

Negotiating Sudan's North-South Future

I. OVERVIEW

Sudan's fragile Comprehensive Peace Agreement (CPA) is entering its final phase, and a critical vote on Southern self-determination looms, but foundations for a constructive post-referendum relationship are yet to be laid. In addition to a handful of outstanding CPA items, future arrangements on citizenship and nationality, natural resource management (oil and water), currency, assets and liabilities, security and international treaties must be negotiated, regardless of the referendum's outcome. Many in Sudan and abroad are focused on ensuring the referendum exercise takes place on 9 January as planned. But simultaneously pursuing agreement on the broader post-referendum agenda is not only critical for a peaceful transition and long-term regional stability, but may also serve the more immediate objective of clearing the path for a mutually accepted referendum.

After months with little progress, the African Union (AU) High-Level Implementation Panel on Sudan and the U.S. jump-started stalled negotiations in recent weeks. But considerable work remains to bridge the gaps between the CPA parties, and time is short. Details of all the post-referendum arrangements cannot, and need not, be negotiated before the vote. But the absence of a basic blueprint for the post-2011 relationship between North and South contributes to uncertainties about the political and economic future of each, risks the referendum being viewed as a zero-sum game and thus sustains fears about the smooth conduct of the exercise and acceptance of its result.

The referendum is sure to shock Sudan's political system. Thus, efforts have intensified to achieve a framework agreement that addresses, in concrete terms, those post-referendum issues that will have an immediate impact on the population. Such an agreement should also ensure that a mechanism is firmly in place so that negotiations can continue beyond January – up to (and possibly beyond) July 2011, the date on which both the CPA expires, and the South might expect to attain independence, if it votes for secession, as expected. The framework currently under consideration also espouses a series of general principles within which to frame future discussions.

But with less than seven weeks until the vote, the pace of negotiations is cause for concern. Mistrust between the parties remains high, and the still unresolved issue of Abyei

complicates the political environment. Given the political brinkmanship that has long characterised Sudan's North-South politics, it is conceivable that the parties might continue to circle fruitlessly before attempting to strike a grand bargain at the last moment. Such high-stakes gambling risks instability in Sudan and the region, and should be discouraged.

As voter registration for the referendum is now underway, the chances for spoilers to derail the exercise are diminishing fast. Some National Congress Party (NCP) officials have shown signs that they may be increasingly resigned to the reality of partition, but the ruling party could still contest the results on technical grounds or withhold its recognition of an independent South. As the Sudan Peoples' Liberation Movement (SPLM) in Juba clamours for international safeguarding of the South's right to self-determination, the NCP waits. It could continue to stymie negotiations on post-referendum arrangements, preferring to employ its leverage at the eleventh hour in an attempt to extort significant concessions from the SPLM and the international community in exchange for their endorsement of the referendum.

Southern Sudan's right to self-determination is guaranteed by the CPA, and efforts must continue to ensure smooth conduct of the 9 January poll. But progress now toward a series of win-win arrangements could also remove obstacles to the referendum and temper the potential impact of its result.

II. NCP-SPLM DYNAMICS

Both the NCP and the SPLM seek reassurances, and because neither has gotten them, post-referendum negotiations are stuck, and uncertainty about the referendum exercise persists.¹ The NCP feels threatened, its future uncertain. The political and security landscape has changed since the signing of the CPA in 2005. Darfur rebels continue to

¹ For recent Crisis Group reporting on these and related Sudan issues, see: Crisis Group Africa Briefing N°175, *Sudan: Defining the North-South Border*, 2 September 2010; Africa Report N°159, *Sudan: Regional Perspectives on the Prospect of Southern Independence*, 6 May 2010; all previous Crisis Group reports and briefings on Sudan can be viewed and downloaded at the website, www.crisisgroup.org.

present a problem to the government, formerly aligned constituencies feel betrayed, and Northern opposition parties are poised to blame the party for partition and capitalise accordingly. The NCP is concerned that aggrieved political forces might coalesce and wary that Juba might support one or more.² Its political future is also threatened by economic vulnerability, as a majority share of the country's most profitable resource – oil – appears about to be lost to an independent South.

The SPLM wants assurance that the referendum will happen and that Khartoum will both accept the result in good faith and be the first to extend recognition if the vote is for secession. While the SPLM has proven it is willing to deal, its singularity of focus on the referendum has also at times curtailed negotiations. There appears a calculation by some party members that it may be wiser (for domestic political reasons) to talk in concrete terms about cooperation with the North only after the people of Southern Sudan have exercised their right to self-determination, as well as a desire to deal with some issues on what it hopes might be more equal footing after the referendum.

Thus, neither party is likely to ease its posture on the post-referendum agenda further until some assurances are obtained. Ideally, moderates who can see beyond the current mistrust to the benefits of future cooperation could be drawn out. But the highly-politicised atmosphere limits the chances for such pragmatists to deliver.

Throughout 2010, the SPLM has remained adamant that the referendum date is non-negotiable. Its sense of urgency mounted as preparations for the exercise lagged, and its appeals for international safeguarding intensified. Southerners fear that their long-awaited chance for independence, like so many unfulfilled promises in the past, might be thwarted by Khartoum. As such, President Salva Kiir and the leadership of the Government of Southern Sudan (GoSS) consistently stressed the 9 January date in the international arena, warning of the dire consequences of a delay, including return to war.

While the South and its SPLM leadership now undoubtedly favour secession, SPLM policy was once dominated by a platform for democratic renewal of all Sudan – the “New Sudan” vision. In the wake of its former leader John Garang's tragic death in 2005, differing visions within the party between secessionists and “New Sudan” supporters came into sharper focus. The secessionists ultimately prevailed, and most others were convinced over time, as the familiar NCP politics of intransigence diminished hopes of national reform. As “New Sudan” faded from the party's agenda, the SPLM increasingly disengaged from national

politics.³ As a result, its strategic relations with the NCP evolved and its political leverage in Khartoum was diluted, forcing it to rely more and more on the influence of CPA guarantors to hold the NCP to account.

There is considerable speculation about what the NCP's ultimate policy vis-à-vis the referendum will be, as party members have given conflicting signals, and a coherent strategy has yet to emerge.⁴ Many believe this is because the NCP never expected the referendum would materialise and they would be faced with the stark reality of impending partition. Camps promoting differing perspectives emerged within the party regarding both the referendum and negotiations on post-referendum arrangements. Some hoped to delay or deny the plebiscite altogether; others were ready to allow the South to go but would fight to maintain sufficient control of the oil, including, if necessary, by orchestrating destabilisation along the North-South border. A third camp of pragmatists, cognisant of international pressure, an ICC-indicted president, and the legacy of residing over partition, wished only to negotiate the best possible package of post-referendum arrangements and thereby solidify continued NCP control of North Sudan.

Even if not united on the objective, the tactical bottom line has been that the party could afford to wait-and-see. While the stakes are high – the peace and stability of the country – there appear few disincentives for it to do otherwise. It might continue to drag its feet, knowing that in doing so, it could aggravate the South and possibly force the SPLM into ill-advised decisions or major concessions on post-referendum issues. While a dangerous gamble, the NCP might wait until the eleventh hour and attempt to extract such concessions in exchange for a smooth referendum and recognition of its result. The obstinacy calculation extends further: waiting might also improve the severance package to be obtained from the international community in exchange for playing ball on the referendum. But if ill timed, a policy of extortion could endanger the opportunity to end the country's isolation and normalise political and economic relations more broadly. Furthermore, last-minute deals that disadvantage the SPLM, if reached in bad faith, are liable to be dishonoured in the long run.⁵

² See Section VI.3 below for further discussion of political and military support for opposition groups.

³ This shift generated serious disagreement between the party's northern and southern sectors, a factor which showed itself in the run-up to the April 2010 elections, when the interests of the two clashed.

⁴ This reality, as well as the differences in approach and internal power dynamics, has complicated negotiations. Crisis Group interviews, Khartoum, Juba, November 2010.

⁵ Crisis Group interview, senior SPLM official, Khartoum, November 2010.

III. THE MEKELLE MEMORANDUM: TALKS BEGIN

Following Sudan's April 2010 presidential and parliamentary elections, party leaders began informal discussions about structuring negotiations on post-referendum and post-CPA arrangements between North and South. At the same time, former South African President Thabo Mbeki and his AU partners were positioning themselves to spearhead international engagement in charting a post-CPA relationship between North and South. Mbeki was heading the AU High-Level Implementation Panel (AUHIP), which, after reviewing the situation in Darfur, had been given an expanded mandate "to assist the Sudanese parties in implementing the CPA and related processes".⁶ It largely succeeded in bringing international actors together behind their engagement, so as to ensure a coherent approach and prevent the parties from forum shopping.

In June 2010, the CPA parties signed a Memorandum of Understanding in Mekelle (Ethiopia) that committed them to a discussion of the post-referendum issues and outlined its modalities. Such talks would be grounded in the peace agreement but not constitute renegotiation of it. A joint negotiating team was established, with six members from each party.⁷ Four clustered working groups were also established – (1) Citizenship, (2) Security, (3) Financial, Economic, and Natural Resources, and (4) International Treaties and Legal issues – to review potential arrangements on each issue and feed in to a joint high-level negotiation team. Each group had three to five negotiators from each party and was supported by technical experts as requested.

⁶ In July 2008, the AU Peace and Security Council (PSC) called for the formation of a high-level panel to examine the crisis in Darfur and formulate recommendations on accountability and reconciliation in the region. This panel was led by former Presidents Thabo Mbeki (South Africa), Pierre Buyoya (Burundi) and Abdulsalami Abubakar (Nigeria). Its October 2009 report was exhaustively researched and well-received, though implementation of its recommendations remains minimal. The work constituted a new chapter in AU political engagement on Sudan. The PSC subsequently broadened the mandate of the panel – now known as the AU High-Level Implementation Panel (AUHIP) – to address CPA implementation. Crisis Group Report, *Sudan: Regional Perspectives on the Prospect of Southern Independence*, op. cit.

⁷ The SPLM team included: GoSS Minister for CPA Implementation Pagan Amum, GoSS Minister for SPLA Affairs Nhial Deng, GoSS Minister for Regional Cooperation Deng Alor, GoSS Minister of Legal Affairs and Constitutional Development John Luk, GoSS Minister for Cabinet Affairs Kosti Manibe, and GoSS Minister for Irrigation and Water Resources Paul Mayom. The NCP did not designate a fixed team, though it was led by Idriss Abdel-Gadir.

The memorandum put the parties themselves in the driver's seat. The talks were first and foremost bilateral, with an option to request the facilitation of the AUHIP or other external technical assistance when deemed necessary. According to the facilitator's terms of reference, AUHIP presence in direct negotiations would require the request of both parties, but the panel could initiate discussions, raise issues with either party, provide technical and/or political advice and be proactive in making proposals.⁸

In the ensuing three months, substantive negotiations were few and there was little progress to report. Working groups were handicapped by the interconnection of issues, minimal sequencing of the agenda and the absence of strategic directives from the parties.⁹ The SPLM had too little technical expertise and felt access to information was controlled by their NCP counterparts in government. Requests for disclosures, particularly regarding oil statistics and other economic issues, went largely unanswered.

Prior to Mekelle, senior SPLM officials were clear that third-party engagement was necessary and in their interest.¹⁰ But as time passed, the party appeared both uncertain of what it might gain from such engagement and unsure how to make it happen.¹¹ This was due in part to what it perceived as increasing signals from the international community that they should accommodate the North in exchange for independence. While such sentiments were driven by regional stability objectives, the SPLM resented what they saw as shallow suggestions to "buy their freedom".¹² It did in each working group circu-

⁸ Terms of Reference of the Facilitator, obtained by Crisis Group.

⁹ Despite a pledge in the Mekelle Memorandum to involve civil society in the process, neither women nor civil society groups were sufficiently engaged in issues or negotiations that might directly affect them.

¹⁰ Crisis Group interviews, senior SPLM officials, Juba, April 2010.

¹¹ SPLM officials expressed mixed feelings about the AUHIP following expansion of its mandate in February 2010 and again when its role in North-South issues materialised. Crisis Group interviews, SPLM officials, Juba, April 2010. Warranted or not, uncertainties also included concern about the panel's ultimate intent, which they perceived to include a preference for unity. Ethiopian President Meles Zenawi was critical in selling President Mbeki and the AU to the SPLM, but while it opened up to them, a degree of uncertainty lingered. Crisis Group interviews, senior SPLM officials, Juba, October 2010.

¹² In a 17 September 2010 address to the U.S. Congressional Black Caucus Foundation, GoSS President Salva Kiir remarked: "There are rising calls that the South must make 'accommodations' and 'compromises', if it expects the North to accept its independence. The terms 'accommodation', 'compromise' and phrases such as 'buy your freedom' are troubling. These terms imply in some way that the South has not already made significant compromises and sacrifices. Anyone who knows the his-

late proposals. Across the table however, the NCP appeared uninterested. It did little in the way of making proposals or responding to SPLM ones.

While the small AUHIP team worked hard to position itself as the go-to third-party facilitator, observers questioned the infrequency of its direct engagement and desired a more proactive strategy. In any such mediation, criticism is inevitable from those on the outside, particularly when the approach, as was the AUHIP's, is close-hold. However, some suggestions were merited. The parties were largely in control of the process, but many felt the panel had a mandate to do more to push them forward and could better draw on the technical expertise of other international partners.¹³

IV. NEW YORK: ABYEI I

On 24 September 2010, a high-level meeting was convened on the margins of the UN General Assembly. Some 30 heads of state and foreign ministers, including U.S. President Obama, drew attention to Sudan, reiterated their commitment to a timely referendum and underscored that agreement on post-referendum arrangements is "a matter of urgency".¹⁴ Meanwhile, the hotly contested region of Abyei remained unresolved. Located between Northern Bahr al Ghazal, Warrap and Unity states to the south and Southern Kordofan to the north, Abyei is geographically, ethnically and politically caught between North and South. It is home to the Ngok Dinka, while Misseriya nomads migrate seasonally through the territory.

Abyei has long been – and remains – a flash point, where land, nomadic grazing rights, security, and (formerly) oil contribute to volatility. By way of a protocol, the CPA granted the disputed territory special administrative status under the presidency and its own January 2011 referendum to decide whether to continue that status within the North or become part of the South.¹⁵ As preparations for this referendum foundered, rhetoric ratcheted even higher, and the hardened positions of political elites trickled down to communities.¹⁶ Just as Abyei threatened to spoil

CPA negotiations in 2004, it became clear the issue might prevent an agreement on post-referendum arrangements if left unresolved. Finding a solution quickly became a priority. Having played a critical role in brokering and drafting the CPA's Abyei protocol in 2004, the U.S. made a move.

Special Envoy Scott Gration used the UN opportunity to invite the parties for a weekend of trilateral talks on Abyei at the Green Tree Estate in Manhasset, New York.¹⁷ His office tabled a proposal that addressed the critical issues: citizenship, settlement and movement rights within the territory, economic activities, security cooperation and natural resources. The oil revenue-sharing proposal was not particularly contentious.¹⁸ Contrary to popular belief, Abyei, as defined by the Permanent Court of Arbitration in 2009, is not "oil-rich".¹⁹ Current estimates are that Abyei accounts for roughly 0.6 per cent of Sudan's oil revenue.²⁰ The U.S. proposal also addressed the most contentious issue – who was eligible to vote in the planned Abyei referendum.

¹⁷The SPLM contingent included Pagan Amum, Deng Alor, GoSS Minister in the Office of the Presidency Cirino Hiteng, State Minister at the Presidency Weik Mamer Kuol, and officials from the GoSS mission in the U.S., David Buom Choat and Agnes Oshawa; the NCP delegation included NCP official and Director of Strategic Studies Centre Sayed Al-Khatib, State Minister at the Ministry of International Cooperation Yahiya Hussein Babiker, State Minister for Ministry of Humanitarian Affairs Mutrif Sideeg, State Minister at the Presidency Amin Hassan Omer, and National Security Advisory Council member Bakri Saeed.

¹⁸The original U.S. proposal was that in the event Abyei becomes part of Southern Sudan, the revenue from the oil fields currently producing and those that would produce in the future would be shared as follows: 50 per cent for the GOSS; 42 per cent for the Government of Sudan; 4 per cent for Abyei area (with stipulations to be administered by the Abyei Administration and shared with the Misseriya Community); 2 per cent for development projects to benefit Ngok; and 2 per cent for development projects to benefit the Misseriya. In later negotiations, neither party appeared to object to a 92 per cent share for Khartoum or Juba, depending on which way Abyei went.

¹⁹Per the CPA, the territory of Abyei was to be defined by an Abyei Boundary Commission (ABC). That body's 2005 ruling meant that a significant percentage of Sudan's known oil reserves fell within the territory of Abyei (though output from the producing fields has since been in steady decline). The NCP rejected the ruling, and after three years of deadlock and a series of violent clashes, the parties submitted the dispute for arbitration. The Abyei Tribunal, constituted at the Permanent Court of Arbitration (PCA), announced its final award in 2009, which reduced the size of the area set forth by the ABC, and in doing so in effect cut the two most lucrative sites – the Heglig and Bamboo oilfields – out of the area.

²⁰The percentage of total production is even lower, as it is good quality oil. Crisis Group email correspondence, international petroleum sector analyst, November 2010.

tory of our country knows that nothing could be further from the truth".

¹³Crisis Group interviews, diplomats, Juba, Khartoum, September, November 2010. The Mekelle agreement also formalised a role for the Assessment and Evaluation Commission Secretariat in supporting the negotiating teams, though its experts were under-utilised.

¹⁴Communiqué, High-Level Sudan Meeting, New York, 24 September 2010.

¹⁵Crisis Group Briefing, *Defining the North-South Border*, 2 September 2010.

¹⁶Crisis Group interviews, Abyei Area, October 2010.

Many Misseriya fear that secession of the South – possibly including Abyei – could result in a loss of grazing rights, thereby threatening their way of life. Some in Khartoum have stoked such concerns, and encouraged the Misseriya to fight for participation in the Abyei referendum. While the GoSS has repeatedly pledged that the Misseriya may continue their traditional grazing patterns into Abyei and South Sudan regardless of the referendum outcome, the issue of security and arms-carrying during migration has not been sufficiently addressed, contributing to Misseriya scepticism of such pledges.²¹ In addition to the Ngok Dinka, whose right to vote is uncontested, the original U.S. plan proposed that eligibility be extended to those who had resided inside the Abyei Administrative Area for one continuous year prior to voter registration.

According to officials present, NCP team leader Sayed Al-Khatib welcomed discussion and engaged positively, but the delegation indicated it was not authorised to make decisions and requested a week to review the proposal and consult interested constituencies.²² The parties pledged to meet again in Addis Ababa and agree on criteria for membership of the Abyei Area Referendum Commission, nominate its members and find a solution on voter eligibility.

V. ADDIS ABABA: ABYEI II

As agreed, Gration convened the parties, as well as Ngok Dinka and Misseriya leaders, to more formal talks in Addis Ababa in October. Presidential Adviser Salah Gosh replaced Al-Khatib, and NCP posturing was more stringent from the outset.²³ The original proposal's text did not survive long, and a variety of variants were pitched, testing a series of governance, citizenship and security equations. U.S. development packages in the tens of millions

of dollars were also on offer, particularly for the Misseriya. An NCP paper proposed joint administration of an integrated territory belonging to both North and South, another idea suggested splitting the area in half between North and South. Neither were seriously entertained.

While some of the ideas discussed might satisfy objectives in Khartoum or Juba, not all would solve the Abyei problem on the ground. In the end, the parties tentatively agreed to forgo the referendum, acknowledging that at such a late stage it could be problematic both for Abyei and the political landscape more broadly. But the SPLM would not publicly commit to side-stepping the Abyei referendum until a viable alternative was agreed.²⁴ An SPLM-endorsed proposal was floated that would cede the territory to the South by presidential decree, while offering something to the NCP in exchange. This is the likeliest outcome, but what the NCP wants in return remains unclear.²⁵

While nominally representing the interests of local Misseriya communities – a constituency it hoped not to alienate – the NCP also used Abyei as a bargaining chip. In addition to testing the waters on what the SPLM might concede on Abyei or other post-referendum issues, it was at least as interested in identifying what incentives the U.S. might offer. When the parties failed to make progress, it was accepted that an Abyei solution could not be achieved in isolation from the remaining post-referendum issues, and nine days of frank talks concluded without any resolution. Nevertheless, the U.S. did usefully jump-start more substantive discussions with the parties. The Addis round both brought details of some other post-referendum issues into sharper focus and catalysed another round of talks on the CPA and post-referendum agendas. Because Abyei would be considered in the context of this broader post-referendum landscape, the AUHIP was invited to carry the process forward.

Meanwhile, as progress on referendum preparations and the post-referendum arrangements foundered, political rhetoric heightened to dangerous levels. Warnings and threats were issued, including on the issue of citizenship and the future status of Southerners in the North. Information Minister Kamal Obeid (NCP) sparked controversy when he said that if the South chose secession, “[Southerners] will not enjoy citizenship rights, jobs or benefits, they will not be allowed to buy or sell in Khartoum mar-

²¹ Crisis Group interviews, Misseriya cattle owner, Abyei Area, October 2010. Many Misseriya have not crossed into South Sudan in recent seasons, given a standing Sudan People's Liberation Army (SPLA) order for them not to come with weapons. As a result, resource pressure has been intensified in Abyei, and tensions are again high during this season's migration.

²² Crisis Group interviews, September, November 2010.

²³ The NCP delegation also included Minister for International Cooperation Galal Yousif Al Degair, Ambassador and NCP lead on Abyei Portfolio El-Dirdieri Mohamed Ahmed, State Minister at the Presidency Idriss Abdelgadir, and senior Misseriya community figures, Abdelrasoul El Nour and Muktar Babo Nimr; the SPLM delegation included Pagan Amum, Deng Alor, Nhial Deng, Luka Biong Deng, Wek Mamer Kuol, Head of GoSS Mission to the United States Ezekiel Gatkuoth, David Buom Choat, Agnes Oshawa, and David Dang Kong. Sizeable delegations from both the Ngok Dinka and Misseriya communities also participated.

²⁴ Crisis Group interviews, Juba, Khartoum, October-November 2010.

²⁵ SPLM officials have hinted at development packages and citizenship options for the Misseriya as well as a percentage of Abyei's oil revenues and other financial incentives.

ket, and they will not be treated in hospitals".²⁶ National Assembly Speaker Ahmed Ibrahim Al-Tahir said they would be "second class citizens" in the North.²⁷ Islamic councils reportedly issued fatwas against Southerners in Khartoum, and allegations of intimidation were levelled against unity supporters in the South.²⁸ Accusations were traded of aggressive military posturing and provocation along the North-South border.²⁹

The proximity of the national army (the SAF) and the South's army (the SPLA), as well as proxy forces, in some areas along the border presents a considerable risk of unintended conflict. Command and control structures are put to the test in such circumstances, as a single hostile incident could inadvertently ignite much broader conflict, particularly in the period around the self-determination referendum, when emotions will be high.³⁰

VI. KHARTOUM TALKS: TOWARD A FRAMEWORK AGREEMENT

The AUHIP reconvened broader and quieter negotiations on 7 November at the Council of Ministers' premises in Khartoum. The panel aimed to conclude a framework agreement within the week, just before the Eid holiday and in time to send a positive signal to all Sudanese before voter registration for the referendum began on 15 November. The U.S. special envoy's office and the UN Mission in Sudan (UNMIS) were invited to participate in the high-level talks, and broader consultation was sought with a variety of international technical experts.³¹

²⁶"NCP minister criticised over Southern Sudanese in the North 'will not enjoy remarks' Sudanese in citizenship", *Sudan Tribune* (online), 26 September 2010.

²⁷"Al-Tahir calls on people to preserve Sudan's unity", *The Citizen* (online), 5 October 2010.

²⁸Crisis Group interviews, international officials, Khartoum, November 2010.

²⁹Attention has most recently been drawn to a confirmed SPLA deployment inside the Abyei Area, which was subsequently withdrawn, as well as alleged new Sudan Armed Forces (SAF) activity near the South Kordofan-Northern Bahr al Ghazal border and the White Nile-Upper Nile border. Crisis Group interviews, retired SAF general, senior GoSS security official, Juba, November 2010. Crisis Group email correspondence, UNMIS official in Abyei, October 2010.

³⁰Crisis Group Briefing, *Defining the North-South Border*, op. cit.

³¹In addition to broader consultation, the AUHIP increased its substantive support staff, moves welcomed by the Khartoum diplomatic community. Some also perceived a welcome and necessary shift in its approach: from desire for a Sudanese-owned and -led process to one driven by more proactive mediation. Crisis Group interviews, diplomats, Khartoum, November 2010.

Hoping to break the deadlock, the SPLM, NCP and AUHIP urged the U.S. administration to come forward with a more detailed incentives package in advance of the talks.³² It is no secret that Washington has the kind of big-ticket items that might alter the equation. In early November, the Obama administration presented an offer to lift the U.S. designation of Sudan as a state sponsor of terror as early as July 2011, normalise diplomatic relations including exchange of ambassadors, work with Congress to remove unilateral economic sanctions and assemble a package of aid and multilateral debt relief that might provide a counterweight to the potential cost of partition and help reintegrate Sudan into the world economy.³³

The U.S. had already sent signals to Khartoum of its readiness to deal by directing its Office of Foreign Assets Control (OFAC) to ease restrictions on the sale of agricultural equipment, and pledged to further expand such licensing arrangements.³⁴ In addition to overtures from Graton and Ambassador Princeton Lyman, Senate Foreign Relations Committee Chair John Kerry made back-to-back trips to Sudan in early November to deliver the message on behalf of the White House.

The U.S. incentives are on offer in exchange for, among other things, smooth conduct of the referendum and recognition of its result, agreement on the post-referendum issues and resolution of the Abyei issue, affirmation of the rights of Southerners in the North, and refrain from military action or destabilisation along the border. The most substantial carrot – the lifting of U.S. economic sanctions – would also be contingent upon an improved government approach in Darfur: provision of humanitarian aid, freedom of movement for the UN-AU Mission in Darfur (UNAMID), continuation of peace negotiations and an end to militia support and the targeting of civilians.³⁵ While a lucrative package, the NCP remains par-

³²Crisis Group interview, U.S. official, November 2010.

³³While not as overtly transactional as the U.S. offer, other key Western and Gulf countries were ready to contribute incentives and relieve debt and made clear to Khartoum that smooth completion of the CPA would transform the country's economic relationship with the international community. Crisis Group interviews, diplomats, Khartoum, November 2010.

³⁴Valmont Industries Inc., a U.S. company specialising in irrigation equipment, was given a "test case" license for an initial sale of equipment to the Sudanese sugar company Kenana on 20 September 2010. The U.S. company's interest broadened when OFAC issued a broader exemption. Valmont actively lobbied for the exemption, backed by Graton. Both sides hope the relaxing of licensing arrangements will attract foreign investment, alleviate food shortages and bolster the agricultural sector. Maram Mazen, "Valmont holds talks on sales to Sudan as U.S. sanctions ease", *Bloomberg*, 26 October 2010.

³⁵U.S. document carried to Sudan by Senator Kerry, as published in Al-Sahafa (Sudan).

ticularly wary, as it feels Washington reneged on similar offers during the CPA negotiations and might do so again. Also of interest to at least some elements of the ruling party is a Security Council deferral – via Article 16 of the Rome Statute – of the ICC arrest warrant for President Bashir, though this issue has not surfaced in these exchanges, and the party is realistic about its chances on this front.³⁶

While the administration can deliver on the terrorism designation and its associated sanctions, broader economic sanctions and debt relief are not within the president's discretion. The administration made every effort to convince Khartoum that it would work with Congress and the wider international community on them, but neither debt nor full sanctions relief can be guaranteed, and they cannot happen overnight.³⁷ The roadmap to normalisation has been laid out, but the most desirable items are at the end, and some of the benchmarks remain open to interpretation.³⁸

The AUHIP presented a 30-page framework document for discussion, the foundation of which was an "Overriding Principle" of "Promoting a Viable Northern and

Southern Sudan" beyond the referendum.³⁹ The majority of the document was aspirational – general principles designed to ensure that negotiations would continue beyond January and in effect facilitate a peaceful divorce, future cooperation, and protection of the rights of Sudanese in North and South. In addition to a host of re-commitments to outstanding CPA agenda items (such as expeditious demarcation of the border), issues that could be dealt with going forward were addressed in general terms, while those with immediate post-referendum implications were dealt with more concretely. The most substantive included:

Citizenship and Nationality. The proposed agreement affirmed that no person's nationality or citizenship would change during the CPA period, regardless of the referendum outcome. Citizens would remain entitled to live anywhere in the country, and their rights as such would remain intact. In the event of secession, a person's status would not be determined until a new state was established in the South after the end of the CPA interim period in July 2011, new citizenship and nationality laws were established in that state, and existing laws were clarified in the Northern state. After these conditions were met, a constitutionally protected transitional period would ensue in which a person might freely choose to retain or acquire citizenship in either state.

The text was largely compatible with a previous SPLM proposal and grounded in state practice and international law. The NCP instead proposed that any person deemed eligible to vote in the referendum would be limited to Southern citizenship and would lose citizenship rights in the North. Some speculated this was in step with a campaign to create a true Islamic state after the referendum; others saw it as merely an emotional backlash against Southern secessionism.⁴⁰ SPLM counterparts and concerned interlocutors highlighted the dangers of an ethnic-based policy by asking pointed questions, formally and informally: what might such a policy mean for Northerners in the South? Since the policy appeared inconsistent with existing citizenship laws, was it not a slippery slope with potential implications for many groups in the North? Given that the regime is internationally isolated and the little support or protection it does receive is from Africa, would not a policy that in effect expelled Southerners on racial and ethnic grounds threaten further isolation, particularly on the continent?

³⁶ In his 27 September speech to the UN General Assembly, Second Vice President Ali Osman Taha expressed Sudan's rejection of the ICC decision regarding President Bashir and said it was a direct threat to the ongoing peace processes in the country. "Taha's speech at UN General Assembly", Sudan Radio Service, 28 September 2010.

³⁷ Sudan's total external debt was some \$35.7 billion, at the end of 2009. The majority of that amount (69%) is bilateral debt, roughly half of which is owed to Paris Club members and half to other bilateral donors. The remainder is owed to multilateral institutions (15 per cent) and commercial creditors (17 per cent). Bilateral debt owed to the U.S. is some \$2.2 billion. On the margins of the annual World Bank meeting on 9 October 2010, the U.S. and UK established a special working group to address Sudanese debt and initiated a reconciliation review to chart possible courses to reduce and ultimately eliminate its burden, in alternative potential post-referendum scenarios. But this is a lengthy process. Sudan's considerable arrears are a "significant stumbling block in the path of debt relief and restructuring". To qualify for many international relief mechanisms, including the Heavily Indebted Poor Countries (HIPC) initiative, bilateral and commercial arrears must first be cleared. The Paris Club – financial representatives from nineteen major world economies – can be proactive in relief and cancellation, but securing clearance arrangements would take time, and not all the debt is owed to Paris Club members. "Sudan – Technical Brief on the External Debt Situation", Background material for World Bank Annual Meetings, October 2010, obtained by Crisis Group. The U.S. dispatched a deputy assistant secretary of the treasury and its Paris Club representative to Sudan in October to outline the debt reconciliation process to finance officials in Khartoum and Juba. Crisis Group interview, U.S. officials, November 2010.

³⁸ Crisis Group interview, senior U.S. official, October 2010.

³⁹ Copy of an initial draft of the "Framework for Resolving Outstanding Issues Relating to the Implementation of the Comprehensive Peace Agreement and the Future Relations of North and South Sudan", obtained by Crisis Group.

⁴⁰ Crisis Group interviews, Khartoum, November 2010.

NCP negotiators appeared to acknowledge the weaknesses of the position, but they were toeing a party line.⁴¹ President Mbeki, therefore, went up the chain to meet with Vice President Ali Osman Taha following the talks to persuade him to reconsider. Taha subsequently tasked Gosh to negotiate compromise language with SPLM Minister Pagan Amum, but that session did not materialise and no agreement was finalised.⁴²

Currency. In the wake of the referendum results, some argue that uncertainty or confusion about currency arrangements could diminish confidence in the Sudanese pound and cause its devaluation. A monetary crisis would harm both North and South. A transitional monetary union, with joint regulation of monetary and currency policy was proposed, after which South Sudan might launch its own currency, provided Khartoum agreed to redeem Sudanese pounds for hard currency, and Juba secured foreign reserves to back it. Oil is the main source of Sudan's foreign reserves, which are also necessary to pay debt arrears, facts that underscore the extent to which the issues that define Sudan's forthcoming transition are interconnected.⁴³

Additional Issues:

Security. The framework document proposed a commitment that neither North nor South would host any opposition group operating against the interests of the other. This would also restrict refuge or financial, material or military assistance to such groups or their political leaders. Historically, both parties, but most notably the Khartoum government during the war, have engaged opposition groups in such a manner. Mini Minawi, a Sudanese Liberation Army (SLA) faction leader from Darfur, has been in Juba of late. Northern intelligence services allege that he and other rebel elements are operating from safe havens provided by Southern Sudan, and should be arrested.⁴⁴ New allegations have also been levelled against the South for hosting and/or supporting the JEM (Justice and Equality Movement) Darfur rebels.⁴⁵ Allegations likewise have

implicated the NCP as backing renegade generals in the South and renewing ties with elements of the Lord's Resistance Army (LRA), the notorious originally Ugandan insurgent group, operating along the South's borders.⁴⁶

However, a more nuanced solution is required to address the issue – in both political and security terms – when considering the SPLM's northern sector, as well as the considerable constituencies in the Nuba mountains and Southern Kordofan that have long been integral components of the party and its army. It is not realistic that Juba simply cut ties with them. Nor can CPA implementation alone resolve the dilemma. A more comprehensive strategy is required, building in part on the Popular Consultations processes in Southern Kordofan and Blue Nile.⁴⁷

Oil. Both regimes depend heavily on oil revenue, and secession would alter resource ownership and current wealth-sharing arrangements.⁴⁸ Oil was not addressed in great detail in the talks, because Norway, long a key international player in Sudan, is leading a parallel process toward arrangements on future petroleum sector management, and the framework refers to the principles of that track. All concerned appear to have broad confidence in its expertise and the direction of that process. In mid-October, Oslo helped establish a sub-group on oil under the "financial, economic, and natural resources" cluster group. Terms of reference as well as a roadmap of meeting dates and discussion topics were agreed, to be facilitated by Norway and its special petroleum envoy.

The roadmap is envisaged to be completed by mid-December, and draft architecture is planned to be presented sooner, within which the parties might negotiate specific details on pipeline rental, transit fees, port services, joint development options and the like.⁴⁹ Reaching

bels. U.S. officials are among those advising Juba to desist from any such activity as a strategic error. Crisis Group email communication, U.S. official, November 2010.

⁴⁶ Originating in Uganda, the LRA have long operated against the government in Northern Uganda, before moving on to South Sudan, Central African Republic and the Democratic Republic of Congo. In response to the Ugandan army's support for the SPLA during the war, the Sudanese government backed LRA rebels.

⁴⁷ Chapter V, Section 3 of the CPA provides for Popular Consultations to be held among the people of Southern Kordofan/Nuba Mountains and Blue Nile to determine whether or not the CPA meets their aspirations. The process was codified in law in the Interim National Constitution (2005) and the Popular Consultation Act (2010).

⁴⁸ Oil is responsible for roughly 60 per cent of the Government of Sudan's revenues and some 98 per cent of GoSS revenues. "Sudan Economic Report", Bank Audi sal-Audi Saradar Group, December 2009.

⁴⁹ As negotiations coalesced in November, Chinese representatives increasingly engaged the Norwegian facilitators, pre-

⁴¹ Crisis Group interview, international official, Khartoum, November 2010.

⁴² Crisis Group interviews, Khartoum, November 2010.

⁴³ The U.S. Agency for International Development (USAID) has funded monetary experts from Deloitte to advise the GoSS on future currency options and monetary policy.

⁴⁴ "My stay in Juba not for bad intentions, says Mini Arko Minawi", Sudan Radio Service, 11 November 2010.

⁴⁵ Intelligence reports indicate that Uganda may be hosting, training and possibly supplying JEM fighters and presume that Juba is at least aware. Crisis Group interviews, international officials, Khartoum, November 2010. Ugandan officials deny any such support. Officials are also attempting to ascertain whether supply routes servicing contingents of the Ugandan army (the Uganda People's Defence Force, UPDF) in South Sudan and the Central African Republic might also be servicing JEM re-

some level of agreement before the referendum is important not only because both economies need uninterrupted revenue, but also to sustain the confidence of oil companies in their existing investments. Norway has also been providing technical support and advice on petroleum sector management, assisting the National Petroleum Commission in preparation for an audit, and supporting assessment of prospects in the face of declining production. It has engaged both parties on models for cooperation and optimisation of economic potential, regardless of the referendum outcome.

Additionally, the AUHIP document proposed a joint review of all government assets and liabilities and principles for equitable allocation; agreement to fully fund and complete the Popular Consultations processes in Blue Nile and Southern Kordofan before the end of the CPA interim period; commitment to principles for a "soft" North-South border including a joint funding mechanism to promote cross-border activities; and a series of less binding principles on security, water and continuation of joint exploitation of oil resources.⁵⁰

The talks lasted more than a week, often late into the night, but the parties did not sign an agreement. While progress was arguably achieved, concrete commitments were minimal. Both parties weakened or excised substantive details from the proposed text and in some sense appeared "surprisingly happy to stay in the realm of general principles".⁵¹ Abyei remained a fulcrum on which the talks might tilt. The NCP wanted to agree on general principles without dealing with it but the SPLM insisted it be addressed concurrently. Thus, on the final day, Mbeki planned a meeting with Presidents Kiir and Bashir to discuss an Abyei solution. At the last minute, Senator Kerry called Kiir and urged him to go. He agreed, and after his plane from Juba was late, he waited. However, Bashir instead departed for an Eid pilgrimage to Mecca. The two met only briefly at the airport, and the sides blamed each other that substantive discussion could not take place.⁵²

While many of the general principles were verbally endorsed, the talks ended on 14 November with only an agreement to reconvene at the presidential level under AUHIP auspices, immediately upon Bashir's return. Talks were later agreed to recommence on 24 November, after a summit of the regional organisation Inter-Governmental

Authority on Development (IGAD) was announced in the interim.

The SPLM had for weeks signalled that it was ready to deal, but the NCP was noticeably reluctant to make proposals and sending conflicting signals, thereby complicating discussions, and Mbeki had little leverage. Many wondered whether this was another iteration of a familiar NCP tactic to engage in complex forums and extended talks but with no intention of delivering any real outcome.⁵³

While the impasse over post-referendum arrangements did not directly impede technical preparations for the referendum, it sustained a worrying atmosphere of uncertainty. Fear persists that post-referendum issues may be used to hold the exercise hostage, or that the NCP will withhold recognition of the vote's result. As long as its intent remains unclear, these concerns are merited. That said, as the referendum approaches and the steps toward producing a final voters list unfold, it will be increasingly difficult to derail the process. If and when there is an overwhelming vote for secession, attempts to deny recognition will be met with considerable pressure from many AU member states and the wider international community. It is not out of the question that Khartoum would defy such pressure, but to do so would further isolate it and increase its economic vulnerability.

VII. REFERENDUM SCENARIOS

Whether or not sufficient agreement is reached on critical post-referendum issues, a number of referendum scenarios can be anticipated. Which of the following might emerge may well be influenced by whether there is clear progress toward a set of mutually beneficial arrangements. Continued stalemate could well increase the likelihood of the more undesirable scenarios, and any outright denial of self-determination would risk a return to conflict.

Referendum is held on time, and Khartoum endorses the result. If the NCP negotiates principles on the post-referendum arrangements that it is comfortable with and secures a favourable package of international incentives, it may accept the referendum results and in due time extend official recognition to a new Southern state. Such deals may be contingent upon the ruling party withholding objections to irregularities or shortcomings in the referendum exercise itself. If so, the scenario would in effect be a negotiated settlement in which the referendum was primarily a ceremonial exercise, confirming the will of the people of South Sudan. International actors would breathe a sigh of relief, and their endorsement of the re-

sumably interested in the security of oil investments. Crisis Group interview, diplomat, November 2010.

⁵⁰ Working draft of "Framework for Resolving Outstanding Issues", op. cit.

⁵¹ Crisis Group interview, diplomat party to the negotiations, Khartoum, November 2010.

⁵² Crisis Group interviews, Khartoum, Juba, November 2010.

⁵³ Crisis Group interviews, Khartoum, November 2010.

sult and subsequent recognition of an independent state would be uncomplicated.

Referendum is held on time, and Khartoum contests results or withholds recognition. The more technically sound the registration and polling phases of the process, the less space there will be to contest the result. But the exercise of self-determination is ultimately a political event with political ramifications, particularly for the ruling party. If it desires, the NCP would find no shortage of pretexts on which to contest the result.

For example, members of an NCP National Assembly caucus have considered filing a Supreme Court challenge to the legality of the referendum timeline issued by the South Sudan Referendum Commission (SSRC), which shortened the period between publication of a final voters list and the polling date in contravention of the Referendum Act. A similar challenge may be submitted to the constitutional court.⁵⁴ If challenged after the poll, the political weight of a clear result in favour of secession would dampen, though not eliminate, such manoeuvres. There is no equivalent for NCP endorsement of the process. The prospect of such a scenario reinforces the importance of a political settlement now on the principles of the post-referendum agenda.

If Khartoum does not accept the result, regional states, institutions and CPA guarantors more broadly would need to consider how best to respond in order to ensure the CPA is upheld, the right of self-determination respected and new conflict avoided. The UN Secretary-General's Panel on the Referenda,⁵⁵ led by former Tanzanian President Benjamin Mkapa, might play a key role. In addition to quiet diplomacy in Khartoum and Juba, his assessment of the process and of the will of the people would inform the response of AU states and the international community more broadly.

⁵⁴ Crisis Group interviews, Khartoum, October 2010. An August meeting of the presidency directed the Commission to amend the timetables, but legal observers worried that the presidency directives were not binding. Crisis Group interviews, technical assistance providers and legal experts, Juba, November 2010. Article 32 of the South Sudan Referendum Act states that the Referendum Commission shall prepare the final voters register "three months prior to the start of polling". One week into registration, senior NCP officials also sent signals, accusing the SPLM of intimidating potential voters in the capital, and submitted a series of complaints to the SSRC. They threatened not to recognise the referendum result if the registration process continued in a non-transparent manner. "Sudan's NCP threatens not to recognise the referendum outcome", *Sudan Tribune* (online), 21 November 2010.

⁵⁵ The panel was mandated to deal with the Abyei referendum envisaged by the CPA as well as the South's.

Referendum is delayed, and South Sudan pushes ahead toward new referendum date. Delay is increasingly unlikely but still conceivable. While delay would generate considerable disappointment among Southerners, pursuing a new date would likely be the least contentious way forward. Exhausting all possible options, particularly if it was increasingly clear that the NCP was dragging its feet, would only build stronger support for the GoSS and SPLM case. The challenge would be to balance Southerners' patience against the prospect of real progress toward a new date. Extra time would be a necessary but not sufficient condition. Given Sudan's culture of political brinkmanship and the parties' poor record on CPA implementation, a clear roadmap to any new date would be required. Again, agreement on the post-referendum agenda would decrease the likelihood of NCP attempts to further protract the process.

Referendum is delayed or undermined, and South Sudan pursues a unilateral declaration of independence (UDI). A UDI would leave South Sudan's future largely in the hands of international public opinion and individual states' decisions whether to extend recognition. Those decisions are often made more on the basis of political interests than a principled approach to the circumstances of the territory in question. As such, some states have declared independence unilaterally and remain suspended in "geopolitical limbo" while world powers assert irreconcilable positions on their status.⁵⁶

The chances of securing individual recognitions would likely be greater if UDI were declared on 9 July (the end of the CPA period) than if the South acted in January, without exhausting alternatives. That said, the clearest path to legitimacy is, of course, via consent and recognition by the central governing authority in Khartoum, which would almost certainly not happen. While some regional states hint at recognition in such a scenario, and speculation about others further afield persists, it has been made clear to Juba that no one wants UDI. The SPLM is well aware of the risks and hopes to avoid the scenario, but the option remains on the table, should it be left no other recourse.⁵⁷

Referendum is delayed or undermined, and South Sudan conducts referendum on its own. During a visit of the Security Council to Sudan in October, Kiir floated the possibility of the South administering its own referendum, without participation of the national government or the NCP. Regardless of its political or financial feasibility, the idea had been increasingly discussed in SPLM circles

⁵⁶ Magdalena Frichova Grono, not yet published article prepared for Open Democracy.

⁵⁷ Crisis Group Report, *Sudan: Regional Perspectives on the Prospect of Southern Independence*, op. cit.

for weeks.⁵⁸ Unsurprisingly, the NCP responded immediately, labelling any such unilateral step an abrogation of the CPA. In such a scenario, Khartoum would undoubtedly undertake a diplomatic campaign to discredit the move as illegitimate and to prevent recognition by its international allies.⁵⁹ It could well find sympathetic ears, from regional states and beyond, including powers traditionally averse to secessions such as China and Russia.

With respect to unilateral options, the NCP might argue that the right to secession is circumscribed – not unconditional, but rather must be exercised in accordance with the CPA.⁶⁰ The SPLM might respond that the international community and the NCP have recognised, through the CPA, the South's right to self-determination and that this extends to a right to secession. It might further argue that the NCP, in failing to help organise the vote as prescribed in the peace agreement, breached its commitment to honour that right. Because that right has been repudiated, the SPLM is not bound by the process, but can seek alternative means through which to realise that right. It might also cite as justification for resorting to an alternative mechanism the "inter alia" language in the CPA's Machakos Protocol, to which the party leadership has for some time been drawing attention.⁶¹

VIII. CONCLUSION

In briefing the Security Council on the latest round of talks, President Mbeki pledged to reconvene the parties before the end of November to "agree on ways and means by which to accelerate and better coordinate the negotiations". Talks are set to resume the week of 22 November. A framework agreement, if signed, would not be the end itself, but an important step toward shaping the post-referendum relationship between North and South. It would serve to structure more detailed discussions ahead of the referendum, as well as between January and the end of the CPA interim period in July 2011.

Securing the referendum is the top priority, but neglecting the groundwork for positive post-referendum relations would be short-sighted and possibly a recipe for renewed conflict. Pressing the parties to complete these tasks before the end of the CPA period is the surest way to guarantee a peaceful transition in the near term and a stable relationship in the long run.

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⁵⁸ Many reasons might complicate or disqualify such an option. The GoSS would have to foot most of the bill and provide all technical and logistical support. Such a referendum could only take place in the South, thereby denying participation to Southerners in the North and the diaspora.

⁵⁹ Senior NCP official Rabie Abdulatti told Reuters that Kiir's words were unacceptable and argued: "Nobody would recognise it. This is against [the] CPA. Everything about its implementation should be agreed by the two partners". Louis Charbonneau, "South Sudan might have to hold its own referendum – president", Reuters, 7 October 2010.

⁶⁰ Article 2.5 of the CPA's Machakos Protocol states that "at the end of the six (6) year Interim Period there shall be an intentionally monitored referendum, organised jointly by the GOS and the SPLM/A, for the people of South Sudan to: Confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement, or to vote for secession".

⁶¹ Crisis Group interviews, Senior SPLM officials, Juba, October 2010. "Interview: Pagan Amum outlines south Sudan's 'ransom' to break Abyei deadlock", *Sudan Tribune*, 1 November 2010. A third-party official close to the CPA negotiations acknowledged that the phrase, while drafted very early in the CPA negotiations, was intended to convey the "accurate legal position that there is no single way of giving effect to the right to self-determination, which may have many other ways of being expressed". Crisis Group email correspondence, November 2010.

APPENDIX A

MAP OF SUDAN

