instead full opportunity to participate equally in the national government, to govern their own region, and to catch up for the south's slow development. For the GoS, making unity attractive to the south should not be done at the expense of the north or of the country at large. Unity could not be fostered by creating two systems within one country, less so by encouraging separatism and preparing the ground for an independent south to emerge. Prioritizing unity meant, instead, creating and/or strengthening countrywide institutions, which are by their very nature susceptible to bridging the gap between the north and the south. In theoretical terms, the parties' positions illustrated two well-known schools of thought in power-sharing and peacemaking issues.²²⁷ The SPLM/A's position was consistent with the 'consociational' approach, to use Arend Lijphard's term, according to which making peace in divided societies entails granting minority groups guarantees and safeguards to protect their interests. By contrast, Khartoum's position was in line with the 'integrative' approach described by Donald Horowitz, which focuses on creating incentives for inter-group cooperation, building joint institutions and enhancing collective decision-making processes. Interestingly, this debate showed through each of the outstanding issues negotiated in Naivasha.

227) Timothy D. Sisk, *Power-Sharing and International Mediation in Ethnic Conflicts*, United States Institute of Peace, Washington DC, 1996, 143p.

1) Power-Sharing at the National Level

In the negotiations on power-sharing, the SPLM/A claimed the biggest possible share of power, arguing that it was the best way of making unity attractive to the southerners while the GoS, driven by self-preservation, tried to reduce concessions to the maximum. In the end, the two parties allocated to themselves the lion's share of power during the interim period. The discussions were not limited to allocating ministerial positions in a transitional government, however, but dealt with many aspects of power-sharing at various levels. Thus, southerners should become able to run their own affairs (in particular, via the newly-established government of southern Sudan) and are also entitled to greater political participation at the central level. The Protocol on Power-Sharing should further allow for the political space to open gradually to other political forces and recognizes the 'need for inclusiveness' in that respect. Democratic elections, the first since 1986, are foreseen, although not before 2009. Whether the power-sharing provisions provide the necessary basis for the Sudan's democratic transformation remains a critical uncertainty.

The Presidency

The apex of Sudan's power structure will be the new institution of the presidency, consisting of the president and two vice-presidents. A presidential system had been taken for granted by the parties, without pondering whether a parliamentary one might not be more suitable to accommodate the population's diversity. The posts of the presidency were allotted to parties and not individuals, meaning that in the case of a vacancy the NCP should fill in the post of president and the SPLM/A the post of first vice-president. By implication, Dr John Garang may not become the Sudanese president before elections take place at this level, but possibly after (in which case, the first vice-president should be from the north). Until presidential elections are held, the incumbent President al Bashir will remain president and the current SPLM chairman John Garang will be the first vice-president as well as the president of the government of southern Sudan. The post of second vice-president should be allocated to the current vice-president and GoS negotiator, Ali Osman Taha, for whom it was essentially created. Although there should be a clear gradient of power between the two vice-presidents, the lack of precision concerning the functions of the second vice-president (who may perform any task or duty assigned to him by the president) may enable the incumbent to play a bigger role than expected.²²⁸ In general, major decisions should be taken by the president and first vice-president, however,

228) The respective functions of the two vice-presidents are briefly described in appendix A of the implementation modalities of the Protocol on Power-Sharing.

within a ‘collegial decision-making process’ (art. 2.3.4. of the Protocol on Power-Sharing). Among other tasks, the presidency will appoint members of most of the commissions created by the peace agreement, as well as the justices of the Constitutional Court and National Supreme Courts.²²⁹ This may not necessarily help the democratization process.

Human Rights and Democratization

The CPA in general and the Protocol on Power-Sharing in particular address human rights and democratization issues in a mixed and unconvincing manner. The state of emergency, which has provided the basis for imposing arbitrary security measures since December 1999, is to be lifted all over the Sudan ‘except where it would not be permissible’ to do so. In particular, it will remain in force in areas outside the ceasefire zone, such as Darfur. Similarly, the power-sharing protocol provides safeguards and announces institutional reforms of key importance for the restoration of human rights and political liberties, but most of the relevant provisions are qualified one way or another. Hence, what will change in practice remains to be seen.

The Protocol provides a catalogue of human rights and fundamental freedoms ‘to be enjoyed under Sudanese law, in accordance with the provisions of the [international] treaties’. The conditions of implementation of these rights remain unspecified, however, as is the composition, mandate, and authority of the Human Rights Commission that is called for in the Protocol. The fact that the Commission’s members will be appointed by the Presidency raises concerns as to its independence. In addition, as result of a mutual understanding between the two main belligerents, the peace agreement fails to provide a mechanism (such as via a truth commission, prosecution, or any other format) to either bring the perpetrators of war crimes to justice, or account for the numerous abuses committed during the southern conflict.

The Protocol also states that the Constitutional Court, National Supreme Courts, and all judges of other national courts will be independent and will perform their functions without political interference. All judges are to be appointed by the presidency on the recommendation of the National Judicial Service Commission, however. While it has criminal jurisdiction over the members of the presidency and other high-level officials, the Constitutional Court is said to be ‘independent from the Judiciary’ and answerable to the presidency. The president of the Constitutional Court will be appointed by the Sudanese president with the consent of the first vice-president.

229) Appendix B1 of the implementation modalities of the Protocol on Power-Sharing lists the appointments that the Sudanese President is required to make with the consent of the first vice-president.

Lastly, the Protocol provides for one ‘National Security Service’, which, in accordance with the SPLM/A’s requests, is to be representative of the population (that is, non-NIF members may be recruited). Under the state of emergency, police and security officers enjoyed a high degree of impunity and engaged in a campaign of harassment, intimidation and persecution of political opponents and human rights defenders. The new security service is to focus on information-gathering and analysis, whereas arrests and interviews are to be performed only by the police force. While the service will remain anchored in the presidency, its mandate is advisory and is to be further elaborated in the National Security Act. Since the security service was vital to the NIF regime and as such the most powerful and organized state institution, how it will evolve will be crucial for the future of the Sudan.

Elections and Pre-Election Representation

The principle and timing of elections has been a contentious issue throughout the negotiations. Initially, the SPLM/A was opposed to calling for elections during the transition period, arguing that if the signatory parties failed to win, the implementation of the agreement would be jeopardized – a fear directly inspired from the abrogation of the Addis Ababa agreement. By contrast, the government’s delegation demanded elections during the very first year of the interim period, while the state apparatus would still be under its control.

The SPLM/A finally accepted the principle of elections after obtaining constitutional provisions prohibiting campaigning against the peace agreement and compelling any contestant to implement its provisions.²³⁰ Although legitimate, this clause obliges parties not invited to the negotiation table to abide by the outcome of the talks. It may also lead to preventing any adjustment of or amendment to the peace agreement that may be deemed necessary.²³¹

The SPLM/A was also concerned with allotting sufficient time for proper electoral preparation, in view notably of the massive return of refugees and internally displaced persons. The agreement therefore stipulated that a number of ‘considerations’ – but not conditions – should be taken into account before holding elections, pertaining in particular to repatriation and the rebuilding of infrastructures and institutions.

Prior to the elections, a population census should be conducted by the end of the second year of the interim period. Although preparation should commence immediately after signing, this schedule may prove too tight for

230) ‘Whoever runs in any election must respect, abide by, and enforce the Peace Agreement’ (art. 1.8.6).

231) In the same vein, the text stipulates that ‘amendments to the interim national constitution affecting the provisions of the peace agreement may be introduced only with the approval of both Parties signatory to this Agreement’ (art. 2.2.7.2).

running a suitable process. Yet critically important in any divided society, this census will have a direct impact on southern representation in the civil service and (after the elections) in the national institutions. The risks of manipulation are commensurate with the stakes.

The Protocol on Power-Sharing stipulated that elections be held during the third implementation year and left the date for presidential elections open. During the implementation talks, however, the parties agreed to hold elections at all levels ‘before the end of fourth year’, by July 2009 at the latest. In agreeing to this schedule, the NCP and the SPLM/A secured their dominant positions in Sudanese interim institutions for an additional year.

In the Government of National Unity (GNU) to be established prior to elections, 52 per cent of ministerial seats are reserved for the NCP (including 49 per cent to northerners and 3 per cent to southerners), 28 per cent to the SPLM (including 21 per cent to southerners and 7 per cent to northerners), 14 per cent to other northern political forces, and 6 per cent to other southern political forces. The allocation of seats prior to the elections will be similar in both the legislative and executive branches, but the National Assembly will be composed of 450 members and the Council of Ministers (the Cabinet) will be composed of 30 ministers and 34 state ministers. In other words, the ruling Islamist Party will be in a position to overrule all other Sudanese political groupings until at least 2009.

The bicameral National Legislature will also comprise a Council of States (upper house) composed of two representatives from each state (the ten southern states out of 25 will therefore account for about 38 per cent of seats). After the elections, ‘there shall be equitable representation of the people of South Sudan in both legislative chambers’. However, the agreement does not indicate whether ‘equitable representation’ means strict proportionality or may entail overrepresentation of minority groups.²³² Providing that they retain 34 per cent of seats in the legislature, southerners enjoy a (short) de facto minority veto on amendments to the national constitution (of which approval requires 75 per cent of votes in both chambers) and on pieces of legislation affecting the interests of the states (66.6 per cent majority required in the Council of States). For all other legislation, however, a simple majority vote of both chambers is required – meaning that southern and other non-NCP representatives may be outnumbered.

232) During the negotiations, however, the GoS delegation showed reluctance in giving the south more political representation than strict demographics demanded – it would therefore propose 25 per cent where the SPLM/A claimed 40 per cent – and even at times opposed the principle of quotas – as in the judiciary – arguing that this would ‘politicize’ the institutions in question (interviews in Naivasha, October 2003).

Sharia Law in Khartoum

The power-sharing agreement brings a solution to the question of *sharia*'s application in the national capital. Raised by the SPLM/A after the signing of the Machakos Protocol, this issue long remained a stumbling block in the discussions on power-sharing. The southern delegation stressed that, as the national capital, Khartoum should be secularized. In its view, this symbolic issue should demonstrate the extent to which the Islamist government is really committed to taking into account the cultural and religious diversity of the people of the Sudan. However, the GoS was concerned with preserving its Islamic credentials and argued that, with Khartoum in the north, *sharia* law should apply there in accordance with the Machakos Protocol. A number of compromise solutions were examined, ranging from exemption of *sharia* for non-Muslims to the creation of a '*sharia*-free' enclave within Khartoum and even the relocation of the capital to the south (following Abuja's model). Eventually, the national capital was stressed to be 'a symbol of national unity that reflects the diversity of Sudan' but the GoS opposed any general personal or regional exemption. Instead, the power-sharing agreement provides non-Muslims with guarantees that, in applying Islamic punishments, judges will take into account identity and religious differences and will observe in particular 'the long-established legal principle that non-Muslims are not subject to prescribed penalties' (art. 2.4.5.4).²³³ Still, the application of *sharia* law to non-Muslims will be left at the discretion of judges, themselves appointed – for the time being – by the NIF regime. A 'special commission' will also be established by the president to ensure that the rights of non-Muslims are protected and not adversely affected by the application of *sharia* in Khartoum, but its composition and real powers are unknown. The SPLM/A nevertheless accepted this idea of (weak) 'safeguards' for two main reasons: a) the status of *sharia* law in Khartoum, which was anyhow a red line for the GoS, was to be counterbalanced with a referendum for Abyei; b) inflexible application of *sharia* to non-Muslims may be remembered by southern voters at the end of the interim period.

2) Asymmetrical Federalism

The Sudan's renewed system of governance is based on asymmetrical federalism. As during the negotiations of the Addis Ababa Agreement, the GoS delegation at Machakos refused an early mediators' proposal to set up a

233) During the Abuja negotiations of 1993, NIF leaders could conceive of the south being exempt from certain punishments in deference to its non-Muslim population but wanted the north to be fully subject to *sharia*. The acceptance of safeguards for non-Muslims in the north therefore marks a (limited) concession. On the Abuja negotiations, see Lesch, *The Sudan*, p. 177.

northern region as a counterpart to a southern region. Therefore, significant powers will be shifted from the national government to the lower levels of government but only southern Sudan will have its own regional government that will act as interlocutor between the national government and southern states. Put differently, the government of Southern Sudan shall link between the national government and the states in the south while northern states will interact directly with the national government.

The Government of Southern Sudan (GoSS)

Southern Sudan is therefore given back the regional government that had been instituted under the Addis Ababa agreement. The GoSS enjoys greater autonomy than its predecessor of the 1970s, although a number of powers will be exerted concurrently at the three levels of government, thereby giving potentially rise to conflict of competencies.

The government of southern Sudan shall consist of a legislature, an executive, and a judiciary. Pending elections, SPLM representation will amount to 70 per cent in both the assembly and the council of ministers, while the remaining seats will be equally shared between other southern political forces and the NCP (15 per cent each). The SPLM/A will therefore get 119 out of 170 seats in the southern assembly. While its leader, John Garang, will simultaneously hold the position of first vice-president, head the southern government, and assume the position of commander-in-chief of the southern army, the SPLM/A has been granted (or has granted itself) massive powers over the southern administration. Its forthcoming supremacy is likely to generate fears and frustrations, however. Despite its popular support, the SPLM/A is perceived to be dominated by the Dinkas and therefore, not necessarily representative of the entire South.

As regards the NCP's representation in the south, those quotas were introduced in response to the Sudanese government's criticism of the Nakuru draft that inclusiveness was conceived as a one-way process enabling southern participation at the national level but neglecting non-SPLM representation in the southern government. Yet, the NCP's support base in the south is probably far lower than 15 per cent, even though it may include southern politicians distrustful of the SPLM/A. In the same vein, the GoS is entitled to appoint one state governor and one deputy governor in the south (oil-rich Unity state is likely to be its first choice).

Affirmative Action for the Southerners

The Protocol on Power-Sharing also provides for significant southern participation in national institutions with membership in the newly established three-member presidency, reserved seats in the legislative and executive branches, and quotas in the civil service (subject to census results). Recognizing that 'imbalances and disadvantages must be redressed', the

parties agreed to allocate between 20 per cent and 30 per cent of civil servants' positions to southerners gradually over the interim period (20 per cent within the first three years, 25 per cent within five years, 30 per cent within six years). This objective raises two major problems. First, the final figures should be consistent with the census results, which raises again the risk of manipulation and seems to suggest that no overrepresentation is contemplated. Secondly, positions are reserved for *qualified* southerners, which entails a significant training effort and may otherwise provide a pretext for failing to meet the objectives.

Nevertheless, in providing simultaneously for southern representation at the national level (and reciprocally limited National Congress representation at the southern level), the power-sharing agreement devises a more sophisticated compromise solution than the 'one country/two systems' formula advocated earlier. This model might also prove more consistent with the ultimate goal of a united Sudan. One should note, in that respect, that both Arabic and English are to be the official working languages of the national government.²³⁴

NCP/SPLM Domination at the State Level

With the exception of Blue Nile and Southern Kordofan states (see below), the two parties have agreed on symmetrical power-sharing arrangements at the *state level*. Pending elections, in the northern executive and legislature, the NCP will be allocated 70 per cent, other northern political forces 20 per cent and the SPLM 10 per cent. Similarly, in the southern executive and legislature, the SPLM will get 70 per cent, other southern political forces 20 per cent and the NCP 10 per cent. Put differently, northern political representation will amount to 90 per cent in the northern states where the SPLM will be the only southern political force; southern political representation will amount to 90 per cent in the southern states where the NPC will be the only northern political force. In the absence of general elections at this level, the power-sharing agreement would read like a kind of bilateral deal to confiscate power.

3) The Three Areas

Under the north-south border drawn in 1956, the Three Areas of Abyei, Southern Blue Nile and the Nuba Mountains fell under the jurisdiction of northern administration and then experienced systematic marginalization and discrimination. With the same causes producing the same results, the Three Areas joined the SPLM/A in its fight against the Khartoum government from

234) Despite colonial history, southerners see the former as a language of oppression and the latter as a language of liberation.

the mid-1980s.²³⁵ The case of the Three Areas – to which may be added the rebellions in Darfur and eastern Sudan – therefore exemplifies the fact that the Sudan’s war should no longer be solely seen as a north-south conflict but rather as a conflict between the centre and the periphery. Accordingly, a comprehensive peace agreement required addressing these cases as well, if only because continuing conflict in these areas that are strategically located on the borders of the south could jeopardize the implementation of any peace accord.

The Political Significance of the Three Areas

For the SPLM/A, which raised the issue after the signing of the Machakos Protocol, the Three Areas were of importance because they tested the long-standing rhetoric on a ‘New Sudan’ and proved that the rebellion’s agenda was not purely southern but genuinely national. The SPLM/A was also under strong pressure from its brothers-in-arms from the Three Areas. A great part of the southern rebellion’s leadership originated from Abyei, thereby raising concerns about the political and military unity of the movement if the status of the area was not adequately addressed. Furthermore, participants in two separate conferences held in November and December 2002 in Southern Blue Nile and the Nuba Mountains also requested that their region enjoy the same right to self-determination as the south and mandated the SPLM/A to negotiate on their behalf along these lines. Hence, the issue of the ‘borders of the south’ was raised. The SPLM/A promoted the view that the Three Areas were an integral part of the south – or should at least be given the right to decide which side to join – and demanded that their status be included in the IGAD negotiations’ agenda. For Khartoum, however, discussing the Three Areas under the auspices of IGAD would have meant either enlarging the scope of peace talks to the whole of the Sudan, or affiliating the Three Areas to the south – two interpretations that it rejected. The government actually refused to acknowledge that the Sudan’s problems derived from the way that the Sudan was governed from the centre; rather it wanted to portray the conflict as a problem with the south of which, it argued, the Three Areas had never been part.

235) As highlighted by the ICG, ‘much of the tension there is fed by the same factors that led to the long running war in Southern Sudan: a central government that has exploited local resources, imposed its religious and cultural beliefs on historically diverse populations and consistently pitted local tribes and ethnic groups against each other for short term tactical gain. Many communities across Sudan feel deeply marginalized as a result of these practices. Failure to achieve change peacefully has pushed more and more of them into armed confrontation with central authority’, ICG, *Sudan’s Other Wars, Africa Briefing*, 25 June 2003, p. 1.

Far from a subsidiary question, the status of the Three Areas had therefore very significant political implications, as a consequence of which they were long-considered probable stumbling blocks on the road to a peace agreement. Because of the Sudanese government's reluctance to address them in the IGAD framework, the thorniest issues on the table have also long been the least discussed. Nevertheless, the Three Areas gradually imposed themselves on the agenda. The SPLM/A implicitly admitted that they were not part of the south but did manage to obtain agreement that their political status be addressed in the comprehensive agreement. The GoS finally accepted discussing the issue under the auspices of the Kenyan government – that is, in a separate process from the IGAD talks although at the same place (Naivasha), following the same modalities (dedicated sub-committees) and with the help of the same mediator (Lt. General Sumbeiywo).

The procedural aspects thus solved, the most difficult part remained: substance. While the SPLM/A initially claimed self-determination for all three areas, the GoS was strongly opposed to extending to any area in the north a right granted exclusively to the south according to the Machakos Protocol. This was for fear of: a) setting a precedent for other northern regions like Darfur or eastern Sudan; and b) enlarging the southern territory that might secede following the referendum. Nevertheless, the two parties agreed to work out a special status for these Three Areas. Furthermore, it was understood that because of historical and political reasons a specific solution would be found for Abyei, while a common formula entailing a status of autonomy under the north's jurisdiction would be elaborated for Southern Blue Nile and the Nuba Mountains.

The Protocol on the Resolution of Abyei Conflict

A bridge between the north and the south, the Abyei area has experienced several decades of conflict during the Sudan's two wars between the Ngok Dinka, kin to the Dinka community in the south and affiliated to the southern rebellion, and the Misseriya, nomadic 'Arab' tribes from the western Sudan organized in militias by Khartoum. While the Ngok Dinka at independence had chosen to remain under the north's jurisdiction, the question of Abyei's administrative status erupted with the Sudan's first war. It should have been solved in 1972 in the framework of the Addis Ababa peace agreement, but the referendum that would then be evoked to enable Abyei residents to choose between being part of the northern state of Kordofan or the southern state of Bahr el Ghazal never took place. Thirty years later, the SPLM/A and the GoS were still divided over the same issue. In brief, the SPLM/A demanded that Abyei area be transferred to the administration of Bahr el Ghazal through a presidential order or that a referendum be organized enabling the Ngok Dinka (and only them) to express their will. The SPLM/A's position reflected the strong constituency within its ranks and among southerners in general for Abyei to join the south. However, the GoS had several concerns related to: a)

Misseriya herders' seasonal access to water and grazing; b) its own access to oil reserves recently discovered in Abyei; c) the potential impact on northern 'stability' of a popular consultation resulting in Abyei area changing status. Consequently, the Sudanese government tried to gain time and offered Abyei the possibility to be linked to neither side but to the presidency until a settlement procedure was agreed upon.

After months of status quo, the impasse was finally broken by the US administration. On 19 March 2004, Senator Danforth tabled a compromise proposal that was accepted in full by the two parties. (Actually, independently of the peace talks, Ngok Dinka and Misseriya had already negotiated in 2001, as tribes, an agreement to express their willingness to live together and to regulate the passage of cattle.) The US proposal stipulates that, upon signing a comprehensive peace agreement, Abyei area will be awarded a 'special administrative status' under the institution of the Sudanese presidency. Accordingly, Abyei residents will become citizens and be represented in the legislatures of both a northern and a southern state (Southern Kordofan and Bahr el Ghazal respectively). During the interim period, the area will be administered by a local executive council, to be elected by its residents. At the end of the interim period, Abyei residents will have a separate referendum, simultaneous with but irrespective of the results of the referendum for Southern Sudan (to be held in January 2011), to decide whether to retain their special administrative status in the north or to become part of Bahr el Ghazal. Therefore, the Protocol on Abyei follows a similar logic to the Machakos Protocol: interim arrangements are put in test until the population concerned decides to confirm the system or to change its status. The stakes will be high for Abyei residents as change of status might mean a change of country if the majority of southern voters opt simultaneously for independence. There is something of a stroke of genius in this proposal, in that linking the two votes enabled both parties to claim victory: the GoS did not concede an extension of the (external) right to self-determination to a northern area; yet, as claimed by the SPLM/A, Abyei residents may choose to share the destiny of the south, including seceding from the Sudan. However, this Protocol is fraught with a number of loopholes.

First, the issue of the body of electors is left unsolved. The residents of Abyei who will cast a ballot are defined as the members of the Ngok Dinka community as well as 'other Sudanese residing in the area'. Do these other Sudanese include, as the GoS will likely claim, Misseriya and other nomadic peoples whose right to graze cattle and move across the territory of Abyei is also recognized in the agreement? Here remains a critical uncertainty that will not be cleared until the criteria of residence are worked out by the referendum commission.²³⁶

236) While the US government made clear its view that a referendum should be organized for Abyei, some confusion was reported within the administration on the eligibility issue. The

Second, the Protocol defines Abyei as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905. An Abyei boundaries commission comprising five impartial experts will be established to define and demarcate precisely the area thus defined. Given the GoS's previous attempts to expand the definition to include Misseriya areas that could shift the balance of a vote, the determination of geographic boundaries may give rise to gerrymandering and will be critical step.²³⁷

Third, population displacements may seriously affect the results of the referendum. On the one hand, the Sudanese government may undertake to resettle Misseriya people in the area during the six-year interim period.²³⁸ On the other hand, many Ngok Dinka residents who were displaced by the war will have to return to Abyei. So far, however, attempts by USAID and UNDP to repatriate these people were marred by poor planning and met by resistance from Khartoum.²³⁹

Finally, the Protocol spells out how oil revenues from Abyei will be divided during the interim period – 50 per cent for the national government, 42 per cent for the government of southern Sudan and the remaining 8 per cent equally shared between Bahr el Ghazal region, Western Kordofan, the Ngok Dinka and the Misseriya people – but does not stipulate what kind of (compensation) arrangements there may be in the case of separation after the referendum (neither does the national wealth-sharing agreement).

Accepted by both parties under pressure to move forward, the US proposal outlines a reasonably balanced and fair compromise. However, the protocol left aside a number of key issues that may inevitably erupt again during the implementation period and compromise the resolution of conflict in this area. This might also be true of the other two areas.

The Protocol on the Resolution of Conflict in Southern Kordofan and Blue Nile States

The peoples of Southern Blue Nile and the Nuba Mountains had similar grievances against the central government related, on the one hand, to the GoS's Islamization policy in non-Muslim areas and, on the other hand, to the expropriation of their land.²⁴⁰ From the 1970s on, the Sudanese government actually launched and developed in these areas large agricultural schemes that

US State Department implied that both the Ngok Dinka and the Misseriya should vote, whereas USAID suggested that only the former may be consulted. See ICG, *Darfur Rising: Sudan's New Crisis*, Africa Report N°76, 25 March 2004, p. 27.

237) On the GoS's past manipulation attempts, see ICG, *Sudan: Towards an Incomplete Peace*, Africa Report N°73, 11 December 2003, p. 8.

238) As suggested by *Africa Confidential*, 'A Good Deal Missing', Vol. 45, N°12, p. 3.

239) According to ICG, *Sudan: Towards an Incomplete Peace*, p. 8.

240) For background information on the conflict in Southern Blue Nile and the Nuba Mountains, see Johnson, *The Root Causes of Sudan's Civil Wars*, pp. 131-137.

were funded by Gulf investors and benefited almost exclusively northern 'Arab' Sudanese with strong links to Khartoum. In the mid-1980s, these grievances made the peoples of Southern Blue Nile and the Nuba Mountains sympathetic to the SPLM/A. However, whereas the land issue provided the SPLM/A with most of their recruits outside the south, it was not a major issue for the southern rebellion, which had therefore no coherent policy on the topic. In addition, while fighting alongside the SPLM/A against the government, the peoples of both regions are generally perceived to be supportive of a united Sudan and opposed to an independent south. They used to equate self-determination with self-government and rallied behind the SPLM/A, especially after the movement made clear that it was not following a separatist agenda. Eventually, this anti-secessionist inclination made it easier for the SPLM/A to give up its initial claim of granting the right of self-determination to all three contested areas and to negotiate instead an autonomous status on behalf of the peoples concerned.

Contrary to the SPLM/A's request, however, the two areas will not be administered directly from the presidency, not even be endowed with a tailor-made special status. As the title of the Protocol suggests, the case of Southern Blue Nile and the Nuba Mountains is addressed within the framework of the respective state to which they belong, namely Blue Nile and Southern Kordofan.²⁴¹ These two states, instead of the two areas, are granted autonomy status and will be represented in national institutions in proportion with their population size.²⁴² In the case of Southern Kordofan, not only does the final name of the state exclude all reference to the Nuba Mountains, but Southern Kordofan will merge with parts of Western Kordofan state to reconstitute the former Southern Kordofan province.²⁴³ These changes are likely to be seen by

241) *Protocol on the Resolution of Conflict in Southern Kordofan and Blue Nile States*. The initial title referred to the state of Southern Kordofan/Nuba Mountains until the parties agreed on a final name.

242) Autonomy status entails the establishment in each state of a state executive that will consist of a state governor, a state council of ministers and local governments. In addition, a state legislature will prepare and adopt a constitution and may relieve the governor of the state of his/her functions. Each party will hold the office of the governor for half of the pre-election period (no party may hold the governorship in both states at the same time; the deputy governor shall be drawn from the other party than the governor). The states will have exclusive competencies over key areas (such as state police, local governments, media, state judiciary, social welfare, health care, state budget and taxation...) and will have concurrent powers with the national government over some other areas (including economic and social development; tertiary education; health policy; urban development; delivery of public services; disaster preparedness; electricity generation; water and waste management; gender policy).

243) By implication, the newly constituted Southern Kordofan state will comprise two of the three contested areas, namely the Nuba Mountains and Abyei (the latter with special administrative status). The power and wealth-sharing arrangements and percentages for

the Nuba people as an attempt to dilute, rather than take account of, their demographic weight and distinct identity within a greater framework, to the benefit of (Baggara) 'Arab' tribes. For instance, the state capital will be Kadugli, in the Nuba Mountains, but to accommodate the latter, the state legislature will convene its sessions alternately in Kadugli and El-Fula, where all of the state ministries and institutions shall have branches. There are other possible sources of concern.

Firstly, while autonomy status may seem significant on paper, pending the general elections in 2009 the two areas/states will remain firmly under the control of Khartoum's jurisdiction and dominated by the National Congress Party: the NCP will be allocated 55 per cent and the SPLM 45 per cent of the positions in both the executive and the legislature of the two states.²⁴⁴ Both parties have also agreed to share governorship in the two states.

Secondly, the Protocol does not adequately address a key issue at the root of the conflict in these areas: land expropriation. A land commission will be established in each state to review existing land leases and contracts and examine criteria in use for land allocation. This commission may 'recommend to the State authority the introduction of such necessary changes, including restitution of land rights or compensation'. Given the Protocol's lack of precision, however, it remains to be seen of whom the land commission will be composed, how impartial and binding its recommendations will be, and ultimately whether the expropriated people will in effect be given their land back or receive decent compensation.

Thirdly, the issue of *sharia*, which was also a main source of grievance, is hardly touched upon. The Protocol only mentions that the states are competent for religious matters, subject to conformity with the Interim National Constitution. Since both areas will remain under the north's jurisdiction, such a provision may mean that *sharia* law will apply in the Nuba Mountains and Southern Blue Nile, with no exemption for non-Muslims.

Finally, despite (deliberately) confusing wording, the indigenous peoples of the two areas will not be directly consulted on the Protocol. The text recognizes that 'popular consultation is a democratic right', but fails to work out the mechanism through which this right shall be exerted. Actually, the GoS rejected the option of a referendum for the two areas/states, fearing that this solution would then become a model for resolving the conflicts in Darfur and eastern Sudan. Instead, the agreement will only be endorsed by each state

Southern Kordofan are described in the annexe to the implementation modalities of the protocol on Southern Kordofan and Blue Nile State.

244) The SPLM insisted on a fifty-fifty share of power until the day before signing. It should be noted, however, that in the other northern states, the power-sharing equation grants 70 per cent to the NCP, 20 per cent to other northern political forces and 10 per cent to SPLM.

legislature following evaluation of its implementation.²⁴⁵ If the agreement is fully implemented, the conflict will be considered settled; if not, negotiations will be held with the national government to rectify the shortcomings. The question arises as to whether this procedure may adequately replace the free expression of popular will and may resist political manoeuvres.

To conclude, the Three Areas were finally addressed during the peace talks (contrary to Darfur or eastern Sudan), but both Protocols contain a number of loopholes and shortcomings suggesting that their provisions, even if fully implemented, might not foster the political settlement called for. Short of being considered a bridge like Abyei, the Nuba Mountains and Southern Blue Nile were not granted a specific status per se, but will remain under the ruling party's firm control at least for four more years. It seems therefore unlikely that the indigenous peoples of these two areas, who will not be directly consulted, will consider that their grievances have been adequately addressed. Nuba organizations in particular have expressed frustration with a protocol that fails to recognize the right of the people of the Nuba Mountains to govern themselves on their historical land.²⁴⁶ At the same time, the Misseriya 'Arabs' are said to be strongly opposed to the dissolution of Western Kordofan state and the reabsorption of their areas into Southern Kordofan. Building on this discontent, a new Islamist-oriented front, Al Shahama, which the GoS has ascribed to Turabi's destabilization strategy, has reportedly emerged in the region.²⁴⁷ Security arrangements should also be assessed under this light.

II. Security Arrangements

During the interim period, the Sudan's security context is intended to be governed by two distinct documents: the Permanent Ceasefire Agreement, concluded on 31 December 2004 in Naivasha, builds upon, and elaborates, the Agreement on Security Arrangements during the Interim Period reached fifteen months before by the same parties in the same place. The resulting provisions are presented below. The overall logic of the security arrangements is that during the interim period, the Sudan will have two separate armies (all other armed groups must disband) that will redeploy their forces to northern and southern Sudan respectively. The armies will also create several

245) Each state will establish a parliamentary assessment and evaluation commission that shall submit its report by the fourth year of signing. In addition, a separate independent commission shall be established by the presidency to evaluate the implementation of the peace agreement.

246) See Nuba Survival, 'Naivasha Accord Fails to Address Nuba Grievances', Statement, 4 January 2004.

247) Justice Africa, *Prospects for Peace in Sudan Briefing*, October-November 2004, par. 8 and 19.

joint/integrated units. Depending on the 2011 referendum's outcome, the two forces will either merge into a single national army or become the respective armed forces of two separate states.

1) Separate Armed Forces, Joint/Integrated Units

The security talks aimed at working out the division of military responsibilities during the interim period. Accordingly, each side tried to secure for itself the highest possible level of military control. When the discussions started about these aspects in April 2003, the two belligerents agreed on one point only: to be the sole parties to the negotiations (regardless of other military actors such as GoS-allied southern militias). For the rest, their positions were diametrically opposed.

While it is usually the case at the end of a war that armed forces of both (or more) sides merge into a unified army, the rebel forces – the SPLA – had no intention of disappearing but wanted to be recognized as the southerners' sole army – be it under a confederal arrangement – until at least the holding of the referendum. The SPLM/A therefore hoped to ascertain control over southern Sudan, to preserve a self-defence capacity, and to provide itself with the necessary leverage to ensure implementation of the peace provisions. In the same vein, the southern delegation demanded that the Sudanese Armed Forces (SAF) withdrew behind the south/north border of 1 January 1956, while conceding the maintenance in the south of only one SAF unit as a symbol of unity and to provide security for northerners. In turn, the SPLM/A also requested having some of its troops deployed in Khartoum as a symbol of southern participation at the central level as well as to protect its leaders in the capital city. By contrast, the government put forward that one country implied a single army and stressed the right for every sovereign state to deploy its armed forces all over the national territory (especially in and around the cities and oilfields). The GoS nonetheless accepted the concept of two separate armies (since it was the SPLM/A's bottom line), under certain conditions of size and deployment

The Naivasha agreement typically reflects a compromise solution: the Sudanese Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA) will remain largely separate during the interim period, although they will be treated equally as the Sudan's National Armed Forces; and should unity be opted for by the southern voters at the referendum, they will form a single army of the Sudan. In the meantime, the parties agreed to redeploy their forces to their respective side of the 1956 border and to form 'joint/integrated units' (JIU) that will be composed of equal numbers of soldiers from SAF and the SPLA. Joint/integrated units will be established in Southern Sudan (a total of 24,000 soldiers), in the Nuba Mountains and Southern Blue Nile (a total of 6,000 troops each), in Khartoum (a total of 3,000 troops) and, possibly, in eastern Sudan.

A joint defence board (JDB) will be established under the presidency to coordinate the two forces and command the joint/integrated units. The Board will be composed of the two forces' chiefs of staff, deputies, and senior officials. The JDB, which will make decisions by consensus, may have an important role to play in clarifying differences and avoiding unexpected developments.

The very name of the 'joint/integrated units' actually indicates initial disagreement on their nature and especially their command structure. The theoretical difference between 'joint' and 'integrated' units is that the former would be deployed side by side and would retain their own command and control structure while the latter would be merged and placed under a single command. Unable to agree on either model, the parties opted for a hybrid, hence ambiguous solution. The ultimate objective is to gradually shift from joint to fully integrated units within 52 months – that is, by May 2009. To that end, a common military doctrine will have to be developed by the parties and JIU components will be jointly trained, including an air force and marine component as per the SPLM/A's request.

Although the JIUs will be dissolved if separation is voted for in the 2011 referendum, they are expected to constitute the 'nucleus of a post-referendum army of Sudan', as the agreement stipulates. In the meantime, they should also be tasked with protecting the oilfields and they will enable each party to maintain troops on the other's territory despite obligations to withdraw. Thus, the GoS delegation insisted increasing the size of the units and extending the timeline for redeployment, while the SPLA demanded small units and short deadlines. In the end, the Sudanese Armed Forces will have to evacuate north to the 1956 border within two-and-a-half years of the beginning of the pre-interim period.²⁴⁸ The SAF is, however, authorized to maintain 12,000 troops in Southern Sudan within the joint/integrated units. Similarly, the SPLA must pull out from the Nuba Mountains and Southern Blue Nile within six months of the deployment of JIUs there, but each JIU in these areas can include up to 3,000 SPLA troops.

It should be noted that the security arrangements were not fully finalized when the CPA was signed, and differ from one area to another. In the case of Abyei, the parties have agreed to constitute a 'joint battalion' that is to be the only accepted military presence in the area, but have failed to define its size. In the Nuba Mountains and Southern Blue Nile, the GoS reserved the possibility of deploying SAF troops in addition to the proposed JIUs. Lastly, owing to the GoS's reluctance to accept southern troops remaining in a region falling under its jurisdiction, the parties have failed to reach any agreement on the size and format of a JIU in eastern Sudan and the SPLA must withdraw in

248) The SAF will have to reduce its presence every six months by 17, 14, 19, 22 and 28 per cent respectively and finally evacuate north to the 1956 border by July 2007.

full from the region within twelve months.²⁴⁹ These differing outcomes reflect the dynamics of the negotiations in each case: the SPLM/A delegation was more successful in defending southern interests than its allies' interests, especially in those areas (unlike Abyei) that will undoubtedly remain part of the north.

The Naivasha agreement of September 2003 was received with much satisfaction by the southerners as they would retain their own army during the interim period and therefore preserve a self-defence capacity against any misfortune or misbehaviour.²⁵⁰ After securing a referendum and a separate army, the SPLM/A had reached two major and mutually reinforcing objectives: the referendum should provide guarantees that the GoS will abide by its commitments (or face a vote against unity) and the security deal should ensure that the outcome of the vote will be respected. In other words, the southerners believe that they have protected themselves against a new dishonoured agreement.

Nevertheless, the SPLM/A had to accept, as in 1972, the retention of northern troops in southern Sudan. In addition, although the south will keep its own army, the costs will be borne by the southern administration, which will rely on oil revenues and international assistance. Deploring the SPLM/A's refusal to disclose its troop strength, the GoS's delegation indeed refused the southern army being funded from the national treasury. This position appeared inconsistent with the agreement to treat both armies equally and may only contribute to the setting up of a fully independent southern military.

The fact remains that the CPA does not stipulate respective troop strength for the SAF and SPLA. The parties have agreed to the principle of downsizing forces in equal proportions but will start negotiating the modalities only after completion of SAF redeployment to the north (that is, not before July 2007). This has important implications in terms of disarmament, demobilization and reintegration of combatants.

2) Disarmament, Demobilization and Reintegration Challenges

Although the disarmament, demobilization and reintegration (DDR) of former combatants is seen as crucial to a secure and peaceful Sudan, the implementation modalities for conducting DRR activities were not elaborated. The CPA mainly provides for the creation of a National DDR Coordination Council (NDDRCC) to be appointed by the presidency and responsible for guidance and evaluation of two separate DDR committees. These committees are tasked with designing and implementing programmes at their respective levels (north and south).

249) SPLA forces in Eastern Sudan should be reduced by 30 per cent within four months after signing, 40 per cent within eight months and the remaining 30 per cent by January 2006.

250) See IRIN, 'Sudan: Shuttle Diplomacy Before Peace Talks Restart', 1 October 2003.

It should be stressed that the parties' interests in DDR are asymmetrical. Since the GoS will redeploy a large number of combatants from south to north, it is likely to want to demobilize and reintegrate many of its soldiers within a short timeframe. Yet, more than half of the 120,000 GoS combatants in the south are southerners who must either be withdrawn or be reintegrated in the communities against which they may have fought earlier. By contrast, the SPLM/A was adamant about maintaining its own army throughout the interim period and is likely to move much more slowly towards DDR. In fact, until the parties find agreement on their respective troop levels, DDR will mainly focus on the so-called 'non-essentials' (including child soldiers, the elderly, and the disabled), who should be demobilized within six months, and the 'Other Armed Groups' (that is, GoS-affiliated southern militias). The latter are a serious problem.

The SSDF Problem

The label 'OAGs' (other armed groups) refers in particular to the southern militias, which are affiliated to the GoS through the support that they have received from the government since the peace agreement they signed with it in 1997. Brought together under the umbrella of the South Sudan Defence Forces (SSDF), these militias are important military actors in that: 1) they are made up of thousands of fighters; 2) they control a large band of territory in Southern Sudan and in particular they provide security in the oilfields; and 3) they include a substantial number of Nuer, the second largest ethnic group in southern Sudan.²⁵¹ In other words, the support of these militias is essential for the sustainability of the peace process.

Yet these estimated 30 groups were hardly involved in the security talks. According to chief mediator Sumbeiywo, the reason was that 'it would have been impossible to negotiate with all of Sudan's different armed groups at the same time'. In addition, militias were considered 'indirectly included' in the negotiations as they were represented by the side to which they were affiliated – the GoS or the SPLM/A.²⁵² In fact, neither party wished for the SSDF to be granted official status in the discussions. The GoS feared that their proxy forces would ultimately align with the SPLM/A, thereby depriving it of a useful means of pressure and destabilization. The SPLM/A was reluctant to acknowledge the military power of these groups and become subject to the influence of militias that were perceived essentially as stooges of Khartoum; therefore, the SPLM/A preferred not to take militias on board and to postpone reconciliation until after they were weakened. Garang accepted

251) On the SSDF, see in particular ISS/ASAP, *The South Sudan Defence Force (SSDF): A Challenge to the Sudan Peace Process*, ISS Situation Report, 8 April 2004.

252) IRIN, 'Sudan: Armed and Angry: Sudan's Southern Militias Still a Threat to Peace', 4 June 2004.

integrating some of them, such as the EDF and SPLM-United, but on a case-by-case basis only to avoid having to negotiate with all of the militias as a group. In that respect, the non-inclusion of the SSDF also reveals the failure of south-south reconciliation that neither the SPLM/A nor the GoS really sought. Although the SSDF were invited in April and August 2003 to attend the security talks as part of the GoS's delegation, at the end of the day it remains doubtful whether all the armed groups concerned consider that they were fully included or represented. Yet, the Naivasha agreement may have critical implications for them in the post-conflict Sudan.

In short, the two main parties agreed that only their forces will have official status during their interim period and that 'no armed group allied to either party shall be allowed to operate outside the two forces' (art. 7a). Therefore, while the Khartoum peace agreement, to which they were officially party, entrusted the SSDF with providing security for the south until the holding of a referendum, the Naivasha Agreements state that the same groups must now disband. Specifically, they shall be incorporated into the organized forces of either party (army, police, prisons and wildlife forces) or reintegrated into the civil service and civil society institutions (art. 7b) within a year.

Obviously, the question is raised as to whether all the groups concerned will abide by provisions in the negotiation of which they were barely involved and that stipulate radical changes to their previous status. Although the SSDF leadership reacted positively at first – presumably because of job opportunities in the armed forces and public administration – it is unlikely that every militia will accept the deal and disband without resistance.²⁵³ Fighting in late 2003 and early 2004 in the south suggest rather that despite the prospects of civilian/military reintegration, certain military commanders may not be keen to join either of the two official armies – especially not an SPLM/A that is perceived as Dinka-dominated – or to give up the territory, their source of income, under their control.²⁵⁴ SSDF Nuer commanders, whose group makes up the majority of oil-rich Unity state, may be further disgruntled with the provisions of the wealth-sharing agreement, which allocates only 2 per cent of oil revenues to oil-producing states against 40 per cent in the Khartoum agreement.²⁵⁵

It should be further stressed that the SSDF do not constitute a united force but are made of separate organizations and military forces over which the United Democratic Salvation Front, the SSDF's political wing, has in fact very little control. Within the SSDF, the real power is held by local field commanders, who are themselves directed individually by the Sudanese government's military intelligence. In the absence of central command, the disarming and disbandment of each SSDF component will have to be taken

253) For the SSDF's reaction, see ICG, *Sudan: Towards an Incomplete Peace*, p. 23.

254) See above, chapter 3.

255) ISS Situation Report, *The SSDF*, p. 15.

on a case-by-case basis while the GoS's power of persuasion may ultimately make a critical difference. However, deteriorating security conditions in the south since 2003 suggest that Khartoum is still able and willing to use its influence over SSDF member organizations to undermine rather than to foster the peace process.

Unless the SSDF components are accommodated and included in Southern Sudan's political and military administration, they will remain potential spoilers both independently and at the service of other actors. The incorporation of a number of SSDF groups into the SPLA is a valid option, especially given the lack of civilian reintegration prospects in Southern Sudan. However, this incorporation will increase the southern army's running costs and presupposes genuine rapprochement between the SSDF and SPLM/A leadership. Interestingly, the CPA refers to DDRR with an extra 'R' that stands for 'reconciliation'. While there has been much discussion of, and appeals for, south-south reconciliation since the Machakos Protocol, the results have been negligible. This greatly endangers the permanent ceasefire.

3) Ceasefire Provisions and Monitoring Structures

On New Year's Eve 2004, the GoS and SPLM/A agreed to end their 21-year-long conflict and commit themselves, on behalf of their allied forces, to *permanently* ceasing hostilities in southern Sudan, the Three Areas, and eastern Sudan. Simultaneously, the state of emergency was to be lifted in the ceasefire zone (which does not, however, include the Darfur region).²⁵⁶

A multi-layered structure will be used to monitor the ceasefire and, in particular, to verify the redeployment of forces and investigate alleged violations. At the lowest level, Joint Military Teams (JMTs) – to be composed of equal numbers of SAF and SPLM/A officers and international UN monitors – will conduct patrols and report on violations to one of the eight Area Joint Military Committees (AJMC) that are to be established (seven in the south, one in the east). With a similar membership, AJMC will report to the Ceasefire Joint Military Committee (CJMC), the military decision-making body to be located in Juba. The CJMC will be chaired by the UN Force Commander and include his deputy as well as security officers from each party. The CJMC reports to the Ceasefire Political Commission (CPC), the political decision-making body that will be composed of senior political,

256) The parties further agreed not to 'arm, train, harbour on their respective areas of control, or render any form of support to external subversive elements or internal armed groups'. If respected, this commitment can have far-reaching national and regional implications, in that it will prohibit the NIF from supporting the Lord's Resistance Army or SSDF elements, and prevent the SPLM/A from helping Darfur or other rebel groups. This clause provides at least a legal basis for monitoring the parties' conduct, not only between themselves, but also with regard to other parties.

military, and legal party representatives, the deputy special representative of the UN Secretary-General (SRSG), and observers from IGAD and the IGAD Partners Forum (IPF). The UN will chair the CJMC on a permanent basis and the CPC on a rotational basis.

The ceasefire monitoring structure builds on the mixed national/international monitoring model inherent to the VMT and the JMC.²⁵⁷ International representatives enjoy no pre-eminence or decision-making authority at any level, however. The CPC is ultimately answerable to the presidency rather than the SRSG and decisions will be made by consensus, even under UN chairmanship. The agreement suggests no role for the UN in cases of ceasefire violations and, indeed, presents no real UN response other than individual 'disciplinary measures'. Finally, the ceasefire agreement states that 'any deadlock arising out of the implementation of the ceasefire shall be referred, as of last resort, to the Presidency' (par.10.5). These provisions suggest that, despite international representation and the presence of UN monitors on the ground, the parties will act as their own judges. In the case of either non-compliance or simple disagreement among the parties, the United Nations Mission in Sudan (UNMIS) is unlikely to serve as an enforcement mechanism or authority.

The United Nations Mission in Sudan (UNMIS)

Although a United Nations peace-support operation was foreseen long before the CPA was actually signed, the parties held differing views and expectations on its mandate and structure. While the GoS perceived a UN mission as potentially encroaching on state sovereignty and only envisaged non-armed peace observers, the SPLM/A desired peacekeeping troops that have Chapter VII mandate. In either case, the UN mission would be deployed with the parties' consent and cooperation, but a Chapter VII mandate would authorize the mission to use force in circumstances other than self-defence. Finally, the ceasefire agreement stipulates a 'peace-support mission' mandated under Chapter VI only to 'monitor and verify' the ceasefire and to 'support' implementation of the CPA (par. 15.1). The parties also agreed that the UN mission should include a 'force-protection element' but the troop numbers were not specified (par. 15.3). For its part, the UN Secretariat was opposed to taking precedence over the parties but expected formal units to protect the mission's personnel and assets (as has been the case with the African Union's peacekeeping force in Darfur).

In accordance with the ceasefire provisions and with the recommendation of the UN Secretary-General, on 24 March 2005 the UN Security Council decided to establish the United Nations Mission in Sudan.²⁵⁸ UNMIS will

257) On the monitoring mechanisms, see above in chapter 3.

258) Security Council Resolution 1590 (2005).

consist of ‘up to 10,000 military personnel and an appropriate civilian component including up to 715 civilian personnel’. It will be up to DPKO planners to set up the mission within this range.²⁵⁹ The main role of the Mission will be to support implementation of the Comprehensive Peace Agreement, in particular the security provisions related to the permanent ceasefire, the redeployment of forces, the formation of the JIUs, and the DDR activities.²⁶⁰ The UN Mission will also assist the parties in disseminating the CPA and implementing governance-related aspects, in particular restructuring the police, promoting human rights and the rule of law, and preparing for the elections and referenda.

Since it is established to foster implementation of the Naivasha agreement, the UN Mission will be deployed, as proposed earlier by the Secretariat, in the former war areas of the so-called north-south conflict: southern Sudan (divided into three sectors: Equatoria, Bahr el Ghazal, and Upper Nile) and the Three Areas (with one sector each).²⁶¹ The Mission’s headquarters will be based in Khartoum with a special office located in the southern capital (initially Rumbek). The establishment of a Redeployment Coordination Headquarters is also proposed in Kassala in order to monitor the redeployment of troops in eastern Sudan.

Expectedly, UNMIS is mandated to perform these tasks under Chapter VI of the UN Charter. The role of the Mission is to ‘assist’ the parties and ‘monitor’ the process, not to enforce implementation by instructing or sanctioning the parties in cases of non-compliance. Yet past experience in other ‘post-conflict’ countries suggests that relying exclusively on the goodwill of the signatory parties to implement the CPA appears to be fairly hazardous given that: a) the parties (in particular the GoS) are only loosely and tactically committed to the peace process; b) the level of mistrust lingering between the belligerents after two decades of war justifies stringent third-party intervention; and c) breakaway groups or proxy forces that are supported either from within or outside the country may act to undermine the process.

UNMIS is authorized to resort to force under Chapter VII in two specific cases only: to protect its personnel, equipment and freedom of movement, and to protect civilians who are under the imminent threat of physical violence. As violence in the Shilluk Kingdom illustrates, it may indeed well be that civilians are found to be under threat in the Mission’s area of

259) In January 2005, the UN Secretary-General recommended the establishment of a peacekeeping force of 10,130 military personnel, including 750 military observers, enabling units of 5,070 troops, a force protection component of 4,150 soldiers, and a civil police force of 755 officers. *Report of the Secretary-General on Sudan*, S/2005/57, 31 January 2005.

260) According to the ceasefire agreement, the UN Mission should be given all relevant information concerning the parties’ troop strength, location, and military equipment.

261) The area of the UN’s responsibility measures approximately 1,250 by 1,000 kilometers and has very poor communication structures.

deployment. Since the UN Security Council has not decided to send troops to Darfur, but only requested to increase the number of human rights' monitors there, this provision raises many questions, however. The supposition that the UN Mission will protect civilians may create unrealistic expectations that may ultimately and seriously undermine its credibility.²⁶² It may also generate confusion and tensions with the African Union's Mission in Sudan (AMIS). In the worst-case scenario, civilians will continue to be abused and killed under the eyes of *both* AU and UN monitors, with both refusing to protect the people or ensure respect for humanitarian and security protocols.

To conclude, the UN Mission has a vital role to play in the post-settlement Sudan, especially in view of the interim period's complex security parameters. Its concept of deployment appears flawed from the outset, however. On the one hand, UNMIS is tasked with ensuring implementation of the CPA, yet it is not granted the required authority over the signatories for doing so. On the other hand, UNMIS is authorized to take action to protect civilians, yet its forces will not be deployed in areas where civilians are mostly targeted. Finally, the late approval of UN Resolution 1590 means that UN military personnel may not be fully deployed before the end of 2005, several months *after* the end of the pre-interim period. This gives any potential spoilers ample time to act.

III. Wealth-Sharing Arrangements

Contrary to what might be suspected, greed was not the only rationale behind the parties' positions in the discussions on wealth-sharing issues. More fundamentally, these discussions reflected conflicting views on the best way to promote unity, with the SPLM/A claiming the necessity of correcting historical imbalances in regional development and the GoS refusing to focus exclusively on the southerners' needs. The negotiations were further marred by persistent mistrust, on the part especially of the southern delegation. Remembering the experience of the 1970s when southern Sudan received only a small proportion of the funds that it was due, the SPLM/A showed particularly distrust of any kind of financial centralization and tried rather to circumvent the GoS's interferences in national and international money flows. In the end, and thanks in part to facilitation efforts provided by experts from the World Bank and the IMF, the parties managed, albeit at the price of some ambiguities, to reach agreement on a number of interim arrangements, concerning in particular the funding facilities for reconstruction and

262) The unfortunate precedent set by the UN Mission in the DRC should be remembered here.

development, the sharing of oil and non-oil revenues, and the banking system.²⁶³

1) A Dual Mechanism for Reconstruction and Development

Among the guiding principles for equitable sharing of wealth, the parties agreed that Southern Sudan faces ‘serious needs’ in terms of basic government functions, civil administration, and social and physical infrastructure, and ‘shall be brought up to the same average level of socio-economic and public standards as the northern states’ (art.1-5). Regional imbalances between the north and the south were therefore acknowledged. The agreement also referred to ‘other war-affected areas’ (in particular the Nuba Mountains, Southern Blue Nile and Abyei) that face similar needs even though they are not part of the south.

The diagnosis justified the establishment of two reconstruction and development funds – the Southern Sudan Reconstruction and Development Fund (SSRDF) and the National Reconstruction and Development Fund (NRDF) – and, accordingly, two Multi-Donor Trust Funds (MDTFs). In theory, the national funds should be principally financed by the respective government whereas the MDTFs are set up for channelling international assistance. In practice, money flows from the multi-donor to the national funds are to be expected. The discussions on implementation modalities resulted in assigning the administration of both MDTFs to the World Bank. Arrangements will be made to enable UN agencies to operate within these funds while applying their own rules.

The establishment of two trust funds conveys pros and cons. On the one hand, the setting up of a separate MDTF for Southern Sudan will enable the GoSS to raise funds directly from international donors without relying on Khartoum’s goodwill. This should ensure that development needs in the south will actually be addressed during the interim period. On the other hand, such a structure may not help in developing a nationwide view of the Sudan, but instead contribute to consolidating – including in donors’ perceptions – a north-south paradigm that the resolution of the Sudan’s problems requires overcoming.

In that respect, it may be noted that the scope of the national fund, which was initially envisaged for the Three Areas only, is being gradually expanded to include all Sudanese regions but the south. Upon Khartoum’s insistence, the NRDF and the national MDTF are dedicated not only to ‘war-affected areas’ (such as the Nuba Mountains and Southern Blue Nile) but also to ‘least developed areas’ outside Southern Sudan. This approach enables avoiding exclusive focus on SPLM-held or affiliated areas, but also fuelled the

263) *Framework Agreement on Wealth-Sharing During the Pre-Interim and Interim Period between the GoS and the SPLM/A*, Naivasha, Kenya, 7 January 2004.

flawed perception of a specific fund for the north. This perception was further reinforced after the outbreak of conflict in Darfur shed light on the marginalization of this region and announced future reconstruction needs. While Darfur will likely be eligible for the NRDF as a war-affected area, it remains to be decided in what proportions.²⁶⁴ In consultation with the parties, donors will have to define ratios and criteria for distributing aid and making use of this complex mechanism so as to correct, not perpetuate, regional disparities.

2) Sharing Oil and Non-Oil Revenues

Whereas the wealth-sharing agreement does not indicate a ratio between the two MDTFs, it stipulates that oil revenues will be shared on a fifty-fifty basis between the government of Southern Sudan (GoSS) on the one hand, and the national government and northern states on the other (the GoS had argued that national wealth should be shared on the basis of needs' assessment, but, fearing deceit, the SPLM/A demanded precise percentages). While oil resources are mostly located in the south, the agreement should endow the GoSS with substantial revenues and simultaneously ensure that the Sudan as a whole benefits from this natural wealth. In the end, those who might complain are the oil-producing states themselves, which were directly allocated a minimum of only 2 per cent of oil revenues in proportion to their respective production.

Chaired by the Sudanese president and the president of the GoSS and composed of four representatives of each side and a maximum of three representatives per producing state/region, a National Petroleum Commission (NPC) will be established during the pre-interim period. The NPC will formulate policies in relation to the management and development of the oil sector and in particular will negotiate and approve all contracts for exploration and development of oil. Through this commission, southern representatives shall therefore be directly involved in oil exploitation. Southern representatives will also be granted access to existing oil contracts with a view to assessing potential social and environmental problems caused by oil exploitation. Although oil contracts signed before the signing date of the CPA are not renegotiable, in the case of problems the Sudanese government should compensate the affected persons.

The parties have also found agreement on the sharing of non-oil revenues to be pooled in a National Revenue Fund (NRF). In the name of 'equalization', it was agreed that 50 per cent of the national taxes collected in

264) The Protocol on the Two Areas allocated 75 per cent of the national fund to war-affected areas, in particular Southern Kordofan and Blue Nile states, and the remaining 25 per cent to least developed areas (for its part Abyei is eligible for both national and southern funds). But these provisions disregarded the conflict in Darfur.

Southern Sudan by the national government should be allocated back to the GoSS.²⁶⁵ At the request of the southern delegation, this proportion might be increased after a mid-term review of the interim period. Further indicative of the southerners' level of mistrust and need for guarantees, the agreement stipulates that the national government shall not withhold an allocation earmarked to a state/region or the government of Southern Sudan (art. 1-14). To ensure the effective transfers of funds, a Fiscal and Financial Allocation and Monitoring Commission (FFAMC) will be established, composed of experts from the interested parties (states/regions, GoSS and national government). Interestingly, the FFAMC should elaborate a formula for allocating resources to war-affected and least developed areas, and may seek international assistance in this respect.

3) Dual Banking and Monetary System

Despite the setting up of the FFAMC, internal money flows might prove fairly cumbersome, as two banks will operate and two currencies will circulate during the interim period. This dual system was established mainly at the SPLM/A's request. These demands raised controversy and objections from the GoS in so far as they seemed to run against the potential reunification of the Sudan. Actually, it seems that these measures were advocated by the SPLM's members who were the least committed to unity and more to independence.

Reflecting the Sudan's conflicting identities, a dual banking system will be established, albeit not fully separate as the SPLM/A had hoped. In the north, the Central Bank of Sudan will operate according to Islamic law (which prohibits, for instance, charging interests on loans); in the south, the Bank of Southern Sudan will be created as a branch of the latter but nonetheless will apply conventional (Western) banking regulations. Each bank is expected to use its respective financing instruments to implement the same national monetary policy.

Failing to reach agreement on a single currency, the two parties only decided to establish 'as soon as is practical during the Interim Period' an overall national currency whose design should 'reflect the cultural diversity of Sudan'. No date was specified in the agreement on implementation modalities, however. In the meantime, the Sudanese dinar will remain the currency of the north, and multiple currencies (Kenyan and Ugandan shillings, US dollars, not to mention the newly-created Sudanese pound) continue to circulate de facto in the south.

265) In addition, taxes imposed by the GoSS and southern states will be exclusively used by the respective level of government.

4) Shortcomings of the Wealth-Sharing Agreement

The wealth-sharing agreement fails to be specific with regard to natural resources other than oil, in particular water and land.

Water Resources

First, the crucial issue of the division of water resources is not addressed (possibly because of the regional dimension of the problem). Controversy may arise again if the national government, which enjoys exclusive competence in the management of the Nile waters, undertakes to increase the flow of the Nile northwards, as earlier in the past with the construction of the Jonglei canal. In addition, while the Machakos Protocol has increased the prospect of an independent south and correlatively exacerbated Egyptian concerns, the Nile waters' issue will have to be addressed in a regional framework, such as the World Bank-led Nile Basin Initiative, soon after the signing of the comprehensive peace agreement.

Land Ownership

Secondly, the agreement tackles only superficially the question of ownership of land and national resources. Yet this issue lies at the root of many conflicts throughout the Sudan and may prove further critical with the return of hundreds of thousands of refugees and internally displaced people in the aftermath of a peace agreement. A settlement process has nonetheless been designed that entails the establishment of a National Land Commission. 'Representative and independent', this commission shall arbitrate between conflicting claims over land. It should also provide advice on land reform policies and the incorporation of elements of customary law and practices into land legislation. Given the politicization of these issues, it remains to be seen which principles this commission will apply in its rulings, how it will arbitrate between the modern and traditional farming sectors, and whether it will prove insensitive to political pressures. A sister commission with an analogous mandate will be established for Southern Sudan. Whereas both commissions shall cooperate, the prevalence of differing legal and exploitation systems in the north and the south may make them unlikely to apply similar principles.

In the end, the wealth-sharing provisions denote much more mistrust, self-interest and ambiguous agendas than a shared commitment to address the Sudan's key problems and build a common future. The SPLM/A wanted to sever all links with the central government, everything but north-south money flows; in contrast, the GoS showed reluctance in providing political and financial autonomy for the south and was much more willing, on behalf of unity, to have southern resources 'shared' with the rest of the Sudan. In fact, each party subscribed to the goal of a united Sudan provided that the other party pays the price for it.

Conclusion

The CPA provides for a fair settlement of Africa's oldest war by addressing the legitimate grievances of the southern Sudanese whose right to self-determination is recognized. Yet this major achievement was overshadowed by the conflict in Darfur, which was even interpreted as a side-effect of the IGAD process. The two rebel groups that took up arms in Darfur – the SLM/A and JEM – not only complained about the increasing marginalization of their communities and regions, but also expressed great frustration at being excluded from the IGAD negotiations. The SLM/A and JEM were supported in that respect by the Beja Congress, a rebel group from eastern Sudan, which staged guerrilla attacks in October 2003 immediately after the signing of the security agreement to protest against non-inclusion in the security talks of the National Democratic Alliance (NDA), of which it is a member. In January 2004, Darfur's rebel groups and the Beja Congress announced that they would create an alliance to present their grievances together and prevent the Sudanese government from finding a 'partial solution' to the Sudan's problem with only the SPLM/A.²⁶⁶ This east-west alliance appears like a severe refutation of the north-south approach that was seemingly built in the IGAD process. Restricted to the two main fighting forces, the IGAD process was criticized for rewarding, and therefore encouraging, the use of force, and for being too exclusive in terms both of representation and substance – two features that may badly impact on its legitimacy, relevance and, eventually, sustainability. The IGAD process and the resulting CPA also need to be assessed against these important criticisms.

How Exclusive has the IGAD Process Been?

It is true that the IGAD process was essentially bilateral, and for two main reasons. First, the Sudanese government and the SPLM/A wanted both to remain the sole parties in the negotiations in order to exert full control over the process, to be credited eventually for delivering peace, and to secure their dominant position in the post-conflict Sudan. Put differently, they refused to see their status of major actors undermined in an 'all-inclusive' process. This applies both to the SPLM/A, which opposed any legitimacy being granted to its brother enemies of the pro-government southern militias, and to the GoS, which constantly refused to allow the NDA to be party to joint negotiations with the SPLM/A.

Secondly, the IGAD mediators accepted this state of affairs as it was the parties' wishes and provided the advantages of simplification and clarity. Although it was argued that widening the process might have facilitated the search for compromises (as the GoS would have shared the costs of

266) IRIN, 'Sudan: Western and Eastern Rebels Forge Alliance', 16 January 2004.

concessions with others), it seems more likely that enlarged participation would have caused more complications: each additional participant is indeed prone to defend the narrow interests of its constituency and to introduce its own bottom lines, thereby making it more difficult to reach a comprehensive agreement. The fact is that, despite its long duration, the IGAD process proved to be the most fruitful peace initiative on the Sudan since the beginning of the second war. There was therefore hardly an incentive for the mediation team to change strategy.

Furthermore, the IGAD process has been to a certain extent less 'exclusive' than usually stated. The SPLM/A did not negotiate on its own capacity only, but represented at least indirectly the National Democratic Alliance. During the Machakos negotiations, DUP leader and NDA chairman, Mohamed Osman Al-Mirghani, was therefore regularly briefed by John Garang; after the signing of the Protocol, the SPLM/A received a 'conditional mandate' to continue negotiating on behalf of the NDA.²⁶⁷ Likewise, the SPLM/A was also mandated by the peoples of the Nuba Mountains and Southern Blue Nile to defend their interests in negotiations with Khartoum. The remark also applies to southern militias that were indirectly represented by, and sometimes incorporated in, the GoS or SPLM/A delegations, depending on their political affiliation. Lastly, northern politicians from the NDA (including from the Beja Congress) have also accepted joining the GoS delegation, driven probably more by self-interest than a concern for the peace process's support base. These examples show that the IGAD process, albeit bilateral in nature, was not hermetically closed to external views, interests and interferences. Yet it is true that, reluctant to give up their status, both parties preferred co-opting individuals and/or representing collective interests than accepting the direct participation of organized groups in the negotiations. Instead of ambiguous mandates and dubious invitations, a more formal observer status should have been granted to the SSDF or to the NDA, which would have enabled these parties, if needed, to attend the discussions of direct relevance to them (such as security and power-sharing).²⁶⁸ Short of this, important stakeholders not only felt excluded from the talks, but also from the governance arrangements that were created in the course of the negotiations. This raises critical questions concerning the legitimacy and sustainability of the CPA.

267) ICG, *Sudan's Best Chance for Peace*, pp. 13-14.

268) However, it happens also that stakeholders exclude themselves from the process: Egypt initially refused the observer seat offered by the IGAD mediators because it wanted the self-determination issue to be first taken off the negotiation agenda. See Justice Africa, *Prospects for Peace in Sudan Briefing*, August 2002, pp. 5-6.

Does the Comprehensive Peace Agreement Lack Legitimacy and Support?

A short answer to this question might be the following: although criticized by non-parties, the CPA is not all rejected by its detractors and may in fact be threatened by its very signatories. First, despite its shortcomings, the IGAD process has involved the two primary actors. This may sound obvious but it makes a significant difference with other peace initiatives like the 1995 Asmara Declaration or the 1997 Khartoum Peace Agreement, which were not endorsed by either the GoS or the SPLM/A. Although not all-inclusive, the CPA is at least signed by the two main fighting forces and therefore gives peace a real chance. This is the first reason why this initiative is broadly seen as serious and legitimate, and supported as such within and outside the borders of the Sudan.

Secondly, observers and 'excluded' parties did not fail to notice that the search for inclusiveness was conceived as a *gradual* process, with negotiations being first limited to primary actors and the peace implementation period then fostering greater political participation. Recognizing the 'need for inclusiveness so as to ensure the sustainability of the interim agreements' (as stated in the Nakuru draft), the two parties accepted the inclusion of, in small proportions though, opposition parties in the political structures of both northern and southern states and in the government of national unity.²⁶⁹ Later on, they also agreed to hold general elections during the interim period, although at a fairly remote date. These are small – critics would say 'symbolic' – but nonetheless important steps that may pave the way for greater political participation and democratic change. Despite their objections, 'excluded' stakeholders are aware that the CPA may initiate the process of loosening the ruling party's grip on power and may lead to a new political dispensation in which they should be able to operate. In effect, most of them give support, if qualified support, to the Sudan's peace process, in which they see an opportunity for regime change and simultaneously for their own political comeback. Thus, both the NCP and the SPLM have been wooed by the other political forces (Turabi's Popular Congress, NDA member organizations, marginalized groups, etc.) that are seeking strategic alliances to secure their future and/or promote their interests in the post-conflict Sudan. As emphasized by analysts, 'the positive element in these deals and machinations is that all the major parties in Sudan are endorsing the peace agreement and seeking to become part of the post-war dispensation. This minimizes the chances of any reshuffling of the political deck undermining peace'.²⁷⁰

269) *Nakuru Draft Framework Agreement*, 6.0 on Inclusiveness. Ideally, those percentages should be revised in order to increase the representation of non-signatories, including groups from Darfur and eastern Sudan.

270) Justice Africa, *Prospects for Peace in Sudan Briefing*, November-December 2003, p. 4.

Historically, 'excluded' parties have played the role of peace spoilers, if needed by seeking alliances with other disgruntled constituencies from the other part of the country. Out of this consideration, 'excluded' groups from the IGAD process repeatedly warned against the risks of limited participation in peace talks, and provisions were eventually inserted at the SPLM/A's request to prevent the agreement from unravelling in the event of non-signatory parties coming to power. In the present setting, it seems that participation and support are two different things, however, with the latter being not necessarily a condition for the former. Actually, the greatest threats to the peace agreement seem to come in part from 'excluded' parties (such as the GoS-affiliated militias) but also, increasingly, from the signatories' own ranks (in particular elements within the ruling party). Even certain rebel groups from eastern and western Sudan welcome the peace agreement in the hope that the appointment of John Garang as first vice-president will help their cause – this hope does not exclude the fear that the SPLM/A will prioritize its new 'partnership' with the NCP, however. By contrast, the violence perpetrated by the Sudanese government in the Darfur region raises questions, to say the least, about its commitment to resolving conflicts peacefully, addressing long-standing grievances and complying with peace agreement provisions. In reality, the current regime, whose power base is severely shrinking, looks increasingly like an ethnic and political minority that wants to keep power at any cost, including genocidal violence, and knows that liberalization may provoke its political demise. Those elements within the ruling elite, who have not yet relented on 'Arab' supremacy or simply want to keep the benefits of exclusive power, are probably the most serious candidates for spoiling behaviour. Since the signing of the CPA, furthermore, the SPLM/A has seemed to realize the importance of getting other parties on board, if only because of the NCP's unreliability, while the NCP holds to the idea of political partnership with the SPLM and expects the latter to sever links with its former northern allies.

In conclusion, there is no simple correlation between inclusiveness and the sustainability of a peace agreement. Being 'out' may not mean refusing support, while being 'in' does not ensure commitment. Put differently, the peace agreement might paradoxically be spoiled by insiders rather than outsiders. Eventually, the support provided by a given party to a peace agreement depends less on this party's status than its perceived interests. If the peace process is seen as fostering change, it may be supported by those political forces favouring a new political dispensation but resisted by conservative forces unwilling, for instance, to give up too big a share of power. Conversely, if the peace agreement is seen as creating too few opportunities, it will be resisted by political forces hoping for radical changes, but supported by conservatives whose key interests are saved.

Has the IGAD Process Only Delivered a Partial Solution to the Sudan's Problems?

The bilateral format of the negotiations was believed to imply that the outcome would benefit the two signatory parties only (at the expense of outsiders) and deliver a partial solution to the Sudan's problems (while leaving tensions and grievances outside the south unaddressed). These inferences require closer examination.

Undeniably, the GoS and the SPLM/A have granted themselves the lion's share of power until at least general elections are held. Ultimately, however, the Sudan's peace process may potentially benefit Sudanese society as a whole by fostering political change at the central level. Power-sharing arrangements are not limited to providing regional autonomy for the south, but should enable the SPLM/A and other opposition forces from the south and the north to play their part in the national government. This new dispensation may impact in turn on the policy practice. In fact, the IGAD mediators estimated that addressing every group's grievances would complicate the negotiations but that this could and should be easier after the establishment of a national unity government comprising the SPLM/A. In other words, the change in government is expected to translate into a change in governance. If this is verified, the IGAD process may actually benefit other stakeholders than the sole signatories.

For the same reason, it is not fully accurate to argue that the IGAD negotiations have exclusively focused on the south to the detriment of other marginalized areas. Although the north-south prism has remained predominant, other regions than southern Sudan were considered within this framework, directly or indirectly. The Three Areas, which the GoS initially refused to discuss precisely because they lay outside the south, are the clearest example (even though these talks were formally not part of the IGAD initiative). Paradoxically, this extension of peace talks to regions lying beyond the strict borders of the south (but long embroiled in the conflict) might have encouraged other groups (in eastern Sudan and Darfur) to intensify pressure to be included in the process. Yet the IGAD negotiations could hardly be expected to include Darfur, since the conflict erupted there only after they were relaunched. Still, the CPA might also help to alleviate the marginalization of these peripheral areas, since it provides for a decentralized system of government and foresees modalities for increased budget allocations to state governments. For instance, the National Reconstruction and Development Fund will be partly dedicated to the least developed areas outside southern Sudan. In short, if the CPA does not directly address every aggrieved group's concerns, it at least creates conducive conditions for doing so in the relatively near future through opening the political space, restructuring the governance system and providing a framework for the resolution of local conflicts. To a large extent, the initial focus on the conflict in the south should, actually must, have countrywide implications.

As with any peace agreement, the CPA is far from perfect, but fraught with loopholes, lacunas and limitations. One might have preferred an all-inclusive formula or, even better, a settlement providing for the immediate, peaceful and non-conditional dismissal of the NIF regime. Neither of these options was realistic. The result is therefore mixed, unfinished, and can lead to better or worse. At least the Comprehensive Peace Agreement provides a starting point for restructuring the Sudan into a democratic and united state. The principle challenge of the interim period will be to transform this potential into reality.

Conclusion

The Sudan's second war lasted for 21 years and actually dated back to independence. This exceptional duration went along with an increasing complexity, in particular after the 1989 *coup d'état*. The National Islamic Front seized power with an anti-peace and pro-Islamist agenda, exacerbated factionalism in the south, and triggered greater interferences from the Sudan's neighbours. Simultaneously, the conflict spilled over the initial borders of the south – a development that provided the SPLM/A with new allies but did not necessarily contribute to clarifying its political agenda. Finally, the beginning of oil exploitation in the late 1990s was widely seen as a critical war-aggravating factor, although not sufficient to provide the GoS with decisive military superiority. Owing to all of these factors, it was doubted whether the Sudanese war would ever end. Yet in January 2005, the Comprehensive Peace Agreement was signed. This study aims to explain how the Sudan's intractable conflict was, at least nominally, brought to an end and to draw some lessons from this peacemaking experiment. This conclusion recapitulates the main findings in that respect and will further provide an assessment of the peace prospects that the CPA supposedly raises.

How was the Sudan's 'Intractable' Conflict Ended and What Lessons can be Learned in Terms of Conflict Management and Resolution?

The answer to the above question partly lies with the following two figures: '9/11'. The end of the conflict in the south is indeed first and foremost ascribable to contextual factors, and '9/11' is the single most important of

them. The Sudan case is an example of conflict that seems truly intractable until a 'geopolitical shift' alters fundamentally the parameters and parties' calculations.²⁷¹ Actually, the conflict seemed even more hopeless than those fundamental shifts – the end of the Cold War is another case in point – are usually unpredictable, or at least unpredicted. This teaches outsiders to be modest – certain situations are sometimes simply not amenable to a negotiated settlement without a fundamental change – and yet never to lose hope, as even seemingly desperate cases might ultimately be rescued and solved. In the Sudan's case, '9/11' urged the GoS to leave behind its reputation of sponsor of international terrorism and its related pariah status, if needed by engaging in peace efforts. In turn, the US administration seized the momentum to recast its Sudan policy and focus attention on the war in the south. Therefore, a more conducive bilateral dynamic than the sterile confrontation of the 1990s started to take place between Khartoum and Washington. This said, '9/11' may not have had such an impact on the course of the war had these international developments not coincided with key domestic changes.

A dozen years after the military *coup*, the ruling party found itself essentially driven by self-preservation while its Islamist project had ended in failure, its support among the northern Sudanese had shrunk away, and it had failed to defeat the southern rebellion. Hence, a peace agreement was seen by the National Congress as a means to rejuvenate itself and stay in power thanks to a newly forged 'political partnership' with the SPLM/A. It should be noticed here that oil exploitation impacted on the war's parameters, but did eventually not prevent the conclusion of a peace agreement. Despite much talk about resource-based war economies, the Sudanese case and other conflict situations show that the exploitation of natural resources is not an impediment to peace as long as peace is equated with greater, not lesser, benefits.²⁷² In sum, Khartoum's engagement in peace efforts marked a new, self-interested pragmatism, which contrasted with the NIF's initial messianic and export-oriented programme. On the southern side, the SPLM/A no longer hoped to topple the government – and actually never was really able to pose such a threat. However, the southern movement expected to take advantage of the GoS's new posture and was strengthened by its links with the northern opposition and the return to its ranks of southern breakaway groups that were disgruntled with the Khartoum Agreement. Put differently, the SPLM/A engaged in peace negotiations with a view to capitalizing on its growing political weight, rather than its military power.

271) See Chester A. Crocker, Fen Osler Hampson and Pamela Aall, *Taming Intractable Conflicts: Mediation in the Hardest Cases*, United States Institute of Peace Press, Washington DC, 2004, p. 35.

272) On this point, see also Rogier, *Rethinking Conflict Resolution in Africa*, p. 45.

If the Sudan's case illustrates the importance of contextual factors, it also highlights the no less critical role of peacemakers in seizing the momentum and setting up a credible diplomatic process. As indicated above, the Sudan's peace process and the Comprehensive Peace Agreement in which it resulted are greatly ascribable to the role played by the US administration, a role that demonstrates the absolute need for a lead-nation in peacemaking efforts. The United States actually provided the impulse, leverage, seriousness and sustained attention, without which the peace efforts would have been unlikely to succeed. Comparing Clinton's and Bush's policies on the Sudan, it would be tempting to contrast the unfruitful 'bulldozer diplomacy' of the former with the constructive honest-broker role played by the latter. Extrapolating a bit, it may be argued that the resort to coercive means simply does not match a peacemaking purpose. Such a comparison would be partly flawed, however. First, Clinton's containment policy was not that worthless since it provided a source of leverage that was later used by the Bush administration. Second, Khartoum's greater responsiveness to external demands and actual engagement in peace negotiations after '9/11' reduced the need for a confrontational approach. This does not mean, however, that sanctions and other non-consent-based measures should be excluded a priori from the peacemaker's toolbox. To the contrary, subsequent developments in the south make the case for stringent monitoring mechanisms that grant final authority to third-party actors. The Darfur tragedy further reminds us that rogue states are highly successful in gaining the advantage from lack of international resolve. In sum, Clinton's and Bush's policies on the Sudan reflected different requirements at different moments in time, and both had their rationales and limitations. The Sudan case illustrates the great difficulty of dealing with a rogue regime, especially when addressing several conflicts at once.

A key feature of Bush's policy, however, relates, quite surprisingly perhaps, to its multilateral dimension. Whereas the Bush administration was criticized worldwide for its arrogance and unilateralism, in the Sudan it refrained from running the show alone but joined with other regional and international partners. The arrangements found with the troika members and with IGAD were, it is true, in line with the ad hoc multilateralism that Washington favours. (Revealingly, the United Nations was expected to play a significant role after the signing of a peace agreement only.) Nevertheless, the US administration played a catalytic and coordinating role that contrasted with the conflicting regional peace initiatives of the 1990s and certainly contributed to the success of the peace process. In effect, a multilayered mediation structure was set up, which involved, on the one hand, international actors to provide legitimacy, leverage and resources, and on the other, regional actors to provide insight, ownership and good neighbourliness.

This co-facilitation model built on third-party actors' comparative advantages would be worth replicating in the future.²⁷³

By contrast, as of May 2005, peace efforts for Darfur have proven inconclusive for reasons that come to light when compared to the Naivasha process. First, the parties do not seem genuinely interested in peace talks: the GoS prolongs the cat-and-mouse game with the international community until reaching its military objectives; the rebel movements wait for the international community to side with them and bring pressure to bear on the GoS. Second, the region's political leaders (Déby, Konare, Qaddafi and Obasanjo – most of whom have vested interests in the conflict) have launched competing mediation efforts akin to the traffic jam of peace initiatives witnessed earlier with regard to the south. There is a difference in casting, however: whereas the conflict in the south has been mainly mediated by the Sudan's south-eastern neighbours (for example Kenya on behalf of IGAD) at the expense of Arab countries (Egypt and Libya), the Darfur conflict has enabled the Sudan's north-western neighbours and other 'marginalized mediators' such as Nigeria to accomplish a diplomatic comeback under the auspices of the African Union. As a result of both Western indifference and African pride, the AU has actually taken the lead in both peacemaking and peacekeeping efforts. As it struggles to deliver on both fronts, Darfurian civilians pay the highest price. Third, the resolution of the crisis has been impeded by the lack of a substantial and coordinated international response. Although the UN Security Council was finally seized by the matter, its lukewarm resolutions merely reflected the least common denominator among its (permanent) members and were not put into effect. Dividing lines not only separate Western countries on the one hand, and China and Russia (the Sudan's usual supporters) on the other, but also run across Western governments themselves, notably France and the US. This lack of cohesion added further to a lack of commitment. In contrast with the Naivasha process, Western governments have not committed staff on the ground (only contributed to the planning of the AU's mission) and have lately attended peace talks on Darfur. From Addis Ababa to Washington – via Khartoum – the consensual saying emphasizes the need for an 'African solution'. Since the adage did not apply to the conflict in the south, it is unclear why it should to Darfur, however. Anyhow, if a negotiated settlement is seen as the best way of stopping genocidal violence, Western countries should at least join efforts and fully commit themselves to this goal. At the time of writing, however, the US administration, which was initially the most outspoken Western government, is said to be more interested in preserving intelligence ties with Khartoum and

273) See Rogier, *Rethinking Conflict Resolution in Africa*, in particular recommendation 8, p. 50. In Sudan, these two levels should have been more clearly linked to the third local level of NGOs providing field-knowledge and grass-roots' reconciliation. This may have facilitated south-south reconciliation efforts, for instance.

ensuring implementation of the CPA than in taking the lead in peace efforts for Darfur.

The new context and the new process largely explain how the Naivasha process reached a conclusive end. A third key element relates to the effectiveness of the IGAD mediation team. If the most skilful mediator can sometimes simply not help without a geopolitical shift, when this shift occurs the momentum has to be seized at the negotiation table – the IGAD team did it. Similarly, the parties' new motivation to engage in serious negotiations meant a greater willingness to search for compromise solutions and make concessions – the IGAD mediation team proved able to exploit this peace opportunity. In particular, it succeeded in accompanying the parties along the way, playing a more or less prominent role according to the needs; keeping the process on track despite a number of setbacks and delays; and crafting creative compromise solutions while building on the existing literature.

The most significant breakthrough was the Machakos Protocol and Khartoum's acceptance of a referendum on southern independence against the maintenance of *sharia* in the north. The ruling party's prioritization of its own survival at the expense of the Islamist project helped break the long-lasting deadlock on these principled issues. It remains to be seen how far the National Congress Party is willing to make its *aggiornamento*, however. For its part, the SPLM/A benefited from the fact that the self-determination of the south as a 'justified exception' to the preservation of state borders had gained gradual acceptance at the international level.²⁷⁴ A referendum after six years also has the advantage of conciliating – by procrastination – historically conflicting views on the 'southern question', namely Garang's vision of a 'New Sudan' based on voluntary union, and most southerners' separatist aspirations. A landmark agreement, the Machakos Protocol is therefore inherently ambiguous. This applies to the CPA as a whole, which can be seen either as the launching of a transformation process, or as a closed deal between two parties to divide up the country among themselves.

To What Extent May the CPA Deliver a Sustainable Peace throughout the Sudan?

The signing of the Comprehensive Peace Agreement undoubtedly opens a new chapter in the Sudan's troubled history. It does not necessarily usher in a new era of peace, unity and prosperity, however. The CPA merely opens a transition period whose final outcome is largely indefinite.

The CPA might provide the basis for solving the Sudan's conflicts of governance to the extent that it addresses a number of key southern grievances (establishment of a regional government, participation in central government, affirmative action in the civil service, a referendum on self-determination, etc.) and may simultaneously lead to the abolition of the

274) Deng, 'Negotiating a Hidden Agenda', p. 98.

dictatorial regime in place since 1989 (thanks to government change, restoration of basic freedoms, holding of general elections, etc.). The agreement therefore provides room for settling the so-called north-south conflict as well as being a vehicle by which governance problems throughout the Sudan may be addressed. In particular, the establishment of a government of national unity and the move towards a decentralized system might create opportunities to address local conflicts and grievances in northern peripheral and marginalized regions.

At the same time, the CPA generates far more speculations than clear answers. It does not provide a final but an interim settlement to the conflict, and therefore leaves all options and scenarios open. Whether two separate states or a united and democratic Sudan will emerge will be decided in the years to come, and ultimately by the southern voters in 2011. Although it commits the parties to prioritizing unity, the Machakos Protocol tends to enshrine, territorialize, and therefore reinforce ethnic, religious and cultural differences throughout the Sudan and even stipulates a procedure for divorce. In the final analysis, it might pave the way for separation rather than unity.

Such an outcome is even more likely if the ruling party does not abide by the spirit of the agreement, for example by preventing the holding of the referendum or alternatively by giving up the south. In fact, a critical step to preserve the Sudan's unity would be the dismissal of the Islamist regime, for instance after holding democratic elections in 2009. The ruling party will likely do everything it can to prevent this scenario, however. If needs be, the NCP might choose to leave the SPLM/A to administer southern Sudan (unless it tries to instil instability) while continuing to draw benefits from oil exploitation and remaining firmly and solely in control of the northern part of the country. The ruling party's positions on the status of the Nuba Mountains and Southern Blue Nile, on the application of *sharia* law in Khartoum and on the insurgency in Darfur strongly suggest that the NCP, or at least influential elements within its ranks, is not ready to concede authority outside the south. Accordingly, the NCP may also be tempted to prevent genuine participation of the SPLM/A and other political forces in the decision-making process at the central level. Such a strategy would hardly generate loyalty to the state.

The southerners' willingness to break ties with the 'Jallaba' also poses a serious threat to the viability of a united Sudan. From this perspective, granting southern Sudan a separate government is a necessary step on the path towards unity but also an insufficient and potentially risky one. Promoting unity requires in addition enabling and encouraging southerners to participate fully in the *Sudanese* affairs at the national level. If the people of the south do not perceive the Sudanese state to be their own too, they will likely focus on southern Sudan to build their state and will separate from Khartoum. Hence, the post-conflict setting raises critical challenges for the SPLM/A's leadership, which will have to build capacity both for governing the south and fulfilling its responsibilities in Khartoum (Garang himself will be divided between the southern and the national capital cities). Whereas it

has been given a stranglehold over the southern regional administration, the SPLM/A will further have to transform itself into a political party, learn the basis of democratic governance, and engage in reconciliation efforts with the southern groups that do not recognize themselves in it. In fact, the SPLM/A has itself to face up to the challenge of democratic transformation that it called for the Sudan.

Furthermore, it remains to be seen whether the Sudanese state will democratize and open political space to other political forces. For the time being, the Protocol on Power-Sharing recognizes the 'need for inclusiveness', but allocates the lion's share of power to the two signatory parties at all levels. Northern and southern states will remain dominated by the NCP and the SPLM, respectively. If the power-sharing arrangements might possibly lay the basis for restructuring the Sudan's governance system, they may also result in entrenching the two main parties in power – furthermore so as little considerations were given to fundamental issues such as the most appropriate political system or the instauration of the rule of law. Such a scenario would trigger new rebellions, for example by disgruntled groups trying to topple the big two, and fuel again the cycle of violence.

Finally, the CPA is comprehensive in name only. Owing to Khartoum's 'peace by piece' strategy, the IGAD process was restricted to the GoS and the SPLM/A and focused mainly, albeit not exclusively, on the conflict in the south and the Three Areas. In order to accommodate other parties (such as the NDA) or address other conflicts (Darfur), separate negotiation channels were established (Cairo and AU talks respectively) or will have to be opened (on eastern Sudan, for example). This piecemeal strategy enabled the NIF regime to remain the master of the game, especially to remain in control of the north, and not to address the Sudan's conflicts of governance in a comprehensive and coherent framework. Ultimately, a key challenge will be to coordinate all of these channels and conciliate their outcomes.

To conclude, the CPA is undeniably a historic achievement, and the southern Sudanese should be helped in fully realizing their right to self-determination. Building a peaceful and united Sudan will require moving beyond the north-south paradigm, however, and broadening the scope and support base of the agreement in order to make it really comprehensive. In particular, it will be critical to address the conflicts in western and eastern Sudan (possibly through recreating regions after the southern model) and to foster democratic changes at the central level (both changes in government and in governance). A successful transition will require the international/donor community to design a multilateral and integrated strategy for peace, security and development in the Sudan.²⁷⁵

275) For more on this, see Emeric Rogier, *Designing an Integrated Strategy for Peace, Security and Development in Post-Agreement Sudan*, Occasional Paper, Clingendael Institute, The Hague, April 2005, 90 p.

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