



THE SUDANS

Africa's Search for Peace,
Democracy, and Two
Viable States

Alex de Waal and Willow Berridge

Foreword by President Thabo Mbeki

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As I write these words, Sudan is mired in an intense, bloody, and destructive conflict. South Sudan has yet to recover from its own armed conflict that was no less destructive. These conflicts were avoidable. But they are nonetheless deeply rooted, complex, and apparently intractable. If the peoples of Sudan and South Sudan are to live in peace, lessons must be learned from the past.

In April 2019, when nonviolent popular protests by the Sudanese people led to the removal of the government of President Omar al-Bashir, the hopes for democracy and peace were very high. However, formidable challenges confronted the nation and its civilian-led government.

Because many opportunities were missed and errors were made, the high hopes generated by the people's uprising disappeared. Instead, an unnecessary and destructive war broke out. In this regard, both Sudanese and international actors bear responsibility. Indeed, the world has failed Sudan, through inaction, paralysis, and, in some cases, complicity in worsening the violence destroying Sudan.

In July 2011, when the South Sudanese celebrated their independence, hopes for the new nation were also very high. At that time, the international community demonstrated enormous goodwill and contributed considerable resources toward the building of the nation and the state. Mistakes, however, were also made and openings towards unity and a stable peace in the country were not taken. In this regard, both the South Sudan leaders and their international partners failed. Today, in 2025, South Sudan is an international orphan, its urgent need for peace, national reconciliation, and unity neglected by the world.

This book documents the activities of the African Union High-Level Panel on Darfur (AUPD, 2009), its successor the African Union High-Level Implementation Panel for Sudan (AUHIP, 2009–2011) subsequently renamed the African Union High-Level Implementation Panel for Sudan and South Sudan, to assist the people of both Sudan and South Sudan resolve their major political challenges.

I had the honor and privilege to serve as chair of the High-Level Panel (the Panel) in all its phases. I was joined in this endeavor by, among others, General Abdulsalami Abubakar, former president of the Republic of Nigeria, and President Pierre Buyoya, former president of the Republic of Burundi. Both these

former heads of state and the rest of my co-panelists served with dedication and distinguished themselves by their principled commitment to Africa's mission in the Sudans. Sadly, President Buyoya passed away in 2020 because of the COVID-19 pandemic. He is sorely missed.

The length and succession of names of the Panel members is an indication of the commitment of the African Union to Sudan, before and after the secession of South Sudan, and the complexity of the African Union's engagement over those years. The Panel's work has represented an unprecedented level of political engagement by the African Union. It confirmed a firm commitment to the norms, principles, and institutions solemnly adopted by African leaders when they formed the African Union in 2002, and it has served as an example of the functioning of the African Peace and Security Architecture put in place by the African Union after 2002.

This book tells the important story of that engagement. In doing so, it allows the reader to follow, in great detail, the analysis and activities of the Panel, of its African and international partners, and of the Sudanese and South Sudanese who were at the helm of their nations at that pivotal time in their history.

The account in this book is meticulously detailed, drawing on original sources and the extensive documentation provided by members of the Panel, including myself as Chairperson, members of staff, other diplomats and partners, and the Sudanese and South Sudanese parties. Rarely has an African exercise in facilitating peace, security, democracy, and justice been detailed in such a comprehensive manner.

It would be natural to assess the events described in this book in the light of subsequent events in the two Sudan's. Indeed, some of the seeds of the current calamities in these countries can be identified in several accounts in this book. Some of the relevant fault lines were indeed identified at the time.

In my preface to the report of the AUPD, presented to the African Union Peace and Security Council in October 2009, I summarized some of the key findings. For instance, I wrote: "During its extensive interactions with its Sudanese interlocutors, inside and outside Darfur, the Panel repeatedly heard that the conflict was, in reality, a manifestation of a broader crisis affecting the whole of Sudan."¹ This larger problem was the legacy of Sudan's colonial and postcolonial system of governance that cemented a highly unequal allocation of political power and economic resources, condemning the majority of the population to political disempowerment, economic underdevelopment, and marginalization. This malignant inequality was made more consequential because successive governments based in Khartoum also failed to address the

challenge of unity in diversity, so that the country's diversity served as a centrifugal force.

In that same preface, I warned of the dangerous illusion of seeking military solutions to the problems then confronting Sudan, writing: "It is true that the central power may have the possibility to defeat and suppress armed insurrections, which occur in the periphery. But it is equally obvious that, sooner or later, these insurrections would recur as long as the basic social and economic structure of Sudan remained unchanged."²

The AUPD report was adopted as the official African Union policy and strategy for Sudan by the heads of state assembled for that meeting of the Peace and Security Council. The Council determined that all activities of the Panel, and therefore the African Union, should be conducted under the guiding objective of the democratization of Sudan.

Thereafter, the work of the Panel was directed toward implementing that policy, even as it responded to the varied and changing circumstances. The most significant such change in circumstances was the referendum on self-determination in southern Sudan, held in January 2011, and the subsequent independence of the Republic of South Sudan, six months later.

Speaking in Khartoum on the eve of the Referendum, I underlined to an audience of northern Sudanese, who were naturally apprehensive about the fate of their country subsequent to the imminent secession, of how their future remained African. I said: "The Sudanese nation is a true melting pot of African peoples. Sudan's Pan-Africanism has been of the most practical kind, welcoming and integrating people from across the continent."

I concluded this part of my lecture with the following words:

In this context we would like to emphasise that should Sudan divide, it will not divide into an "African" south and an "Arab" north, still less into two states divided by adherence to different faiths. In the case of secession, the multi-ethnic, multi-religious African country of Sudan will divide into two countries, north and south, both of which are equally African, and both of which will of necessity embrace diversity.

We hold firmly to the view that northern Sudan is no less "African" than southern Sudan. Islam is a religion of Africa, just as the Arabs of Sudan and the Mahgreb are people of Africa.³

Two days later, I spoke to a large and enthusiastic audience in Juba, animated by a vibrant optimism about their future. The celebratory atmosphere was similar to that of the newly independent African nations in the 1960s.

Minded to impress on the South Sudanese some of the lessons of that wider experience, I said:

Part of that experience tells us that the struggle for self-determination is also a struggle for democracy and equality. The exercise of national self-determination, marked by the birth of an independent state is a vital step, but it is not the only step. It is when all citizens in a state, regardless of colour, race, ethnic origin, religious belief or gender exercise equal rights, that it can be said that freedom has truly been achieved.

Within South Sudan, the days and months following the historic exercise of the right of self-determination will be a time for healing, for reconciliation and for building a new, inclusive and democratic Southern Sudan.⁴

I also emphasized the economic challenge facing the new nation, in the changed African and international context of the 2010s: “The legacy of under-development . . . is yet to be overcome. The challenge facing South Sudan in the years ahead is to fight a new war. This is a war against poverty to build a better life for all the people of South Sudan. It will of necessity also have to be anchored on a democratic, developmental state capable of articulating and mobilising the necessary capacity from amongst the people to implement its programme with the people as the central pillars of that programme.”⁵

I reminded both audiences in north and south Sudan of the “overriding principle” agreed to by the government of Sudan and the Sudan People’s Liberation Movement before the referendum, namely that they would cooperate to achieve “two viable states,” with a shared commitment to living in peace and cooperating on resolving their shared social and economic challenges. I said: “This commitment had political, security, economic and social dimensions. It is deeper than a promise to respect one another’s sovereignty. It requires ongoing cooperation in all those fields, and building a special relationship of good neighbourliness, friendship and solidarity across what will be the longest international border on this continent. This border should be a ‘soft border,’ allowing the people who live adjacent to the border, or whose livelihoods depend upon crossing the border, to continue their lives with minimal disruption.”⁶

Sadly, this principle was honored in the breach. Absent such shared commitment to cooperation and good neighborliness, neither country could be expected to thrive. And so it has transpired.

The peace and stability of the two Sudan’s are of vital importance to the stability of a vast area of our continent and indeed of Africa. This includes Africa’s relations with the rest of the world, in particular with the states of the

Arabian Peninsula. Accordingly, as Africans, we have no choice but to collaborate with the sister people of Sudan and South Sudan to help them identify, bridge, and close the immense structural fissures between and within their countries. That was true when the Panel was established and is no less true today.

The Sudanese and South Sudanese confront these challenges in a world that is less favorable than it was fifteen years ago. The African Union and United Nations are weaker. Some of the tools they have fashioned have fallen into disuse, either because their most powerful member states prefer to conduct their foreign relations on a bilateral, transactional basis, or because the organizations' own leaders have chosen not to use the instruments at their disposal. Many of the democratic norms that underpinned our efforts have been transgressed with impunity. Aid donors are less forthcoming even while the needs for rehabilitation and reconstruction are greater.

Nonetheless, the norms enshrined in the Constitutive Act of the African Union and other solemn commitments to peace, democracy, and human rights, remain as valid as ever. The unification of facilitation efforts, in accordance with the African Union commitment to the guiding principle of democratization, and with a commitment to a sustained, deep, uninterrupted political accompaniment of the Sudanese and South Sudanese, is required.

Additionally, our analysis of the fundamental problems in Sudan and South Sudan, as I have outlined, remains relevant.

When we began our exercise in Darfur in March 2009, we posed two questions. The first was, "What is the definition of the problem that we are seeking to solve?" The second was, "What do the people of Sudan have to say about this?" As neither question could be answered satisfactorily by national political leaders and foreign diplomats, our starting point was to consult the people, beginning with the affected communities in Darfur, and to listen to them. Too often, that irreplaceable step and that consultative method, and the principle underpinning them, are forgotten.

The Panel did not engage with preexisting templates nor formulae for Sudan and South Sudan. Rather, our guiding principle was that political differences should be confronted through frank and honest dialogue. The Panel sought to keep the Sudanese and South Sudanese talking, rather than reaching for their guns. This demanded a combination of urgency and patience, statecraft, and candor.

We did not preach. Neither did we negotiate through the media. We listened to all involved, from the humblest citizen to heads of state. We never said no to dialogue. Our failures were when dialogue was foreclosed, undermined by obstinacy, poisoned by polarization, or short-circuited by the false allure of violence.

I am confident that with the full and effective participation of the people of Sudan and South Sudan in any and all mechanisms that determine their future, they can achieve the shared goals of democracy and prosperity, in two viable states, at peace with themselves, with one another, and with Africa as a whole.

We dedicate the publication of this important and historic book to the accomplishment of that realizable dream.

Preface and Acknowledgments

This book is a detailed account of the work of the most ambitious peacemaking efforts undertaken by the African Union (AU) since its creation in 2002. These took place in Sudan between 2009 and 2014. During this period, under the leadership of former South African President Thabo Mbeki, the AU High-Level Panel on Darfur (AUPD) first developed a strategy for seeking a holistic settlement to the Sudanese conflict in Darfur, and then the AU High-Level Implementation Panel for Sudan (AUHIP) played the central role in facilitating the talks over the secession of South Sudan and relations between what had now become two countries.

The book has three principal purposes. First, it is aimed at a readership of Sudanese and South Sudanese, providing documentation of a crucial period in their nations' shared history, using previously inaccessible sources. The five years covered in this account span the independence of South Sudan and include a number of events and episodes that are crucial to gain an understanding of those countries' history and current state of affairs. The Panel followed the practice that negotiation should not be conducted in public, and the Panel's chair and members rarely gave press conferences or made public speeches. Even when vehemently criticized in the press, including by the two parties, the Panel did not respond. Its version of events has not hitherto been made public. More than ten years on, putting events on the record is primarily a service to the people of Sudan and South Sudan, so they can be better informed and make their own assessment.

Second, this book is aimed at Africa's diplomats and peacemakers. The Panel headed by President Mbeki, along with General Abdulsalami Abubakar and President Pierre Buyoya (who sadly passed away as the research for this book was underway), was the most ambitious, wide-ranging, and sustained high-level African exercise in peace since the formation of the African Union in 2002. As one of the most significant African statesmen of his generation, President Mbeki applied the norms, principles, and methods developed during the period of inception of the AU to the challenge of Sudan, including the birth of the Republic of South Sudan. If there is to be an exemplary case of "African solutions to African problems," it is the Panel's work in the Sudans. Peace initiatives in Africa have rarely been documented and narrated drawing on the records and perspectives of African principals, and this book helps to fill this gap.

Third, the book seeks to illuminate the challenge of international engagement in complex, internationalized conflicts. The crises in the Sudans involved issues of justice, reconciliation, peace, democracy, self-determination, and economic stability. The response involved multiple multilateral organizations. As well as the AU, the Intergovernmental Authority on Development was engaged; and it was a matter before the United Nations Security Council (UNSC), not least because the United Nations had no fewer than four separate peacekeeping missions in the Sudans over this period. Of necessity, the US was deeply engaged throughout at a high level, because of its recent history in helping forge the Comprehensive Peace Agreement and the significance of its sanctions against Sudan. The AUHIP was mandated by the African Union Peace and Security Council meeting at the level of heads of state. In May 2012, the UNSC gave the Panel an additional mandate under resolution 2046, which gave it the option of requesting the Security Council to act using Chapter VII powers—an unprecedented level of authority, albeit one that the Panel declined to use. Throughout this process, the US was a major actor, and the book details the cooperation between Washington, D.C., and the AU.

The research and writing of this book were carried out by the authors in collaboration with President Mbeki and the members of the Panel staff and advisers, including Abdul Mohammed, Barney Afako, Pauline Onunga, Neha Erasmus, Chris Luckham, David Mozersky, Laura James, and others. Alex de Waal was a member of the Panel team from its inception, stepping back to a part-time role in July 2011. Some details provided here reflect his direct eyewitness account of the various talks; when possible, these have been referenced through his diaries, which are deposited in the Sudan Peace Archive. Willow Berridge is a scholar of Sudan who brings the perspective of an independent historian.

To conduct this research, we used the internal archives of the Panel, including President Mbeki's personal notebooks and files. The Panel's records were carefully cross-checked against the newspapers, articles, and books in both the Arabic and English languages and from Sudanese and South Sudanese press, which also proved invaluable for documenting not just the views of the negotiating teams but also the pressures they felt under their domestic constituencies. Aside from interviews with other key protagonists, this research also drew on the records of the late Ambassador Princeton Lyman, who was US Special Envoy during the critical period, and on with the personal collections and recollections of others who were engaged during the process, notably Lissane Yohannes, Joseph Tucker, Chris Luckham, and Vladimir Zhagora. Drafts were reviewed at workshops in Johannesburg held in May 2022 and May 2023.

Abbreviations

ABC	Abyei Boundary Commission
ACHPR	African Commission for Human and People's Rights
AEC	Assessment and Evaluation Commission
AIM	Ad Hoc Investigation Mechanism
AJOC	Abyei Joint Oversight Committee
AMIB	African Mission in Burundi
AMIS	African Mission in Sudan
ARC	Abyei Referendum Commission
ARCISS	Agreement on the Resolution on the Conflict in South Sudan
AU	African Union
AUBP	African Union Border Program
AUC	African Union Commission
AUHIP	African Union High-Level Implementation Panel for Sudan
AUPD	African Union High-Level Panel on Darfur,
AUPSC	African Union Peace and Security Council
AUTE	African Union Team of Experts
CBL	current borderline
CBOS	Central Bank of Sudan
CNPC	Chinese National Petroleum Company
CPA	Comprehensive Peace Agreement
CSO	civil society organization
DDDC	Darfur-Darfur Dialogue and Consultation
DDPD	Doha Document for Peace in Darfur
DoP	Declaration of Principles
DPA	Darfur Peace Agreement
DPP	Darfur Political Process
DRA	Darfur Regional Authority
DUP	Democratic Unionist Party
EAC	East African Community
EU	European Union
FVP	First Vice President
GNPOC	Greater Nile Petroleum Operating Company
GoS	Government of Sudan
GoSS	Government of Southern Sudan

HAC	Humanitarian Affairs Commission
HIPC	heavily indebted poor countries
ICC	International Criminal Court
ICID	International Commission of Inquiry into Darfur
IDP	internally displaced people
IGAD	Intergovernmental Authority on Development
IMF	International Monetary Fund
JBVMM	Joint Border Verification and Monitoring Mechanism
JCM	Joint Chief Mediator (of the AU and UN on Darfur)
JCM	Joint Command Mechanism (proposed for the Two Areas)
JDB	Joint Defense Board
JEM	Justice and Equality Movement
JIU	Joint Integrated Unit
JMST	Joint Mediation Support Team
JPC	Joint Political Committee
JPF	Just Peace Forum
JPSM	Joint Political and Security Mechanism
JSR	Joint Special Representative of the United Nations and African Union
JWG-EFNR	Joint Working Group on Economic, Financial, and Natural Resources
LJM	Liberation and Justice Movement
NCF	National Consensus Forces
NCP	National Congress Party
NEC	National Elections Commission
NEPAD	New Partnership for Africa's Development
Nilepet	Nile Petroleum Corporation
NISS	National Intelligence and Security Service
NSA	National Survey Authority
NUP	National Umma Party
OAG	Other armed group
OAU	Organization of African Unity
PCA	Permanent Court of Arbitration
PCP	Popular Congress Party
PDF	Popular Defense Forces
PILPG	Public International Law and Policy Group
PSC	Peace and Security Council
RSF	Rapid Support Forces
RSS	Republic of South Sudan
SAF	Sudan Armed Forces

SCCED	Special Criminal Court on Events in Darfur
SCP	Sudan Communist Party
SDBZ	Safe Demilitarized Border Zone
SLA	Sudan Liberation Army
SLM	Sudan Liberation Movement
SPLA	Sudan People's Liberation Army
SPLA-N	Sudan People's Liberation Army-North
SPLM	Sudan People's Liberation Movement
SPLM-N	Sudan People's Liberation Movement-North
SRF	Sudan Revolutionary Front
SRSG	Special Representative of the Secretary-General
SSLA	South Sudan Liberation Army
SSRB	Southern Sudan Referendum Bureau
SSRC	Southern Sudan Referendum Commission
SST	state sponsor of terror(ism)
Sudapet	Sudan National Petroleum Corporation
TARC	Tufts Archival Research Center
TBC	ad hoc Technical Boundary Committee
TFA	transitional financial arrangements
UN	United Nations
UNAMID	United Nations–African Union Hybrid Operation in Darfur
UNHCR	High Commissioner for Refugees
UNISFA	United Nations Interim Security Force for Abyei
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan
UNSC	United Nations Security Council
USSES	United States Special Envoy for Sudan

PANEL MEMBERS, STAFF, AND ASSOCIATES

Abdul Mohammed	African Union High-Level Implementation Panel for Sudan (AUHIP) chief of staff
Abdulsalami Abubakar	Panel member and former president of Nigeria
Alex de Waal	Senior adviser to the AUHIP
Barney Afako	AUHIP staff
Chris Luckham	AUHIP staff
Laura James	AUHIP staff
Paatii Ofosu-Amaah	AUHIP staff
Pauline Akelo Onunga	AUHIP staff
Pierre Buyoya	Panel member and former president of Burundi
Thabo Mbeki	Panel chair and former president of South Africa

SUDANESE AND SOUTH SUDANESE

Abdalla al-Sadiq Ali	Chair of Technical Boundary Committee (2005–2011)
Abdel Aziz al-Hilu	Leader of Sudan People's Liberation Movement (SPLM) in South Kordofan, subsequently SPLM-North
Abd al-Rahim Hamdi	Senior Islamist and former finance minister of Sudan
Abdel Wahid al-Nur	Leader of Sudan Liberation Movement
Ahmad al-Omda	Commander of Sudan People's Liberation Army (SPLA) Ninth Division, Blue Nile
Ahmad Ghazzali	President al-Bashir's translator
Ahmad Haroun	Governor of South Kordofan (2009–2013), subject of International Criminal Court (ICC) arrest warrant
Ahmed Ibrahim Tahir	National Congress Party (NCP) speaker of parliament
Ali Hamid	NCP politician; leader of the security cluster discussions
Ali Osman Taha	Vice president of Sudan (1998–2005, 2011–2013); second vice president (2005–2011)

Al-Tayyib Mustafa	Leader of Just Peace Forum and editor of Islamist newspaper <i>al-Intibaha</i>
Amin Makki Madani	Sudanese human rights lawyer
Daniel Kodi	SPLM governor of South Kordofan (2007–2009)
Deng Alor	Senior SPLM politician and Sudan foreign minister (2007–2010)
Dirdeiry Mohamad Ahmed	NCP Abyei negotiator
Francis Deng	Prominent South Sudanese academic and diplomat with ties to Abyei
Gabriel Changson	SPLM politician and banker involved in financial talks
Ghazi Salah al-Din	High-ranking NCP politician responsible for Darfur file
Ibrahim Ghandour	NCP secretary for political affairs
Hasan al-Turabi	Leader of National Islamic Front and architect of 1989 coup; subsequent leader of Popular Congress Party
Idris Abd al-Gadir	NCP lead negotiator during AUHIP-facilitated talks
Imad Adawi	Sudanese general representing the Sudan Armed Forces (SAF) in the talks
Ismat al-Zain	SAF chief of staff
James Hoth Mai	SPLA chief of staff
Jibreel Ibrahim	Leader of Justice and Equality Movement rebel group, (2012–present)
John Garang	Founder and leader of Sudan People’s Liberation Army (1983–2005); vice president of Sudan (2005)
Jugod Maker	Commander of SPLA Ninth Division
Kamal Obeid	NCP hard-liner and information minister, later responsible for “Two Areas” negotiations
Khalil Ibrahim	Leader of Justice and Equality Movement rebel group (2000–2011)
Kosti Manibe	SPLM politician and negotiator
Lam Akol	Former Sudan foreign minister and leader of Democratic Change Party in South Sudan
Luka Biong Deng	SPLM politician and cochair of Abyei Joint Oversight Committee
Malik Agar	Rebel leader in SPLM, then SPLM-North; governor of Blue Nile (2010–2011)

Minni Minawi	Leader of Sudan Liberation Movement
Mariam al-Sadiq al-Mahdi	Political leader in National Umma Party
Mohamed Ibrahim Khalil	Chair of the South Sudan Referendum Commission
Mohamed Mukhtar	NCP negotiator on citizenship cluster
Mohamed Osman al-Mirghani	Leader of Democratic Unionist Party and <i>Khat-miyya sufi</i> order
Mustafa Ismail	Sudanese foreign minister (1998–2005)
Nafie Ali Nafie	Leading NCP hard-liner and securocrat
Nhial Deng	Government of South Sudan minister for SPLA affairs
Omar al-Bashir	President of Sudan (1989–2019)
Pagan Amum	Senior SPLM politician and chief negotiator in AUHIP facilitated talks, cochair of government of Sudan (GoS)/SPLM joint political committee
Paul Mayom	SPLM politician and negotiator in AUHIP-facilitated talks
Riek Degoal	Deputy chair of the Technical Boundary Committee (2005–2011)
Riek Machar Teny	SPLM deputy leader and vice president of South Sudan after 2011
Sabir Mohamed Hassan	Governor of the Central Bank of Sudan and principal NCP negotiator in financial talks
Sadiq al-Mahdi	Prime minister of Sudan (1966–1967, 1986–1989); subsequently leader of opposition National Umma Party
Salah Abdalla “Gosh”	Former intelligence chief and cochair of GoS/SPLM Joint Political Committee
Salva Kiir Mayardit	Vice president of Sudan (2005–2011); president of South Sudan (2011–present)
Salva Mathok	Senior SPLA military commander and SPLM politician
Sayed al-Khatib	Senior NCP politician and negotiator in AUHIP-facilitated talks
Tariq Abd al-Karim	SAF colonel and assistant to minister of defense
Yasir Arman	SPLM, then SPLM-North politician and Two Areas negotiator; Sudan presidential candidate in 2010

OTHER AFRICAN FIGURES AND PARTICIPANTS

Djibril Bassolé	UN joint chief mediator for Darfur (2008–2011)
Elghassim Wane	Director of the AU Peace and Security Department
Hailemariam Dessalegn	Prime minister of Ethiopia (2012–2018)
Ibrahim Babangida	President of Nigeria (1985–1993)
Idriss Déby Itno	President of Chad (1990–2021)
Jean Ping	AU Commission chair (2008–2012)
Lazaro Sumbeiywo	Lead mediator of 2005 Comprehensive Peace Agreement
Lissane Yohannes	Intergovernmental Authority on Development special envoy for Sudan
Meles Zenawi	Prime minister of Ethiopia (1995–2012)
Oumar Konaré	AU Commission chair (2003–2008)
Ramtane Lamamra	AU commissioner for peace and security
Seyoum Mesfin	Ethiopian foreign minister (1991–2010)
Teodros Adhanom	Ethiopian foreign minister (2012–2016)

INTERNATIONAL FIGURES

Anders Hannevik	Norwegian special envoy for oil
Derek Plumbly	Chair of the Comprehensive Peace Agreement's Assessment and Evaluation Commission
Haile Menkerios	Special representative of the secretary general for Sudan and head of the United Nations Mission in Sudan
Ibrahim Gambari	UN-AU joint special representative for Darfur (2010–2012)
John Kerry	US senator, later secretary of state
Luis Moreno Ocampo	ICC prosecutor (2003–2012)
Princeton Lyman	US special envoy to Sudan and South Sudan (2011–2013)
Rodolphe Adada	UN-AU joint special representative for Darfur (2007–2009)
Scott Gration	US special envoy to Sudan (2009–2011)
Susan Rice	US permanent representative to the United Nations (2009–2013)

Timeline of Main Events and Panel Activities

2009

March	African Union High-Level Panel on Darfur (AUPD) begins work
October	AUPD finalizes report
29 October	African Union Peace and Security Council (AUPSC) adopts AUPD report and mandates the African Union High-Level Implementation Panel for Sudan (AUHIP)

2010

February	Efforts to convene Darfur conference postponed
11 April	General elections
June	Start of postreferendum negotiations
November	Government of Sudan (GoS) and the Sudan People's Liberation Movement (SPLM) complete negotiations on Framework Agreement

2011

9 January	Referendum in southern Sudan
April	Conflict in Abyei
May	Elections in South Kordofan State; results disputed
June	Conflict in South Kordofan
12 June	Summit meeting on Abyei, leading to agreement on temporary arrangements, including peacekeeping force
14 June	Negotiations on all postreferendum issues leading to agreement on security arrangements on the border
June	Negotiations on Two Areas conflict leading to Framework Agreement, which is then repudiated by GoS
9 July	Independence of South Sudan
9 July	Doha Document for Peace in Darfur, signed by GoS and one Darfur movement
September	Conflict in Blue Nile
November	Formation of Sudan Revolutionary Front
December	Sudan diverts South Sudanese oil

2012

January	South Sudan shuts down oil production
March	Border skirmishes; South Sudan issues new map with claimed areas
April	Border conflict at Heglig
24 April	AUPSC adopts AU Roadmap
2 May	UN Security Council Resolution 2046 adopts the AU Roadmap
June–August	Panel convenes intense negotiations in Ethiopia
August	Agreement reached on oil and transitional financial arrangements
September	Summit meeting in Addis Ababa; Sudan and South Sudan sign cooperation agreements
September	Panel proposes a formula for Abyei; South Sudan accepts and Sudan rejects

2013

January	Summit meeting between Sudan and South Sudan; no progress made
April	Oil pipeline reopens
July	President Kiir dismisses his cabinet
December	Conflict in South Sudan

2014

January	Steps toward national dialogue in Sudan
April	UN Security Council encourages unification of Sudanese peace tracks

Part I

BACKGROUND AND ISSUES

INTRODUCTION AND OVERVIEW

The African Union High-Level Implementation Panel for Sudan (AUHIP, the Panel) was the most sustained and ambitious political and diplomatic engagement in the African Union's twenty-five-year history.¹ The Panel articulated the AU's norms of peace, cooperation, democracy, and governance of diversity, in an unforgiving political context marked by distrust and rancor. The turmoil and bitterness were both internal and international. Many Sudanese and South Sudanese leaders shared the Panel's broader vision of two viable states, at peace internally and cooperating with one another, but found themselves submerged in a tide of militarized calculation and transactional politics. The international community included both supporters and detractors—those who cooperated and those who saw the Panel's activities as obstacles to their agendas.

The Panel's work often appeared to be a deeply frustrating race between achieving agreements that were self-evidently in the interests of both countries, and the political turmoil and economic collapse that would follow a failure to agree. The basic principle of work was that the Panel should be a facilitator, not a mediator and certainly not an arbiter—although, of necessity, it was dragged into mediation and more actively involved in proposing solutions than it had wanted. The parties had to own the process, and if that made for a slow and painful process, so be it. Some people in the international community pushed hard for a more intrusive or even directive method. The authority for such an approach was belatedly bestowed on the Panel by UN Security Council (UNSC) resolution 2046 in May 2012; however, the Panel insisted that a more directive approach was wrong and would not work. Only reluctantly and as a

last resort did the Panel put forward its own proposals, notably for Abyei. Nonetheless, the Panel's agenda was informed throughout by the norms and principles of the AU and by the definition of Sudan's national crisis contained in the October 2009 Report of the African Union High-Level Panel on Darfur (AUPD) to the Peace and Security Council (PSC). This report identified the core issue facing Sudan (and by implication the two Sudans) as achieving democratic governance of diversity.

In this book, we chronicle the activities of the Panel between 2009 and 2014, a period that marked the height of its efforts to achieve peace and democratic governance in Sudan and South Sudan, an effort that began in Darfur. Throughout the five years narrated in this book, the parties and the Panel were working against the clock. The first deadline was to implement the AUPD recommendation for a Darfur-Darfur Conference in time for the people of Darfur to become participants in national democratic processes, such as the general election of April 2010. For the people of Darfur, the vision of inclusive, consultative processes to redress the divisions within Darfur and a national democratic process that would address Darfur's position within Sudan briefly flickered into life, fanned by the demands of Darfurian constituencies. This was soon submerged in a swirl of tactical political positioning, from which no broader vision of the future—or even a process of articulating such a vision—could emerge. Both national and international actors were responsible for this failure.

The second timetable was for the referendum on self-determination for southern Sudan, which had been set in the Comprehensive Peace Agreement (CPA) for January 9, 2011, and the southerners were adamant that while the politics of delay—*tagility* in the Anglo-Sudanese vernacular—was applicable to everything else, this date was sacred and could not be postponed.² South Sudan's independence day six months later was similarly immovable. As these dates approached, the facilitators' task was not to make peace but to prevent war. The two ruling parties—the National Congress Party (NCP) and the Sudan People's Liberation Movement (SPLM)—were not only pushing one another to the brink but also were challenging the Panel and the international community to see what they could tolerate.

The third ticking clock had no set alarm but was no less of a worry: the prospect of a calamitous internal collapse in one or both countries, should agreements on essential cooperation fail to be reached. Mbeki wrote a "non-paper" to the parties as they stood at the brink of war in February 2012: "Both countries face a genuine risk of a hyper-inflationary spiral. The economic viability of the two countries is thus being severely undermined by their failure to agree on the Oil related issues. In the absence of prompt action, there could be serious long-term consequences for both."³ This was an understatement, as both writer

and readers knew. In these circumstances, the Panel could not follow the standard peacemaker's formula of awaiting a moment of "ripeness" to create a discreet negotiating forum in which it could build confidence between the parties, breaking down barriers of ignorance and distrust, to forge a shared vision, a positive-sum compromise. The constant danger was that the people on one side or the other who wanted war, or at least brinkmanship and posturing short of all-out war, would get their way.

The Panel's was a thoroughly *political* peace mission, in which the norms of peace, cooperation, and democracy were frail crafts bobbing in a storm of transactional politicking and angry confrontation. Each deadline brought both urgency and obstacles that threatened an increasingly fragile peace. Nonetheless, the Panel remained committed to seeing the process through to a successful conclusion, aware that only the Sudanese and South Sudanese leaders could ultimately deliver on that promise.

A Pivotal Period

In documenting the activities of the Panel during five years of activity, we offer critical insight into the political dynamics that shaped the pivotal moments in Sudanese and South Sudanese history, immediately before and after the founding of South Sudan in 2011. In the aftermath of secession, historians of Sudan expressed the fear that the post-2011 division would be superimposed on the study of the Sudans' past, given historians' tendency to use nation-states as a reference point.⁴ This book, however, very much places the emphasis on the intimate social and political history that has continued to define the relationship between the Sudans, even at the moment of their formal separation. The populations of the Sudans are bonded, in many ways traumatically, through long patterns of social and economic interchange and exploitation dating back to the wars of imperial expansion in the nineteenth century.

The history we share is one of how the intimacies between the two Sudans played out throughout the period of political divorce. The bitter negotiations over the distribution of financial assets and the transitional financial arrangements (see [chapter 11](#)) that would recompense Khartoum for the loss of its oil resources speak to the disputes over decades of exploitation and underdevelopment of the south and other peripheries. The efforts of the NCP to deny dual citizenship specifically to South Sudanese after 2013 represented a brutal effort to erase these intimacies, which exposed in practice just how real they remained (see [chapter 13](#)). The post-2011 war in South Kordofan and Blue Nile fought by the Sudan People's Liberation Army's (SPLA's) former northern divisions

(see [chapter 10](#)) and the fighting at Heglig, known to the southerners as Panthou, in April 2012 (see [chapter 15](#)), were not just conventional interstate conflicts and proxy wars. For some in the SPLM, their purpose was to topple the regime in Khartoum so as to enable the emergence of a “New Sudan” in the North. This purpose was aligned with a vision for a united and radically transformed Sudan that dated back to the 1980s. More prosaically, the SPLM was also fighting over the shared oil infrastructure that was bequeathed to the two post-secession states. This latter dynamic played out most explosively during South Sudan’s closure of its oil pipeline in January 2012 (see [chapter 14](#)).

Given the role of the AUHIP as an external facilitator of talks on Sudan and South Sudan’s conflicts, it might be tempting to bracket this book as “crisis research”—narrating disruptions rather than analyzing deeper structures. Historians of the Sudans have often shown skepticism toward accounts based on immediate crises, which tend to overlook long-term contexts and “see conflict between North and South as part of the ‘genetic code’ of Sudan.”⁵ Although this book recognizes the long-term structural factors that have contributed to conflict in the contemporary Sudans, including colonial and postcolonial underdevelopment, and the marginalization and exploitation of the country’s peripheries by the middle-income economy of the urban center—it also provides a thick description of unfolding events, showing that these wars were not inevitable. Specific political decisions by politicians and generals, alongside oversights by the international community, contributed to the outbreak of a preventable conflict in South Kordofan in June 2011 (see [chapter 10](#)). Determined work by the AUHIP and other international actors prevented conflicts in Abyei in May 2011 ([chapter 8](#)) and in Heglig in June 2012 from intensifying.

One of the pitfalls of “crisis research” is, indeed, its tendency to focus excessively on armed conflict.⁶ A great deal of the research on postindependence Sudan has been limited to the study of civil wars and Islamist politics, overlooking the country’s proud history of civic uprisings that have toppled dictatorial regimes.⁷ This mirrors a world in which international actors have put peace processes ahead of civic transformation, and in the case of the Sudans, put the secession of the southern region ahead of democratization in the north. Veteran civic revolutionaries from 1964 and 1985 were furious when the international community allowed the NCP and SPLM to dominate the 2010 elections, neglecting the forces that historically nurtured democratic politics (see [chapter 4](#)). Yet one of the long-term patterns of Sudanese history—with some important exceptions—is that civic protest has been largely restricted to the urban center, whereas armed rebellion has acted as the dominant mode of rural resistance.⁸ This dichotomy has stood in the way of peace and democratization in Sudan. As will be seen, the AUPD sought to resolve this through a Darfur political process that would foreground civic actors in discussions over the Sudanese

crisis in Darfur. Unfortunately, the United Nations (UN) and US gave priority to the parallel Doha process, which foregrounded the belligerents and focused on Darfur in isolation from Sudan as a whole (see [chapter 5](#)).

In part, the dichotomy between civic politics and armed rebellion is wrapped up with a classic colonial-era distinction that sees large parts of rural Sudan as “tribal” and thus politically and culturally separate from the rest of the country. Mahmood Mamdani has charged both the postindependence regimes and international peacemakers with continuing a colonial-era logic of “indirect rule” by using peace processes to empower regional despots through the logic of “tribal self-determination,” thus averting radical structural change.⁹ Most NCP leaders and many southerners subscribed to this logic, while also explicitly or implicitly accepting the premise that that Sudan would divide into an “African” south and an “Arab” and Muslim north. Within the SPLM, an influential group drew inspiration from the 1924 White Flag movement, which sought to fight colonialism by transcending tribal boundaries, and particularly north-south boundaries.¹⁰ Thus, the colonial past seeps into the political present. Throughout the period under study, tensions were visible between radical actors seeking to use the AUHIP-facilitated processes to generalize revolution throughout Sudan, and an entrenched regime seeking to buy off peripheral rebels through partial agreements focused on specific regions, whether in South Kordofan, Blue Nile, or Darfur. In short, the history this book recounts shows the ongoing relevance of colonial-era “tribal” narratives and their capacity to defer a more transformative politics.

The Origins of the Panel

The Panel began with Darfur. The AU’s initial trigger for setting up the Panel was alarm over the implications of an imminent arrest warrant against President al-Bashir, demanded by the International Criminal Court (ICC) prosecutor in July 2008. This step took the future of Sudan out of the hands of any process that could be influenced by Africa. It appeared to be the culmination of a US agenda for assertive intervention in Darfur. Africa appeared powerless, within the continent and globally.

This was painful for the leaders of the AU. At the height of the massacres, fighting, and mass displacement, the then-chair Alpha Oumar Konaré had traveled to Darfur.¹¹ He slipped away from his security detail and spent the night in a camp for displaced persons, listening to the stories of victims and seeing their plight firsthand. He had warned al-Bashir that unless the government of Sudan (GoS) did its utmost to end the atrocities, the AU would invoke the principle of “nonindifference” enshrined in the organization’s Constitutive Act.

The then-commissioner for peace and security, Saeed Djinnit, asserted the same principle, and the AU dispatched a peace mission to Darfur. In 2008, Commission Chairperson Jean Ping consulted with Commissioner for Peace and Security Ramtane Lamamra and Head of the Peace and Security Department Elghassim Wane. They concluded that if the AU was serious about its principles and instruments, then it needed to set the agenda for Darfur accordingly. It needed a high-level initiative that could define the issue.

Subsequently, the AU has been widely criticized for seeking to protect heads of state from being called to account for criminal actions. After the ICC had issued warrants for Colonel Muammar Gaddafi (Libya) and President Laurent Gbagbo (Côte d'Ivoire) and had launched an investigation into President. Uhuru Kenyatta (Kenya), the AU took a formal decision to object to international indictments against heads of state.¹² In 2008 and for the case of al-Bashir, the AU Commission and PSC did not have such a position, instead asking for a deferral rather than an outright cancellation of the proceedings against al-Bashir.¹³ The AU, however, was still responding to others' agendas rather than setting its own.

The AU position on Sudan stemmed from several abiding concerns and aspirations. In [chapter 2](#), we examine Sudan's place within African agendas. Along with the norm of nonindifference, three such agendas stand out. The first is the question of national identity and the challenge of unity in diversity. Variations on this question have been central to all African nations since independence. In Sudan, the questions have particular salience because at independence in 1956, Sudan inherited acute disparities from its colonial history, and reproduced those unequal relations of power, wealth, and identity in its postcolonial governments. Those disparities and identity challenges were as acute in Darfur as they were between the north and the south, where a simplistic and misleading "Arab" versus "African" dichotomy dominated political discourse. As Mbeki stressed in public lectures in Khartoum and Juba on the eve of southern Sudan's referendum in January 2011, the country would not be splitting into an "Arab" north and an "African" south, but into two African countries, each characterized by diversity, and the future of each depended on good relations with the other.

The second agenda is African peacemaking. The resolution of Sudan's first civil war in 1972 was an African initiative, and African states were at the vanguard of efforts to resolve the second from 1992 onward. Notable in these efforts was a commitment to the principle of self-determination for southern Sudan, enshrined in the Declaration of Principles adopted by the Intergovernmental Authority on Development (IGAD) in 1994. Without an African interstate recognition of this right, South Sudan's independence would have been immeasurably more difficult and perhaps impossible.¹⁴ Sudan was also the test case for the African peace and security architecture, painstakingly

constructed following the foundation of the AU in 2002. The very first meetings of the AU PSC were on Darfur in the early months of 2004. The AU dispatched a peacekeeping mission, the African Mission in Darfur in April 2004, even before it had the necessary support apparatus in place. It also took on the role of mediator, convening six rounds of peace talks that culminated in the ill-fated Darfur Peace Agreement in May 2006.

The third agenda is the African renaissance from the millennium onward, represented by the norms, principles, and institutions of the AU and by the vision for economic development and social progress spearheaded by the New Partnership for Africa's Development. Africa's recognition of the right to self-determination was made in the context of a broader commitment to social, economic, and political cooperation and integration. The future of Sudan and South Sudan depended on them being "two viable states" at peace with themselves and one another, and fully part of wider African initiatives to promote growth and integration.

The Sudanese crisis in Darfur, with its implications for the Sudanese nation on the brink of the historic decision whether their future was as one country or two, challenged all of these African agendas and threatened the prospects for the African Renaissance. Although the immediate trigger for establishing the Panel was the ICC arrest warrant, the context was alarm over Sudan's national crisis and what this might portend not only for Sudan but also for the continent as a whole.

African peacemaking—or more widely, "African solutions"—dictated a collaborative approach and respect for the AU's institutions and partnerships.¹⁵ The AUPD and AUHIP were mandated by the PSC meeting at the level of heads of state and government. The Panel reported extensively to the PSC, submitting yearly reports that included both details of activities and analysis of the situation and challenges. In response to events, such as the crises in Abyei and Heglig, the Panel referred matters to emergency meetings of the PSC (twice at the ministerial level, rather than the regular permanent representatives level) and to the UNSC. The Panel briefed the PSC approximately four times per year. The Panel collaborated closely with the UN, IGAD, and especially its chair, Ethiopian Prime Minister Meles Zenawi, neighboring countries, and other international partners. It took a lead in establishing the Sudan Consultative Forum, cochaired by the AU and UN, which involved all of those partners. The Panel engaged with the Bretton Woods Institutions, attending the meetings of the World Bank and International Monetary Fund (IMF), and with the African Development Bank. It met with the Arab League and the European Union. In addition to obtaining funds from the AU core budget and support from South Africa, the Panel's operations were funded by the United Kingdom, Norway,

and the European Union. Particularly significant was close liaison with the US and its special envoys. The experience of the Panel is an important episode in US-Africa partnership, which among other things also facilitated cooperation with China and Russia, helping to enable a common position by all five permanent members of the UNSC during the Heglig crisis of 2012. An African-led approach placed the AU at the center of a web of international relationships, and demanded time, energy, and skill in coordinating those actors whose interests did not always align.

The UN was receptive. Sudan was among its priorities. In 2009 it was second only to Afghanistan in the commitment of financial resources, budgeting \$2.5 billion for its two peacekeeping missions. Senior UN staff expressed fears that any collapse of the CPA might lead to new conflict and Sudan “becoming a battle ground of strategic proportions.”¹⁶

Having taken the steps of setting up the AUPD and selecting an array of prominent lawyers, the AU Commission needed a high-ranking chairperson who could steer the process. In December 2008 it asked Mbeki, who had recently stepped down from his position in South Africa, to head the Panel. He accepted, on the condition that he could shape the agenda and add two other former presidents, choosing Abdulsalami Abubakar and Pierre Buyoya. The choice of Mbeki was guided by Meles, who had identified stability in Sudan as a strategic imperative, and who knew that Mbeki shared the view that stability could be achieved only by a process of inclusive democratization in the country.

Leadership Fault Lines

Peace in Sudan and South Sudan was the responsibility of the governments of President Omar Hassan al-Bashir and President Salva Kiir Mayardit. Al-Bashir presided over a divided and dysfunctional government and was managing both internal challenges and external threats. He made certain gracious decisions, notably to recognize the referendum on self-determination for southern Sudan. He also made some decisions that made conflict inevitable, such as repudiating the Panel-facilitated Framework Agreement to resolve the new conflict in South Kordofan in July 2011. He could be a frustrating interlocutor. In a note made during a meeting with al-Bashir on November 21, 2011, as the crisis between Sudan and South Sudan over the oil pipeline and disputed borders entered a crescendo, the Panel chairperson, President Thabo Mbeki wrote in the margins of the meeting note, in square brackets: “[Protracted negotiations—minimal results].”¹⁷

President Kiir was the father of South Sudan’s independence. Like al-Bashir, he was skilled at managing the problem of the day, but too often only by refusing

to face the problems of tomorrow. At times, both presidents showed a readiness to compromise and to take difficult decisions in pursuit of the wider good, but each was either unwilling or incapable of doing so consistently, and they never did so jointly. Kiir also presided over a rivalrous group of subordinate political leaders and generals, who frequently pursued their own agendas even when that entailed circumventing, contradicting, or even publicly humiliating their leader. His chief negotiator, Pagan Amum, was notably capable of acting in this way. During a session of talks in which Amum and his opposite number from Khartoum were escalating their confrontation to a point of mutual destruction, Mbeki wrote and underlined, “Must help each other” in his meeting notes.¹⁸ The leaders of north and south had accepted a principle that the secession of South Sudan from Sudan should result in “two viable states” at peace with themselves and one another, cooperating in a spirit of Pan-Africanism. Instead, barely six months after Kiir celebrated South Sudan’s independence day, receiving the congratulations of al-Bashir, the two countries were in a state of confrontation, with the instruments of armed combat and economic warfare both deployed. In the pithy summation of Meles Zenawi, the question was, “Who will die first?”¹⁹

The two principals each had their own sense of both paranoia and invulnerability. Al-Bashir and the GoS were convinced of a conspiracy of western nations, orchestrated by the US, to remove them from power. The arrest warrant issued by the ICC prosecutor for al-Bashir in 2008 was emblematic of this concern, as well as being a direct and personal threat against the Sudanese head of state. In the weeks before the warrant was made public, as Moreno Ocampo’s intentions became clear, senior UN staff were, in private, terrified about what it might entail. An unsigned internal analysis expressed the fear that al-Bashir would sacrifice the CPA rather than lose power: “There is no ground to believe that, if his political survivability is put in danger, the President and the NCP [National Congress Party] would hesitate using the CPA as a shield.”²⁰ The GoS prioritized normalization of relations with the US and continually espied US plots to work with the SPLM to bring about regime change, making trust-building exceptionally difficult. The Khartoum leadership was also riven by rivalry and distrust. Espying threats and conspiracies from abroad and potentially from within the ruling cabal, al-Bashir and other senior figures in the ruling NCP and Sudan Armed Forces (SAF) also faced a growing challenge from their own populace that would bring them down a decade later. International leverage was limited. The US, by dint of its political and financial power, including its sanctions and its designation of Sudan as a state sponsor of terror, had by far the most leverage—and yet it was unable to achieve many of its objectives. Special Representative of the UN Secretary General for Sudan Haile Menkerios observed in a meeting with the Panel that “the North has reached

2 conclusions. (1) No reward for good behaviour. (2) No consequences to negative action—[although this is] not yet fully concluded.”²¹ Sudan’s leaders would ultimately be punished by their citizens, but not before they had driven the country into an abyss.

Kiir and the leaders of the SPLM, conversely were convinced that the GoS would resort to force, bribery, and trickery to undermine their independence, and meanwhile were plagued by internal dissension and a political culture that empowered every delegate to speak his or her mind independently in the talks. Among the SPLM leadership were those who believed that they needed to assert military parity with the GoS, or dominance over it, and who felt confident that the US would give them a free pass if they provoked a war against the north. They wanted to join the club of nations but did not want to be bound by its rules. That fatal hubris set in motion a cycle of reciprocal destabilization, causing immense suffering to the citizens of South Sudan.

The leaders on each side knew those on the other side intimately. If they didn’t know one another from university or staff college before the civil war broke out in 1983, they had become familiar with their counterparts during the recurrent peace negotiations that began as early as 1985, and then from their time as partners in the Government of National Unity formed in 2005. They calibrated how much they should trust their counterparts in the opposing delegations. Some they trusted to have the right impulses, but they did not believe them to have sufficient power to act on them. Others they simply distrusted. The men (and the cast of characters was almost entirely male) who decided the future of the Sudans were experts in calculating one another’s alliances, capabilities, and fallibilities, and in second-guessing everyone else’s next move. Al-Bashir himself was the master of this game, with his famed encyclopedic knowledge of the Khartoum political elite, the provincial aristocracy, and the officer corps of the army. Always deciding the next move in the light of the one after, he missed the chance for real national leadership. Kiir’s personal characteristics were comparable—he was famous for his memory of people—but he rarely managed to rise above the scheming of his subordinates.²²

The legacy of the exploitative relations between north and south, including slavery, colored the negotiations. Many northerners simply did not treat their southern counterparts as equals and assumed that it was the natural order of things that South Sudan would be subordinate to Sudan. Southerners were alert to every subtle hint of racism or disparagement. They saw the northerners across the negotiating table, looking at them as the sons of their servants. Consequently, southern negotiators wanted to prove themselves—avenging injustices and displaying power were ends in themselves, even when it was to their disadvantage.

Plan of the Book

This book has four parts. [Part I](#), which includes this chapter and [chapter 2](#), provides a background to the work of the Panel, in the context of a history of Sudan, situated within African regional politics and especially the creation of the AU. The remainder of this chapter summarizes the subsequent three parts, each of which covers a specific time period. [Part II](#) covers the work of the AUPD in Darfur, including a focus on how the Darfur conflict could be resolved only in the context of the wider project of democratizing Sudan. [Part III](#) deals with the path to the secession of South Sudan, and [part IV](#) addresses the ongoing activities of the Panel as Sudan and South Sudan grappled with internal crises while also coming to blows with each other. [Part V](#) concludes with a chapter that reflects on the Panel's legacy and lessons to be learned.

Darfur and the Sudanese Crisis, 2009–2010

In [chapter 3](#), we document the Panel's work in Darfur, from its first visit in March 2009 to the completion of its report in October. The approach was innovative and simple. The panelists consulted the people. In a series of town hall-style meetings held over forty days, they listened to the views of Darfurians on peace, reconciliation, justice, and Darfur's place in Sudan—plus anything else that participants in the meetings wished to bring up. The Panel went to places that were off-limits for the GoS, including rebel-held areas and internally displaced person camps where the people supported the rebels. The Panel's rationale was that neither the government nor the armed movements were offering solutions, but that if the people were directly empowered, they would be able to insist that their strategies were followed and their goals adopted. It was an exercise in practical democracy.

The GoS was threatened by this approach but was unable to object, given its vulnerable position vis-à-vis the international community. Less obviously, this method also threatened the armed movements. At one point, one of the leaders of the Justice and Equality Movement (JEM) told the Panel that JEM represented the people, so there was no need for these laborious consultations. Mbeki responded, "If that is the case I am sure the people will tell us that we need only go and speak with you."²³ The people who spoke with the panelists said no such thing. Similarly, the Arab nomads who had been used as militia to fight on the government's behalf were eager to have their voices heard directly, and they did not want Khartoum to speak for them.

The AUPD report "Darfur: The Quest for Peace, Justice and Reconciliation" was released in October 2009. It identified two levels to the crisis. The crisis of

conflict among the Darfurians was to be resolved among the people of Darfur. Meanwhile, the Sudanese crisis in Darfur was to be tackled at a national level, through a national process of democratization. Peace between the GoS and the armed groups would be an essential element of this process, but the wider political agenda should not be hostage to the men with guns.

The AUPD was a process of learning and analysis. It was an “African solution” in two senses. First, in its method, it was an exercise in consultation with the affected people, allowing analysis and recommendations to emerge from the grassroots. Second, it was substantively based on the norms, principles, and institutions of the AU, as enshrined in the Constitutive Act of the AU and a host of other commitments to peace, democracy, human rights, and cooperation. This “African” approach to the problem did not exclude the wider international community; instead, it sought a collaborative approach among the external partners engaging in Sudan, which in due course led to (among other things) the creation of the Sudan Consultative Forum.

The AUPD report was presented at a meeting of the AU PSC held at the summit level, in Abuja, Nigeria, on October 29, 2009. This meeting officially adopted the report as the AU analysis for Darfur—and by extension, Sudan as a whole—and mandated the AUHIP to facilitate the implementation of the report’s recommendation and outstanding issues in the CPA, all in the spirit of democratizing Sudan. In his endorsement of the report, Prime Minister Meles proposed that henceforth the AU should precede its political interventions with an analysis of the problem in the manner the AUPD had brought to bear on the Darfur situation.

In [chapter 4](#), we address the challenge of democratization—in Darfur and more widely in Sudan—in early 2010. The most urgent task facing the Implementation Panel was convening the promised Darfur-Darfur Conference before the general elections. This was an ambitious task to accomplish in a short time frame—too ambitious, it transpired. The key problem at that time was obtaining the coordination of the different international actors, namely the UN African Union Hybrid Operation in Darfur and the joint UN-AU mediation in Doha, Qatar. After the failure to convene the conference and to bring Darfurians fully into the national democratic process before the April elections, the Panel tried a second approach, namely a Darfur political process that would run alongside the Doha peace process. This also encountered insurmountable obstacles, with the joint UN-AU institutions refusing to follow the African policy enunciated in the PSC decision that established the Panel, and the GoS happy to see the internationals in disarray.

Meanwhile, the Panel also endeavored to make the democratic process in Sudan as a whole more inclusive and legitimate. The 2005 CPA required the

Sudanese to accomplish two national tasks: self-determination for southern Sudan and democratization for the country as a whole.²⁴ To ask a country emerging from twenty years of civil war and fifteen years of authoritarian rule to achieve either one of these tasks was challenging. To ask it to do both at the same time—and then also to settle another war (Darfur)—was expecting a miracle. This was especially so when the two signatories to the CPA each lacked democratic credentials and did not contemplate losing power. Two men—John Garang and Ali Osman Taha—had crafted the CPA, bridging their deep ideological differences to forge a common approach for how to transform the country. But with the untimely death of Garang and the subsequent political eclipse of Taha, their vision faded. Tactical bargaining became the order of the day and the democratization agenda slipped into the shadows. For many southerners and most in the international community, the implementation of the CPA became an exercise in checking boxes until the southerners could check their own box marked “independence” in the referendum and exit from Sudan.

Aware of the long odds against success, the Panel nonetheless focused its first efforts on the general elections, which were on a delayed schedule of voting in April 2010. The Panel tried to make the electoral process more open, transparent, and fair, with the goal of consolidating the norms and practices of democratic politics in both north and south. Unfortunately, the power of the NCP electoral machine in the north and the SPLM in the south, and the ill-prepared and fractious condition of the opposition meant that the two incumbent parties won handsomely. In fact the postelectoral political landscape was less inclusive than beforehand, with the NCP and SPLM achieving near-total domination of their respective domains. The imperative of winning the elections meant that substantive issues facing Sudan were not properly aired. Much of the public debate was on the integrity of the electoral process, not on the fundamental question of how the diverse peoples of Sudan should relate to one another. The scale of the respective electoral victories by NCP and SPLM meant that the two presidents dominated the political landscape. Each party, however, was a coalition of different political groupings, so that much of the two leaders’ political capital was mortgaged to those who had engineered their victories. Additionally, the SPLM’s electoral challenge to al-Bashir for the presidency, although it was stood down at the last moment, deepened the rancor between the two parties.

The Panel’s efforts started late and were conducted in unpropitious circumstances. They provided, however, an essential foundation for the Panel’s subsequent engagement with the postreferendum and postsecession arrangements, and a promissory note for a return to the challenge of democratization later on.

In [chapter 5](#), we recount how the people of Darfur were disappointed. Having formally accepted the report of the AUPD, the GoS used its formidable

skills to undermine any prospect of its implementation, and the required coordination among key international actors was not forthcoming. When al-Bashir reconciled with his Chadian counterpart, President Idriss Déby Itno, in early 2010, and Déby subsequently imposed a deal on JEM, the GoS reported to the Panel that the Darfur crisis was well on the way to a solution. Mbeki disagreed. The Panel's diagnosis was also too radical for the UN and the Qatari hosts of the peace talks, who fell in with the approach of trying to engineer a peace agreement through a process whereby the armed groups, who were reluctant to negotiate with the GoS, instead negotiated with the mediation to design a template for a settlement. Civil society representatives and others were invited to attend the talks in Doha to approve a document that had already been crafted. The separation of the Darfur peace process from both national-level democratization and the broader challenges facing Sudan and South Sudan as they divided into two countries, was a disastrous error.

The Path to the Independence of South Sudan: 2010–2011

The electoral outcomes and the failure to resolve Darfur was not an auspicious basis on which the NCP and SPLM could negotiate the future relationship between northern and southern Sudan, whether as one country or two. The issues that should have been the topic of national debate were only now brought to the surface. At the opening of the postreferendum discussions, Mbeki put a range of possible relationships in front of the NCP and SPLM delegates, including a confederal system and two states governed by a far-reaching cooperation and integration agreement. Some leaders in both the north and south initiated a project of cross-border cooperation and integration known in Arabic as *tamazuj* and sought ways to maintain a north-south partnership following the inevitable vote for secession. Over the following months, however, options other than sharp separation faded and then disappeared altogether.

The Panel took the lead as the external facilitator of the negotiations on the postreferendum issues, alongside pressing for resolution of several important outstanding issues from the CPA, including the status of Abyei and the north-south boundary line. The UN, US, and other key international actors were supportive partners. This unity of purpose across the international partners with the Panel functioning as a singular point of coordination was essential to those successes that were achieved.

Until November 2010, there was considerable doubt as to whether the referendum on southern Sudan would be able to move forward at all. Enormous logistical and political problems had to be overcome for it to happen, and

happen smoothly. The referendum commission had to be established, staffed, and capacitated. Voters needed to be identified and registered. Distrust between NCP and SPLM threw up huge obstacles. The southerners' distrust was in the open; Khartoum's maneuverings were more shadowy and more worrying. It was only in November that al-Bashir accepted that the referendum would go ahead at all, on the date decided of January 9, 2011, and that he would accept the outcome. He overruled those in the NCP and SAF who had other intentions. Implicitly, the president came to terms with southern independence at this point. While making this decision, al-Bashir also appeared to have decided that he would make no other concessions to the SPLM—ruling out compromise on Abyei, the borderline, or on the SPLM/SPLA in the “Two Areas” of Southern Kordofan and Blue Nile.

The Panel brought the NCP and SPLM together to hammer out a “framework agreement” for postreferendum issues. Over a week of negotiations in November, the parties agreed to the principle of achieving “two viable states,” cooperating in their mutual interest. The negotiations, however, were colored by bitterness and recrimination, and the SPLM refused to sign any agreement until the status of Abyei had been resolved to their satisfaction. On the principle that “nothing is agreed until everything is agreed,” the framework agreement was not signed. North and south agreed only that there should be a sharp separation. In [chapter 6](#), we describe these events and the Panel's role in them.

The January referendum was a rare moment of calm, with relief that the poll passed off peacefully and that al-Bashir had graciously accepted the outcome. It was followed by hope that he and President Salva Kiir Mayardit could work together on completing the work needed for the secession to be accomplished peaceably and harmoniously. It was the calm before the storm. In [chapter 7](#), we turn to the challenge of a peaceable independence.

On the eve of the referendum, it had become clear that the GoS and SPLM needed to agree to a raft of security arrangements that would follow separation. The crucial opening for addressing these issues was an agreement to set up a Joint Political and Security Mechanism (JPSM), should the south become independent. The Panel made the case that either the JPSM, or the two ministers of defense, should meet to resolve numerous outstanding items on the security agenda. Such was the level of mutual distrust, however, getting them to agree to meet was a formidably difficult exercise. They also had fundamentally different ideas for how the border security regime should function, the fate of southerners in the SAF and northerners in the SPLA, and what should happen to the Joint Integrated Units established under the CPA. The two sides prevaricated and provoked each other.

After the referendum, al-Bashir faced a bitter backlash in the north and Kiir faced calls that he should leverage the moment of triumph for southern voters to deliver on promises to SPLM constituencies that had not been able to vote—Abyei and the Two Areas. It quickly became evident that both sides were expecting a return to war—the question would be what kind of war and when. Over the succeeding months, the Panel’s efforts to resolve outstanding issues and ensure that cooperation mechanisms were working were all—in the eyes and hands of the parties—subordinate to positioning with respect to this anticipated war. The likely sparks for the conflict lay in Abyei and South Kordofan; the fighting would likely occur along the entirety of the border, and the oil pipeline and related financial arrangements would be not only assets but also weapons.

The two crises unfolded as feared in May. Conflict began with armed clashes in Abyei followed by an SAF operation that overran the area. Tensions escalated in South Kordofan over the ill-timed postponed state elections and the unresolved status of SPLA units in the state. War erupted there in early June. Both sides were mobilizing for a full-scale war along the entire boundary and supporting rebellions in the other state.

In [chapter 8](#), we deal with Abyei. More than any other issue, the disputed area of Abyei—north of the administrative boundary but inhabited by Ngok Dinka who identified with the south—exemplified the gulf between the parties. Negotiations over Abyei repeatedly showed the two sides’ readiness to lapse into zero-sum calculations, with the uncompromising positions held by relatively small constituencies exercising a veto over the broader process. The US and the Panel each tried approaches to resolve the Abyei conundrum, focusing on technical solutions to the issue of eligibility for the promised Abyei referendum (the US), and on a political solution from the presidents (the Panel). Consistently, leaders from the Ngok Dinka and from the Misseriyya who had settled in the northern parts of the area and who used the pastures during their seasonal migration, intervened to veto proposals, including potential compromises by their presidents.

In [chapter 9](#), we detail the action to respond to the crisis in Abyei and the prospects of war at the time of independence. Efforts were led by the Panel and involved the US, UN, Ethiopia, and other partners. Crucial was a summit held in Addis Ababa on June 12–13 followed by two weeks of intense negotiations on all outstanding issues, leading to agreements on temporary arrangements for Abyei and on border security, making it possible for South Sudan to achieve its independence in an orderly manner. Other issues remained unresolved: financial arrangements, the final delimitation of the boundary, and citizenship.

In [chapter 10](#), we address the Two Areas of South Kordofan and Blue Nile. In a united Sudan, these areas would have been symbols of unity in diversity; in a divided Sudan, their status as places where much of the population supported the SPLM meant that they posed a particular threat to any smooth secession. Khartoum, Juba, and the international community all underestimated the importance of the politics of the Two Areas and the challenge they posed to peace. In 2011, the Panel devoted enormous attention to this issue, first trying to find a formula for preventing war, and then when war did indeed break out in early June, resolving that war through negotiations. The Framework Agreement for the Two Areas, signed in Addis Ababa on June 28 by presidential assistant Nafie Ali Nafie and the chair of the newly formed SPLM-North (SPLM-N), Malik Agar, offered a path to peace. Unfortunately, the agreement was repudiated by al-Bashir within days. This fateful decision created an intractable armed conflict that poisoned the postindependence relations between Sudan and South Sudan.

The question of citizenship, addressed in [chapter 11](#), is fundamental to how the peoples of Sudan and South Sudan see themselves. One of the tragedies of the secession of South Sudan is that the two sides opted for the most exclusive and hardline definitions of citizenship, ruling out options of dual nationality and even ruling out the option of choice for individuals of mixed descent. The Panel had strong feelings on this matter, but this tough line was one on which the Sudanese and South Sudanese agreed. When a common approach to citizenship proved impossible, the Panel instead negotiated with each country in parallel. This helped avoid the worst outcomes, such as mass statelessness.

In [chapter 12](#), we deal with the vexed issue of how to delimit the boundary between the two countries. The Panel was hopeful that the secession of South Sudan would be accomplished within the spirit of African unification and cooperation, under which borders should be “soft” and easily crossed. The two parties did not take this approach. On the contrary, they retreated from Africa’s emergent norms on borders. They shared the principle that the new international boundary should follow the administrative boundary as it existed on the day of national independence, January 1, 1956, but determining where that boundary line ran was a complex challenge requiring expertise in subtle interpretation of colonial-era gazettes, maps, and other documents. The southerners had a sense of entitlement to territory based on customary settlement patterns and brought tribal chiefs to testify accordingly, whereas the north focused on rigorous interpretation of the documents. The south distrusted the north and suspected it was not disclosing all it possessed. The north suspected the south of harboring undeclared claims. Having failed to delimit the boundary during the CPA Interim Period, both sides dragged their feet during the negotiations of 2010–2011. No agreement was reached.

In [chapter 13](#), we discuss the financial arrangements between Sudan and South Sudan, and by extension, between the two countries and the international community. The US was, of necessity, a third party. In 2001, one of the GoS's reasons for entering into the negotiations that led to the CPA was to be removed from Washington, D.C.'s list of state sponsors of terror, which would remove the threat of regime change and open the door to diplomatic and financial normalization. Hopes for this were dashed by the war in Darfur, which led to a new round of US sanctions on Sudan, and which mobilized a vociferous domestic constituency, including members of Congress, deeply skeptical of any dealings with Khartoum. Moreover, because of the ICC arrest warrant, western leaders could not meet or speak directly with the Sudanese president. Restrictions extended to the UN—Special Representative of the Secretary General Menkerios was permitted to meet with al-Bashir, strictly insofar as he was carrying out UN-mandated activities and also was instructed that if the two men were photographed together, Menkerios should not be seen smiling.²⁵ Although domestic lobbies kept Sudan as a foreign policy priority in Washington, the administration was hampered in how it could engage.

In the tense weeks leading up to the referendum, Senator John Kerry (D-MA)—then chair of the Senate Foreign Relations Committee—flew twice to Khartoum with a promise of expedited action on lifting Sudan's designation as a state sponsor of terror and normalization of relations between the US and Sudan. There were two caveats: Congressional support was needed, and sanctions related to Darfur would need a separate process. It is not clear how al-Bashir weighed these promises, and regardless, President Barack Obama could not deliver on his offer, leaving al-Bashir once again feeling that the Americans had moved the goalposts.

At the beginning of the postreferendum negotiations, the Panel worked on the assumption—shared across the international community—that the oil pipeline was an umbilical cord connecting south and north. The oil was extracted in southern Sudan but could only reach international markets through the single pipeline to Port Sudan. An alternative pipeline to the east African coast was a long-term possibility, but it could be constructed only at great expense over several years. In the meantime, South Sudan would rely on the existing infrastructure, and Sudan would have a counterpart incentive to keep the oil flowing because of the fees and tariffs it would earn. The technical elements were not difficult to resolve. The north's major challenge was the massive financial gap that it would face following the loss of oil revenues. Mbeki took a personal initiative to try to bring delegations from north and south jointly to the meetings of the IMF and World Bank to make the case for debt relief. The GoS postsecession finance gap—estimated by the IMF at \$9 billion—was to be met three

ways: by GoS austerity measures, transitional financial payments from the south, and international contributions. The concept was agreed, but the negotiations did not progress. Part of the problem was that, for the south, the financial issue was tied in with Abyei: They saw the north has holding Abyei for ransom, and they did not want to pay until it was released.

Postseparation Conflicts: 2011–2013

South Sudan became independent without an agreement on the pipeline and financial arrangements. The negotiations continued, but as the weeks passed, it appeared that both sides were ready not only to engage in brinkmanship but also to push over the brink. Both were in denial about the economic implications of failing to agree, and they appeared ready to gamble with extreme hardship to punish the other. This is the focus of [chapter 14](#).

This issue came to a head in December 2011, when the GoS began diverting oil from the pipeline to its refinery and to illegally chartered ships. South Sudan responded by threatening to shut down its entire oil production—a step that no oil-producing country had ever taken. It was a particularly dramatic step as oil provided more than half of South Sudan’s gross domestic product and 97 percent of its government revenue. The Panel convened last-minute meetings to try to avert the crisis and won the assent of Kiir to a “cover agreement” to be followed by detailed negotiations, but Kiir was dramatically countermanded by his chief negotiator Pagan Amum and reversed his position in the middle of an emergency IGAD summit. It was both a humiliation and a step into mutually assured economic disaster.

It is hard to make sense of Juba’s decision. Part of the rationale appeared to be sheer defiance of the north, making a dramatic show of South Sudan’s independence. Alternatively, the decision made sense in the context of an imminent war. Indeed, there was already an escalating proxy conflict. In late 2011, the SPLM-N had made an alliance with the Darfurian armed movements (of which the most capable was JEM), to form the Sudan Revolutionary Front (SRF), which was waging a regime change war in Darfur and the Two Areas, with the active backing of the SPLA. Had the pipeline remained open, the GoS would have financed its war effort from the South’s oil. And in due course, a full-blown war erupted.

In [chapter 15](#), we tell the story of how that war came about. When the GoS recognized the independence of South Sudan in July 2011, the statement from the palace specified that this was within the “existing boundaries” at 1956 and when the CPA was signed in 2005. Contrary to the often-repeated position of GoS senior officials, however, there was no definitive map from the CPA nor

the UN Mission in Sudan, and they were therefore committed to enforcing a fundamentally ambiguous position. Moreover, the GoS position was that agreement on a secure border was a precondition for agreement on anything else because, it argued, that South Sudan was harboring and supporting JEM and the SPLA divisions in the Two Areas were fighting against the GoS while still fully integrated into the command and control of the SPLA proper.

Two issues, theoretically quite distinct, in practice became deeply entangled. One was the final boundary line, to be settled on the basis of determining the merits of the two sides' legal claims as supported by their documentation. The other was the temporary security line used for the purposes of separating the armed forces of the two countries. The GoS continually conflated the two. This became a major issue over a strip of land fourteen miles wide south of the Bahr al-Arab or Kiir River that divided Darfur and Bahr al-Ghazal. Because the parties had failed to agree where the security line should run, they asked the Panel to draw a map, and the Panel reluctantly agreed. The line on that map followed what the GoS considered to be the "CPA map" along the entirety of the border with the exception of the Fourteen-Miles area, where it followed the river, in accordance with *de facto* control. This infuriated the GoS, especially so as whilst al-Bashir personally did not raise an objection to the AUHIP map when meeting with the three Panel members, his subordinates had. It was a strategically important area because it was where JEM was mounting its operations from South Sudan into Darfur. The dispute over this remote area was at times no less fraught than the question of Abyei.

The proxy war became an overt war in April 2012. The spark was a territorial claim made by South Sudan to Heglig (known to the southerners as Panthou), an area that was not one of the five "disputed areas" identified in the negotiations on the boundary two years earlier, in line with a set of expanded territorial claims made in a new map issued by Juba. Heglig was also the major remaining oil-producing area within northern Sudan, and its military occupation closed the facility. No definitive account of the military engagements leading to the invasion is available. It was a demonstration of the south's military capabilities and an undeniable act of aggression. It threatened a full-scale war.

In [chapter 16](#), we examine the international repercussions of the Heglig war. It was met with a vigorous and unified international response, in which South Sudan suddenly and unexpectedly found itself on the receiving end of international criticism. The AU led the way in defining the issue and lining up the UN, the US, and the international community with the aim not only of deescalating the immediate conflict but also using the crisis as an opportunity to address all the outstanding unresolved issues between the two countries. The AU PSC adopted a communiqué that laid out a road map with a three-month

deadline, and should the parties fail to agree, that authorized the Panel to produce a report and make “final and binding” proposals on the topics. The communiqué also urged a parallel process between the GoS and the SPLM-N. At a time when the UNSC was bitterly divided, an AU PSC communiqué succeeded in obtaining UNSC consensus and a strong resolution, which gave the AUHIP an additional mandate. For the Panel, it was a departure from its procedure of insisting that it was a facilitator of a process owned by the parties, and it should not—and could not—enforce any decisions upon them.

In [chapter 17](#), we detail the negotiations over the road map. The logic of mutual destruction should have been clear to both north and south by this time. Even if they were not fighting a shooting war directly against each other, each country was now locked into a downward economic spiral that was sure to cause not only mass impoverishment but also political turmoil. Nonetheless, each side was relentlessly zero-sum in its calculus. Hard-liners on each side were prepared to tolerate pain to inflict a fatal blow on the other. The chief negotiators knew that an agreement to reopen the oil pipeline was essential and had a good sense of what the deal would be, but nonetheless they needed to bring their quarrelsome constituents along with them—a process that required public posturing. With the economic damage done to the south by the oil shut-down, Juba was in a much weaker position to link the financial deal to Abyei. The north’s attempt to link border security to the oil and finance deal was also problematic because it was technically impossible to reach a final determination on the legal boundary in the time available and because even had it wished to do so, the central government in Juba simply could not control the border. Therefore, the negotiation process was in part an exercise in separating the issues and stepping back from the parties’ long-held principle that “nothing is agreed until everything is agreed.”

The Panel succeeded in securing agreement on the financial issues, as the basis for resuming oil production and export, but only at the eleventh hour, with the PSC waiting to convene its delayed session as required by the UNSC deadline. It was a verbal agreement with the Panel acting as guarantor that an agreement had indeed been reached, with high-level intervention from US Secretary of State Hillary Clinton, who met with Kiir that day and pressed him to accept a compromise. It was enough to avert the invocation of the Panel’s reluctant role as drafter of recommendations of last resort. It was akin to a shotgun wedding. Sudan and South Sudan could now see a way to avoid accelerated, self-inflicted collapse.

In parallel, the Panel sought to convene the GoS and SPLM-N for negotiations, on a political settlement (or at least a process leading to such) and on the urgent issue of humanitarian access to the suffering people in areas of the Nuba

Mountains controlled by the rebels. In [chapter 18](#), we examine this process, in the context of the path not taken—namely a comprehensive national process within Sudan including Darfur. The international decision taken after the AUPD report in October 2009, to pursue a standalone process for Darfur in preference to the Panel’s recommended course of action, had created an insoluble problem. The PSC communiqué and UNSC resolution 2046 did not integrate Darfur into the Panel’s program of work. The SPLM-N considered itself part of the SRF and would talk with the GoS only on the basis of a national agenda. The GoS considered the SPLM-N still to be an illegal proxy of South Sudan, which it would not recognize and with which it would not negotiate until it had disarmed. These positions could not be bridged. Tragically, this also meant that no progress was made on humanitarian access. Even though the Panel sought—in close partnership with the UN and League of Arab States, and with a strong involvement of Meles until the latter’s untimely death in August 2012—to depoliticize the humanitarian issue, the GoS feared that this was a back door to recognizing the insurgency and refused to compromise.

The PSC communiqué and UNSC resolution 2046 also omitted internal conflicts within South Sudan. Juba insisted that any such conflicts were solely the work of Khartoum proxies, and international policy reflected this position, but by this time it was evident that internal strains within South Sudan were threatening the viability of the new state.

In September 2012, al-Bashir and Kiir met in Addis Ababa for a summit to sign eight agreements on all aspects of their mutual relations. It was not a formality. There were major disagreements to be resolved at the summit, and troublesome constituents needed to be brought on board. Securing agreement required exceptional last-minute interventions from the Panel and from the US special envoy. In [chapter 19](#), we recount this intervention.

Two perennial issues almost derailed the summit and in turn caused a series of problems that delayed the implementation of its key provisions, especially the resumption of oil production in South Sudan. One was Abyei. At the summit, the Panel put forward a proposal, which favored the majority Ngok Dinka population that wanted to join the south. Kiir was ready to accept it; however, al-Bashir refused to compromise. This almost derailed the whole summit. It did not do so because the delegations abandoned the longstanding principle that “nothing is agreed until everything is agreed,” and the south reluctantly conceded that it would need to agree to a package that excluded a settlement of Abyei. The second issue was the security borderline, especially in the Fourteen-Miles area. On this, the GoS agreed to a compromise formula.

The September agreements snatched success in the most difficult circumstances. In [chapter 20](#), we highlight the struggle to implement the agreements

and break down of all the key issues. On returning to Juba, Kiir was unable to persuade provincial leaders from the Fourteen-Miles area to endorse the agreement, and it became stuck in the implementation. The northern generals reintroduced security conditionalities as a requirement for implementation. It took another six months for the two to agree a process for implementation and for the south to resume oil production. Abyei remained bracketed, and the AU and UN were unable to dictate a settlement in the face of obstruction from Khartoum.

Underlying these delays was the failure to resolve the ongoing war in the Two Areas and Darfur. The GoS and SPLM-N again refused to meet, even on the humanitarian issue, and the GoS allegation of continued southern military support to the SPLM-N and JEM remained. It took until April 2013 for the two sides to meet, which was too late to prevent the escalation by SRF that caused another crisis. By this time, Khartoum was using the threat of a shutting down the pipeline again to extract concessions from Juba, including exploiting internal tensions within the SPLM to press Kiir to appoint a new government that was more favorable to cooperation with the north, at the price of deepening internal dissension. For the north it was a hollow victory, as the economic, military, and political crises remained unresolved.

Reflections

By the end of 2013, Meles's question "who will die first?" was answered. South Sudan would perish first, but Sudan would be so severely damaged in the process that its own survival was imperiled. The detailed narrative of this book stops in 2014. In [chapter 21](#), we outline how, a decade after the disengagement of the Panel, South Sudan and Sudan each face crises. The Chapter traces the trajectories toward crisis in the two governments' failures to honor their commitments to core principles of "two viable states" and of governing diversity and democratizing.

The starting point for the AUPD was the question of accountability. The Panel's report placed this element within the CPA commitment to the democratic transformation of Sudan. The implementation of the CPA also included an explicit commitment to the creation of a professional military and the disbanding of "other armed groups." The leaders of Sudan and South Sudan did not honor these commitments.

In [chapter 21](#), we also place the Panel's experience in the wider context of the challenges of peacemaking in Africa, in particular in the building of the AU's peace and security architecture. The AUPD was distinguished by its exploration of how the norms and principles of the AU, in particular the principle of "nonindifference" should be related to the challenge of peacemaking, and by its

innovative inclusive method of work. The AUHIP was, as the “implementation” in its title indicates, differently mandated. It was the most complex process of political accompaniment, conflict prevention, management, and resolution in which the AU has engaged in its two decade history. It involved engagement with numerous actors inside Sudan and South Sudan, and the coordination of a wide range of international stakeholders, notably Ethiopia and IGAD, the UN, the US, and European governments. The Panel reported to the AU PSC and, after May 2012, to the UNSC. Throughout this, the Panel’s core principle, steadfastly upheld (sometimes to the frustration of other international partners), was that conflicts could be resolved and that progress toward democracy and accountability could be achieved only with the ownership of the process and outcomes by the leaders of Sudan and South Sudan.

SUDAN IN AFRICA

Speaking in Khartoum just four days before the referendum that would lead to South Sudan's independence from Sudan, Thabo Mbeki explained why the African Union (AU) was so deeply invested in facilitating the Sudanese people's search for an inclusive, democratic, and peaceful future.¹

Regardless of the outcome of the referendum, you and all of us should value it as a decisive moment which gives Sudan the historic possibility to make a new beginning, a new start towards a future of hope, peace and a better life for all the people of Sudan.

It is also a decisive moment for Sudan in the context of its role and place in Africa. As it makes its new start, Sudan has the possibility to convey important lessons to the rest of our Continent, for the benefit of the peoples of Africa, about how to establish genuine and lasting peace after a period of war and how to construct successful societies and states based on true respect for the rich diversity characteristic of many African countries and so clearly exemplified by this country.

The united Sudan (1956–2011) was an African country that faced the challenge of governing diverse people in an inclusive and democratic manner. Sudan posed a particularly acute challenge, not only because of the extent of the diversity but also, and more particularly, because of the extreme political and economic disparities inherited from the colonial era, and little had changed over succeeding decades. In his Khartoum speech, Mbeki stressed both elements.² On the positive side, he said: "The Sudanese nation is a true melting pot

of African peoples. Sudan's Pan-Africanism has been of the most practical kind, welcoming and integrating people from across the continent. It has provided the Sudanese people with an exceptionally rich cultural heritage, and an unparalleled tradition of accepting and absorbing people."

He also asked rhetorically why the majority of Africans recorded Ghana, rather than Sudan, as the first country in sub-Saharan Africa to gain independence from colonial rule, in spite of Sudan joining the community of nations one year earlier than Ghana, in 1956. "The truth is that this mistake derives from this country's unhappy history," he said. Months before Sudanese independence, a military rebellion had broken out at Torit in southern Sudan, which would later develop into the first Sudanese Civil War (1963–1972). This conflict, as it was reported at the time, pitted the "Arab" north against the "African" south. These events, Mbeki explained, "communicated the firm message to your fellow Africans that Sudan's independence was not complete as it still had to complete the process of decolonisation."

Part of our tragedy is that throughout the years of independence, until the conclusion of the CPA in 2005, the Darfur Peace Agreement in 2006 and the Eastern Sudan Peace Agreement again in 2006, ruling groups in this country failed successfully to resolve the problem posed by the polarisation of Sudan into one centre and many peripheral regions.

Rather, to maintain its position of dominance and privilege, the centre chose to rely on the use of force and the silencing of the voice of the periphery by doing its best to stifle democratic opinion and action, seeing such democratic expression as a threat to its continued survival.³

These were the themes of the report of the African Union High-Level Panel on Darfur (AUPD), which defined the central issue as "Sudan's crisis in Darfur," to be resolved by the democratic transformation of the Sudanese state.⁴ This sensibility also colored the spirit with which Mbeki and his fellow members of the African Union High-Level Implementation Panel for Sudan (AUHIP), approached the northern and southern Sudanese as South Sudan's independence neared. Mbeki said: "We would like to emphasise that should Sudan divide, it will not divide into an 'African' south and an 'Arab' north, still less into two states divided by adherence to different faiths. In the case of secession, the multi-ethnic, multi-religious African country of Sudan will divide into two countries, north and south, both of which are equally African, and both of which will of necessity embrace diversity."⁵

The audience in Khartoum was somber and anxious. The speech sought to convey both the challenges facing postsecession northern Sudan and also the

opportunities for the country, still a valued member of the AU, to rise above its troubled past. Mbeki spoke in Juba two days later—and just two days before the polling booths for the referendum opened—to an excited audience that filled every available space in the city’s largest hall. He repeated the same point: “We should also remind ourselves that Sudan has always been a multi-ethnic African state. Should it divide into two countries, it will divide into two diverse, multi-ethnic African states.”⁶ He congratulated the southern Sudanese but reminded them that the vote on self-determination was the beginning of a process of building democratic and inclusive governance. He also reminded them that their historic association with the Sudanese state was not solely one of being the victims of oppression.

Having paid tribute to the southern Sudanese patriots who had resisted colonial invaders, Mbeki then made special mention of southerners’ historic leadership roles in the Sudanese nationalist movement, namely Ali Abdel Latif who “in 1922, issue[d] a clarion call for the right of self-determination for all the peoples of the Nile Valley. . . . Like his fellow Africans further south in South Africa, the founders of the African National Congress who, at its formation in 1912 had committed themselves to ‘burying the demon of tribalism,’ Ali Abdel Latif correctly recognised that the success of the struggle for liberation lay in the unity of all Africans regardless of their ethnic backgrounds.”⁷

This message resonated with those in the Sudan People’s Liberation Movement (SPLM) who still nursed the dream of a united “New Sudan” in which ethnic, racial, and religious differences were transcended by a shared political vision. Indeed, the very concept of “the “Sudanese” owes its lineage to the colonial categorization of the many diverse peoples who were displaced by nineteenth and early twentieth century processes of imperial expansion and enslavement, making the lands of the Nile Basin a melting pot.”⁸

In the audience at Friendship Hall in Khartoum was Professor Yusuf Fadl Hasan, the eminent historian and former vice chancellor of the University of Khartoum. Mbeki mentioned him by name in his speech, for his research on the peaceful manner in which Islam had spread throughout Sudan. In the late 1960s, Yusuf was also the convenor of a seminal conference and editor of a volume titled *Sudan in Africa*.⁹ Before this publication, Sudanese history and identity were written almost entirely from a paradigmatically “northern” viewpoint. Postcolonial historians and anthropologists in Khartoum, Juba, and other universities challenged this view, in a manner similar to the rewriting of the history of the west by Paul Gilroy in *The Black Atlantic*.¹⁰ There is an emergent strand of subaltern history and anthropology—we might call it the Black Nile school of thought—that traces how Sudanese identity has been constructed from the south to the north, as much as the other way around.¹¹ British imperial officers

made a racialized distinction between those they deemed Arabs and Sudanese, with the latter referring particularly to those who had lost their tribal identities in the turmoil of imperial conquest, subjugation, and displacement, who were further categorized as Africans, Negroids, and Blacks.¹² “Closed districts” were administered by tribal chiefs (“native administrators”) according to customary laws, as codified by British officers, and were cut off from what was seen as the pernicious influence of modern ideas. At its apex, this ideology resulted in the Southern Policy of 1930, which established separate cultural, political, and economic development for the southern provinces of Sudan along “indigenous and African lines.”¹³ The policy was reversed in 1947, but its legacy lingered.

As independence neared, the use of *Sudanese* was appropriated by the elites of northern Sudan, and the word climbed the socioeconomic ladder.¹⁴ Those elites were undecided whether to join with Egypt’s Arabs in challenging British colonial rule or to champion a Sudanese nationalism that rejected Egypt and its own shade of colonialism.¹⁵ This ambivalence lived on in the divisions within the National Congress Party (NCP) in the years covered by this book, manifest in a clash between those who cleaved to a more conventional nationalism who saw the loss of the south as a total defeat, and radical Islamists who saw partition as a chance to realize their dream of a uniformly Arab-Islamic nation. In the peripheries, emergent political leaders could not decide whether to separate from the oppressive center or lay claim to it. The SPLM had still not fully resolved this question in 2011, with powerful groups seeing a sovereign South Sudan as a springboard for revolution in northern Sudan. These complex and acrimonious debates played out most acutely on the questions of nationality and citizenship at the moment of South Sudanese independence (see [chapter 13](#)).

Sudanese identity arose from the west as well as the south. The south-north axis of Sudan’s African identity has garnered much attention, the west-east axis less so. In his Khartoum speech, Mbeki observed how “Immigration from West Africa, over many generations, has also enriched Sudan.”¹⁶ Mahdist ideas and the Mahdist movement were strongly influenced by west African traditions. In this respect, and others, Darfur was a historical origin point for Sudanese nationalism—indeed the city of Omdurman bears the imprint of the Darfurian communities that were instrumental in founding it. In western Sudan as in west Africa, Islam is color-blind and the distinction between Arab and African is at most one of local significance. The AUPD report challenged the racialized distinction between Arabs and Africans as an essentialist fiction.¹⁷ All were Africans, and an Arab identity was a perfectly legitimate African identity.

A vital element in this political-cultural critique was liberating Arabism from connotations of racism and oppression. At the same time as General Ibrahim Abboud’s regime from 1958 to 1964 was using force and other instruments

of state to impose Arab and Islamic identities, Pan-Africanists such as Kwame Nkrumah were making common cause with Algerian and Egyptian revolutionaries in a joint emancipatory political project. The generation of northern nationalists educated in prominent colonial-era institutions embraced Arabism on an ideological and cultural level, hoping that Arabic would prove to be the linguistic glue that bound Sudan's diverse ethnic communities into a single nation.¹⁸ Although in the 21st century many Sudanese radicals associate Arabism with state power and economic exploitation, in the 1950s and 1960s, it was Arab socialism that appealed to the political radicals in Khartoum. In the wake of the Suez Crisis, they looked to emulate Nasser's Egypt. Joseph Garang, a prominent Marxist of southern heritage, saw the southern rebels as reactionaries backed by imperialist proxies and Christian missionaries.¹⁹ Indeed, in the 1960s, Sudan's African neighbors—notably Ethiopia, Kenya, and Uganda—had pro-Western governments sympathetic to southern secessionism, which discouraged Sudanese leaders from adopting an African orientation.²⁰

In the 1950s, Sudan was a champion of decolonization and the nonaligned movement. Both military and parliamentary regimes provided moral and material support to the liberation movements fighting white settler dominance in southern Africa. Sudan was one of the first nations to fulfill the demands of the newly founded Organization of African Unity (OAU) to sever ties with Apartheid South Africa and Ian Smith's white minority-led Rhodesia. Muhammad Ahmad Mahgoub, Sudan's prime minister during the second democracy, cut ties with the UK to protest London's policy toward Smith's regime, even as he was intensifying his military campaign against the southerners.²¹ Sudan was also a leading backer of Arab liberation struggles, hosting the 1967 Khartoum summit, during which the Arab nations resolved that there would be no reconciliation with Israel following its victory in the Six-Day War. Arab and African anticolonial politics made common cause in this era.

Sudan and African Conflict Resolution in the OAU Era

The OAU was founded in 1963, the year that the conflict in southern Sudan escalated into full civil war.²² At its inception, the OAU's priorities were to safeguard the sovereignty of the newly independent African states and defeat Africa's remaining white settler regimes. Resolving conflicts within African states was less of a concern. The OAU created a Commission of Mediation, Conciliation, and Arbitration, but it was never fully operationalized.²³ It was mandated to intervene only in interstate conflicts, which made it irrelevant to

the vast majority of conflicts in postindependence Africa that were intrastate.²⁴ Conflict resolution was devolved on an ad hoc basis onto individual statesmen to facilitate negotiations. The OAU supported the Nigerian government during the Biafra conflict between 1967 and 1970, afraid of undermining it in the face of a secessionist movement that might inspire other separatists on the continent. When the Burundian regime massacred twenty thousand Hutus in 1972, the OAU congratulated the president for doing what was necessary to preserve his country's territorial integrity.²⁵

In the 1960s when sovereignty and anti-imperialism were the OAU's priorities, Sudan's Pan-African and Pan-Arab credentials enabled it to divert attention from its internal inequalities and its suppression of the southern opposition. The Sudan African National Union (SANU) claimed that the Khartoum government was practicing internal colonialism and petitioned the OAU and the United Nations (UN) for the right of self-determination for southern Sudan. Even though many African governments were sympathetic to SANU, they were wary of backing secessionism. When Sudan's transitional government of 1964–1965 convened a roundtable conference on the future of the South, none of the seven delegates from other African nations were eager to endorse SANU's call for self-determination. In particular, the Nigerian representative downplayed the seriousness of Sudan's divides, arguing that the conflict was a result of "family difference" and comparing the country's religious and cultural diversity to that of his own.²⁶ Meanwhile, the OAU refrained from getting involved in the war, sticking to the principles of its charter, which decreed that there should be no intervention in the affairs of independent African countries.²⁷

Despite the OAU practice of noninvolvement, Sudan was one of the first countries in Africa to accept an externally mediated settlement of a civil war, and that peace initiative came from Africa. The initiative was launched in 1971 by the All-Africa Council of Churches under its Liberian General Secretary Canon Burgess Carr. In turn, Carr requested Ethiopian Emperor Haile Selassie to host the peace talks. The authority of the emperor was crucial in resolving the most vexing issues dividing the government of President Jaafar Nimeiri and the Anyanya movement, such as the status of rebel fighters.²⁸ Haile Selassie ruled that one country should have one army. An agreement was reached in February 1972.

Selassie played his role primarily in a spirit of solidarity. Having been instrumental in the creation of the OAU, he was determined to see African independent states resolving their own problems. He also had more immediate motives. Ethiopia had long been at odds with Sudan over the latter's tolerance of the Eritrean Liberation Front, and Addis Ababa hoped to bring an end to the refugee crisis brought on by each country's stoking of the other's conflicts.²⁹ With a socialist revolution in its neighbor Somalia, Ethiopia was keen to woo Sudan

away from the communist bloc and, given that it was concerned about its own secessionist movement in Eritrea, to push the southern rebels in the direction of compromise.³⁰ The Addis Ababa agreement granted the southern region an autonomous regional government and opened the door to embrace diversity across all of Sudan. The 1973 constitution included an innovative recognition of “noble spiritual beliefs” alongside Islam and Christianity. Sadly, the peace lasted barely a decade.

In the early phases of the Second Sudanese Civil War (1983–2005), Ethiopia once more emerged as a prominent external party, albeit with its geopolitical camps now switched. President Nimeiri had moved Sudan into the US orbit, and Ethiopia’s socialist government had aligned with the Soviet Union. The Ethiopian leader Mengistu Haile Mariam played host to the SPLM and Army and encouraged its Marxist orientation.³¹ The SPLM chair John Garang championed a revolutionary project for the whole country based on African socialism.³² Once Nimeiri had been overthrown in 1985, Ethiopia was well positioned to provide a venue for talks between the SPLM and the various parties that participated in Sudan’s third parliamentary regime. Several of those parties and the SPLM made a declaration at Koka Dam in 1986, in a series of negotiations that culminated in a 1988 agreement between the SPLM and the Democratic Unionist Party.³³ The Islamists, however, now principally organized under the National Islamic Front of Hasan al-Turabi, distanced themselves from both deals and launched a coup in 1989 to prevent the northern civilian parties compromising on the role of *sharia* in governance.

The arrival of Omar al-Bashir’s Salvation Regime initially caused international dynamics to revert to familiar dynamics from the early 1960s. The government opened its borders to the Arab world, facilitating a route to Sudanese nationality for migrants from the various Muslim and Arab nations that was much faster than that offered to those from countries farther south. Many of those who arrived in Khartoum were militant Islamists to whom the regime was offering safe haven and who would later participate in al-Turabi’s Popular Arab and Islamic Conference, which was designed to offer a radical alternative to the Saudi-led Organization of the Islamic Conference.³⁴ As such, although the cultural and political orientation of the regime toward the Arab world strengthened, its diplomatic ties to the Arab states weakened. When al-Turabi declared his support for the 1990 Iraqi invasion of Kuwait, Sudan found itself isolated from almost all of the Arab world. It turned instead toward Africa, taking a stand that was partly bellicose and partly friendly.

Al-Bashir had been briefly ready to accept the Americans as mediators in the civil war.³⁵ Now it was firmly in the anti-US camp. It welcomed militants, including Osama bin Laden and the American government designated it as a state

sponsor of terror for hosting the architects of the 1993 World Trade Center bombing. Thereafter, the US shifted its political and military support to the “frontline states” and the SPLM and adopted an explicit regime-change agenda.³⁶

Nigerian President Ibrahim Babangida offered to mediate. The SPLM accepted on the condition that Babangida would take this role as a head of state, not as OAU chair.³⁷ At this point, the SPLM was in desperate need of a favorable mediator. Following the downfall of the military regime in Ethiopia in 1991, support for Garang’s leadership in the movement declined, and a splinter faction emerged under Riek Machar that showed itself to be ready to bargain with the regime, especially after it appeared to float an offer of self-determination at Frankfurt in early 1992. This mediation was followed by two rounds of talks at Abuja in 1992 and 1993, which also failed to bridge the divide, as the SPLM factions insisted that the government of Sudan (GoS) must either accept a secular state or allow the south the right to self-determination, while Khartoum’s negotiators refused to compromise on either sharia or unity. The Nigerian government demanded that the SPLM drop its demands for an independence referendum, which the SPLM would not do.³⁸

The role of mediator was then taken up by the north-east African regional economic community, the Intergovernmental Authority on Development (IGAD).³⁹ Four member states, Ethiopia, Eritrea, Kenya, and Uganda, jointly volunteered to facilitate talks. They began in September 1993, with Kenya as the chair.⁴⁰ Initially, there were hopes that a mediator had been found that would be able to develop a productive relationship with Khartoum. It was al-Bashir who had proposed IGAD, anticipating that Eritrea and Ethiopia would be sympathetic. He was taken aback, however, by the active and interventionist approach that the IGAD mediators would take. Ethiopia’s foreign minister Seyoum Mesfin took the lead role in drafting a Declaration of Principles (DoP) maintaining “a secular and democratic state must be established in Sudan,” and that failing agreement on this point “the respective people [*sic*] will have the option to determine their future including independence, through a referendum.”⁴¹ Seyoum shared it with the then Eritrean foreign minister, Petros Solomon, who agreed with it and made minor amendments. It was formally presented at a ministerial meeting of IGAD in Nairobi on May 20, 1994.

The IGAD DoP was momentous. Without an African interstate organization authorizing the principle of self-determination, South Sudan’s road to independence would have been extraordinarily hard. Mbeki reminded his audience in Juba of this in January 2011: “At the darkest hour of the war in southern Sudan, when the end of the struggle seemed at its most remote, when the people were most divided and demoralised, it was Sudan’s African neighbours, acting in a spirit of collective solidarity, which identified the foundation

stone of a future settlement. And for eight long years these countries did not waver in their commitment to the Sudanese people.⁴²

Although Garang had misgivings (he was fearful that the language on self-determination would enthuse the southern separatists), the GoS was furious. Seyoum stopped over in Khartoum in June 1994, returning from the OAU summit, and met with Ghazi Salah al-Din al-Atabani, whose starting point was outright rejection.

Over the next three years, a combination of internal politics and external pressure brought Sudan to accept the DoP. Initially, Hasan al-Turabi had envisioned the Sudanese Islamic movement as an African movement, in contrast to the Arab Muslim Brotherhood in Egypt, making a particular point of recruiting members from Western Sudan.⁴³ In the mid-1990s, a power struggle broke out within the regime between Western Sudanese Islamists and those from riverain backgrounds with a more Arabist outlook.⁴⁴ Because IGAD refused to waiver in its support for self-determination, hard-liners forced the withdrawal of Khartoum's Darfurian negotiators, Ali al-Haj and Muhammad al-Amin Khalifa, blaming them for conniving with "fellow Africans" to undermine Sudan as an Arab and Islamic nation.⁴⁵ The GoS replaced the two negotiators with Nafie Ali Nafie and Ghazi.⁴⁶ The new negotiators rebuked IGAD publicly for the DoP, while insisting they would never compromise over national unity or Islam as the basis for the state. This removed a middle ground. In due course, the GoS strategy placed it in a position in which it accepted self-determination. Under Garang, the SPLM was still defiantly unionist, and the breakaway factions, such as those led by Riek Machar and Lam Akol, were the champions of self-determination. In cutting deals with those latter groups with the aim of dividing and weakening the SPLM, the GoS accepted the principle of self-determination, expecting to control that agenda. Some Islamists saw the possibility of reconstituting Sudan on a federal basis.⁴⁷ Having included self-determination in its 1998 constitution (drafted by al-Turabi), the GoS could no longer reject it in the IGAD DoP.

The IGAD peace process was rejuvenated in 2001 with the active support of the US, Britain, and Norway. Members agreed that Kenya should be the locus for the Sudan secretariat, and it should appoint the mediator. The result was an important combination of African legitimacy and US material leverage. The new envoy and mediator was the Kenyan general Lazaro Sumbeiywo, who took an active lead and conducted the key mediation tasks. The troika was deeply involved. The US was impatient for a high-profile peacemaking success involving an Arab-Muslim government and the Norwegians were eager to claim public credit. Their collective efforts resulted in the Comprehensive Peace Agreement (CPA) in 2005. It was a Sudanese, an African, and an international triumph. It was also overshadowed, however, by the war in Darfur.

The African Renaissance

The AU, a new continental organization, was born from the triumphs and tragedies of the 1990s. The triumph was the final liberation of Africa from European colonial and racist rule. The tragedy was the prevalence of civil wars, military coups, and mass atrocities, culminating in the genocide in Rwanda and the deepening immiseration of many Africans. The African Renaissance embraced a vision of Africa renewed by its own leadership. It found expression in the norms and principles enshrined in the Constitutive Act of the African Union, adopted by treaty in 2002, and the parallel effort to reenergize the continent's economic development through the New Partnership for Africa's Development (NEPAD). Part of the rationale was that Africa would rise together or fall together. Some countries might be better positioned to take a leading role in the rise, with their neighbors benefiting in much the same way that the "flying geese" model of regional development had functioned in East and Southeast Asia, but no national development strategy could be adopted and implemented without regard to how it would benefit neighbors. By the same token, any nation in conflict or crisis was a liability for all. Cooperation was both principled and pragmatic.

During the period of the CPA Interim Period and the Darfur crisis, the African peace and security architecture was being assembled and the economic vision of NEPAD was beginning to materialize, with Ethiopia as a proactive player. Sudan posed a far-reaching challenge to these African agendas. Its crises threatened to have impacts far beyond its borders, both because of the destabilizing effects on neighboring countries and because the crises were so grave that they invited international engagement that might well undermine Africa's agendas. Mbeki was Africa's leading advocate for African integration, and he articulated the link at the launch of the postreferendum talks between the GoS and SPLM in 2010: "The African Union is itself an expression of the African continent's desire for integration and unity. . . . The striving towards economic and political integration is more than a manifestation of Africa's deep-seated recognition that our strength comes from our common identity. Closer ties among ourselves are a necessity for our continent's security and development." He also emphasized that "this does not contradict the right of self-determination for the Southern Sudanese," but that "the drive towards African integration and unity provides a context to the establishment of the nation-state different from what obtained fifty years ago."⁴⁸

Regional economic integration in Africa was complicated. First, unlike in industrial economies, most countries were competitors in the same export markets (most of Africa's trade export of primary commodities was to Europe, Asia and America) rather than being positioned to benefit mutually from

comparative advantage in manufacturing. Second, there were large discrepancies in structures of economies and levels of development. Thus some, such as the members of the East African Community preferred market integration and others (Ethiopia) preferred infrastructural integration with state-directed development plans, postponing integration of markets for further down the line. Some small countries (Rwanda) tried to position themselves as specialists in high-value production, whereas countries highly dependent on oil (Angola, Chad, Gabon, Equatorial Guinea) opted out of integration altogether. Nigeria was a special case, potentially the regional engine for West African integration. South Africa had the most to offer and the most to gain from continental economic integration.

Sudan's economy was uniquely positioned. It had many complementarities with its neighbors, but the dominance of oil production meant that its incentives for integration were lessened. The secession of the south would likely lead to the abrupt decarbonization of the northern economy, which was an opportunity to restructure for an economy that would be more productive in the long term with more to be gained from economic integration. The economy of an independent South Sudan would be hyperdependent on oil revenues, with very under-developed manufacturing, service, and financial sectors, and therefore would need to manage its economic integration issues with particular care.

The biggest challenge for the Sudans was politically navigating the transition from a unitary, but crisis-ridden, dysfunctional state, to two viable neighboring states. Would the Sudans be the place in which the African Renaissance would be manifest, or where it would succumb? All the neighboring countries had stakes in this, but Ethiopia articulated them most clearly. Ethiopian Prime Minister Meles Zenawi was crucial in mandating the AUHIP in October 2009, and as the referendum neared a year later, he provided the Panel with a concise but strategic assessment of the stakes.⁴⁹

Meles began with a characteristically pithy formulation: "This is a race between sanity and insanity. We don't know which will win. To buy time, we can resolve conflicts or delay them." Asked what the outcome could be if enough time were to be bought, he answered, "If we in Ethiopia succeed with our project [of democratic developmentalism] we can impact positively on our neighbours, on the model of the flying geese." He referred to his 2002 National Security white paper, which identified poverty reduction as Ethiopia's central strategic goal, and noted the fear that without food security and economic growth, stability at home and peace and security in the Horn of Africa would be endangered.⁵⁰ But this was a race against time. Meles said:

Sudan doesn't appear to give us enough time. The likelihood, the foregone conclusion, is a state in southern Sudan. That state will be either very fragile (the best case) or a failed state. The problem is that the

SPLM has a dangerous appetite for big money. The political budget is highly inflated. This has an impact [in terms of exacerbating] zero sum politics and ethnic conflict. If the north wants to play dirty it can burn southern Sudan with a box of matches, in its sleep. To occupy the south it would need to use its army, [but only] to burn it will just need a match. And if the south explodes it will try to destabilize the north, through its peripheries, Darfur and the Nuba Mountains. In the east it will not have much luck because the problem in the east was created by our brother [Isaias Afewerki].⁵¹

Meles was clear that “The only solution is an alliance between north and south after the separation. Secession must be negotiated to protect the interests of both . . . or the whole area will burn.” He was worried that “the international community is concentrating on cornering the NCP rather than giving them a way out.” Meles’s conclusion was as follows: “If the west will allow us, we will give some space to the NCP to survive, post-referendum. Then we may pull it off. If we don’t get that space, the country will blow up and we cannot foresee the consequences. . . . If we can cross that river peacefully, we will have a fighting chance. If not, I don’t know. So we must postpone, at the very least, the explosion of Sudan.”

Meles was a passionate and strategic advocate for the African peace and security architecture, and positioned Ethiopia as a pillar of that peace, providing political and military support and also serving as a key link to other international actors, including the UN. A measure of his success was that when Ethiopia was elected to a nonpermanent seat at the UN Security Council (UNSC) in 2017, Ethiopia’s stabilizing role seemed to follow the natural order of things in the Horn of Africa, rather than a position painstakingly crafted with much political investment. Meles continued that investment in support of the Panel until his untimely death in 2012.

The African Peace and Security Architecture, Article 4(h), and Darfur

The transition from the OAU to the AU began in 1999. The AU was formally inaugurated in 2002 and its Peace and Security Council (PSC) in 2004. Darfur was its first and biggest challenge. Insofar as Africa’s norms and institutions for peace and security evolved around specific cases, Darfur’s impact on the peace and security architecture was profound.

The approach to peacemaking of the AU marked a paradigmatic shift from that of the early OAU. The Constitutive Act of the African Union incorporated

Article 4(h), the principle of “nonindifference.”⁵² This averred “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”⁵³ Nothing similar had existed in the OAU charter. The principle of nonindifference emerged from the report of the OAU’s International Panel of Eminent Personalities into the genocide in Rwanda.⁵⁴ Since the 1970s, many African scholars and politicians had been pushing for an approach of collective responsibility for the continent’s governance. Tanzania’s Julius Nyerere was a vocal critic of the OAU’s adherence to nonintervention in the internal affairs of member states from the Biafra war onward. He acted on this in 1979 when Tanzania invaded Uganda to topple Idi Amin’s regime. That same year, Nigeria sent peacekeepers to Chad, which was followed by the OAU’s first peacekeeping mission. Regional bodies played the leading role in interventions. In 1990, Nigeria dispatched troops to Liberia in spite of opposition by the belligerents, obtaining an Economic Community of West African States mandate. A Sudanese scholar working for the UN, Francis Deng, articulated the notion of “sovereignty as responsibility” in this era.⁵⁵ In his 1996 text of the same name, Deng and his coauthors explained: “Sovereignty as responsibility means that national governments are duty bound to ensure minimum standards of security and social welfare for their citizens and be accountable both to the national body politic and the international community.” Sudan, in Deng’s view, was one of the most egregious examples of the failure to exercise responsible sovereignty.⁵⁶

The creation of the AU in 2002 marked a watershed in Africa’s norms, principles, and institutions regarding peace and security. The AU included new norms and institutions, and the AU’s member states signed up to a Common African Defense and Security Policy, which now included intra- as well as interstate conflict among the major security threats that Pan-African bodies should prevent.⁵⁷ The PSC began operating in 2004 as the highest authority for peace and security, and has remained active ever since, holding more than five hundred meetings, vastly more than occurred for similar purposes under the OAU. It has mandated eight major peace support missions.⁵⁸

The PSC has formally invoked Article 4(h) just once, on Burundi, in 2016.⁵⁹ That has led some to consider it a dead letter, overruled by the persistence of other norms such as noninterference, which are also contained in the AU’s Constitutive Act. Without doubt, there were still limits to the AU Commission’s willingness to challenge the sovereignty of African states, and member states on the PSC were always attentive to protecting their own interests. The norm has been invoked informally, however, to press governments to step back from perpetrating atrocities that would count as “grave violations” and to put

pressure on the AU to invoke its duty to intervene. It did so in Darfur and other cases, including Burundi, Central African Republic, and Libya, although in all cases its impact has remained unclear.

The AU developed its own models for peace missions.⁶⁰ Lacking the financial and institutional capacity to implement complex, multimandate peace operations on a par with the UN, the AU instead has focused on peace support operations of a kind that the UN was less well-placed to conduct. One kind was political missions, of which the AUHIP is a prime example. Another kind was peace enforcement that required coalitions of troop-contributing countries prepared to sustain significant casualties—for example, the AU Mission in Somalia. Because of resource constraints, including reliance on western donors for funding, such missions have struggled to perform as effectively as their UN counterparts.⁶¹

In early 2004, the PSC finalized its rules of procedure and held its first preliminary meetings. On the agenda were Burundi and Darfur. African peacekeepers were already in Burundi serving in the African Mission in Burundi (AMIB). An initial contingent of a 3,300-strong “green helmets” mission arrived in 2003, to oversee peacebuilding and initiate a disarmament, demobilization, and reintegration program. The mission was notable for how it engaged with non-state armed groups and civic actors and is credited with success in incorporating them into peacebuilding processes.⁶² From the outset, AMIB was envisioned as an interim arrangement, and in May 2004, its troops were “re-hatted” as the UN Operation in Burundi.

Darfur was the first peace mission mandated by the PSC and the first true exercise in operationalizing the norms, principles, and institutions of the AU’s vision for peace and security. It was a tough place to begin.

The AU found itself as mediator for Darfur by accident rather than design. The president of Chad, Idriss Déby, had an interest in stopping the Darfur war because he knew that the conflict would likely destabilize his country. In 2003, he convened two rounds of talks in the Chadian city of Abeché, at which the GoS and Sudan Liberation Movement/Army (SLM/A) signed a ceasefire agreement, which neither side respected.⁶³ As the conflict escalated, Déby’s fear began to be realized. Because of close ties to the ethnic Zaghawa among the rebels and his dispute with some of the Masalit leaders in the SLM/A, Chad was becoming directly embroiled in the war.⁶⁴ For that reason, Déby asked the AU to assist. At the time, there was debate about extending the GoS-SPLM negotiations, progressing under IGAD mediation, to include Darfur. For Khartoum in particular, bringing Darfur into the talks would have risked validating the SPLM’s position that they were fighting against marginalization across the whole of Sudan.⁶⁵ The SPLM also did not want to see Darfur included, fearing

that it would delay the successful conclusion of the CPA and worrying that it would lose its position as the sole representative of the opposition. The troika did not want any further delay. The UN, which was setting up an advance mission in Sudan in anticipation of the finalization of the CPA, also did not want to be involved. Darfur was therefore treated separately from the main Sudanese political settlement to the lasting detriment of both.

The AU joined Chad as the mediator for peace talks in N'djaména in March 2004.⁶⁶ The talks were, unsurprisingly, fractious, and the delegations did not actually formally meet face to face. Instead, the mediators shuttled between them with a text. On April 7, on his way to the ten-year commemoration for the victims of genocide in Rwanda, AU Commission Chair Oumar Konaré made a brief visit to Khartoum where he met with al-Bashir. He passed the message that Africa and the world were outraged by the atrocities in Darfur and urged the Sudanese president to agree to a ceasefire and humanitarian aid before the crisis escalated further. He pointed to Article 4(h), to which Sudan had assented when it became a member of the AU. Al-Bashir instructed his negotiator in N'djaména, Major-General Ismat al-Zain, to sign. General Ismat followed the instruction.⁶⁷ With weeks, the first ceasefire monitors of the African Mission in Sudan (AMIS) arrived in Darfur.

Little noticed at the time, the deployment of the AMIS monitors coincided with a remarkable reduction in the levels of violence and improvement of humanitarian access.⁶⁸ The key factor in bringing down the extent of atrocities was not, it appears, the capacity of the peacekeepers to provide physical protection for civilians. It was simply their presence. Having eyes and ears in Darfur meant that those perpetrating violence were deterred from attacking the innocent.

The PSC was formally inaugurated on Africa Day, May 25, 2004. At his speech at that meeting, Chair Konaré said, "We need to know the truth about what transpired and what is happening in this region of The Sudan."⁶⁹ The AU Commission was already dispatching ceasefire monitors. Six weeks later, the African Commission for Human and People's Rights (ACHPR) sent a fact-finding mission to Darfur. It recommended urgent action to protect internally displaced people (IDPs), even while it was completing its formal report.⁷⁰ In August, Abdul Mohammed went to see Sudanese Minister of Foreign Affairs Mustafa Ismail with a message from Konaré that the AU was considering a high-level investigation into the Darfur conflict, to deal with issues of peace, democratization, and justice.⁷¹ Such an exercise would be modeled on the OAU's International Panel of Eminent Personalities for Rwanda.⁷² He said that Sudan needed to take the issue of accountability seriously and there would undoubtedly be a price to pay. It would be better, however, to have the response framed by a political framework, rather than letting processes of international

justice take their course, with unforeseeable results. The offer was rebuffed: al-Bashir instructed his foreign minister to reply that any issues of accountability for crimes committed would be dealt with domestically.

The GoS also failed to respond to the ACHPR's fact-finding mission. Instead, outrage over the Darfur atrocities gathered international momentum. In September, the US State Department reported that, based on its investigations conducted among refugees in Chad, there was a *prima facie* case that genocide had been committed.⁷³ Announcing this, Secretary of State Colin Powell turned the matter over to the UNSC, which adopted Resolution 1564 setting up the International Commission of Inquiry into Darfur (ICID).⁷⁴ Headed by the eminent jurist Antonio Cassese, the ICID reported in January 2005 and recommended that the crimes in Darfur be referred to the International Criminal Court (ICC).⁷⁵ The UNSC acted on this recommendation and passed Resolution 1593 on March 31, 2005. The ACHPR, meeting in Banjul in May, called on Sudan to cooperate with the ICC.⁷⁶

Meanwhile, the AU was convening peace talks between the GoS and the armed movements, initially just two—the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). On July 5, 2005, the GoS, SLM/A, and JEM signed a declaration of principles, which is significant as it was the sole document agreed upon by all warring parties in Darfur.⁷⁷ This document was initiated and drafted by Sudanese, with the AU serving solely as facilitator. It was signed at the moment of highest hopes for democracy and unity in Sudan, just days before the formation of the Government of National Unity with John Garang as first vice president. At that moment, the leaders of the Darfurian armed movements were hopeful that the CPA would provide the umbrella for them to become full partners in this transformational national exercise. The DoP is infused with that same spirit, but like the CPA, it is silent about accountability for grave crimes. Paragraph 11 reads: “The promotion of reconciliation, the restoration of the traditional and time honored peaceful coexistence among the communities of Darfur, based on the principle of mutual respect, and the commitment to prevent future divisions are essential [to] restore and sustain lasting peace and stability in Darfur.”⁷⁸

Garang died that same month. The seedling of shared hope did not flourish. Instead, the Darfur talks became a battleground of their own, conducted in the shadow of a drumbeat for military intervention that heightened rebel ambitions and deepened NCP fears.

The AU pressed ahead with peace talks for Darfur, with the former OAU Secretary General Salim Ahmed Salim serving as chief mediator. The talks were held first in Addis Ababa and then over extended sessions in the Nigerian capital, Abuja.⁷⁹ These negotiations were based on the assumption that an

agreement in Darfur would buttress the CPA, enabling the Darfurians to join in the national renewal promised by the CPA. In principle, this was a sound premise. In reality, however, many Darfurians did not see the CPA as an opportunity to contribute to a national process of democratization, with a responsibility to make unity attractive, but as a ceiling on their aspirations.⁸⁰

The AU-mediated talks could not address the overriding issue of international debate, which was the dispatch of a large international military force to Darfur with a mandate to protect civilians. This was the demand of the Save Darfur Coalition and a vocal group of high-profile advocates, including members of the US Congress. President George W. Bush did not want to send US troops and decided instead that it should be a UN force authorized to use force under Chapter VII of the UN Charter. The UN, in turn, demanded that the mission could be deployed only with the consent of the belligerent parties (i.e., a peace agreement). For the White House and UN Headquarters, the political content of a peace agreement for Darfur was entirely secondary: They wanted a deal on an expedited timeline to bring blue helmets to Darfur and remove the problem from their inbox. The UN would not permit the AU to be part of the planning for this high-profile and ambitious mission. The US State Department saw the peace talks as a necessary but minor backdrop to their deal with Khartoum needed to implement President Bush's directive. Consequently, at the highest international level, the rationale for the Darfur Peace Agreement (DPA) was to license the UN to impose international troops, rather than making peace.

It was not only in the US that Darfur had achieved a remarkable public profile, but also in France.⁸¹ Nicolas Sarkozy's campaign for the presidency in 2007 included a commitment to strong action on Darfur, echoing its depiction as genocide by the Urgence Darfour campaign and the outspoken public intellectual Bernard Henry Levy.⁸² On winning the election, Sarkozy appointed the veteran advocate for humanitarian intervention Bernard Kouchner as foreign minister.⁸³ France also retained a long-standing relationship with Chad, which served as a base for its military operations in the Sahara. In a more traditional manner, French policy was focused on preventing the Darfur conflict from destabilizing Chad any further, especially after attacks by Sudan-backed rebels reached N'djaména in 2006 and 2008.⁸⁴ The Elysée favored African leaders who would serve as gendarmes dedicated to protecting French interests on the continent, a position that repeatedly led them—and their protégés—into dispute with Pan-Africanists. A third strand for French influence was at the UN, where the post of under-secretary-general for peacekeeping operations was reserved for a French nominee.

What the Save Darfur Coalition and Urgence Darfour really wanted was North Atlantic Treaty Organization troops, but given the political realities in

Washington, D.C., and Paris, the UN would have to do. To make the case for the UN, it was necessary to belittle AMIS and its achievements. The AU paid the price for the ambitions of the interventionists.

The UNSC gave the Abuja talks a deadline of April 30, 2006. As it approached, the US and UN—which had paid little attention to the negotiations—belatedly realized the substantive issues at stake and rushed to engage. It was too late, and in fact, the flurry of interest by high-level figures, including President Obasanjo, US Deputy Secretary of State Robert Zoellick, UK Secretary for International Development Hilary Benn, and Special Representative of the Secretary-General Jan Pronk, only reinforced the sense among the leaders of the Darfur armed groups that they could expect an even better deal from the international community. The Abuja talks finished with Abdel Wahid and Khalil rejecting the DPA and only the SLM's Minni Minawi signing, under visible duress.⁸⁵

Three months later, in August 2006, the UNSC passed Resolution 1706, authorizing a Chapter VII UN mission in the absence of consent from the GoS. Al-Bashir, however, categorically rejected it. The UNSC did not want to impose a force and sought a compromise in the form of a hybrid AU-UN mission. This was agreed in principle at a meeting in Addis Ababa in November 2006, with a plan for the UN to provide interim assistance to AMIS in the form of a “light support package” followed by a “heavy support package.” Sustained negotiation between the GoS, UN, AU, and western powers led to the passing of Resolution 1769 in July 2007, which created the UN-AU Hybrid Operation in Darfur (UNAMID) and set a handover date of December 31, 2007.⁸⁶ By that date, a follow-up to the AU mediation headed by Salim and Jan Eliasson, former Swedish minister of foreign affairs, was expected to secure an inclusive agreement and the UN's “heavy support package” to UNAMID was supposed to be in place. Neither of these conditions were met, however, and UNAMID inherited a neglected AMIS force, without any substantial additional logistical support or reinforcements, an unclear mandate, and no peace agreement.⁸⁷

Alongside the completion of the AMIS-UNAMID transition, in June 2008, the UN appointed a joint chief mediator for Darfur, the former foreign minister of Burkina Faso, Djibril Bassolé.⁸⁸ He was a more traditional West African political figure from a state that had recently become aligned with France's Africa policies.

Although the AU mediation had no power address the number one issue facing Darfur—international troops—it avoided the issue lurking in the shadows, namely the ICC. As the peace talks were ongoing in Abuja, the ICC was conducting its investigations, with little publicity at first. On the grounds that the accountability issue was proceeding down a separate track, the AU mediation ignored the question of justice.

Against this backdrop, Khartoum hosted the AU summit in January 2006.⁸⁹ The venue of the summit had been decided three years earlier when it looked as though it would be the occasion for Sudan's post-CPA rehabilitation as a full member of the African community of nations. At that time, al-Bashir had also been designated to become the AU's chair for 2005–2006. In July 2005, because of the Darfur atrocities, the AU Assembly prevaricated on appointing al-Bashir—keeping Nigeria's President Obasanjo in place for an additional six months—but stuck with Khartoum as the venue for the following summit. When they convened in the Sudanese capital in January 2006, with no peace agreement for Darfur, Africa's leaders decided that they still could not in good conscience elevate al-Bashir to serve as chair. Instead, they elected President Denis Sassou Nguesso of the Republic of Congo.⁹⁰

Sudan, Africa, and the International Community

The global media coverage of Darfur took the conflict out of its Sudanese and its African context. In the critique of Mahmood Mamdani, the Save Darfur movement was less about the realities of Darfur than it was about the assertion of liberal interventionist principles.⁹¹ Following a similar logic to the War on Terror and invasion of Iraq, western states would use their military might in pursuit of a humanitarian cause, which affirmed their virtue and power. As noted previously, Darfur became a high-profile issue in US politics. Even before that, however, for multiple reasons (e.g., it was a state sponsor of terror, a strategically positioned country, and the focus of vocal domestic constituencies) Sudan was high on Washington's agenda and a foreign policy priority for successive US administrations. Since the 1980s, senior policymakers spent more time on Sudan than on almost any other African issue except Apartheid, and in the 2000s, Sudan rivaled China as a national security agenda item. This continued to be the case throughout the life of the Panel, with high-profile engagement by Secretary of State Hillary Clinton, Permanent Representative at the UN Susan Rice, Senator John Kerry, and even President Barack Obama. In 2010, Ambassador Princeton Lyman was appointed as US special envoy for Sudan (later, Sudan and South Sudan) and played a significant role.

There were sharp divergences among senior US policymakers in the first months of the Obama administration, with some favoring robust action against Khartoum and others supporting a continuation of the Bush administration's commitment to negotiated outcomes. A Sudan strategy was agreed and announced in October 2009 (see [chapter 3](#)). The announcement said that the administration

would pursue these aims through engagement with the NCP and SPLM. This did not assuage the fears of the NCP that Washington harbored a regime change agenda. The SPLM, meanwhile, enjoyed favored status among many figures in the administration as well as in Congress and with activist groups. This did not, however, translate into a strategic alliance. The US and South Sudan stumbled at the first hurdle in September 2011, when President Kiir lied to President Obama when the two met on the sidelines of the UN General Assembly in New York. The relationship was irretrievably damaged when South Sudan attacked the north six months later, defying clear messages from Washington, D.C.

The strategic relationship that underpinned US policy—and provided the pivot for AU engagement as well—was Ethiopia. Under Meles, Ethiopia emerged as the anchor of the Horn of Africa. In concordance with its balancing strategy, Ethiopia maintained its partnerships with the US, the European Union, and China, and positioned itself as the lead actor in the multilateral peace and security architecture for the region. At key moments during the years 2009–2012, Ethiopia stepped in to provide the guarantees needed to persuade the Sudanese and South Sudanese to cooperate, and the resources needed to underpin agreements. Notably, Ethiopia provided the troops for the UN force in Abyei and for border monitoring. Meles was personally invested in seeking a resolution of the conflict in the Two Areas, an effort that did not survive his death. The Ethiopian role was neither flamboyant nor threatening: It was an example of leadership through alliance building and discreet reassurance and guarantee, the kind of peacemaking that doesn't receive the accolades it warrants.

The relationship between the US administration and the AUHIP was one of reciprocal need but different styles. The US could provide the material incentives that Sudan and South Sudan needed but lacked the credibility and access with Khartoum. The Panel could work only through persuasion and patience. At times, the US criticized the Panel for not moving faster and for being, in its view, unduly accommodating toward northern Sudan. The Panel was concerned that the US would overpromise and underdeliver and was insistent that only a deal fully owned by the Sudanese and South Sudanese would work.

The Panel was born of the overreach of the international community, and a fear in Africa that the future of Sudan was being set outside the continent, by people who did not have the country's interests at heart. The point of origin for the Panel was the ICC, and specifically the ambition of the prosecutor, Luis Moreno Ocampo. Following the UNSC referral of Darfur to the ICC in 2005, the prosecutor at first followed a cautious path, with a small team that sought cooperation from the GoS. The ICC's first two arrest warrants, issued on April 27, 2007, were for a serving minister, Ahmed Haroun, and a militia leader, Ali Abd al-Rahman ("Kushayb").⁹² Fifteen years later, Ali Kushayb was the first to

appear in the dock at the ICC's new purpose-built court in The Hague, on thirty-one charges of war crimes and crimes against humanity. The cases were well documented, and few disagreed that the two men had a case to answer. Subsequently, Moreno Ocampo decided to be much bolder and demand an arrest warrant for President al-Bashir, on charges including genocide, based on the argument that the head of state had hatched a genocidal plan targeting Darfur's African tribes long before the eruption of the war in 2003.⁹³ According to Moreno Ocampo's argument, this unfolded over many years, and when armed conflict was finally instigated, according to the prosecutor, al-Bashir implemented his plan in two stages. Stage one was the military offensives of 2003–2004 and stage two was the gradual extermination of Fur, Masalit, and Zaghawa populations in IDP camps, through means including starvation and rape. The audacity of his charges and the shaky nature of the evidence and argument in support of them caused much discontent among the ICC's staff and some of its supporters. Nonetheless Moreno Ocampo made a public application for an arrest warrant on July 14, 2008, and the ICC confirmed the warrant in March 2009.⁹⁴

The arrest warrant was not a surprise—Moreno Ocampo had signaled his intention for some months—but nonetheless it was a shock. The AU was unsure how to respond and decided to establish a high-level panel to examine the issues and options.

Part II

DARFUR AND THE SUDANESE CRISIS: 2009–2010

SUDAN'S CRISIS IN DARFUR

The immediate trigger for the African Union High-Level Panel on Darfur (AUPD) was the request of the prosecutor of the International Criminal Court (ICC) for an arrest warrant against President Omar al-Bashir. The arrest warrant was hugely controversial because of the substance of the charges and because of the feared impacts on peacemaking (in Darfur and in the completion of the Comprehensive Peace Agreement [CPA]) and on humanitarian operations in Darfur (figure 2). The African Union (AU) had taken a strong position in line with its principle of nonindifference, but it also had a principle of opposing unconstitutional changes in government: It held that regime change should take place only through legitimate African processes, not through any external initiative. The government of Sudan (GoS) was shocked, but al-Bashir obtained modest reassurance from the reaction of First Vice President Salva Kiir Mayardit and senior opposition leaders, including Sadiq al-Mahdi, who averred that peace and democracy were paramount and that they would not be supporting the handover of the president to the ICC.¹ The GoS explored the possibility of a friendly country bringing a draft resolution to the United Nations (UN) Security Council, using Article 16 of the Rome Statute to defer any ICC action for a year. When it became clear that the US, France, and Britain would lobby against any deferral, the GoS dropped the plan. One consequence of the arrest warrant, not immediately apparent, was that it severely limited the role that could be played by the UN and western nations in political negotiations with the GoS. The UN secretary-general, on advice from the legal office of the UN, deemed that it was inappropriate for any UN official to do business

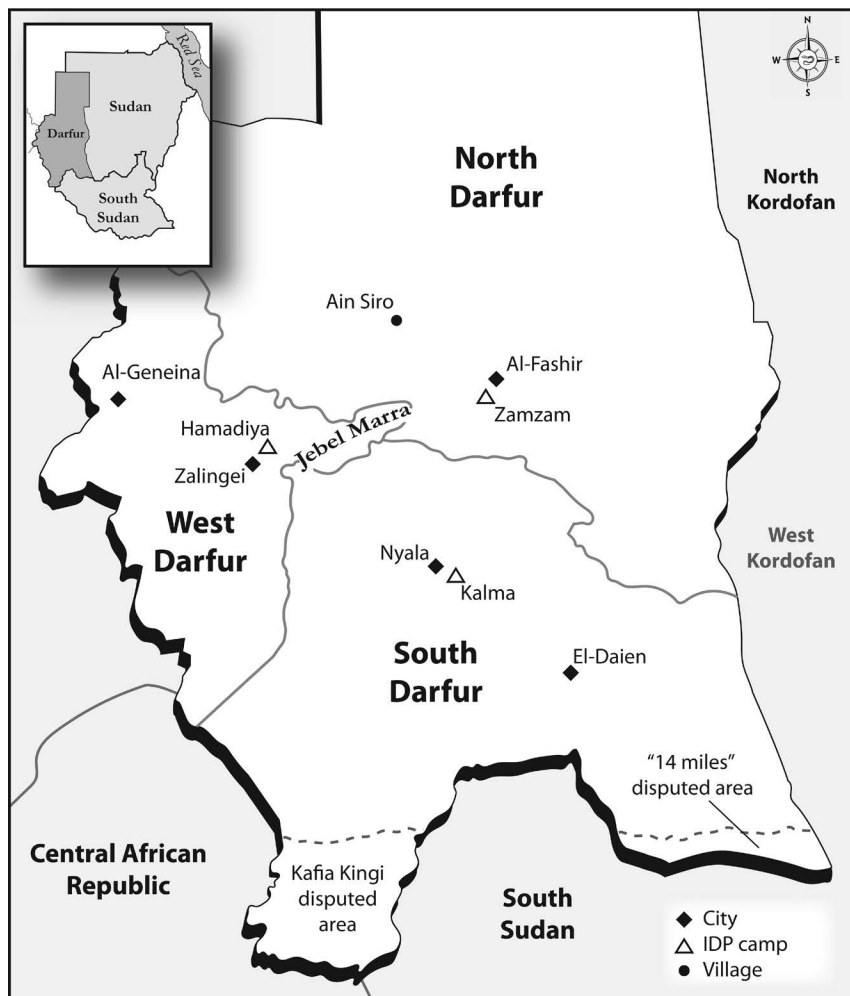


FIGURE 2. Darfur. Created by John Wyatt Greenlee/Surprised Eel Mapping.

with an individual wanted by the ICC, except on essential business. Given that the special representative of the secretary-general for Sudan and head of United Nations Mission in Sudan (UNMIS) had essential business to transact with the president, further advice was given that he should not be photographed smiling with al-Bashir. Similar prohibitions or restrictions were applied to European and American diplomats, with the result that President Jimmy Carter became the only American to meet with or call President al-Bashir for several years.

Senior staff at the AU Commission ruefully observed that if al-Bashir had been ready to take African advice earlier, he would have been spared this

outcome. The arrest warrant had been the ICC's worst-kept secret and a debate was underway on its implications. That same month, the African Union Peace and Security Council (AUPSC) met at the ministerial level and called for the arrest warrant to be deferred for one year.² The communiqué also stated that "in order to achieve long-lasting peace and reconciliation in Darfur, it is imperative to uphold the principles of accountability and bring to justice the perpetrators of gross human rights violations in that region." The AUPSC also resolved to establish "an independent High-Level Panel made up of distinguished Africans of high integrity to examine the situation in depth and submit recommendations to Council on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed."³

It was the first AU high-level engagement on transitional justice.⁴ Its initial step was to focus on the legal challenges of accountability alongside reconciliation. The AUPSC looked for a senior African to chair the Panel. For several months, the decision languished. At the end of the year, the Commission approached Thabo Mbeki, who had recently stepped down as South African president. Mbeki's name was proposed by Meles Zenawi, who first consulted President al-Bashir. Mbeki accepted. As the leader who had been pivotal to crafting the principles and institutions of the AU, and who had been the first president of the AU on its inauguration in Durban in 2002, he was a prestigious choice. He also had strong relations with both al-Bashir and Kiir. Mbeki had made a state visit to Sudan to celebrate the New Year, also independence day, in 2004–2005, on the eve of the CPA, and had promised al-Bashir that he would help rehabilitate Sudan's reputation in Africa. South Africa chaired the AU Committee on the Post-Conflict Reconstruction of Sudan and one of its first steps was to send a team headed by Deputy Minister of Foreign Affairs Aziz Pahad to New Site in the Sudan People's Liberation Movement-held areas of southern Sudan.⁵ After the death of John Garang, Mbeki convened discreet meetings between al-Bashir and Kiir to discuss the implementation of the CPA.

Mbeki appointed two other former heads of state as members of the Panel. General Abdulsalami Abubakar, had been Nigerian president for a year following the death of General Sani Abacha in 1998, presiding over the transition to a democratic government. Abubakar had subsequently been active in regional peacemaking and had served as the envoy of the Economic Community of West African States to Liberia and Sierra Leone. President Pierre Buyoya had led Burundi during 1987–1993 and again from 1996–2003. On both occasions, Buyoya had taken power by military coup, but each time, he had stepped down to usher in a civilian government and had become a peacemaker. He said of the

Burundian peace process that its most lasting achievement was to educate the citizens of the country about their democratic rights.⁶

The inaugural meeting of the Panel was held in Addis Ababa on March 18–19, 2009. The Panel reviewed AU and UN documentation and finalized its members and team of experts. Abdul Mohammed, coordinator of the AU's Darfur-Darfur Dialogue and Consultation (DDDC), joined the meeting. Abdul would go on to become the driving force behind the Panel's consultations with Darfurians, which provided the most important method and substance of the AUPD report, and subsequently the chief of staff of the African Union High-Level Implementation Panel for Sudan (AUHIP).

Over the following weeks, Mbeki, Abubakar, and Buyoya held meetings with al-Bashir, Ali Osman Taha, and senior judicial officials. In line with much of the regime's official rhetoric, al-Bashir blamed the conflict on "tribal problems," in addition to the actions of the rebels and the proliferation of firearms in the region as a result of neighboring conflicts. He blamed much of the breakdown of law and order in Darfur on the decision of Nimeiri's regime to dismantle the system of neotraditional local government known as the "native administration."⁷ In a second meeting, al-Bashir insisted that the rebellion was continuing because "[the] Zaghawa want to control Sudan" and said that the war would end when Sudan made peace with Chad and its Zaghawa president Idriss Déby.⁸

Consulting the People

The Panel took a crucial early decision, to take the step that had been so singularly lacking in the mediation efforts to date, and indeed, that had been widely blamed for the failures of peacemaking. It decided to ask the people of Darfur for their views, using the DDDC.

The DDDC was based on the July 2005 Declaration of Principles (DoP), which read: "Agreements reached by the Parties shall be presented to the people of Darfur to secure their support through Darfur-Darfur dialogue and consultation."⁹ The Darfur Peace Agreement referred to the DDDC to seek support for the agreement and also to assist in resolving local conflict. Abdul Mohammed offered to put the staff and networks of the DDDC at the disposal of the AUPD.

Over the next five months, the Panel traveled four times to Sudan and to Darfur and spent more than forty days meeting with more than 2,700 people in Darfur and about 400 people in Khartoum. On the first extended visit to Darfur, in May, it immediately became clear that such consultations were an essential long-overdue exercise. Much had been said about the people of Darfur,

but they had not had the chance to speak for themselves. The Panel insisted that it should go where it wanted (including to internally displaced person [IDP] camps outside GoS control and rebel-held areas) and speak with whomever it wanted without the presence of government officers. The GoS agreed. Many Darfurians enthusiastically turned out and expressed their views. Public hearings had between 75 and 150 participants each, and the government was “notable by its absence” in most consultations. Even when individuals close to the GoS were present, participants did not appear to be afraid of expressing views critical of the regime.¹⁰

After the first extensive field visit in May, the Panel reported that “there is no consensus among Sudanese including among Darfurians how to describe the events in Darfur during 2003–04 and subsequently.”¹¹ Arab communities preferred to use the terms “war” (*harb*) and “troubles” (*mashakil*), whereas Fur and Masalit regularly used the terminology of “genocide” (*ibada*).¹² Darfurians of all political colors also spoke of anarchy (*fawdha*); few mentioned respect for the state (*heibat ad dawla*).¹³ They described different circles of conflict, among Darfurian communities, between the rebels and the army and progovernment militia, and between Darfur as a whole and the Sudanese state. Attributions of blame diverged along the expected lines: Displaced people blamed the government; tribal leaders attributed responsibility equally to government and rebels. The visit clarified the questions that needed to be posed. As well as the three core issues for the Panel—peace, justice, and reconciliation—a fourth was added: Darfur’s position within Sudan.

For the second major visit to Darfur, the DDDC organized a series of town hall-style meetings, which were held in IDP camps and rebel-held areas, in the cities of al-Fashir, Nyala, al-Geneina, and Zalingei. Beforehand, DDDC staff asked the communities in question to prepare presentations on the four questions and to select spokespeople. Some of the meetings lasted all day. On occasion, the United Nations–African Union Hybrid Operation in Darfur (UNAMID) security detail became nervous as dusk approached and the Panel was continuing a vigorous discussion with no sign of wanting to stop. They met with civil society, IDPs, nomads, and the customary leaders who constituted the “native administration.”

Additional consultations were held in Khartoum, including fourteen political parties, encompassing the full spectrum from the Sudan Communist Party to the Popular Congress Party. The AUPD report noted: “This was the first involvement of the national political parties in a collective discussion with the UN or AU on this topic.”¹⁴

Across Darfur, everyone agreed on the need for peace, reconciliation, and justice but disagreed on what this would entail. Two aspects to the war emerged.

The conflict among Darfurians, all averred, could be resolved by the Darfurians. The conflict between Darfurians and the central government needed political resolution. One participant in Nyala succinctly explained this: "First, Darfur versus the centre; and second, local, due to lack of development. There was increasing population and animals, conflict between farmers and herders, also between farmers and farmers, pastoralists and pastoralists; and also this problem brought from Chad, including the spread of weapons related to each country supporting each others' rebels. Different players came in leading to confusion and lack of single diagnosis." In the rebel-held village of Ain Siro, Omda Abdalla Shallali indicated how relations between the local command of the Sudan Liberation Army (SLA) and the neighboring Arabs had changed: "Arabs were our enemies in the recent past, when the Sudan Government saw them as its right arm. We went through burnings, killings, rapes. Who directed them? It was the government. It was the mistake of the government, not them. . . . We currently live side-by-side with our neighbours. We cannot prevent anyone from finding water. We all share the basic needs of water, fire."¹⁵

A spokesman for IDPs in Geneina said: "When this began I went to the Arab nomads and said, we have known each other a long time. What is new? He said, we have instructions from the top. You are African, now you have no land."¹⁶ In Nyala, an Arab leader made a subtly complementary statement, from a different political standpoint: "When the problem in Darfur started everyone in the world was aware of it. When the fragmentation of the armed groups took place we began to doubt that they were fighting for Darfur and thought they were fighting for their personal interest and to bring Darfur to the international table."¹⁷

In al-Fashir, a spokesman for the nomads complained that customary means of conflict resolution had been "complicated by foreign interferences and the exclusion of pastoralists."¹⁸ His priority for reconciliation was to establish secure migratory routes for livestock.

In short, each community blamed the escalation of the conflict on factors outside Darfur. This dynamic could be seen among the native administration leaders. Sometimes, the chiefs offered sharply divergent views and even quarreled in front of the Panel. In a meeting in Zalingei, two senior Fur chiefs blamed both the government and the Arabs for the destruction.¹⁹ An Arab chief responded, beginning with historical explanations, and was shouted down, but then allowed to continue: His first two points regarded the elections (contra to the Fur leaders, he was in favor of them proceeding) and the settlement of lands (which he said could be resolved by negotiation). His key point was the third: "The concern for us is the conflict between the government and the armed movements, what is our role in that?" On returning to his seat, he made a point

of stopping to greet his Fur counterpart warmly. In rebel-held Ain Siro, a representative of the youth said: "Darfurians know the skills for reconciliation. Peace should be established first and then reconciliation; there won't be a problem with this when there is peace."²⁰

It was understandable for the Fur—who had been subjected to massacres and forced displacement—to want protection and a commitment to justice before negotiating with the Arabs. This was made very clear by Fur IDPs located near Zalingei, who insisted that international engagement was essential.²¹ Their spokesperson said Darfur was a test case of the use of force in the responsibility to protect and saw African peacekeepers as insufficient: "The AU was the desire of the Sudan Government, not the IDPs. AMIS failed for three years and was changed to UNAMID, which is still unable to succeed. We are the victims. We do not object to American soldiers coming to protect us." Mbeki responded: "Let us be clear, there is no American soldier coming here to Darfur. There is no European soldier coming to Darfur. No American or European will come and die in defence of your interests. It's not going to happen. So the challenge remains. The challenge of security remains with us. You can make this demand for American or European forces to replace UNAMID. It will not happen. We should not operate on the basis of a dream that is not going to be realized."

Many of the victims of atrocities in Darfur had staked their hopes on dreams of decisive international action and considered anything less than military intervention and the ICC as an unacceptable compromise. Darfurians had specific proposals for consultation, reconciliation, and political change, often with a somewhat idealized view of how customary conflict resolution practices worked. Within Darfur, all (including the most progovernment local leaders) agreed that the different Darfurian communities could resolve their differences through intercommunal negotiation, typically mediated by a neutral committee of elders (*ajawid*). They also concurred, however, that this would not be meaningful unless the government were, first, to refrain from meddling in local affairs, and second, were to attend to its tasks of providing services, including policing and social and economic development. Reconciliation with the government was a different matter.

The most polarizing question was justice. Different people had different conceptions of what that would entail: the prosecution of the perpetrators of atrocity crimes, an expression of remorse and apology by the leaders of the Sudanese government, the provision of compensation for losses incurred, restitution of land and other property seized, the establishment of the rule of law in Darfur, and measures to remedy the historic inequities that had left Darfur marginalized and underdeveloped.

In one meeting in al-Geneina, when an IDP spokesperson made remarks about justice, the translator skipped the part that involved accountability for war crimes.²² Alerted to the omission, Mbeki raised the issue. The IDP representatives briefly whispered to one another and then laid out their concerns about “justice as we understand it.” The meeting record reads:

- “[Our] property looted, land occupied, women raped, settlers steal our land and have the upper hand.”
- “When we go to the police to record a case, the competent office doesn’t record the case. This is since 2003. These are the injustices we are talking about. The IDP community completely lost confidence in the current police.”
- On land occupation, “We look forward to a mechanism to come to the IDP community to look into our claims and address our issues in an independent manner.”
- “We have all the evidence: looting, rape, killing, occupation of land but we need a neutral mechanism to look into this and do the details.”
- “This conflict itself is a result of injustice, lack of development, marginalization.”
- On the arbitrary detention of IDPs. “detainees don’t end up in courts; the issue can only be settled out of court on the basis of payment.”
- “If I go to the Ministry of Interior to get an ID card, I can’t get a document even with witnesses, but someone from Niger can come and get one even without.”
- “Some tribes are above the law, they behave like government. For us to be equal, justice must prevail.”

Asked privately after the meeting whether they would have raised the ICC issue, but were uncomfortable doing so in a public forum, the IDP spokespeople agreed that they would have liked to add the prosecution of GoS leaders to the list. But they noted that the issues they raised were more urgent.

The IDPs around Nyala were outspoken. One at Kalma camp even told the Panel “We delegate Abdel Wahid to talk for us . . . go to France and talk to him.”²³ That was rare—and no one in Darfur said that they would remain silent and ask for either Minawi or the Justice and Equality Movement (JEM) to speak on their behalf. Some IDPs, in contrast, maintained they had been driven into the camps by both the government and the rebels, and they demanded independent representation in future talks.²⁴ IDP participants were hostile to the Arab League and often interpreted the conflict through an “Arab versus African” lens. For instance, one contributor argued that “Bashir has mobilized Arab tribes to kill African tribes.”²⁵

Meanwhile, when the Panel met with representatives of the Darfur Arab Leadership group, they attacked the notion of a divide between “Arabs” and “Africans” in Darfur as a “foreign media fabrication,” insisting “we are all Darfurians—Arab-Africans or African Arabs!,” with the real conflict being between pastoralists and farmers. They were angry that Darfur’s Arabs were being depicted as “settlers from other countries.” Darfurian Arab leaders said it was they who were the most marginalized, because nomads had little access to education.²⁶ At the meeting in SLA-held Ain Siro, people insisted that lands needed to be returned on the basis of Darfur’s *hakura* land tenure system.²⁷ The Arab leaders argued, however, that the *hakura* system had historically marginalized nomads, saying also that humanitarian organizations refused to employ Arabs or allocate aid to them.²⁸

The meetings showed how deep the polarization had gone, sometimes by what was left unsaid. When Nyala IDPs came to the UNAMID base rather than the Panel visiting them in their camp, their spokesman began by saying, “I wish this meeting were in an IDP camp and we could have poured our hearts out to you.”²⁹ When the Panel spent a day in the Hamadiya IDP camp outside Zalin-gei, the participants did precisely that. The spokesperson for the IDPs from another camp, Hassa Heissa, Adam Boush spoke first: “We welcome you and appreciate that you came to learn about our suffering and the genocide.” He then complained: “Whoever comes, we explain to them, they listen and go away and forget about it, and this has never achieved anything, ever.” Boush spoke on behalf of a committee that had compiled a statement:

We as IDPs determine:

1. The AU does not possess the competence, credibility, neutrality and independence in addressing the issue of Darfur, through the apparent backing of the GoS headed by Omar al-Bashir.
2. The AUPD does not possess the competence, credibility, neutrality and correct understanding. Thabo Mbeki’s clear support for Omar al-Bashir on the ICC issue.³⁰

The following exchanges, near-verbatim, capture the tenor of the discussions.

IDP spokesperson: See the facts for yourself.

If you are here to mediate, we need you to deal in a transparent manner.

We fear you are here to defend the criminal Omar al-Bashir.

The biggest problem is women and children. From the beginning of the war until now, the worst part is that if you are a woman carrying a baby boy, they will take the boy and throw him in the fire, the *janjawiid* will rape you in front of your family. This is still going on, under the threat of weapons. If you stay overnight you will see.

There should be no dialogue before apology and the ICC. The prosecution of criminals and former President al-Bashir should be first. [Translator's observation: "she said *former* president."]

President Buyoya: I come from a country that has been through civil war and genocide. We have to come out of this situation of misery and hopelessness. That is why we are here. We know something about conflict. We know something about the frustrations of people.

Mbeki also challenged the IDPs who claimed that the AU had insisted on impunity for al-Bashir. He went on to ask them, was the aim of their struggle to put al-Bashir in prison? Or was it to achieve something else? If it were the latter, he said, should they not decide whether they were ready to sacrifice those goals for the sake of bringing the president to court?

These discussions recurred throughout the Panels time in Darfur. One speaker at Kalma asked: "If you don't want to have Bashir go to the ICC, is there an alternative court in Africa to try him and others?"³¹ Meanwhile, representatives of independent civil society spoke in favor of hybrid courts, as did the National Umma Party, which had been critical of the arrest warrant.³² People also supported resolving lower level crimes through customary and Islamic justice mechanisms—such as the payment of blood money, or *dia*—and for reconciliation through traditional *sulh* conferences. Others, however, said that these mechanisms had broken down irreparably during years of conflict, that they overlooked the extent to which "the state is part of the problem."³³ A record of the exchange in with SLA commander Ali Haroun in Ain Siro, illustrates:

Thabo Mbeki: We can sit and talk until the sun goes down.

We have a serious section of the Darfur leadership here.

I will meet President al-Bashir, say there is a school here, which needs books, money. I would like to say there is a clinic which needs medicine so people have a health service, also it's important that the UN, the GoS must make sure food supplies are not stopped and will reach Ain Siro. People want peace, they want agreements respected; their experience is that this is not so.

Here is my problem. This leadership is saying that, instead of raising those things, I should arrest him.

Ali Haroun: Part of the answer is that Omar al-Bashir is not respecting agreements. As for arresting him, with all due respect, there is no capacity for you to arrest him. But if the question is, do the people of Darfur want to prosecute him? This takes us to the question of elections. There are political and legal aspects.

On politics: We made a revolution with demands for rights. We are still on that path. Who could sign? Al-Bashir—I could sign with him.

On elections: We don't know if we are part of Sudan. Some [of us] are IDPs, refugees. We cannot trust the census. First we need peace, then we will think about these other things.

On legality: Since he has committed crimes against Darfurians, if he goes back to the people who suffered, they should decide whether they want to prosecute or not.³⁴

The ICC prosecutor, Luis Moreno Ocampo, met with the Panel on July 7. Mbeki noted Moreno Ocampo's position: "[We] need to prosecute without taking into [account] political considerations."³⁵

On the final topic—Darfur's place in Sudan—there was much greater consensus, with the significant outlier of the Zalingei IDPs. Ismail Yahya, one of the Rizeigat chiefs expressed the views most succinctly.³⁶ He said, "In Darfur we think we are part of Sudan," adding that the census had shown that Darfur was Sudan's second most populous region. "So it's an obligation that we should participate in any decision. Without Darfur there is no Sudan. We are part of political will, we should be a full partner, a witness to make sure that everything is happening according to agreement."

Ismail went on to report on the unresolved debate within his group, on the forthcoming elections: "One part says, we should participate, there is no ideal world. Majority view: there should be sustainable peace before elections." The consensus among the chiefs was most cogently expressed in al-Geneina:

Holding election in Darfur is it is not possible for the following reasons:

1. An inadequate population census.
2. There is no peace, which is a prerequisite.
3. The situation in Darfur is not suitable for practicing transparent democracy.³⁷

Omda Abdalla Shallali of Ain Siro expressed the widely held view that Darfur was reduced to an afterthought in Sudanese politics. He said: "You have come from Khartoum. Do you see these villages look anything like Khartoum? Do you see schools like the schools in the north? Do you see hospitals? Have you seen any gas station? Are we part of Sudan?"³⁸ Among the IDPs in Zalingei, one speaker took this to an extreme, claiming the right of self-determination: "Elections [should be] after a comprehensive and just peace. If such elections are held, if we win in Darfur, we shall be separating Darfur from Sudan."³⁹

Each community demanded that the Panel should take its agenda and represent it to their adversaries. The Panel refused to do this, repeatedly saying that it was for the Darfurians to sit together to resolve their problems. The Panel's

third visit to Darfur was, as promised, to meet with the community leaders to report on its draft analysis and recommendations. Drawing on the 2005 DoP, its starting point was framing the problem as “Sudan’s conflict in Darfur.” It proposed an all-Darfur conference and political process, and a hybrid court.⁴⁰ It held an “all-in” meeting in Nyala to try to begin the dialogue among the Darfurians.⁴¹

The key political actors could not openly oppose the Panel’s views, but made it clear they did not like them. The National Congress Party (NCP) gave a guarded endorsement.⁴² On two key issues, it disagreed with the Panel’s proposals. The first was inclusivity, on which it said that a small group of parties should represent the people. The second was a categorical rejection of discussing the ICC.

Minni Minawi, who since 2006 had been assistant president, said, “You read well the root cause of the problem in Darfur.”⁴³ He added that, “We are in the Palace but we still have a problem with this government, as great as that between Khalil Ibrahim and the GoS.”

JEM representatives had said that because they represented the population of Darfur, the Panel did not have to consult with the communities. The Panel’s position was that if JEM did indeed represent the communities, the communities would tell them so. Although some local Darfurian leaders did agree that Abdel Wahid al-Nur was their leader and the Panel should fly to Paris—where he was living at the time—no one said the same about JEM. Unsurprisingly, Khalil Ibrahim’s view diverged from the consensus in support of inclusive talks. Later he frankly told the Panel, “Peace talks should be with credible movements—others can join later. Peace can only be achieved with fighters. No negotiations with civil society—would bring chaos [plus] will not bring peace.”⁴⁴

Defining the Problem, Writing the Report

No less challenging than bridging the political gaps within Darfur was managing the chasm among divergent international views. In his presidential campaign, Barack Obama had marshaled the energy of young Americans, including those energized by the Save Darfur Coalition. His nominee for permanent representative to the UN Security Council, Susan Rice, had a long-standing antipathy to the GoS. During the Clinton administration she had been a strong proponent of support for the Sudan People’s Liberation Army and out of government she had called for military strikes “to stop genocide” in Darfur.⁴⁵

In January 2009, taking up her position at the UN Security Council, Rice said that there was “ongoing genocide” in Darfur.⁴⁶ This signaled a confrontation. At that time, incident data indicated levels of lethal violence of about

100 to 150 fatalities per month, most of them during armed clashes between Arab tribes.⁴⁷ Data for nutrition and health among the displaced population indicated that the humanitarian crisis had also stabilized, although there was no sign that IDPs would be able to return home. As the Panel's inquiries were to discover in the succeeding months, Darfur society was in a situation of shock, fracturing under the impact of the atrocious violence of the 2003–2005 period. The two opposing coalitions that had clashed during the height of the war were fragmenting. The armed groups had started splitting in 2005, a process accelerated following the failure of the Abuja talks. Less noticed internationally, the coalition of Arab militia had also begun to crack, with dissenting groups (among them the “neglected soldiers”) accusing the GoS of using them to do its dirty work, and then betraying them. Some Arab militia leaders toyed with rebellion. Bellicose young militia commanders challenged older chiefs for authority over the tribes.

The UN-AU joint special representative (JSR) for Darfur and UNAMID head, Rodolphe Adada, was a mathematician as well as a diplomat. He had examined the data collected by the mission. When he reported to the UN Security Council on April 27, 2009, he remarked, “The conflict in Darfur today is a conflict of everybody against everybody: Government forces against the armed movements, the armed movements among one another, Government forces against the militias and tribal groups against one another. There is also endemic banditry due to a breakdown in law and order.” He continued: “The situation has changed from the intense period in 2003 and 2004, when tens of thousands of people were killed. Today, in purely numerical terms, the Darfur conflict can be considered a low-intensity conflict. During the period from the first day of UNAMID operations on 1 January 2008 until 31 March 2009, our incident database contains reports of just under 2,000 fatalities from violence, with a monthly average of about 130 to 150 deaths. Approximately one-third of the victims were civilians.”⁴⁸

There is no agreed definition of, or numerical threshold for, “low-intensity conflict” but it is a plausible description of the levels of violence, prevailing at the time. His description sparked a political storm. Unfortunately, Department of Peacekeeping Operations staff in headquarters had been preparing the reports of the UN secretary-general to the Council based on a selective or casual reading of raw data from UNAMID incident reports. For example, the April report included, among other things, mention of a series of incidents in which 220 people were reported killed in fighting among Habbaniya, Fellata, and Rizeigat tribes on March 29–30.⁴⁹ This was incorrect. In actuality, UNAMID had first logged a report by the Civil Affairs Department on April 1, based on a summary account provided by tribal leaders. Arriving on the scene the

next day, the civil affairs officer discovered that the total number referred to clashes dating back several years, and the correct figure was in fact thirty dead in the previous week, and that rather than escalating, the violence was now under control.⁵⁰ This was not an exceptional case. Reports from the UN in New York during this period tended to use higher rather than lower figures and to claim that violence was increasing when it was in fact declining.⁵¹ The information provided by JSR Adada was accurate. It contradicted, however, the “ongoing genocide” narrative.

The meeting closed without an open debate. In closed session, Rice subjected Adada to hostile questioning. Shortly afterward, Adada’s contract was renewed for just six months. Taking this as a vote of no confidence, he resigned. The AU did not defend him. Neither did France or the UN. For the GoS, the message was chilling: A UN-appointed senior official could not be expected to be neutral.⁵²

In June, the recently appointed US special envoy, General Scott Gration, examined the same data, visited Darfur, and came to a similar conclusion as Adada. He spoke about “remnants of genocide.”

This sparked a conflagration within the US administration—General Gration was publicly contradicted by Rice and the Darfur advocacy groups rounded on the new special envoy. Gration wrote in his memoirs, “On the other side, however, many were convinced that the intent toward genocide remained. Administration officials, such as Susan Rice and Samantha Power, were opposed to any efforts to change the “ongoing genocide” narrative. Their position was that an immediate regime change in Khartoum was required for resolution.”⁵³

The issue was sufficiently important in Washington, D.C., for the White House to initiate an administration-wide review of Sudan policy. This review concluded in October. It specified: “This strategy includes three primary strategic objectives: first, a definitive end to conflict, gross human rights abuses, and genocide in Darfur; second, implementation of the North-South Comprehensive Peace Agreement (CPA) that results in a peaceful post-2011 Sudan, or an orderly path toward two separate and viable states at peace with each other; and third, ensuring that Sudan does not provide a safe haven for international terrorists.”⁵⁴

In his public announcement, President Obama spoke of “the genocide in Darfur.”⁵⁵ Both the policy and the president’s statement left a margin of ambiguity as to whether or not the US believed that genocide was “ongoing.” Although the policy review promised that the administration would work with the GoS, loud voices remained in favor of regime change.

Thereafter, it would require a courageous UN official to challenge the US stance on the genocide question, and neither Ibrahim Gambari (Adada’s successor as JSR) nor Djibril Bassolé (joint chief mediator [JCM]) was willing to do

so.⁵⁶ The safest approach for UNAMID was to focus single-mindedly on the deployment of its troops, taking the number of blue helmets as the indicator of progress, and avoiding the politics of the conflict as much as possible. Despite some half-hearted efforts by the AU Commission to put in place a system of regular reporting to Addis Ababa, JSR Gambari was well aware that power lay in New York.

When the position of JCM had been established a year earlier, UNAMID had set up an office for him in al-Fashir, anticipating that he would take an inclusive Darfur-based approach. JCM Bassolé, however, followed a different approach, described by his staff as “building momentum through security.”⁵⁷ Bassolé focused on the most salient military threat, the reciprocal attacks between Sudan and Chad, and the first agreement on “good will and confidence building” was exclusively between the GoS and JEM, making no mention of any other armed group or nonmilitary actors.⁵⁸ For JEM, the purpose of the agreement was to make itself the preeminent military actor, and it succeeded. The following month, on the pretext of the ICC issuing an arrest warrant for President al-Bashir and the GoS’s subsequent expulsion of thirteen international nongovernmental organizations from Darfur, JEM repudiated the agreement.

The Panel’s view was that Darfur needed to be resolved politically and in an inclusive manner. The crucial step was defining the problem. Discussion on this started with the Panel’s first session in Addis Ababa, including with JSR Adada. It continued with the consultations in Darfur. Mbeki wrote a “non-paper” with a provisional definition of the problem in May.⁵⁹ When he met with Meles on August 6, the discussion started on this point. Mbeki’s notes begin with item “1. Need proper definition of nature of Darfur conflict.” The two concurred that the “International simplistic definition has complicated [a] solution” and that the situation in Darfur could not be resolved without reference to the national challenge. On that point, Mbeki added in brackets, underlined: “Additional mandate?”⁶⁰

Meles had played a low key but pivotal role in Sudan’s peace process over the previous fifteen years and would continue to do so until his death. He offered to convene a summit meeting of the AUPSC to receive the AUPD report and provide a new mandate for implementing its recommendations.

At the highest level, the UN was thinking along the same lines. The under-secretary-general for political affairs, Lynn Pascoe, wrote to the secretary-general, noting that despite the importance of Darfur, CPA implementation was the biggest challenge in Sudan and “it is not getting the attention it deserves either from the two Parties who signed the CPA, or from the international community that appended its signatures to the CPA as witnesses.”⁶¹ He convened a

“strategic brainstorming” meeting of senior UN and AU staff.⁶² The meeting record includes some striking observations:

The country has a strong possibility of drifting into disaster, framed by a contested separation, with or without a referendum. . . . A political settlement in Darfur loses its relevance, if the collapse of the CPA leads to a violent disintegration of the Sudan. . . . Our team came to a common conclusion that challenges and risks outline above cannot be addressed and mitigated unless the international community adopts a [holistic and integrated] new approach to the Sudan. . . . [Steps should include] operationalizing for maximum impact the findings of the AU High-Level Panel on Darfur, led by President Mbeki; focusing in a systematic manner on the priorities in the implementation of the CPA—elections and the referendum; initiating a representative intra-Sudanese brainstorming or debate on the consequences of the referendum; testing and, if feasible, breaking the ground for a national inclusive dialogue on the future of the country.⁶³

The promise of this informal meeting was fulfilled only in part. It was not until 2013 that the UN was able to overcome the political and institutional obstacles to adopting an integrated strategy. In 2009, however, Mbeki proceeded in the hope that the partnership would be as hoped for.

Drawing on the wording of the 2005 DoP and the input from the consultations in Darfur, the AUPD report defined the conflict as the “Sudanese crisis in Darfur.” According to the report: “It results from a legacy of the unequal distribution of power and wealth in Sudan, whereby peripheral regions, including Darfur, have been historically neglected. The war in Darfur cannot be resolved outside the context of a response to the wider challenges facing Sudan as a nation, of democratic transformation, of creating a new and equitable political and developmental dispensation, and of giving the best chance for national unity.”⁶⁴

Relatedly, it saw that the principal political solution would arise from transformation at the center of power in Khartoum: “Ensuring stability in Darfur requires a political process, in which due attention is paid to the inter-connected pillars of peace, justice and reconciliation, all of which need to be addressed.” From this it followed that a solution “requires a comprehensive negotiated process in the context of a democratic transformation for the whole of Sudan, which should be built on the values of power sharing, wealth sharing, national reconciliation and pursuit of the objective of national unity in diversity, whether Sudan remains one or two countries after 2011.”⁶⁵

Primary responsibility for actions to resolve the crisis fell on the shoulders of the GoS. By adopting the definition of “Sudan’s crisis in Darfur,” the AUPD

report “points to the fact that important roots of the conflict lie in the historical legacy of Sudan’s inequitable governance, and the reality that a solution to the crisis requires decisive contributions by the Sudanese Government. Meanwhile, those critics and adversaries of the Sudan Government, who identify Khartoum as the problem, must by the same token recognise that a large part of the solution can only come from Khartoum.”⁶⁶

Underpinning this was the principle enshrined in the AU Constitutive Act of opposing unconstitutional change in government, and the deeply rooted Pan-African ethic that any form of externally engineered regime change was unacceptable. In turn, this elevated the importance of the general elections, whose date had just been pushed back (again) from February to April 2010. Rather than taking a position on whether the elections should go ahead on this date, the Panel argued for an expedited process of settling the crisis in such a manner that Darfurians could participate fully in them.

The Panel’s hearings highlighted not only the deep differences among the Darfurians but also and equally their determination to address them. The second course of action was for a reconciliation process among Darfurians: “The Panel was struck by the strength of opinion among Darfurians that they are both able and willing to work for peace and reconciliation at the local level, and to reinvigorate traditional mechanisms for conflict resolution, provided they are given sufficient security and reliable assurances of non-interference from outsiders.”⁶⁷

Engagement on politics and peace among the Darfurians was not a secondary element to be bolted on to a completed negotiation among the most powerful fighting groups, but instead was the essential political bedrock for peace. Rather than consumers of a peace deal after the fact, or spoilers bringing frivolous complexities to the negotiating table, the Darfurian constituencies were in fact the principal element that would make the peace process durable. By bringing together all elements of Darfurian society, the goal was to achieve a global political agreement—not a final settlement of all matters of substance.

The divergence between the approaches of the AUPD and JCM Bassolé was becoming evident, and Bassolé did not attend the AUPD public consultations.⁶⁸ He met only briefly with the Panel in June, reporting to New York only that the meeting had occurred “as part of preparations for broadening participation in the peace process.”⁶⁹ The AUPD report proposed that the JCM should base its strategy on “consultation with a wider spectrum of Darfurian and Sudanese stakeholders, taking their views into account in the formulation of his approach.”⁷⁰ It also recommended that the Darfur negotiations be sequenced to work within the timetable of elections and the completion of the CPA. The response of UNAMID—which at this time did not have a JSR—noted

that “the proposed Road Map in the AUPD Report is in consonance with the current activities of the JCM,” who “requires utmost support and backing by the [international community], particularly the AU and UN, at this critical juncture of the peace process.”⁷¹

The third key course of action in AUPD report concerned justice. It argued that justice needed to be folded into the domestic political process. “The Panel . . . considers that the issues of justice and reconciliation, including the role of domestic and international justice, are crucially important and should be an integral part of the solution for Darfur, and thus should be a key issue on the agenda of the political negotiations.”⁷²

The AUPD did not take a stand in favor of or against the ICC. Rather it argued that matter was a question for the Sudanese people. The decision to send the head of state to an international court was one that should be taken only by the Sudanese. If the ICC arrest warrants were imposed on them, it risked creating rifts that would cause more damage. Additionally, the ICC would prosecute only a small number of cases, and the great majority of perpetrators would never face proceedings in The Hague. Most prosecutions, if they were to happen at all, would be in Sudanese courts. The Panel proposed hybrid courts, in which international investigators, prosecutors, and judges would complement Sudanese ones in bringing cases.

The GoS cautiously accepted the AUPD report, including the proposals for an internal dialogue within Darfur.⁷³ The rebel movements and civil society focused on the Panel’s recommendations for justice, espying a let out for al-Bashir vis-à-vis the ICC (see [chapter 5](#)).

The AUPD report was presented to a meeting of the AUPSC, held at the highest level—heads of state—in Abuja on October 29. It was adopted unanimously as the African position. In its communiqué from that meeting, the summit established the AUHIP with a mandate to “to assist in all aspects of the AUPD recommendations, as well as to assist the Sudanese parties in the implementation of the CPA and other related processes, as part of the democratic transformation of the Sudan.”⁷⁴

DEMOCRATIZATION

The wording of the October 2009 African Union Peace and Security Council (AUPSC) summit communiqué is instructive. The tasks of the African Union High-Level Implementation Panel for Sudan (AUHIP), related to Darfur, the Comprehensive Peace Agreement (CPA), and anything else, were all “part of the democratic transformation of the Sudan.”¹ The Panel was guided also by the AU’s principles, including the African Charter on Democracy, Elections, and Governance, which obliges states to “establish and strengthen a culture of democracy and peace”; demands that they “prohibit, reject and condemn unconstitutional change of government”; and encourages them to undertake a broad range of measures for “political, social and economic governance.”²

The principle of opposing military coups was first adopted by the Organization of African Unity (OAU) in 1997 and was enshrined in the Constitutive Act of the AU in 2002. It could not be applied retroactively to the 1989 coup. The constitution in effect in Sudan was the 2005 Interim National Constitution, which was the product of the CPA, and which required free and fair elections during the interim period. According to the international community, the AU, and the Panel, this commitment legitimized Sudan’s Government of National Unity. The immediate challenge was how to make the fast-approaching general election, with its date of April 11, 2010, as free and fair as possible.

The election looked very different, depending on one’s perspective. Before 1989, Sudan had a parliamentary democracy with an independent judiciary and free press. For the civilian parties arrayed in opposition to the National Congress Party (NCP), the 1989 coup constituted the “original sin” of al-Bashir’s

regime.³ Even the Popular Congress Party's (PCP's) al-Turabi, who had orchestrated the putsch, would later repent of it.⁴ The civilian parties had been excluded from the government of Sudan (GoS)–Sudan People's Liberation Movement (SPLM) negotiations and the drafting of the 2005 Constitution, and although everyone welcomed the peace, many had reservations about the dominant role it gave to the NCP. One concern was that the elections be free and fair. Another was neutralizing all the advantages that had accrued to the NCP, including domination of the media, economy, and security infrastructure. They were less hostile to the SPLM, although it was coauthor of the CPA and dominated southern Sudan's political arena. Some in the opposition thought this was the best opportunity to pursue incremental democratization. Others dismissed the process as a fraud.

For many Darfurians, the elections were premature. Because government authority did not reach large areas, many would not be able to register or vote. Crucial issues were unresolved. Others saw the elections as a step toward resolving the crisis. For the "Two Areas" of Blue Nile and South Kordofan, the elections were part of a process of conflict resolution: The elected state assemblies would conduct "popular consultations" to determine the future of those states.⁵ For many southerners, this was their first ever chance to vote freely in a multiparty election, but it was also a sideshow to the main event, the referendum. The SPLM was divided, and its differing positions were to become a crucial factor in the politics of the elections.

The US and other western states had been proponents of including the elections within the CPA. As the elections approached, they had misgivings. The spirit of cooperation between NCP and SPLM had gone; Darfur and the International Criminal Court (ICC) had intruded; and the internationals were now focused on the referendum in southern Sudan. A victory by the NCP was both anticipated and seen as necessary to safeguard the CPA.⁶ None took the civilian opposition seriously. The UN had a strong electoral support team, and there were monitoring teams from the AU, the EU, The Carter Center, and others, as well as diplomats closely following the electoral process. Some saw the elections as a postconflict learning process, whereas others saw it as a technical exercise to be measured against international standards. Those who leaned toward regime change wrote the elections off in advance. Most saw the poll as a box-ticking exercise en route to the referendum in southern Sudan.

For the NCP, the elections were "the biggest political operation since independence," to secure their legitimacy, including a popular vote for al-Bashir and a broad-based government that could share the burden of the momentous and traumatic events that would follow.⁷ The CPA provided for "midterm" elections, for three reasons: First, democracy was a matter of principle for the international sponsors of the agreement. Second, democracy was essential for any

chance of voluntary unity. Third, in the case of secession, the NCP did not want to be alone in shouldering the responsibility for this historic loss and preferred a broad-based government to preside it. As the vote neared, these rationales no longer held.

Al-Bashir could not afford to lose. The ICC arrest warrant meant that the only safe place for the president was remaining in the palace, and any thoughts he may have had of handing over power were now banished.

Ghazi Salah al-Din explained: "For the government, the presidency is everything. I would be happy with 40 percent of the seats in the National Assembly. We can even function with 25 percent of the seats."⁸ Among his other roles, Ghazi was the head of the NCP bloc in the National Assembly. He handled the parliamentary "political budget," which was used for smoothing the passage of NCP decisions within the assembly, and he was a principal strategist for election planning. A second key figure was Ibrahim Ghandour, at that time NCP secretary for political affairs. The overall election manager was presidential adviser Nafie Ali Nafie.

The electoral system posed a particular challenge. Al-Bashir needed to win a majority on the first round to prevent the presidential election going to a second round in which the opposition might unite around a single candidate to unseat him. The NCP assumed that the southern Sudanese—21 percent of the electorate—would vote against him. This meant that al-Bashir needed 65 percent of the northern vote. Ghazi and Ghandour, however, were hoping that many of the opposition heavyweights, such as Sadiq al-Mahdi (Umma Party) and Mohamed Osman al-Mirghani (Democratic Unionist Party) would join a broad-based government. Ghazi explained: "We want a National Consensus or National Unity Government, to address the right of self-determination in southern Sudan. This is the most serious decision. So we want to include as many as possible in the government."⁹ They particularly feared facing any postsecession backlash alone. Nafie, however, nursed an animus against the Umma and Democratic Unionist Party (DUP) for having turned to armed opposition in the 1990s.¹⁰ A former head of the National Intelligence and Security Service (NISS), Nafie had control over an apparatus that reached to every neighborhood and village, and he was comfortable with the NCP's complete domination of the political realm in the north.

The SPLM's view was that the true democratic exercise was the referendum on self-determination. Speaking to southern political parties in March 2010, Salva Kiir Mayardit said that holding elections during the interim period was not the SPLM's preference, but they had been "cornered by the international community."¹¹ He explained that the SPLM was not afraid of democracy but was worried that elections might derail the peace, implying that they might imperil the partnership with the NCP or undermine the GoS's commitment to the referendum. Although the main northern opposition parties had signed up

to the southerners' right to self-determination, they had only done so in exiled opposition, and Kiir did not trust them to keep their word if they won an election. Implicitly, the bargain was that the SPLM would deliver electoral legitimacy for al-Bashir, who would reciprocate by permitting the referendum on independence to proceed nine months later.

It was taken as a foregone conclusion that Kiir would see off his challenger, Lam Akol of the SPLM-Democratic Change, and win the presidency of the government of Southern Sudan (GoSS). SPLM candidates, however, faced real competition for constituencies and governorships, especially from independent candidates with local followings. The governorships were a worry. In the case of renewed war, governors would control the state security committees, which were crucial nodes in the south's security architecture.

The SPLM in northern Sudan was torn. Some saw their future role as continuing as junior partners in another government of national unity. Malik Agar Eyre, the SPLM governor of Blue Nile, was a prime example. For them, as with Kiir in Juba, the key was continuity in the partnership with the NCP. The SPLM's northern sector, however, was also filled with radicals who saw this as the chance to seize the big prize. If the opposition could unite around a single candidate, who could also command votes in the south, this was the chance to take the presidency. Yasir Arman, leader of the SPLM parliamentary delegation, championed this—and was the SPLM name on the presidential ballot.

Yasir drew on a tradition of Sudanese political activism that saw peace and democracy as intertwined. In the early years of the civil war, peace initiatives came from the Sudanese—trade unions, professional associations, and political parties. These invariably called for a constitutional conference and made democracy the central pillar of conflict resolution.¹²

The Panel was plunged into the middle of this turmoil with barely five months left before polling day. The African Union High-Level Panel on Darfur (AUPD) report observed that “those critics and adversaries of the Sudan Government, who identify Khartoum as the problem, must by the same token recognise that a large part of the solution can only come from Khartoum.”¹³ Its perspective was that democratization would have to come through reform with the agreement of the NCP.

The biggest challenge for legitimate elections was in Darfur. The state of emergency gave the security services wide latitude to detain individuals, prohibit meetings, and prevent free expression of views. Even though direct combat between government and rebels was limited, many people lived beyond government control, in rural areas where Justice and Equality Movement (JEM) and the Sudan Liberation Movement/Army (SLM/A)—Abdel Wahid were active and in the internally displaced people (IDP) camps, which were de facto

self-governing. A normal election would not be possible, but postponing elections until after a peace agreement would once again leave out Darfur while historic national decisions were taken.

Darfur Disappointed

The first effort of the AUHIP was to convene the Darfur-Darfur Conference (DDC), as quickly as possible. This required the coordinated efforts of the Panel, the Doha mediation, and United Nations–African Union Hybrid Operation in Darfur (UNAMID), and the cooperation of the GoS.

After Rodolphe Adada resigned as the joint special representative for Darfur, UNAMID had no political leadership. As soon as Ibrahim Gambari was appointed as his replacement, Mbeki wrote to him asking for UNAMID's assistance in ensuring that the DDC should take place before the elections. Gambari responded positively. The augurs were good. The team from the DDDC, which had facilitated the AUPD consultations, was active in organizing meetings to support the mediation efforts, which were now hosted in Doha, on the same issues discussed under AUPD auspices.¹⁴ Time was desperately short. A date was set for the DDC: March 15 in al-Fashir, four weeks before voting in the general election was scheduled. As the days passed, it became clear that it was simply not possible to meet the deadline. International partners, including the UN, had not agreed on the imperative to convene the DDC in March (see [chapter 5](#)). At a logistical level, UNAMID security protocols and GoS travel permissions meant that it took an inordinately long time to accomplish the simplest tasks.

A similar clash of priorities colored the preparation for the elections in Darfur. Panel staff compiled reports of problems. One concern was the census.

We are struggling to find concrete evidence relating to the undercounting of certain communities/localities in Darfur. Those who had promised evidence have not come up with anything concrete. What we can say with confidence is that the census excluded the refugees in Chad (250,000 people from West Darfur) and the people living in rebel-held areas of Jebel Marra (an estimated 250,000 in West Darfur and 150,000 in North Darfur). With the average constituency being 140,000 people this would indicate that there are about 5 constituencies' worth of people [not enumerated].¹⁵

Another point was a "massive increase in the enumerated nomadic population [that] also raises question marks."¹⁶ Mbeki demanded proof. He cited the report

of the South African Statistician General, Pali Lehohla, who had participated as an expert adviser in the 2008 census, and who had endorsed the census findings.¹⁷ Across most of the country, the census was remarkably accurate, but Ghazi Salah al-Din conceded that the Fur “were at a disadvantage on the census” because of the undercount of IDPs.¹⁸ He proposed a solution: “We said that the final agreement will address the problem of representation, maybe by providing more seats, either by election or appointment. We can offer a new local census for Darfur, which is allowed for in the constitution.”

A bigger set of issues was government emergency powers. The Panel met with the main opposition parties, which had formed the National Consensus Forces (NCF, also known as the Juba Alliance after the city where they first met).¹⁹ Prominent among their concerns was the fear that the GoS would use its formidable security apparatus to prevent free and fair campaigning. The Juba Alliance unanimously demanded that the state of emergency in Darfur be lifted and the national security law be scrapped.

The 2010 National Security Act included contentions provisions that gave the members of NISS police powers, including search and arrest, under the direction of the NISS director without judicial oversight.²⁰ These powers could be used without specific justification for forty-five days and could be extended for ill-defined “national security” offenses. NISS was also granted widespread immunities. Over the objections of opposition parties, the SPLM parliamentarians had voted for the National Security Act as part of a trade-off with the NCP.²¹ After Mbeki concluded the Panel’s meeting with the parties with a plea to them not to boycott, Mariam al-Sadiq al-Mahdi went public with their demands, saying it was not possible to campaign in Darfur.²²

Meeting with al-Bashir two days later, Mbeki relayed the opposition demand for repealing the security laws. Al-Bashir responded with a familiar trope, that the US had similar provisions, and they were necessary to detain terrorists before they committed their crimes. Mbeki reported back to his staff after the meeting: “[On the] issue of lifting state of emergency in Darfur. There is a state of war: what do you expect the government to do? So we didn’t even raise that one. The question is how the powers are used. [They] should not be used to prohibit political parties from holding rallies.”²³ He suggested that the Panel should be on standby to raise any cases in which the NISS interfered with legitimate political activities. The opposition parties were sympathetic to the Panel’s approach. They wanted another postponement of the elections, arguing that this would create more time for the process of democratization as well as giving them a chance to catch up on registering their supporters. They also argued that any election in which JEM and the SLM-Abdel Wahid could not participate would not be regarded as credible. Even Minawi’s faction of the SLM, which was

in government at the time, complained that it had not been able to register as a party.²⁴ (It was subsequently able to register.)

In February, the Panel took forward an Umma Party proposal for a political parties summit. Darfur was at the top of the agenda. Issues for debate included how civilian parties should relate to the armed movements and whether the parties should adopt a joint manifesto for the Darfur crisis.²⁵ The summit meeting, initially proposed for February 17–18, was postponed for March 1, and then called off when the parties failed to agree on the formula for representation and the agenda. Campaigning went ahead and Yasir Arman, the SPLM presidential candidate, went there. His “briefing from the campaign trail” to Panel staff captured the combination of passion and skepticism among Darfurians, as captured by the meeting note: “Large support everywhere. He sees the election in Darfur as meaningless and says this is the opinion of all in Darfur. Nonetheless he managed to organize big rallies. . . . His message to the Darfurians was that the African-Arab differences are manufactured in Khartoum and can be resolved.”²⁶

The opposition leaders pressed for a delay in the elections until November. This would have suited them but might have jeopardized the referendum in the south, and Kiir’s GoSS would not have it. The contradiction between the CPA timeline and the Darfur timeline was once again acute. Yasir withdrew his candidacy, and the opposition decided to boycott. Their aim, as Yasir said, was to “deny legitimacy to the regime.”

Voting went ahead in Darfur on the dates planned. The NCP won all three governorships, forty-eight of fifty-one the geographical constituency seats, eighteen of twenty-two of the women’s seats, and all thirteen of the seats on the party list. The PCP, Umma splinter factions, and an independent picked up the remaining seats.²⁷ According to UNAMID civil affairs officers, the results closely followed three factors: the level of voter registration, the resources expended by the parties, and pacts between the NCP and local notables.²⁸ The GoS insisted the parliamentarians elected were the principal voice of the people of Darfur,²⁹ while international advocates spoke of “impos[ing] illegitimate officials through rigged polls.”³⁰ Perhaps the most remarkable thing about the Darfur election was what didn’t happen. It was not disrupted by either rebel offensives or a major GoS crackdown, and the feared violence failed to occur.³¹

Sudan’s Democrats Divided

By January 2010, with polling day just three months away, the opposition parties in northern Sudan began to realize that they had little chance of winning even a significant minority. They were simply unprepared. Amin Makki

Madani later reflected: “Different actions by the opposition including boycotting and shifting positions, confused a very simple electorate in Sudan, whose reading of the politics was not very intellectual . . . the opposition took the registration process seriously only when the process was over, when it had not registered its people, and so it began looking for reasons for delay.”³² When it became clear that the GoS would indeed go ahead with the April election, and the SPLM in southern Sudan would support that decision, most of the parties in the Juba Alliance realized that the election outcome had already been decided, simply because of the disparities in whose supporters had been registered.

At the Panel’s meeting with the Juba Alliance in January, the opposition dilemma came to the fore. An exchange between President Buyoya and Miriam al-Sadiq encapsulated the issues.³³ Mariam had listed the problems her party faced. Buyoya split these into problems that could be solved by engaging with the National Elections Commission (NEC) and the government, and others. He advised her to think deeply about a boycott because she might later regret it, saying, “Please think twice . . . if you boycott you can be out of the political game for some time.” Miriam’s response reflected her dilemma. The Umma Party was discovering that people were enthusiastic about the election, “but we are very sure of the depth of rigging that has taken place. . . . We cannot be part of [the election] without properly being part of it. We have a very small margin of trust in the principle of dialogue.” Miriam’s main fear was the misuse of security powers to suppress campaigning. To address this, the Panel looked to nonbinding agreements, such as a code of conduct.³⁴

Some of the rancor dated back to the formation of the NEC in 2008. The NEC was responsible for drafting the National Elections Act and overseeing the processes of districting and voter registration. There was a consultative process for forming the NEC, and the opposition parties nominated candidates. The choice of joint chairs ultimately was two venerable elder statesmen of Sudanese politics, Abel Alier and Abdullah Idris.³⁵ The fact that neither were NCP members, and both were establishment figures for whom reputation mattered more than material inducement, did not stop the opposition from suggesting that they were prone to influence by the ruling parties. The NEC took decisions that angered the opposition, such as having the ballots printed in Sudan rather than brought in from outside (the opposition argued that this created opportunities for the GoS to print extra ballots) and reducing the number of polling stations in some areas (particularly Darfur, on the grounds of security). It also had no process of adjudicating complaints other than taking them to court. The NEC was often inefficient and sometimes inaccessible, but its leadership strongly professed its independence.

On paper, voters were to participate in a “feast for democracy.”³⁶ Presidential, gubernatorial, and both state-level and national legislative elections would all be

held. Southerners would also be offered the opportunity to elect a regional president, while 25 percent of the legislative seats would be set aside for women-only lists, and 15 percent for seats that would be allocated to parties based on their overall vote share.³⁷ In practice, preparations were undermined by the lack of training for electoral staff and the politicization of electoral arithmetic. The census provided the first major controversy. The preliminary results showed that the population of the south was considerably less than the one-third claimed by the SPLM. When the full results were announced, the SPLM claimed that the numbers were far too low in its core areas of strength, the south, Abyei, and South Kordofan.³⁸ Looking back on the 2008 data with the hindsight of subsequent censuses and population estimates, the numbers appear to have been accurate, and the discrepancy explicable by the population losses suffered during twenty years of war. It is a sad commentary on how the victims of war, famine, and atrocity come to be underrepresented in a democratic system, raising a moral issue about how to compensate for demographic losses in a one-person, one-vote system. The reduced size of the southern electorate posed a political problem also, because if its representation in the national assembly were reduced in line with the census to 20 percent, it would take away those MPs' ability to block the north exercising a supermajority and passing constitutional amendments. Political expediency dictated a compromise, which was that the southern states, along with Blue Nile and South Kordofan, would be allocated extra party list seats after to the election.³⁹ Wrangling over the census led to long delays in the CPA timeline, pushing back national elections to April 2010.

The demarcation of constituencies provided the next controversy. The Elections Act gave the NEC the power to establish constituencies that were no more than 15 percent greater or smaller than the national average, but the NEC repeatedly broke this rule, which was a source of numerous complaints after it published the constituency boundaries.⁴⁰ The Juba Alliance passed a list of complaints to the Panel—that the NCP had gerrymandered the constituencies and rigged the registration process.⁴¹ The Panel passed these complaints to the NEC, which dismissed them.⁴²

Voter registration began only in November 2009. On paper, this was a success, with almost 80 percent of voters registered. Ghandour explained the arithmetic to the Panel: "The NCP has 5.4 million members. Over the last two years it concentrated on building up its membership, it made sure its members were registered and would vote. It has one organizer for each 10 members, whose job it is to ensure they register and vote. For every certain number it will lay on a vehicle. Bashir's vote in northern Sudan is more or less equivalent to the NCP members."⁴³

Ghazi described the huge logistical operation to turn out the vote. "The NCP has its own tent near the polling station. It has a list of registered voters

and is used for people to find their number, also to do some training with sample ballots. Other parties could do this too. They are complaining but it is just that we are more organized than they are.”⁴⁴ It seems that Nafie’s cadres also had an insurance policy to avoid the risk of defeat. Official verification procedures were weak, and there are reports that local NCP bodies often managed the registration process directly.⁴⁵ Indeed, the Panel came across reports that the NCP had its own desks in registration centers, at which it demanded to see voters’ identification slips.⁴⁶ The opposition parties were far less successful in registering their supporters, having fewer resources and less commitment. Ghandour’s view was that of the eleven million voters, five million were NCP, and four million were loyal to other parties.⁴⁷

The parties also complained about the lack of money. This was a sensitive topic, as the NCP was offering funds to its rivals for campaigning—but always with strings attached.

In southern Sudan, the suspicions of manipulation of the census and registration had a *prima facie* stronger case. The official number of registered voters in the south exceeded the number counted by the census by more than 40 percent.⁴⁸ The NEC’s explanation was that the census had undercounted the southern population, especially because of returnees from the north, rather than the registration having overcounted.⁴⁹ This explanation did not account fully for the discrepancy.

The opposition had a legitimate complaint over access to the media, and the Panel formulated a proposal for expanding and revising the Election Media Committee, the first of its kind in Sudan, charged with the task to ensure equitable access to the media among the parties. The NEC responded positively to the Panel’s proposal and reconstituted to include thirteen political party representatives, ten being members of the Juba Alliance and three from the NCP and its allied parties.⁵⁰

The Panel had no desire to be the arbiter of complaints. It wanted the Sudanese political parties to resolve the issues themselves. Sadiq al-Mahdi proposed a summit meeting of political parties at which all issues could be debated. The AUHIP took up this proposal and added to it its own draft electoral code of conduct and statement of common commitments. The first step was to establish an organizing committee. The AUHIP sent out invitations for a meeting at Khartoum’s Friendship Hall.

The AUHIP’s other proposal was for an Electoral Code of Conduct and a Declaration of Commitments that would create a more level political playing field. While the government was refusing to freeze the relevant passages of the State Security Laws, the Declaration of Commitments sought a promise not to use them to obstruct electoral activity.⁵¹ The Code of Conduct required the

parties to agree to the equitable use of state media as well as prohibiting them from using government resources in campaigning. It would have provided an extra layer of oversight by creating Political Party Councils at state, regional, and national levels with representatives from each party which would have the right to investigate complaints.⁵²

The NCP agreed to the summit⁵³ on the condition that the topic would be restricted to the election and that al-Bashir would not be required to debate directly with the leaders of other parties.⁵⁴ But the opposition parties were unenthusiastic, hardening their demands. The Juba Alliance raised the objection that one party should not be given equal representation to the numerous parties in opposition, just because it happened to be in power. On February 16, Sadiq al-Mahdi gave an interview in which he reiterated the NUP's view that the elections should be postponed until November, maintaining if the Darfur crisis was not resolved, the rebel groups would do everything possible to impede the election, intensifying the security crisis.⁵⁵ The next day, the parties met the Panel.⁵⁶ Although they had welcomed the AUPD mandate and method, they were skeptical about the AUHIP and its mandate for supporting the implementation of the CPA—which they still insisted was a bilateral NCP-SPLM pact to exclude everyone else. For them, true democratization entailed postponing elections and revisiting the CPA.

Many of the Juba Alliance signatories had never blessed the CPA.⁵⁷ They were reluctant to sign a Declaration of Commitments that involved “recommit[ting] themselves to implementing the provisions of the CPA,” notably including the referendum.⁵⁸ Sadiq al-Mahdi informed the panel that “[the] CPA has not realised inclusivity of government and making unity attractive,” noting that the risk of “separation into hostile states” should be prevented at all costs.⁵⁹ The opposition was also unhappy that the NCP would get eight representatives in the political party council, which they did.

The Panel met with the Juba Alliance parties again and persuaded them to retract demands that the census and registration be redone, but it did not get them to abandon their demands regarding the Security Act and Darfur State of Emergency.⁶⁰ The NCP offered a verbal promise to the AUHIP that the Security Act would “only be used on armed groups,” but the Juba Alliance rejected this as insufficient and time ran out for convening the political parties' summit.⁶¹ Mbeki announced that the meeting was being postponed indefinitely, because of the AUHIP's failure to resolve the differences between the NCP and other parties, holding it would only “serve to further foul the atmosphere in the country by stirring up division among the Sudanese political leadership.” The letter noted that the AUHIP supported the elections going ahead in April, given that mass registration showed that “the Sudanese people [had] spoke[n] firmly

and unequivocally that they are determined to exercise their democratic right to choose the people they want to serve in the various legislative and executive organs of the state.” Mbeki also noted the NCP’s promise not to abuse the National Security Law to impede the elections.⁶²

The head of the Juba Alliance was Farouk Abu Eisa, a national figure whose name has been forever associated with the “night of the barricades” during the 1964 October Revolution, but who was now an individual without a party.⁶³ He responded furiously to the AUHIP letter, describing it as a “an act of insolence, a reproof, and slander upon the Sudanese political movement.”⁶⁴ He belittled the Code of Conduct. Another member of the Juba Alliance explained to the media they had wanted the AUHIP to take a firmer stand in support of the AUPD recommendations.⁶⁵ This individual (who stayed anonymous) felt that the Panel had let its Darfur report slide—a criticism that spoke to the challenges of implementing the CPA and the Darfur recommendations simultaneously.

Democratization in the South

The Panel was also active in southern Sudan’s elections.⁶⁶ Kiir was both unenthusiastic about elections—which he again reminded the Panel were a distraction from the referendum—and also unworried about his commanding political position. Although never confirmed, many assumed that Kiir agreed to support the elections in return for al-Bashir supporting the referendum.

The SPLM arose from a liberation army that had no experience of electoral competition. Kiir had brought other armed groups into a “big tent,” but the SPLM and its comrades-in-arms dominated the political arena. At a meeting at the regional assembly in Juba, one opposition MP complained: “Will the election serve any purpose? There is a lack of political space. People are not free to move around. The governors and commissioners, all SPLM, control the political space. The SPLM controls, and arrests people. There has been no disarmament.”⁶⁷

Many specific complaints were raised in subsequent meetings, especially by Lam Akol who was contesting the presidency, as the candidate for his SPLM-Democratic Change Party.⁶⁸ Candidates maintained that the SPLM was dominated by its military wing, that it represented tribal interests, that it was suppressing civil protest, and that it escaped criticism from the UN far too frequently.⁶⁹ Meanwhile, the GoSS was not keen to open up political competition. Buyoya reported back from a meeting in which he raised the proposal of a political parties summit in Juba: “Pres. Salva did not receive this proposal warmly. He said, ‘no party is denied participation.’ The problem lies with new parties recently formed. He pointed at Lam Akol and said his party is armed,

causing instability, and working with the NCP. It should be disarmed first before it can be a party. With others, he has no problem.”⁷⁰

Kiir also refused to provide funding to support the development of political parties in the south, maintaining that this was Khartoum’s responsibility. After the GoSS accepted that it would proceed with the summit and discuss a code of conduct, it then refused to allow independent candidates to participate. The SPLM was particularly worried about the independents, many of whom were former SPLM members with considerable local support, who had not been chosen as candidates, passed over in favor of individuals preferred by Juba.

Kiir delegated Vice President Riek Machar to represent the SPLM at the Summit Meeting of Political Parties in Southern Sudan, which went ahead on March 1 and 2.⁷¹ Machar was a longstanding rival to Kiir with an interest in opening up space for political competition, and he was accommodating of opposition critiques. The Panel staff’s note from the meeting is worth reproducing at length:

1. The Electoral Code of Conduct and Declaration of Common Commitment were adopted and signed by all the southern Sudanese political parties at Nyakuron Centre, Juba, this evening following a very successful Summit Meeting.
2. The sessions with the political parties were marked by frank and civil exchanges. The atmosphere was cordial and increasingly warm, due in significant part to the patient and constructive approach taken by VP Riek Machar. Party leaders raised a range of issues, including especially security (notably the fusion between SPLM and SPLA on many issues), raising a number of specific cases of arrest, detention, harassment, confiscation of vehicles and election materials. The head of the United Democratic Party, Tonj Ayel, who had been detained by SPLA Military Intelligence last year, raised his case both in the open session and privately with VP Riek. Other issues raised included funding for political parties, the use of government assets and transport by SPLM candidates and access to the media. There were complaints that directives from Juba were not implemented at local level, and that county commissioners (all of them SPLM) were running their own fiefdoms.
3. VP Riek responded with a detailed, comprehensive and frank discussion of details, including admission of GoSS errors and problems arising from lack of capacity and failure to transmit instructions to local levels. He promised to look into a number of complaints that were raised by Lam Akol and others. It was, as one participant noted, like the inaugural meeting of the Political Parties’ Council. Riek reminded everyone

of the Political Leadership Forum of political parties, and Pres. Buyoya took up the point, suggesting that the Leadership Forum serve as the Political Parties Council for Southern Sudan. The point was reiterated at the closing.

4. There was a clear consensus that the elections should not be postponed, irrespective of what happened elsewhere in Sudan, partly from the principle of democracy and partly because any postponement would probably lead to a postponement of the election [sic, referendum intended]. VP Riek made a strong statement that the referendum would only be fully legitimate if it were presided over by an elected government, and for that reason among others, the GoSS is determined that the elections will proceed in the south even if they are postponed in the north. Even those individuals who in private think that the referendum is too early, dare not say so in public.⁷²

The following day, the Panel convened the independent candidates at the Star Hotel in Juba. According to the meeting note, “All of those present still considered themselves to be members of the SPLM and anticipated fully rejoining the party after the elections.”⁷³ The Political Parties Council for southern Sudan was launched at the end of March, with Sandra Bona Malwal as chair.⁷⁴ This was too late to influence the April election but was held out as a hopeful augur for the future.

The Campaign and the Boycott

The NCP was single-mindedly focused on turning out its voters. Panel staff wrote on February 13: “Today was the official beginning of the election campaign, with a huge rally by the NCP at the Marrikh football stadium in Omdurman, with thousands of minibuses rented for the occasion to bring supporters. A straw poll of minibus drivers suggested that the NCP had many ways of circumventing the official NEC limits on campaign spending, as none of them appeared to have been hired directly by the NCP itself but rather by private businessmen as a campaign wcontribution.”⁷⁵ The NCP held mass rallies and put up billboards with images of al-Bashir in various costumes and poses, looking younger and smoother-skinned than those who knew him at close quarters.

The campaign was a chance for the parties forced into the political wilderness since 1989 to reconnect to their supporters.⁷⁶ Mohamed Osman al-Mirghani of the DUP said that when he visited Kassala, the historic seat of his *Khatmiyya Tariqa*, “it was like a political earthquake, the number of people who came to our rallies.”⁷⁷ The press reported massive rallies at al-Mirghani’s visits to

eastern Sudanese towns, where animals were slaughtered and poems read in his honor.⁷⁸ Huge gatherings attended Sadiq al-Mahdi's tours of the historic National Umma Party stronghold of South Darfur, where the party's leaders took the opportunity to belittle the Doha peace negotiations.⁷⁹ Meanwhile al-Mahdi, as a committed unionist, used his campaign to portray the NCP as the proxies of a US and Israeli conspiracy to dismantle Sudan.⁸⁰ Both sectarian parties used Islamic rhetoric to target the NCP, mocking its electoral symbol of the tree through reference to the Quranic passage in which God warned Adam not to sample the forbidden fruit in the Garden of Eden by commanding him "do not approach this tree."⁸¹ The NCP tree was superimposed on a map of Sudan with its roots tracing the Nile and its tributaries in the south—sometimes posters were defaced with the tree axed at the root by the separation of the south.

Hasan al-Turabi's PCP had its first opportunity to campaign in earnest since he formed it in 1999. Many disenchanted Darfurian Islamists had joined the PCP, and with its informal ties to JEM, al-Turabi's party posed a particular threat to the regime in western Sudan. Its campaign issues echoed JEM's "Black Book"—the socioeconomic marginalization of the region and the dominance of the government by riverain ethnic groups.⁸²

The NCP was most fearful of Yasir Arman, the SPLM's presidential candidate. He had been nominated by the SPLM politburo in November, reversing the earlier decision made at the SPLM convention of 2008 that Kiir would stand for the presidency. Yasir, as one of the SPLM's few riverain northerners, was more committed to democratization than to independence for the south. He was expected to win most southern votes, and in the north he could also appeal to both marginalized regions such as Darfur and the south Kordofan in the north, as well as historically pro-left constituencies in the riverain center.⁸³ The NCP was prepared for the possibility that Yasir might force the presidential race into a second round,⁸⁴ with the unthinkable prospect that a northern partisan of the New Sudan vision could the supreme executive office.⁸⁵

As Yasir's campaign gathered momentum, the SPLM dilemma became acute. For some in the movement, such as Pagan Amum, this was the moment to take the New Sudan campaign to the next level, and gain power in both Khartoum and Juba. Yasir held out this prospect in private and in public: He called upon al-Bashir to withdraw from the presidential race to enable "voluntary unity" and "national consensus," declared that secession would be certain with the NCP in power, and continued to call for the elections to be postponed, putting the CPA schedule at risk.⁸⁶ In Juba, the SPLM faced awkward questions from the opposition: "What if Yasir gets elected: will he want to renegotiate the CPA?"⁸⁷ Kiir's priority was partnership with the NCP to smooth the way to the referendum,

and he reportedly agreed to withdraw Yasir's candidacy, but was outvoted by partisans of the New Sudan vision in the politburo.⁸⁸

By design or by accident, it appeared that the opposition had cornered the NCP and that Yasir might force the presidential election to a second round. Opposition leaders reported rumors that NISS would launch a coup if he managed to do this.⁸⁹ While Yasir was campaigning in Darfur, the crisis over the Juba Alliance participation came to a head. The NCF presented the NEC with a petition signed by the head of every opposition party except the PCP and SPLM to the presidency along with its list of demands and set a one-week deadline to respond.⁹⁰ These demands included postponing the election to November, dissolving the NEC and forming it anew, and forming an interim government to oversee the elections. That deadline expired on March 26, and an SPLM delegation headed by Riek Machar arrived in Khartoum to try to resolve the issue. The plan was for a meeting of the presidency to assert a common NCP-SPLM position. The SPLM team—Riek, Pagan, Kosti Manibe, and Deng Alor, with Yasir called back from Darfur and arriving late—met first with the NCF and then with an NCP leadership group headed by Nafie. The NCP wanted Kiir to deliver on his earlier promise to stand down Yasir's candidacy, but to participate in all the other elections, which would have pressed the other Juba Alliance parties to stay the course. The logic for the SPLM northern sector took the opposite position: They wanted to continue with Yasir's presidential bid, but did not hold out prospects of victories in the legislative and state elections and so advocated boycotting these.⁹¹ Riek articulated Juba's position: "Let full elections continue in southern Sudan while the northern sector can be allowed to take a position which it sees as appropriate."⁹²

The NCP and SPLM delegations discussed all day on March 28 but could not agree. Riek briefed the Panel the next day, explaining the impasse, and that there would be no meeting between Kiir and al-Bashir.⁹³ Riek concluded: "We briefed the parties and left them to discuss. They will take their decision. . . . Our decision will be the last to be taken."

That is not what happened. The SPLM leaders had not reconciled their divergent views. Riek's view was pragmatic, agreeing to the NCP sequence of elections before the referendum. Pagan's view was hard line: "With elections or no elections, there is no relation to the referendum, it has to take place on 9 Jan 2011 no matter what." He feared that the NCP would use its electoral victory to renege on the rest of the CPA. Yasir's view was "the opposition will give the election to the NCP. The SPLM and other forces will deny legitimacy to the regime."⁹⁴ Pagan told the northern parties that Kiir had given him the authority to decide.⁹⁵ Some of the Juba Alliance members were already on the verge of

boycotting the elections. On April 1, the SPLM politburo decided to withdraw Yasir's candidacy, without taking a position for or against the legitimacy of the elections in the north.⁹⁶

The internal debates within the major parties were fierce, with al-Mahdi, al-Mirghani, and al-Turabi all pressing their parties' decision-making councils in favor of contesting, and younger, more radical members favoring the boycott. The PCP leader maintained that it would be an error to withdraw candidates who had already spent money on their campaigns; that an outright boycott of the elections would lead to a reversal of the limited political opening that had occurred; and even maintaining that if the parties participated in earnest, an anti-NCP majority in parliament might be possible.⁹⁷ In spite of al-Turabi's objections, however, most party leaders voted to join the boycott at a heated meeting of the NCF leadership on April 8; only the PCP and DUP went on to campaign.

At the last minute on April 4, the government delivered SDG2 billion to the NUP to support its campaign. Al-Mahdi had been arguing for the NUP to remain in the race but was struggling to convince his lieutenants, including his daughter Mariam. Party leaders insisted that they were owed SDG14 billion by the government as restitution for assets seized following the 1989 coup. Hoping for more funds and a deal that would enable him to run, al-Mahdi agreed to participate if a one-month delay to the elections was granted, but al-Bashir refused to extend the election date, abandoning any plan to buy the NUP into the fold.⁹⁸ Meanwhile, when Panel staff met al-Mahdi on April 8 at his grand but dilapidated old home in Omdurman, the aging leader looked downcast, his eyes glazed.⁹⁹ He had never taken a political post to which he had not been elected, but he had always sought compromise with his rivals for what he saw as the nation's good. Al-Mahdi now foresaw another decade in the political wilderness and feared that his last chance for national leadership had slipped away.

While the NCF was embroiled in its debate—with just days left until the polls opened—Pagan announced a full boycott of the elections in the north. The SPLM quickly revised that position for Blue Nile after Malik Agar insisted that he was still running for office in that state.¹⁰⁰

The NCP election managers were divided over the consequences of the opposition implosion. They were happy for Yasir to withdraw, but the prospect of a widespread boycott posed other problems. Domestically, it threw out their plans to win just enough to be credible. Early on, they expected a tough electoral contest in the traditional heartlands of support for old sectarian parties, so they had mobilized hard. As the opposition's weaknesses became

evident, their reserve strategy was to assist the opposition financially and to cut local deals for NCP candidates to stand aside and let others win. They reportedly gave the DUP money, while that party was also requesting “a gift of seats.”¹⁰¹ But Nafie had roused the NCP’s local cadres and would not now stand them down.

Blue Nile went its own way. As the results came in, the chief UNMIS elections officer told Panel staff: “The only reported result [so far] is Blue Nile where 190,000 votes have been reported and Malik [SPLM] is 8,000 behind his challenger. But the exact outcome is not known.”¹⁰² Shortly afterward, while the NCP won both legislative and state elections, Malik’s final vote edged ahead.¹⁰³ Privately, NCP managers confirmed that a political deal had been struck. Many in the NCP leadership believed that the SPLM—specifically in the Two Areas—should have a political stake in the new government, so they fixed the result accordingly. The Intergovernmental Authority on Development special envoy for Sudan, Lissane Yohannes, said that the NCP had organized its vote count to deliver for Malik.¹⁰⁴ Ghandour confirmed, “In Blue Nile, Ali Osman is in touch with Malik Agar. They don’t want problems. The issue with Malik is personal pride. He is not interested in money.”¹⁰⁵ Agar was declared the winner by a slender margin, and the NCP appeared content with the result.

Sudanese and international advocacy groups zealously tabulated allegations of fraud and denouncing the electoral exercise.¹⁰⁶ The International Crisis Group denounced rigging, which would “return an indicted president and his party to power with catastrophic consequences for Sudan.”¹⁰⁷ Many in the NCF, still inspired by Sudan’s proud revolutionary history, reignited demands for regime change. The diplomatic community in Khartoum was torn. They saw the NCP’s electoral machine rolling unstopably toward victory, but they had lost sympathy for the NCF parties because of internal bickering and failure to take openings offered to them. They were also aware of SPLM malpractices, and were irritated to see western advocacy groups overlook the shortcomings of their friends in southern Sudan. The internationals’ consensus was that the bigger disaster would be to fail to recognize the elections and thereby jeopardize the remainder of the CPA.

Nafie Ali Nafie issued an official statement condemning the boycott and attacking the SPLM’s northern sector—which he described as a creation of the northern communists—but not its southern leadership.¹⁰⁸ A few days later, after the voting had concluded, Nafie observed he was “optimistic” on the NCP-SPLM relationship, saying that “the NCP has always been strategic on the partnership up to the referendum, and it was always clear that the majority of the SPLM supported this.”¹⁰⁹

Aftermath

The elections were originally envisioned as a means of broadening political representation in government in Khartoum and Juba. The outcome was the opposite. The NCP swept the board in the north and the SPLM in the south. In the north, the NCP won 177 of 194 geographic constituencies, 82 of 88 women's seats, and 50 of the 52 party list seats. (Noting that there was no constituency vote in South Kordofan.) It won every governorship save Blue Nile.¹¹⁰ Meanwhile, al-Bashir won 68.2 percent of the national vote. His only serious competitor was Yasir, who in spite of having formally withdrawn still garnered 21.7 percent.¹¹¹

In discussions with NCP leaders, the Panel heard a common story: This was not what the NCP had wanted and its triumph was problem. "We are embarrassed by the victory" said Ghandour.¹¹² He explained that they had been expecting to get "60 plus percent" of the vote in northern Sudan, instead of more than 70 percent.¹¹³ Millions of opposition supporters, he said, were confused and didn't vote. Even the DUP—which officially competed—flopped. Al-Bashir's personal translator, Ahmad Ghazzali explained, "I expected the DUP to get 2 governorships and 20–30 seats, the majority in 10 localities. The NCP should not have allowed this to happen."¹¹⁴

Those, like Ghandour and Ghazi, who had planned for a broad-based government, now faced the obstacle that the major partners in any such coalition were feeling angry, humiliated, and confused. Amin Makki Madani told Abdul Mohammed, "my reading is very blurred."¹¹⁵ He went on: "The outcome has shocked the people. People say, how can this have happened? There is a folklore of stories of incidents, boxes being stuffed, zero votes for candidates in their home polling stations, etc. The 90 percent vote for Bashir in these places is not realistic." While al-Mahdi was downcast and unusually drained of energy, the normally quiet al-Mirghani was animated by derisive laughter. He asked the Panel how the NCP could have won nearly 100 percent in Kassala, where the crowds had turned out for him in unprecedented numbers, and he had never pulled out of the race.¹¹⁶ The answer, according to the independent media was simply that the NCP "managed" the electoral process by infiltrating thousands of members of various parallel security forces into the police units that were responsible for securing the ballot boxes.¹¹⁷ Videos appearing to show ballot boxes being stuffed circulated widely on YouTube. The counting process was deemed "untrustworthy" by the European Union observer mission.¹¹⁸ Media analysis conducted by the EU concluded that both national radio and the print media had allocated substantially more coverage to the NCP and al-Bashir than they did to any other party or presidential candidate.¹¹⁹ Al-Turabi, who had been willing to declare that the elections were transparent albeit marred by technical

errors soon after the polls took place, was furious after the results were announced, and was particularly angry at the low number of votes “given” to the PCP candidate Abdalla Deng Nhial.¹²⁰ “We thought that if Abdalla Deng Nhial scored even 20 percent in the north, it would show the southerners that someone from the marginalized areas can win support in the north. But to give him 1 percent is an insult.”¹²¹ Ghazzali described local NCP cadres as “very tough.”¹²²

When the voting was underway, Ghazi had anticipated spending April negotiating with the other parties, expecting the DUP and Umma to join.¹²³ A week later, like Ghandour, he was still hoping for an inclusive government. Nafie had a very different view. As the votes were being counted, he said: “We hope that the majority that the NCP gets will be devastating. The NCP won’t be the only party. But it will not be easy to form a BBG [broad-based government], as envisaged by Sadiq [al-Mahdi]. Which do we put first, putting our government in order, or keep discussing until we reach consensus? How are we to reach this consensus? The election shows the real consensus, based on the weight of the voters. We won’t wait for a lifetime to reach this. It is not necessary for cooperation that we are all in the executive.”¹²⁴

Instead, Nafie suggested, “We can have a wise and sensible opposition.” After the results were in, Ghandour told Mbeki he still hoped to bring other parties on board in “an inclusive process,” but conceded that “not all are agreed within the NCP.” Nafie was silent on this but said he was expecting street protests: “If the worst comes to the worst, we can deal with them toughly but smoothly.” Ghandour interjected, “Smoothly but smoothly.”¹²⁵

In the south, the SPLM romped home. Its candidates won all but one of the governorships, fifty-one of the fifty-six geographic constituencies, and all the women’s and party seats. Lam Akol’s SPLM—Democratic Change Party gained only two seats, and Kiir also comfortably saw off Akol’s challenge for the southern presidency.¹²⁶ In May, the southern Political Parties’ Council, established following the agreement on the Electoral Code of Conduct, delivered its report. It noted extensive irregularities, including “misplacement” of registration lists and ballot papers, as well as “allegation of vote rigging, harassment, intimidation of candidates, agents and polling officials,” but insisted that party leaders should accept the results. Its recommendation focused on determining how to ensure that the independence referendum was conducted transparently, reducing the role of Khartoum in managing it and calling for “more international and national monitors . . . so that they play a more effective role in the referendum.”¹²⁷

Nafie told the Panel: “in southern Sudan the irregularities are too many. We have decided to overlook them. Let the SPLM be the majority in the south and we will move forward, from pragmatism.”¹²⁸

The two parties had consolidated control and had decided to deal directly with the outstanding issues. Mbeki explained to Derek Plumbly of the Assessment and Evaluation Commission, “NCP and SPLM have decided to negotiate by themselves without mediation, and the Panel’s position is that it should stand ready to advise in the event that it is called upon.”¹²⁹ Up to this point, NCP had been open to discussion with other parties over how to represent Darfur in the national assembly. Ghazi had indicated flexibility, “We will leave Darfur on hold until after the end of April.”¹³⁰ The reality now was that the domestic democratic route to resolving Sudan’s crisis in Darfur was going to be far more difficult.

DARFUR UNRESOLVED

In his “Non-Paper” on the Darfur strategy for the government of Sudan (GoS), Ghazi Salah al-Din started by expressing his agreement with the Panel’s approach—and then delicately eviscerating it. Ghazi had taken control of the Darfur file, in his position as adviser to the president, when the African Union High-Level Panel on Darfur (AUPD) report was finalized. Almost a year later, in September 2010 he wrote:

The ideal process for reaching an Agreement would be that outlined in the Report of the AUPD, namely all-inclusive talks with all groups in Darfur, including both the non-belligerent majority and the minority that has taken up arms, on the full range of political, economic, social and security issues, leading to a Global Political Agreement. In this ideal scenario, the Armed Movements would be privileged only insofar as they would be the exclusive negotiating counterparts of the Sudan Government on a ceasefire. All other issues would be settled in the inclusive talks.

Unfortunately, two considerations make such a strategy impractical today. First, the mechanism whereby non-belligerent parties could be represented in the talks, and could become signatories to an Agreement, will need extensive prior consultation. The time does not exist for such preparatory work, which would necessarily include an assessment of how such a deliberative body would relate to the representatives of the people, elected in the recent General Elections. Second, the

Doha peace talks have advanced sufficiently far, and obtained sufficient international standing, that stalling on those talks in order to conduct political negotiations within Darfur is not politically feasible at present.¹

Ghazi proposed instead that the outcome from Doha should be taken for consultations with Darfurian constituencies. “These meetings will be described as consultations not negotiations, because a government does not negotiate with its citizens, but rather consults with them.”² This was the same formula that resulted from the 2006 Darfur Peace Agreement (DPA). The plan was to take the DPA to the people of Darfur through the Darfur-Darfur Dialogue and Consultation (DDDC). Darfurian civilians would be asked to give their assent to a document that had been hammered out without their involvement and use it as the basis for building local peace. It didn’t work, and Doha would not succeed where Abuja had failed.

Ghazi had a sharp sense of the strategic stakes. Long regarded as one of the Islamic movement’s most pragmatic intellectuals, he was distancing himself from the military strategy that the Islamists had long ago embraced.³ Ghazi knew that al-Turabi’s plan to mobilize the devout Muslim population of western Sudan had led to a crisis in the identity of Sudan’s Islamic movement. Ghazi had faced a challenge from its Darfurian founder, Shafi Muhammad Ahmed, in 1996, for leadership over the movement, a controversy that prefigured the 1999 split and the outbreak of the Darfur conflict.⁴ Like al-Turabi, Ghazi feared that the military had come to be loyal to itself, and not the Islamic movement, and after 1999, he was openly critical of the path the National Congress Party (NCP) took.⁵ He could never forgive, however, the Sheikh for his decision to reach out to the Sudan People’s Liberation Movement (SPLM) and this drove him back into the arms of the NCP.⁶

For Ghazi, the number one aim of peace talks was to remove the US threat of regime change. After the September 11 terrorist attacks, the GoS leadership knew they were an associate member of President Bush’s “axis of evil” and would be on Washington, D.C.’s target list along with Afghanistan, Iraq, Iran, and Libya. Removal from the list required cooperating with the Central Intelligence Agency on counterterrorism (the task of Salah Gosh, head of the National Intelligence and Security Service [NISS]) and making peace with the SPLM (initially, Ghazi’s job, subsequently Ali Osman Taha’s). Ghazi negotiated the 2002 Machakos Agreement that paved the way for the Comprehensive Peace Agreement (CPA). However, al-Bashir dismissed him a year later, after he stirred controversy by meeting al-Turabi.⁷

Al-Bashir's hope that the CPA would normalize relations with the US was negated by Darfur, and he brought Ghazi back into the fold. Ghazi saw his immediate tasks as creating cooperation with Chad and overriding the interminable internal rifts inside the GoS. His strategic goal was, as before, placating Washington. Al-Bashir gave him the authority he requested, and Ghazi developed a strategy—the only occasion in which the GoS had such a coordinated approach.

Ghazi's Darfur plan had several steps. First, the mediation in Doha should complete its work. Under the Joint Chief Mediator (JCM) Djibrill Bassolé, the mediation had been on a rolling schedule, with new deadlines every month or two, but in September 2010, the mediator appeared to be firmly committed to conclude in October so he could return to Burkina Faso and take up a ministerial post. Second, the outcome document from Doha would be taken to Darfur for consultations (not negotiations) with local constituencies, what international partners called the "domestication" of the process. Third, "based on the outcome of the consultations, the draft agreement [will be] finalized by the Mediation, in consultation with the AU Panel, to become the Darfur Global Political Agreement [DGPA]." Fourth, the DGPA would be endorsed by the international community, in ceremonies in Doha and Darfur, and opened for agreement by the principal armed movements. Fifth, the GoS "[would] sign the Agreement, which [would] then remain open for signature, in Doha, until 31 December. On that date it will come into force"—and be set in stone. Finally the DGPA would be formally integrated into the constitution. It was a plan that was focused on Darfur alone, keeping Darfurians separate from the other national issues unfolding at the time.

Mbeki wrote back challenging Ghazi's logic and pressing for civilians to be included in the negotiations. His letter is structured with numbered paragraphs as with a legal brief. One section deals with the question of the status of Darfuri groups in the process.

6.2.4. The unfortunate import of the statement that "government does not negotiate with its citizens," as it relates to Darfur, is that the GoS will only engage its citizens in the manner proposed in the AUPD Report if those citizens take up arms against the Government.

6.2.4.1. This will convey the dangerous message to the population of Darfur and Sudan that the only way to gain a place at the negotiating table is to take up arms.

6.2.4.2. While it may be true that in *normal* circumstances "a government does not negotiate with its citizens," it cannot hold true for *abnormal* circumstances. By all standards, including the numbers of people killed and displaced, the situation in Darfur is abnormal. Abnormal situations require abnormal solutions!⁸

In a meeting with Abdul Mohammed and Alex de Waal, Ghazi backpedaled slightly, saying that he was not concerned about the semantics of “negotiations” or “consultations” and that he would be happy to omit both words, and speak instead about a “Darfur process” and a “Doha process.” The point was that “the GoS does not want to commit itself to making any specific concessions, or any concessions in any specific forum.”⁹ Ghazi was a master of tactics—including prevarication and playing different actors against one another. The GoS had won a tactical victory by ensuring that the Darfur negotiations, as envisaged by the AUPD, would not happen before the elections, so that a new group of NCP powerbrokers—the members of parliament (MPs) and governors newly voted into office—would have vested interests to defend. Accomplished practitioners of “tagility” (the politics of delay), however, can succeed only if they are able to act decisively when the strategic moment arrives. The GoS had entrusted the Doha negotiations to JSR Bassolé, who was equally able to roll deadlines. Ghazi wanted enough of a resolution of the Darfur crisis before the southern referendum, correctly fearing the scenario of a new war with an independent South Sudan supporting the rebels. In October, as feared, Bassolé again asked for more time. As he did again in December.

Point seven of Mbeki’s reply to Ghazi reads: “In essence what [you propose] is an agreement negotiated between the GoS and the International Community, after consultation with the Darfur population.”

The ghost in Ghazi’s “Non-Paper”—never mentioned but pervasive—is the US. The key GoS negotiation was with Washington, D.C., and any agreement in Doha would be an international blueprint that would provide the incentives for Darfurians to buy into it.¹⁰ If it worked, the US would lift sanctions. Mbeki had called out this ghost. Subparagraph 7.1 reads, “With all due respect, we do not believe that a document produced by the ‘experts’ who have been gathered essentially by the UN in Doha could by any stretch of the imagination be considered as a ‘comprehensive Darfur peace agreement.’” He continued:

7.1.1. The various Darfur constituencies to which we have referred, as well as the major armed groups, weak as they may be, would be perfectly entitled to distance themselves from or repudiate such an “agreement.”

7.1.2. The AUHIP would find it impossible to disagree with this position.

These exchanges crystallize the central challenges facing Sudan and the work of the Panel in seeking a resolution of “Sudan’s crisis in Darfur.” The work of peace required dealing with the belligerents. The work of democracy required privileging the civilians over the men with guns. The viability of Sudan demanded a GoS-US deal. Ghazi was trying to weave together elements of both the internationally backed Doha process and the Panel proposals in a manner that achieved his goal: keeping the regime change agenda at bay. This also

meant taking a divide-and-rule stance among the NCP's domestic opponents, keeping the Darfurians separate from the threats of a civilian uprising in Khartoum and armed resistance elsewhere in the provinces during the postsecession storm. Ghazi told Panel staff: "No government that presides over separation will keep legitimacy. The UN and US do not understand the backlash that will happen in the north, from within the NCP. Don't expect al-Bashir or Ali Osman to survive the backlash politically."¹¹

Parallel Processes

When the African Union (AU) adopted the AUPD report as official policy in October 2009, the UN Security Council (UNSC) did not. The UNSC received reports from the joint special representative (JSR), the JCM, and the International Criminal Court (ICC) prosecutor. The US, France, the UN, and Qatar had all adopted their own definitions of the crisis in Darfur and were implementing policies accordingly. None prioritized the resolution of Darfur within the context of national democratization. The United Nations–African Union Hybrid Operation in Darfur (UNAMID) priority was the logistical and administrative challenges of its vast operation, mandated to be world's largest with twenty-six thousand troops and police officers.¹² In January, a new JSR, Ibrahim Gambari, took up that post. He and JCM Bassolé were mandated by the AU as well as the UN, but the AU did not instruct them to implement the summit decisions, nor summon them to report. Understandably, both were therefore responsive almost entirely to New York. The African Union High-Level Implementation Panel for Sudan (AUHIP) efforts in Darfur suffered accordingly.

The basic problem was the absence of an agreed analysis. The Qatari hosts of the Darfur talks and Bassolé defined the most pressing problem as the Justice and Equality Movement's (JEM's) military capacity, which was a by-product of the Sudan-Chad proxy war. Al-Bashir and Déby shared this view. The Sudanese president was the first to move, hoping to restore the security pact between the two countries made in 1991 when Déby took power with Sudanese backing until 2003 when the Darfur war erupted. In preparation for this renewal of ties with Chad, al-Bashir removed Salah Gosh as NISS director general.¹³

Gosh had run the proxy wars in Chad, often acting without the authority of the president and built up NISS as a force to rival the army. Islamists speculated that his visits to Langley on a private plane and NISS's leading role defending Khartoum from JEM in a 2008 raid had made al-Bashir and the generals uncomfortable.¹⁴ Gosh was demoted to presidential adviser without any particular brief, but he nursed his ambitions and again acted beyond his authority—a

subject for later chapters. In December, al-Bashir invited the Chadian foreign minister, Moussa Faki, to Khartoum, and Ghazi made the return visit to N'djaména, where he and Faki signed an agreement to normalize relations.¹⁵ Ghazi told the Panel it was the “most strategic achievement” that would pave the way for peace.¹⁶ Mbeki responded to Ghazi that he was wrong and, to the contrary, no peace could be achieved without democratization.

The N'djaména deal worked for the governments of Chad and Sudan. Ghazi explained: “[The] Chadians have made their own calculations, [and] France has a genuine desire to see an end to the Darfur conflict, for [its] own reasons.” Each country ceased backing the other's rebels. The renewed security pact involved joint operations along their common border coordinated between military officers from the two armies with no third party. Later, the Sudanese would invoke this as their preferred model for a border monitoring regime with South Sudan.

Securing a GoS-JEM deal had been Bassolé's priority, and Déby now gracefully allowed him to claim success. Déby presented Ghazi with the draft text of a framework agreement between the GoS and JEM. Ghazi explained: “It was Déby's deal, I turned up for the signing.”¹⁷ Chad exercised force majeure over JEM. There was, however, something in it for Khalil: Déby made him the pre-eminent Darfurian interlocutor with Khartoum. Faki summoned Bassolé to N'djaména to put his seal of approval on the document, which was translated into Arabic and English. The governments of Chad and Sudan and the mediator then took the agreement to Doha for a signing ceremony, witnessed by Ahmad bin Abdalla al-Mahmoud, the Qatari minister of state for foreign affairs, and JCM Bassolé, thus allowing the Qataris to share in the glory for a deal hatched in Chad.¹⁸ The preamble referred to the CPA and the “Good Will and Confidence Building Agreement” between GoS and JEM, but not the Declaration of Principles, because the latter had also been signed by the Sudan Liberation Movement/Army (SLM/A). Article 2 was a “general amnesty.”¹⁹ Déby followed this up by refusing entry to Chad to Khalil, who was compelled to fly to Tripoli instead.

Libya proved to be the weak link in the chain: Colonel Gaddafi decided not to cooperate and provided JEM with an alternative base.²⁰ Throughout the entire period of the Panel's work, JEM considered negotiation to be a tactical option, subordinate to its principal strategy of taking power by military means. For Khalil, shutting off Chadian support was a setback but not a killer blow.

To understand how the process unfolded it is necessary to go back to 2009. Before the AUPD started its work, Bassolé had made his first effort to resolve the Sudan-Chad proxy war, by engaging with JEM. This had led to the Good Will Agreement of March 2009, but this was swiftly repudiated by JEM. After that, the mediators could not simply remain idle. They had conflict resolution expertise on hand, in the form of a team from New York (the Joint Mediation

Support Team, JMST), and the energies of international envoys, including the US Special Envoy for Sudan (USSES) Scott Gration. While the AUPD was consulting Darfurians, they set in motion a different process, pleading for patience.

Gration was the son of missionary teachers in Congo and a retired Air Force general. He saw himself as a problem solver. After his appointment as special envoy, Gration was briefed on the challenges he would face. He wrote later: "Sitting in my office one evening after all the USSES staff had gone home, I started to write down all the milestones that would need to be accomplished in order to resolve the Darfur situation and implement the Comprehensive Peace Agreement. My list grew into twenty-four consecutive miracles that we would need in Sudan."²¹

Number five on his list of miracles was "Unify the Darfuri rebel movements in order to develop common negotiation positions for the next round of peace talks."²² The host of the mediation was Qatar, but Gration chose Tripoli as the venue for this task, on the basis that the mercurial Libyan leader was capable of spoiling a peace process unless he had a stake in it. Overcoming the rebels' fragmentation was frustrating. They could not agree on a common leader and the international attention they attracted energized their ambitions and rivalries. The historic leader of the SLM/A, Abdel Wahid al-Nur, had solid support among the internally displaced people (IDPs) in Darfur, with the external and internal leaderships mutually reinforcing a position of no compromise. Meanwhile, the GoS delegate to Doha, Hassan Amin Omar, occupied his chair and repeated that he was there in good faith but that there was no one with whom he could negotiate.

The Tripoli negotiations became an exercise in the US envoy constituting a sufficiently credible rebel negotiating partner to sit opposite the GoS, to create the semblance of formal negotiations. This resulted in early 2010 in the formation of the Liberation and Justice Movement (LJM) headed by Tijani Sese Ateem, a former governor of Darfur, from an aristocratic Fur lineage, who carried weight among the older political establishment.²³ He was also, appropriately enough, a senior UN technocrat who resigned his job at the Economic Commission for Africa hoping to serve his people. The politics of Darfur were being shaped to fit the formula for an international peace conference rather than vice versa. Gration ticked off miracle number five.²⁴ Numbers six and seven on his list were to bring civil society to the peace talks and to support the AU-UN process in Doha. In March, the GoS and the LJM signed a Framework Agreement to Resolve the Conflict in Darfur and a ceasefire. The first provided an agenda for the two parties to negotiate, and the second was a formality as the LJM was a political rather than a military force. The JMST observed: "While LJM did gain in stature and cohesion during the negotiations, they were

still largely unknown as an entity in Darfur.”²⁵ The important military actors—JEM and SLM/A–Abd al-Wahid—were either negotiating separately or not negotiating at all.

The Darfur Political Process

The failure to convene the Darfur-Darfur Conference before the April 2010 general elections was a serious setback for the Panel. It revealed the need for a coordinated approach among the international partners, including between the UN and AU. There were too many cooks in the kitchen, each with a different recipe. Ramtane Lamamra, the AU commissioner for peace and security, set out to establish a forum that involved all international stakeholders. The meeting took place on May 7–8 at the AU headquarters in Addis Ababa. It was cochaired by Lamamra and Alain Le Roy, the UN under-secretary-general for peacekeeping. Day one was a “Strategic Review Meeting” of the UN and AU, which was followed the next day by the international partners’ “Consultative Meeting on Sudan.”

At this meeting the Darfur Political Process (DPP) was supposed to be initiated. In fact, it was stifled. The Panel made its case that negotiating only with armed actors would not achieve the necessary outcome and that civilian groups legitimately demanded “that they should participate in the negotiations in their own right.”²⁶ Bassolé disagreed. He pleaded for more time, insisting again that he was on the brink of success, and asked for an extension up to June. Mbeki responded, stressing the need not to delay further. “I hear what the JCM is saying,” he said, but continued: “This process needs to be concluded before the referendum takes place. There is urgency. Gambari noted that the elections had “opened up opportunities and challenges.” Numerous elected officials were entitled to speak for themselves and “can no longer be subsumed under rebels or CSOs [civil society organizations].”²⁷

Bassolé defended the Doha process, assuring Mbeki and Buyoya that the negotiations were inclusive and that the armed groups intended to integrate CSO and IDP representatives in their teams. Mbeki did not agree: “Mr Bassolé is saying that there is an established negotiation process, the rest of you can come on board. This is wrong . . . civil society says, we don’t want to do that, if we become integrated into the LJM we will lose our neutrality; we don’t want to be LJM, we want to be civil society. Integrating civil society into the armed movements does not solve the matter, it complicates it.”

Both the AU and UN appeared poised to launch the DPP as the overall process, with the Doha mediation as a subordinate part. The AU Commission

chair, Jean Ping, noted that Bassolé had not reported to the AU, pointedly saying “ownership must belong to the mandating authorities.” Le Roy was clear on the distinction between the two processes: “[The] political process will be driven internally; [the] peace process will coordinate with that; restructuring of the talks will be led by Mbeki and Bassolé will attend.” The draft of the press release made this clear. But the final communiqué did not.²⁸ In the relevant paragraph (8(iii)), the references to involving “all stakeholders” in inclusive negotiations “in accordance with the AUPD recommendations” were deleted.²⁹ The communiqué now merely called for “all the international actors to work closely together and to coordinate their efforts.” The following day, the larger meeting with the international partners established the Sudan Consultative Forum but did not press forward with the DPP.³⁰

UN bureaucrats were experts at killing initiatives that make them uncomfortable, without leaving a trace. Their counterparts at the AU Commission also sometimes took the path of least resistance. Almost surreptitiously, the Panel’s plan for an inclusive political process had been smothered.

Gambari reported to the UNSC on May 20. He referred to the DPP in passing, making it clear that he did not see it as *political* at all: “The participants agreed that the peace process in Doha should continue and that, building on the progress achieved in Doha, UNAMID should initiate and lead a complementary political process on the ground in Darfur—a kind of a home-grown process—to ensure the systematic and sustained engagement of all Darfurian stakeholders. . . . The goal is to reassure them of their ability to have input in the peace process and aid them in articulating their concerns.”³¹

Over the following months, the Panel repeatedly raised the issue of the DPP and the Darfur-Darfur Conference, including at the two meetings of the Sudan Consultative Forum, in July and November. Each time, they were stymied by a combination of Bassolé’s promises that a breakthrough deal was imminent, UNAMID’s focus on incremental engagement with civil society as a subordinate actor, and a deepening preoccupation with the security situation in Darfur, which impeded efforts to convene meetings locally. Bassolé did not coordinate with the AUHIP nor did he report on his activities to the AU.³²

Blueprints for Peace in Darfur

The principle of inclusivity in peacemaking had gained wide traction across the UN, with the creation of the Peacebuilding Commission and various efforts to include women and civil society groups in the peace processes. The DPA was widely criticized for its lack of inclusivity, and the AUPD had shown that the

Darfurians were hungry for inclusion. The advisers to the Doha process were well aware of this and sympathetic to it. Even before the AUPD completed its work, the JMST initiated a new strand of its activities: “building a civil society track to give stability to the peace process.”³³ A civil society conference was held in Doha on November 18–20, 2009. With the assistance of UNAMID and the DDDC—including the same team that had organized the Panel’s consultations six months earlier—an impressive array of 180 civil society representatives and customary leaders was assembled and flown to Doha. They produced a strong statement.³⁴

For its part, JEM showed no interest in the Tripoli negotiations and dismissed civil society. Khalil Ibrahim expressed his views to Mbeki: “Peace can only be achieved with fighters. . . . No negotiations with civil society/everybody—[that] would produce chaos and will not bring peace.”³⁵ He foresaw that the secession of South Sudan would destabilize the GoS, giving the rebels new opportunities. Khalil’s new strategy strengthened JEM’s ties with the SPLM and Uganda and rejected any peace process that restricted it to Darfur alone.

The mediation team in Doha was therefore tasked with the impossible. The US, France, and the UN wanted peace agreements for their own reasons. Each wanted to repeat the Abuja talks and arrive at a better DPA—one that included JEM, the SLM/A groups, and civil society, and that provided institutions with which UNAMID would work. The Qatari hosts had taken responsibility for the Darfur peace talks under the misapprehension that all of this was possible in a short period of time. For the GoS, the spectacle of disarray among its Darfuran challengers and foreign critics was too good an opportunity to miss. As the pressure on it subsided, the GoS instead relished the chance of doing the minimum.

The JMST approach might be called the “blueprint for peace.” The rationale was that the rebels were too fragmented and disorganized to be able to negotiate seriously and that this provided the GoS with good pretext for doing nothing except sending a delegate to Doha to sit and wait. The team decided to draw up a text based upon expert input.³⁶ Paul Williams and Matthew Simpson described the “proximity talks”: “Under this approach, the mediation team creates an initial draft and then shops it separately to each of the parties in an effort to create a consensus document. The mediation does accept documents produced by the parties . . . [relying] on them only as an expression of the interests of the groups and not as actual negotiating texts.”³⁷

These efforts finally they came together in the “Doha Document for Peace in Darfur” (DDPD).³⁸ It is a blueprint that reads well, as befits the product of skilled technocrats rather than negotiators.³⁹

This was supposed to appeal to the Americans, but by the time that the strategy had been honed, the US had lost faith in it. In September 2010, Gration

told the Panel, “We met with Bassolé today. He said he is starting negotiations again—for the 18th time!”⁴⁰ For Gration, the question regarding Doha was, “how do we declare victory and move on? . . . Nothing more is going to happen soon. Tijani is OK but not much gravitas. No-one else is there. They are just hotel rebels.”⁴¹ Writing to UN headquarters, Bassolé” explained: “The guiding principle is to have a text that not only conforms with international standard, but which reflects, as much as possible, the views and positions of the generality of the people of Darfur and responds to their aspirations for comprehensive and durable peace, stability, and development.”⁴²

A second civil society consultation was convened in Doha in July 2010. More than three hundred delegates were flown from Darfur. Tensions arose in the selection process (the NCP had a hand in choosing who could go) and on their return (the delegates had been showered with cash and presents by their hosts)—that overshadowed the substance of the discussions.⁴³ The third civil society exercise was the All Darfur Stakeholder conference of May 2011, which involved five hundred Darfurian delegates, half of whom were civil society representatives. One diplomat described their role as “Ill-defined and lacking in transparency.”⁴⁴ The delegates were shown a PowerPoint presentation of the main points of the DDPD and asked to endorse it then and there. The draft text of the agreement was not circulated.⁴⁵

As the GoS and the Qataris made progress with the draft DDPD, the pressure on JEM finally paid off. Khalil agreed to propose amendments to the document and asked for assistance to bring his commanders to Doha for this purpose. The JEM delegation arrived in April 2011, but Qatar gave JEM just seven days to come to agreement and supported the GoS position that it was now too late to reopen the document. Negotiations broke down on May 3.⁴⁶ The DPA had been criticized for “no ownership, no peace,” a critique that applied even more to the DDPD.⁴⁷ According to Williams and Simpson, “[The GoS] accomplished their goals; temporary documents with limited substance that advertise[d] their participation in the process without actually binding parties to firm commitments. LJM arguably accomplished its goal of establishing itself as a legitimate negotiating bloc.”⁴⁸

Much of the text of the DDPD was cut and pasted from the Abuja DPA, rewritten to address some of the evident shortcomings of that agreement, such as the compensation fund and the need for justice. Many components bore little relation to the changed realities of Darfur. The power-sharing provisions of the DPA made sense only insofar as the DPA was a buttress to the CPA and its promise of democratization. Five years on the situation was radically different. This security arrangements chapter was even less relevant, formulated for a conflict between two more-or-less symmetrical armed adversaries, not the

situation of multiple armed rebels and militias, in which the LJM had just a few fighters and no significant territorial control.

In a technocratic, apolitical world, the DDPD could have become a blueprint for peacebuilding. Qatar promised generous funding for Darfur, through the Darfur Regional Authority (DRA) and a new development bank. Having taken the position as head of the DRA, Tijani's task was procuring donor funding, disbursing it, and pursuing rehabilitation and development activities. He did not succeed. Helped by experts, he drew up plans for a recovery and reconstruction strategy, estimated at \$7.25 billion, but only Qatar and some Islamic foundations stepped forward with a fraction of that amount. The NCP was too mean-spirited to give Tijani the opportunity to put his skills to good use and merely recycled some old money into his budget.

For Qatar, its involvement in Darfur was one element in a strategy of promoting its soft power throughout the wider region and branding itself as the mediator of choice. It also had initiatives in Lebanon (backed by France) and was positioning itself for further roles across the Middle East and in Afghanistan. As observed by Sultan Barakat, a leading scholar on this topic, "Qatari use of money as a leveraging tool—as in Lebanon—was vital throughout the Darfur negotiations."⁴⁹ Money was used to try to influence rebels based in Libya, through a \$2 billion joint investment fund with Libya. More than \$1 billion in agricultural investment was promised for Sudan. The DRA was promised another \$2 billion, although not all was delivered. Aid delivered with the objective of political reward was often technically inappropriate and susceptible to corrupt practices.⁵⁰ Individual participants in the talks, including the delegates who came directly from IDP camps for the civil society workshops, were given luxury hotel accommodation, cash per diems, and gifts on Muslim holidays. This set a problematic precedent for future conflict-resolution efforts, as few hosts could reach that high bar of financial incentive. Another problem was Qatar's strategic rationale, which included asserting itself vis-à-vis Saudi Arabia and the United Arab Emirates, and when those states came to see Doha as having overreached, they entered the political marketplace with more money and fewer scruples.

The Qataris were praised for their cultural sensitivity.⁵¹ Barakat compares Qatar with other well-known mediators such as Norway, arguing that it has an advantage "since it can use culturally appropriate frameworks to resolve disputes, rather than attempting to import 'one-size-fits-all' norms which may not be suitable—something for which Western powers have been criticized in recent years."⁵² It is important, however, to delve deeper into the "cultural appropriateness" hypothesis, which may consist of little more than a financially flush version of patronage politics along with a veneer of Arab-Islamic ceremony.

Moreover, the (generally favorable, sometimes critical) contrast that analysts have made is with the paradigms of so-called Western peacemaking, not with the norms of African peacemaking, such as practiced by the Panel.⁵³

Lacking from the efforts of the JCM, UNAMID, and the Doha process was any recognition that Darfur's fate was intrinsically bound up with Sudan as a whole. In a concept note for the January 2011 meetings of special envoys and the Afro-Arab Inter-Ministerial Committee, Bassolé continued to treat the Darfur process as separate, noting merely that "the referendum on independence for South Sudan will have unpredictable consequences on the political process in the country, but its peaceful conclusion would represent the removal of the remaining hope and rationale for the movements to pursue a military route to their objectives."⁵⁴

Justice and Reconciliation

A core principle of the AUPD report was that peace, justice, and reconciliation must all proceed simultaneously. This meant that the DPP should have run concurrently with a truth, justice, and reconciliation commission as well as with investigations into war crimes and trials in Sudan. The AUPD was established in the wake of the ICC prosecutor's demand that al-Bashir be arrested, but its report largely sidestepped that controversy, maintaining that Darfurians deserved justice as a matter of principle.⁵⁵

As the report observed, even if the ICC were to proceed, it would only be able to try a limited number of cases.⁵⁶ The only opportunity for wider prosecutions would be in Sudan, and the Panel proposed a combination of national and hybrid courts involving Sudanese and international judges. The Panel's view was that hybrid courts should try those crimes that bore an international sanction. Under the ICC's rule on complementarity, a credible hybrid court could be a means for keeping the ICC from further investigations and indictments.⁵⁷

The report's recommendations for justice generated considerable reaction both within Sudan and internationally, almost all of which focused on criminal accountability, paying little attention to recommendations for reconciliation, democratization, and peace. The ICC prosecutor, in his report to the UNSC in December 2009, devoted thirteen paragraphs to the report, welcoming it and anticipating working closely with the Panel as it sought to implement its recommendations.⁵⁸ The UNSC did not, however, receive or endorse the AUPD report as such.

The Coalition for the ICC and Human Rights Watch welcomed the Panel's proposals, indicating that hybrid courts would complement the ICC rather than

replace it.⁵⁹ The rebel movements criticized the report, however, insisting that the ICC should be the sole recourse for victims of war crimes in Darfur.⁶⁰ Their hostility intensified when former Egyptian Foreign Minister Ahmed Maher, who had withdrawn from the AUPD after playing a limited role, used the occasion of its publication to attack the ICC. Maher praised the Sudanese judiciary and went well beyond the content of the AUPD report by insisting that Khartoum would elect the international judges while the prosecuting and investigation teams would remain Sudanese.⁶¹ Mbeki wrote to the Egyptian foreign ministry to complain, but the damage was done.⁶² Abd al-Wahid al-Nur sardonically thanked Maher for revealing the Panel's "true purpose," and independent Sudanese media took a skeptical line. One commentator lamented: "The Salvation regime knows it will direct, shoot, write the script for, produce and dub the movie that is the hybrid courts. Just a few of the actors will be foreigners."⁶³

Having cautiously accepted the AUPD report, the GoS insisted that it needed time to study the proposal to assess its compatibility with the Sudanese constitution. Commentators maintained that it was playing a long game, refraining from an immediate rejection so it could keep African nations on its side in confrontation with Ocampo.⁶⁴ Tayyib Zein al-Abdin characterized its position as "veiled refusal that will be revealed after a little while."⁶⁵ The pro-NCP commentariat was more scathing. Among the objections were the purported logistical impracticality of inserting foreigners into the Sudanese justice system, the need to revise laws that could not then be applicable retroactively, the inability of the government to try itself while the war was ongoing, the claim that hybrid courts would be "African in appearance but international in content,"⁶⁶ and the belief that they would act as a Trojan horse for the ICC.⁶⁷ The government-controlled Sudan Bar Association maintained that the proposal was a result of a conspiracy between the Panel secretariat, the United Nations Mission in Sudan, and foreign lawyers.⁶⁸ Indeed, the narrative that AU bodies were easily manipulated by Westerners would shape much Sudanese criticism of the AUHIP.

In response, the Panel commissioned a study that established that Sudan's courts were compatible with hybrid courts, and Sudan's judicial officials had training in international law but lacked access to international professional networks that would support them in implementing that law.⁶⁹ The opposition by the Bar Association remained a problem, however.⁷⁰ Opposition lawyers told the Panel they would support hybrid courts only if they were explicitly linked to ICC proceedings and not a substitute for them.⁷¹ Come 2011, the Doha process killed off the hybrid courts as the proposal dropped off the talks' agenda.⁷²

Although more accessible than the ICC, hybrid courts would nonetheless be expensive. The AUPD plan for achieving justice for the vast majority of Darfur's victims was to bolster the capacity of the national justice system to deal with

war crimes. The GoS had already made a number of formal political and judicial responses to international outcry. In 2004 it established a National Commission of Enquiry, which delivered its report the next year and, in spite of downplaying the number of deaths, acknowledged that war crimes had taken place. The chief justice established a Special Criminal Court on Events in Darfur (SCCED), later expanding its jurisdiction to incorporate “crimes under international humanitarian law.” The minister of justice appointed a special prosecutor to work with the SCCED on war crimes. By 2009, none of these mechanisms had made any progress in investigating or trying war crimes in Darfur. The SCCED had prosecuted a few conventional crimes, but not war crimes.⁷³

At the time of the AUPD, the special prosecutor was Abd al-Dayem Zamrawi. Meeting with the Panel, Zamrawi said that witnesses were reluctant to come forward.⁷⁴ With Zamrawi’s blessing, the Panel visited Arusha and Kigali to study witness protection in those contexts and made proposals for what the SCCED could learn. The resignation of Zamrawi and his deputy, however, created a vacuum. Meanwhile, the Truth, Justice, and Reconciliation Commission struggled to get off the ground.⁷⁵

Doha Concludes

The exchanges between Mbeki and Ghazi on the GoS “Non-Paper,” quoted at the beginning of this chapter, were the last chance for any serious attempt to resolve the Darfur crisis before the referendum in southern Sudan—which would, as everyone foresaw, create an entirely new dynamic. The US, which had invested a lot of time and political capital in trying to make the armed groups into a credible negotiating partner, had lost confidence in the process. So too had Ghazi.⁷⁶

Three crucial stakeholders were still invested in Doha. One was, unsurprisingly, the Qatari government. The second was France, whose view was “no alternative to Doha. . . . Non-participating groups will be marginalized and soon forgotten.”⁷⁷ The third group included some of the UN experts, for whom the process was a model for how to do peacebuilding.⁷⁸

Qatar and the UN, aware that their expectation of a quick “win” on Darfur was unrealistic, were ready to explore how the Doha process and the DPP could be made to complement one another. The compromise was that the Doha Accord would go to the Darfur-Darfur Conference so that civilian groups could raise their concerns, within the framework of what had been agreed in Doha. A list of categories of participants was drawn up: elected representatives from the state and national assemblies, representatives of the armed movements and

native administration, other arms-bearing groups, IDPs, refugees, women, youth, civil society groupings and “prominent Darfuri individuals.” The agenda was to use the “Doha Outcome Document” as the point of departure for reaching a “Global Political Agreement” alongside a plan of action for social peace at a local level.⁷⁹

As the southern Sudanese voted for independence, Darfurians were frustrated that they were marginalized at this historical moment. A new political dispensation was needed. When Bassolé resigned three months later, there was an opening for a new approach. Abdul Mohammed wrote to Gambari to emphasize the importance of “linking the DPP to the national constitutional review process in Sudan, bringing an end to the disconnect between the Doha Process and the Sudanese national political calendar.”⁸⁰ Gambari, however, saw the DPP as no more than “a series of broadly inclusive, Darfur-based consultations . . . with the objective to enhance popular support for the outcomes of the Doha negotiations.” The UN was accustomed to processes of consultation between its agents and local communities and continued to be unable to appreciate that the process needed to be *political*.⁸¹ As Mamdani has observed, this flawed approach was rooted in the UN agencies’ self-perception as “saviors” rather than “empowerers”:

For them, the people of Darfur are not citizens in a sovereign political process as much as wards in an open-ended international rescue operation . . . [t]hey worry that bringing together political figures and representatives of civil society for an open discussion risks conveying a feeling that normalcy is returning to Darfur, when it is actually the depth of the crisis that should be emphasized . . . [t]he humanitarian effort is itself based on the conviction that both the crisis and its solution are military, not political.⁸²

Following on from its view that the security crisis must be resolved before the political crisis, UNAMID continued to stall the DPP by insisting that an “enabling environment” was needed first. The position of the AU, and the Panel, was that the DPP and the enabling environment should move in parallel, and the UN should not have veto power over an AU initiative.⁸³ In support of its position, the Panel argued that it had a track record of creating spaces in which a free exchange of views was possible. During its 2009 consultations, the AUPD had sought and obtained assurance from the GoS that it could go anywhere and speak with anyone, and the GoS had respected that. Following government harassment of CSOs that consulted with the DDDC in late 2010, the AUHIP met with Ali Osman Taha and GoS interference reduced immediately.⁸⁴ After consulting with Darfurian nongovernmental organizations, the

Panel defined an enabling environment as one establishing the conditions for free dialogue.⁸⁵

Security officers continually resisted the Panel's efforts. But it stuck to the principle that the political process could not wait until universal security had been obtained, because such a precondition would empower spoilers.⁸⁶ In February 2011, Gambari reported that "It is possible . . . that a credible DPP could be held in Darfur in the current conditions, particularly given that clashes are restricted to only about 10 per cent of the whole region."⁸⁷ In April, the African Union Peace and Security Council (AUPSC) expressed its frustration that the process had not yet commenced, proposed an initial launch date of May 1, and requested UNAMID to prioritize making the necessary preparations.⁸⁸ Then, as feared, both the GoS and the armed movements spoiled the plan. The GoS created a diversion by announcing a plan for a referendum on unifying Darfur as a single region. The AU pleaded at the AUPSC meeting for this referendum to be delayed and its core question to be incorporated into the DPP discussions. Meanwhile, the SLM, JEM, and LJM issued a joint statement on April 14 criticizing Mbeki and Gambari for being too close to the government and championing Bassolé as their preferred mediator, just weeks before the JCM finally resigned.⁸⁹ The US government, meanwhile, despite its prior skepticism toward the Doha process, began to invest more in it as it drew toward a conclusion. A memorandum in advance of Mbeki's visit to the US in April 2011 noted that Darfur was the most significant of the "key policy issues" over which the US and AUHIP differed.⁹⁰

In May 2011, Mbeki attended a UNSC meeting and reminded the attendees that the AUPD's consultations had revealed popular resentment of peace talks in which "the process was handed to belligerents." Mbeki was exasperated, announcing that "the population of Darfur is not very happy with our panel, because they say to us that we've done nothing to ensure that the recommendations we made have been implemented, and they are right, because we disappeared because everyone told us to wait for Doha."⁹¹

The wait for Doha was finally concluding that month, at a meeting of the All Darfur Stakeholders Conference, at which the DDPD was adopted by acclaim. Western envoys decided to stay away. The Darfurian parties did not flock to sign it. Over the following weeks, all Sudanese eyes were on the impending independence of South Sudan and the unfolding conflicts in Abyei and South Kordofan, and speculation over whether there would be a new all-out war. It was not a ripe moment for a partial peace deal. As Ghazi had foreseen, the document was duly signed only by the GoS and the LJM. Ghazi and Tijani Sese flew to Doha and signed on July 14. They declared it a final agreement and gave the holdout rebel movements a deadline of three months to sign it. Two

days later their respective deputies (Amin Hassan Omer and Ahmed Abdel Shafi) signed a protocol that specified the terms on which the LJM joined the government. Tijani became head of the DRA, and LJM members took government posts and combatants were integrated into the Sudanese military.⁹² The DRA was officially inaugurated in February 2012.⁹³

Ghazi did not dismiss the Darfur-Darfur Conference but made it clear that the DDPD was *the* exclusive basis for consultation rather than a basis for negotiation. The EU Special Envoy Rosalind Marsden observed, “The description of the DDPD as ‘the basis’ rather than ‘a basis’ for any further negotiations on Darfur was to remain a stumbling block for the next seven years.”⁹⁴

Following the signing, the AUPSC convened and pleaded with the UNSC to support the DPP, insisting that “one cannot make an end to the conflict the precondition for such a process.”⁹⁵ Unfortunately, the UNSC did not agree. On July 29, it adopted a resolution demanding that the parties to the conflict “make every effort to reach a permanent ceasefire and comprehensive peace settlement on the basis of the Doha Document for Peace in Darfur.” While recognizing that the DPP could play a “complementary” role in achieving this objective, the resolution expressed the UNSC’s regret that “important elements of the necessary enabling environment for a DPP . . . are not yet in place.”⁹⁶

Nor would those preconditions be in place at any time soon. By the time Ghazi and Tijani signed in Doha, war had broken out in South Kordofan and President al-Bashir had repudiated the mediation efforts led by the AUHIP. Instead of following the entreaties of the Qataris and their international backers, the nonsignatory Darfur armed movements instead formed a coalition with the SPLM-North. The Sudan Revolutionary Front’s goal was forcible regime change in Khartoum. Sudan’s crisis in Darfur was unresolved, because it had not been addressed.

Part III

**THE PATH TO THE
INDEPENDENCE
OF SOUTH SUDAN:
2010–2011**

COUNTDOWN TO THE REFERENDUM

Southern Sudanese went to the polls peacefully and on time on January 9, 2011, precisely as specified in the Comprehensive Peace Agreement (CPA). That was not a foregone conclusion. It was an achievement that warranted pride of place in Scott Gration's list of "miracles." Political business as usual would have dictated delay or confusion or both. Many National Congress Party (NCP) leaders anticipated that they could engineer this, while some in the Sudan People's Liberation Movement (SPLM) played a game of brinkmanship almost to the point of threatening war. It required a concerted effort by the international community, including the US, United Nations (UN), Ethiopia, and the Panel, to keep the referendum on track. The story is too complex to be told here; this chapter provides a summary only.

Southern Sudanese were determined that nothing should stand in the way of them establishing a sovereign state. Whatever the official position of the SPLM in favor of unity, the popular understand was pithily summarized by Francis Deng: "What we are fighting for, we know."¹ Most northern Sudanese were in a state of denial about this impending reality until the very last moment. Under the CPA, the SPLM and NCP were both formally committed to unity as the preferred outcome. For these reasons, neither party had seriously begun to think through what secession would entail, let alone begun to negotiate over it. The African Union (AU) had no experience of facilitating secession or partition. Separatism had a very bad name in Africa and the concept of self-determination meant only independence from European colonial rule. The only exception had been Eritrea in 1993—a case marked at first by brotherly cooperation

between the two states, followed by intense acrimony and war. The delayed elections also meant that there were just seven months from the general elections until the referendum date of January 9, 2011—a date that the southern Sudanese insisted could not be postponed.

Two tasks were intertwined and equally essential: holding the referendum in a peaceful and credible manner and preparing for what came next. The African Union High-Level Implementation Panel for Sudan (AUHIP) was actively engaged in the first alongside others and became the facilitator of the second.

The Panel's position on self-determination was that it was the right of the people of southern Sudan, but it should be seen in the context of the Pan-Africanist tradition, whereby the independence of African nations was integral to the project of continental unity. Speaking at the opening session of the postreferendum talks in July 2010, Thabo Mbeki said: "In the event of secession, Northern and Southern Sudan would not be ordinary neighbours, but would be neighbours with generations of shared history—people who have attended the same universities, worked in the same institutions, danced to the same music."²

The intimacy and enmity between the peoples on both sides of the north-south border is best captured in fiction. Francis Deng's *Cry of the Owl* explores the entanglements of Sudan's diverse peoples alongside the enduring racism and antagonisms among them.³ Only in novels, drama, or poetry could the meanings of what it is to be Sudanese be candidly explored. During the war, some Sudanese argued for a truth and reconciliation commission that would allow them to reckon with their shared history.⁴ When the negotiations leading to the CPA began, John Garang and Ali Osman tacitly agreed that the past was too painful and complex to dwell on so they focused instead on imagining a new future. Their shared agenda did not survive Garang's death, and no amount of investment, Sudanese or international, in the technical challenges of the CPA could fill this vacuum.

There were some last-ditch efforts to foster unity, such as the *tamazuj* (intermingling) initiative headed by governors of the states along the common border. The SPLM's northern sector vainly argued with Salva Kiir Mayardit that he should not abandon the New Sudan cause,⁵ and just days before the referendum, counseled publicly against secession, evoking the memory of the 1924 White Flag movement.⁶ These were brave but futile efforts.

At that meeting opening the postreferendum talks, Mbeki said: "Rather than formulating a checklist of items to be ticked off, outside and independent of an overarching conceptual framework, we propose instead that first of all the parties should focus on the elaboration of a strategic vision of how the people of North and South Sudan should arrange their relationship."⁷ He went on to outline four options that had been shared with the two parties: (1) two independent

countries with no durable links; (2) two independent countries within a broad and negotiated framework of cooperation; (3) two independent countries that negotiate a framework of cooperation that extends to the establishment of shared governance institutions; and (4) one country with a federal arrangement between north and south.

This was a challenge not an instruction. The role of the Panel was as facilitator. Nine days later, the Panel convened a “joint exposure workshop” to lay out the issues to be tackled in the postreferendum negotiations. The workshop elaborated the agenda for “clusters” that would address economics, security, nationality and citizenship, and legal issues. In his address, Mbeki said: “We are here as a witness, in order to be helpful as and when required, to provide ideas to prevent deadlock. But the negotiations are fundamentally a bilateral effort between the two Parties. The heavy lifting will be done by you and by no-one else. Let no-one else claim ownership or credit: this is first and foremost an internal Sudanese affair.” He gave advice from the South African experience: first, that the parties should maintain ownership and control over the process and not yield to outsiders; second, that “this [was] not a zero sum game”; and, last, “the importance of leadership cannot be underestimated.” The task before you, he explained, was not to be a hostage to the past, but to map a new future.⁸

This was not, however, how the negotiations transpired. Leaders in the north and south did not develop any strategic vision, let alone a shared one. The negotiators elevated sovereignty to trump all other issues. The talks became a checklist of tasks in which each side sought tactical advantage. The SPLM and NCP leaders realized the chance they had missed only when it was too late.

The underlying problem was that the CPA was more a truce than a definitive political settlement.⁹ Despite the continuing pro-unionist official position of the SPLM, southerners were patiently and vigilantly awaiting their chance to vote for independence. The NCP never had a unified strategy for unity. Some never believed secession would actually happen: Southerners might have a change of heart or some well-placed bribes would win the southern elite around or at least buy a rolling postponement. Others welcomed the departure of the south as a chance to build an Arab-Islamic country. And all were preoccupied with tactical politicking. As a result, the NCP did next to nothing to make unity attractive, as enjoined by the Comprehensive Peace Agreement. The kinds of dramatic options that Garang might have pushed—such as moving the national capital to Juba for a period, or using the six years for a massive investment program in southern Sudan—were not even considered. Preoccupied with political business as usual, the NCP party managers grossly underestimated the depth of South Sudanese nationalist sentiment.

In this context of disarray, an Islamist pro-secession faction set the pace. Their mentor was al-Tayyib Mustafa, Omar al-Bashir's uncle and the editor of the *al-Intibaha* newspaper. Mustafa established a party, the Just Peace Forum.¹⁰ His perspective was that if the north let go of the south, they could justify an Islamic state within the "rump" Sudan.¹¹ Secession would also compel the Sudan People's Liberation Army (SPLA) divisions north of the border to withdraw south or disband.¹² The logic of this position was that secession should happen and a "hard" separation would be best.

Retrospective comments made by Dirdeiry Mohamad Ahmed, a senior member of the government's negotiating team, are evidence of the extent to which the Just Peace Forum narrative influenced the NCP. Writing in 2015, he observed that following the CPA "northerners, who suddenly realised that it was finally possible to end the intractable southern war, ceased to consider southerners as compatriots." According to Dirdeiry, the NCP's principal objective in the interim period was "cultivating the confidence of the northerners in the viability of the postsecession Sudan."¹³ Such a focus on internal politics within northern Sudan not only precluded making the concessions that would have "made unity attractive" but also complicated the task of the government of Sudan (GoS) negotiators for the postsecession arrangements.

The northern secessionists had an economic vision, articulated by the former finance minister Abd al-Rahim Hamdi, who argued that Khartoum and the territories within a day's drive of the capital were the economic powerhouse of the country and could readily function as an independent country, cutting all the peripheries adrift. Once southerners became foreigners their labor would be cheaper.¹⁴ But government economists were also acutely aware that losing the south's oilfields would cripple the northern economy.¹⁵

The last stand of the unionists across the political divide was the *tamazuj* initiative, which focused on the zone of intermingling between the states adjoining the common border. This was launched in 2010 at a conference in Kadugli, Southern Kordofan, followed by a second meeting in Aweil, Northern Bahr al-Ghazal. The plan was to continue with a program of activities and investments that connected the neighboring southern states. Whether this was a final effort to drum up support for unity or an initiative to gain momentum for postsecession trade and cooperation was not clear. Either way, the initiative petered out. The Panel publicly endorsed the *tamazuj* process, attending the two conferences. Mbeki said that he hoped the meetings would enable Sudan's citizens to "deliberate upon the kinds of governance structures necessary for Sudan to achieve equitable unity in diversity."¹⁶ The two vice presidents—Ali Osman and Riek Machar Teny—were active supporters but neither al-Bashir nor Kiir showed any interest in the *tamazuj* initiative. The Aweil conference

called for the “immediate formation of a political committee at the Presidency of the Republic and the Council of Ministers that is tasked with effecting proximity of viewpoints on the remaining problems related to the border demarcation to guarantee smooth flow of commodities [and] citizen movements.”¹⁷ No such committee was formed.

Al-Bashir had been a passionate unionist, and as soon as the CPA was signed, he recognized that the withdrawal of Sudan Armed Forces (SAF) from southern Sudan provided the Sudan People’s Liberation Movement/Army (SPLM/A) with a path to secession that they would surely have taken. With its soldiers gone, Khartoum had forfeited its main tool for managing a referendum outcome in its favor. Al-Bashir avoided expressing this view in public. In August 2010, his translator, Ahmad Ghazzali sent a message to the Panel that al-Bashir was “resigned to the secession of the south” but that he feared the backlash in the north.¹⁸

The northern opposition was the most credibly unionist political bloc in the country, having worked on and off with the SPLM over the previous decades, and it pushed the line that the NCP was sacrificing a united Sudan to guarantee its survival.¹⁹ Leading parties such as the National Umma Party, however, were compromised by their roles in the war in the 1980s, and none had a determining role in the political arena. The outcome of the elections was that negotiating the secession and afterward was entirely down to the NCP and SPLM. The mutual distrust between the two meant that technical issues around the composition and operation of the referendum commission became acrimoniously politicized, while neither party wanted to discuss political issues, such as the relationship between the two states in a strategic way, let alone in a collaborative manner.

Politicized Technicalities: The Referendum Commission

The Southern Sudan Referendum Commission (SSRC) was the most essential element to the successful conduct of the referendum. It quickly became a matter of acrimony. Under the Referendum Act, President al-Bashir was entitled to nominate the chair, and in June 2010, he duly put forward the distinguished lawyer Mohamed Ibrahim Khalil. The Government of Southern Sudan (GoSS) did not ratify his appointment, fearing that as a northerner he would act out of a desire to impede the referendum. Eventually, the Panel was able to alleviate southern concerns by arranging for the capacity of the Southern Sudan Referendum Bureau (SSRB), the Juba-based subsidiary of the SSRC, to be

considerably enhanced. Because the GoSS controlled the nominations to the SSRB, it was assuaged and agreed to Khalil's nomination.

Khalil later maintained that because he was accused by the NCP of SPLM bias, and by the SPLM of NCP bias, this was evidence of his neutrality.²⁰ The truth is more subtle. Khalil had a history of being a unionist but had no history of supporting the NCP.²¹ Historically a member of the Umma Party, he had left government in 1988 because he opposed then prime minister Sadiq al-Mahdi's decision to form a coalition with the Islamists.²² Khalil's subsequent book on the secession of the south took the opposition position that unity would have been possible were it not for the Islamist regime's efforts to impose its vision on the county.²³ In selecting Khalil, al-Bashir showed what the NCP might have done had it formed a broad-based government after the elections, namely sharing the burden of the referendum with others. This put Khalil in a difficult position and at one point he noted sardonically, "I am the villain of the piece."²⁴ His role in managing the SSRC rightly won him considerable plaudits for his professionalism, although along the road, he frequently expressed his frustration at what he perceived to be the domination of the process by the SPLM and international community.

The SSRC was expected to organize within the space of five months a process that should have unfolded over four years, had it been established in 2007 on the CPA schedule. When Mbeki in an August meeting proposed compressing the timeline of the referendum, Khalil noted this would mean either breaking the law or changing the law.²⁵ At this point, the southern cochair argued that "instead of clinging to the literal word of the law, do what is best for the people of Sudan." Khalil then admitted that "business people talk about going around the law," suggesting the campaigning period could be bypassed given that this was already happening in practice.²⁶ The timeline problem was complicated because mistrust—including suspicions that Khalil wanted to postpone the poll—caused further delays. Over the crucial months from July to October 2010, the parties disputed over how to fill vacant positions in the SSRC, over regulations that had been produced by US lawyers, over whether the registration cards and ballots should be printed locally or abroad, and over who controlled the funds for conducting the referendum. In August, Khalil complained that leading SPLM figures were conducting a "slandorous offensive" to undermine him and threatened to resign.²⁷ Pagan Amum was one of three SPLM officials who accused Khalil of being pro-NCP.²⁸ The AUHIP, alongside the UN and US, shuttled between him, Kiir, and the NCP leadership and succeeded in resolving the crisis.

On November 15, 2010, voter registration began. SPLM officials with megaphones and private vehicles drove around Juba announcing that "the promised

land is coming.” The north was quiet. Southerners in Khartoum did not even know that the process had begun.²⁹ The NCP accused the SPLM of deterring southerners in the north from registering,³⁰ and Pagan blamed low turnout in the north on threats by NCP officials that southerners would lose citizenship if they voted for secession.³¹ Officials in Juba feared that the NCP might either inflate the number of northern-based voters to manipulate the result or cause delays forcing the referendum to be postponed.³² None of this happened.

The NCP finally resigned itself to the reality of southern secession. Its leaders became more focused on deflecting blame than impeding the inevitable. Ibrahim Ghandour gave an interview in December maintaining that the NCP should not be blamed for secession given that it was Ali al-Haj—now of the Popular Congress Party (PCP)—who had first conceded the principle in talks with the SPLM in 1992, and the rest of the northern opposition had endorsed this at the 1995 Asmara conference.³³ Meanwhile, by this time, al-Bashir was most concerned with allaying the fears of the northern public about the economic detriments of secession, as well as implicitly demonstrating its potential benefits. Al-Bashir moved closer to the views of the al-Tayyib Mustafa faction within the Islamic movement, telling a crowd in Gedaref in December 2010 that “if the south secedes, we will change the constitution and at that time there will be no time to speak of diversity of culture and ethnicity,” further explaining that Arabic would be the language and Islam the principal source for the constitution.³⁴

Preparing for the Postreferendum

The term “postreferendum arrangements” covered the fundamental task of the unfinished business from the CPA—the real peace agreement between north and south. This was the issue that neither the NCP nor the SPLM wanted to talk about. Facilitating these negotiations could have fallen to the UN, Intergovernmental Authority on Development (IGAD), or a remandated Assessment and Evaluation Commission. But Mbeki outranked all others and had the invaluable assets of enjoying the confidence of al-Bashir and status in Africa.³⁵ Signaling the support of Ethiopia and IGAD, an early meeting was held in the Tigrayan city of Mekelle.

The first step was a “Proposed Framework for the Negotiation Process for the Post-2011 Arrangements between the Government of Sudan (GoS) and the Sudan People’s Liberation Movement/Army (SPLM/A).” Assisted by the AUHIP, the parties signed this on May 22, 2010. This framework was supposed to encourage the parties to think jointly and strategically about relations between

north and south. The framework also removed a potential stumbling block to the referendum, specifying that “neither the CPA nor the [referendum] act condition the 9 January referendum on conclusion of a whole or partial agreement on post-referendum issues.”³⁶ Hence, the framework limited the NCP’s capacity to “hold the referendum hostage.” Meeting in Mekelle the following month, the parties agreed to separate the referendum from the postreferendum talks, making it even harder for the GoS to hold back recognition of the referendum result to obtain concessions on other issues.³⁷

The question of the legal identity of the negotiating parties was in principle complicated and in practice straightforward. Both parties were partners in the Government of National Unity, which was sovereign over all of Sudan, including the south, of which the GoSS was a subordinate part. According to territorial, administrative, and military logic, the talks should have been between a government of *Northern* Sudan and GoSS. But no such northern entity existed. The CPA had been signed between the GoS, in which the NCP was the sole party, and the SPLM/A, and the postreferendum talks were framed as an extension of the CPA, both procedurally and substantively. The NCP was thus the inheritor of the position of the GoS, while the SPLM continued in the role of the SPLM/A of six years prior. The SPLM/A, as its name indicates, however, was a *national* political movement and army, albeit primarily drawn from the south. Similarly, the NCP was overwhelmingly northern, but also had a constituency in the south. In line with the international community, the Panel took the view that the NCP delegation was coterminous with the north and the SPLM represented the south. In practice, Panel staff had to refer to the NCP delegation as the GoS delegation to avoid causing anger in Khartoum. The fact that the CPA cosignatory was also the SPLA was set aside—henceforth, it was just the SPLM. During the talks, the SPLM was routinely represented by Pagan Amum (who had long been committed to unity) and often by Yasir Arman (a northerner). The political disentanglement between north and south was fractious, not only between the parties but also within them.

Mbeki opened the first negotiations at Mekelle in June by telling the delegates “the continent will want to support whatever you decide, whether unity or separation.” Pagan Amum, who would act as Juba’s chief negotiator in the next two years of talks, announced: “We come in the spirit that the referendum is not the end of life of the people of the north or south, but instead a new beginning; either a New Sudan or if the choice is separation, a new beginning of the relationship.” The explicit reference equating unity with Garang’s New Sudan vision would have unsettled the NCP, but Pagan also declared that “in the case of separation, relations will be friendly, based on co-operation.”³⁸ In the subsequent meeting with the AUHIP, however, Pagan took a far more

confrontational tone, blaming the NCP for the lack of progress toward the referendum, insisting that the NCP was testing the SPLM's patience to the extent that war might break out again soon. Others in the SPLM, however, privately warned the Panel that they considered Pagan's tone far too bellicose and suggested that the best way to prevent the NCP from obstructing secession was to provide them with reassurances about its economic consequences.³⁹

Mekelle was the first of many occasions on which Pagan's position appeared to jar with that of other SPLM members. Different power centers within the SPLM pulled the negotiations in different directions. Pagan's actions were frequently his own and did not necessarily have his government or party's formal blessing.⁴⁰ Since the death of Garang, SPLM members treasured their ability to speak freely. As the IGAD representative on the CPA Assessment and Evaluation Commission, Lissane Yohannes had witnessed this. At each meeting, new SPLM representatives would appear, often without having been briefed on the previous meeting and its decisions, and those representatives often contradicted each other.⁴¹ Lissane challenged Pagan and Paul Mayom, and they responded that they were "exercising their democratic rights." When Lissane compared the SPLM's apparent disarray with the discipline imposed by his own Tigray People's Liberation Front, Pagan went on to explain that he had been trained in Cuba and knew all about democratic centralism. Lissane concluded that the SPLM's undisciplined approach was deliberate.

Throughout the postreferendum talks, the SPLM did not have an "official mind" in the same way that the GoS did. Decisions made at AUHIP-facilitated sessions were not fed back into a bureaucratic structure by the SPLM, and it was often the AUHIP that had to refresh SPLM representatives on the state of the talks and previous decisions and agreement, session by session.⁴² Later, Hilde Johnson, the special representative of the UN secretary-general, observed this mindset. Reporting on the first meeting of the SPLM politburo (PB) since independence, she wrote a confidential assessment:

The fact that the PB had not met for a year is a clear indication that a coherent party policy and implementation mechanism was absent. Decisions were taken in Government without consultation with the SPLM's party organs, both on key policy decisions, as well as on party representation in Government fora. . . . It has also been obvious that State officials and the Council of Ministers implemented policies that did not emanate from any source but themselves assuming that what they did was in the interests of the State, and therefore the party.⁴³

In contrast, the NCP showed discipline. Its delegation was consistent from one meeting to the next and they came fully prepared with the minutes and

decisions of prior meetings, and knowing what they were mandated to decide. At the beginning of the talks, however, the GoS had not yet made up its “official mind,” and it was slow in nominating its delegation and even slower in sharing the information it possessed. Especially at the initial stages of the talks, there was an acute informational asymmetry between Khartoum and Juba. Key files on the economy, the border, and Sudan’s diplomatic history were in the possession of northern institutions and were not shared with the SPLM. The GoS delegates said this was a bureaucratically complex task; the SPLM suspected a cover-up.⁴⁴ Later on, deep splits within the NCP, and between them and the army, began to emerge.⁴⁵

At the next meeting, on June 23 the parties signed a “Memorandum of Understanding on Post-Referendum Issues and arrangements.” Probably through oversight, the northern delegates signed as NCP, not as GoS. Following the principles laid out in the May framework, this outlined the basic structure for the negotiations that were intended to produce a Framework Agreement on Sudan’s postreferendum future by September. A Lead Negotiation Panel jointly formed by the GoS and SPLM would establish a Joint Technical Secretariat, which in turn would convene four separate “cluster groups” that would help reach agreement on matters relating to (1) citizenship; (2) security; (3) financial, economic, and natural resources; and (4) international treaties and legal history.⁴⁶ Of these, the security and financial clusters went on to become very active and significant. The citizenship cluster was also important, although it made painfully slow progress. The international treaties and legal history cluster was uncontroversial, with the SPLM accepting that, in the case of secession, South Sudan would comply with obligations entered into by Sudan. Notably, the potentially explosive issue of the Nile Waters was a dog that did not bark: The SPLM accepted without challenge that it would accede to existing commitments.

The negotiations were not the intense, closed-door, and definitive exercise for which the Panel might have hoped. The agreement that “press statements and public briefings pertaining to the negotiations shall be jointly made by both parties,”⁴⁷ which followed Mbeki’s warning in the opening discussions of “the dangers that arise when you negotiate through the media,” would be violated repeatedly in the months to come.⁴⁸ The parties’ commitment to “discuss ways of involving civil society organizations and the Sudanese community at large” was also honored in the breach.⁴⁹ This was a marked departure from the Panel’s practice in Darfur, but as facilitator rather than agenda-setter, it had no authority to dictate.

On July 19–20, the AUHIP convened the parties in Juba for what were called “joint exposure” talks that began detailed discussions. The name was chosen to indicate that the parties would present their positions while experts

presented data, comparisons, and frameworks. Mbeki's introductory presentation recognized both unity and secession as valid Sudanese futures. "The creation of the Government of National Unity," declared Mbeki, "also marked a new beginning in the life of the nation. The late Dr. John made this point when he visited the Nuba Mountains on his way to Khartoum, promising that as First Vice President, he would hold the cause of the Nuba people, along with all those who struggled for a New Sudan, in his right hand."⁵⁰ This assertion revealed Mbeki's awareness of who might be overlooked as Juba and Khartoum haggled over the price of secession. The ambiguous status of the SPLA brigades recruited from the Nuba Mountains and Blue Nile would become highly contentious in the security talks.

The AUHIP did not seek to impose a particular postreferendum relationship on the parties, so much as provide them with the support in making their decisions. Mbeki insisted that the Panel was not a mediator but a facilitator of the talks—although as time passed, the distinction became blurred. The aim of the exposure session was to facilitate the work of the cluster groups and lead negotiators on each side (somewhat confusingly called the Lead Negotiating Panel) by providing the international expertise that could frame their discussions. Idris Abd al-Gadir and Pagan Amum were the two lead negotiators, whose role was to be significant over the following years. Experts presented detailed PowerPoint presentations covering both unity and secession scenarios, highlighting potential pitfalls, and identifying international precedents in Ethiopia and Eritrea, Serbia and Montenegro, as well as Jordan and the West Bank.⁵¹ One presentation covered "political accommodation frameworks" after the referendum. The idea was to avoid seeing the referendum outcome as a binary choice and instead to look at the "many options to explore between the two ends of the spectrum." In the secession scenario, four potential options were raised: a "structured union of independent states," an "economic community of independent states," "reciprocity between independent states," and the scenario that the AUHIP sought in practice to avoid—"mutual isolation."⁵²

Progress toward a framework agreement was slow. A draft internal note for the US special envoy observed that it was difficult to get the parties to focus on the referendum and the postreferendum issues at the same time. The meetings between the GoS and SPLM were brief and for the entire month of August were stuck on the question of the SSRC, without getting to the postreferendum agenda at all. The talks lacked an agreed location, neither side had a consistent and mandated negotiating team, and they had no sense of urgency and no benchmarks. The international entities were more engaged in supporting the referendum than managing its outcome.⁵³ Additionally, internal politics within

the NCP and SPLM had marginalized the people most amenable to brokering compromises, including Ali Osman and Riek Machar.⁵⁴

All of these issues had been foreseen by senior UN and AU officials a year earlier at the UN's brainstorming session, convened over fears that the CPA might fall apart. The background note for this session read, "there have been no meaningful preparations for post-referendum independence. None of the systems required to run a state would be in place in time for a post-CPA secession, including in particular those mechanisms required to manage the security sector and state finances and the delivery of basic services."⁵⁵

The cluster groups met infrequently and did not invite observers.⁵⁶ The legal cluster progressed smoothly, but the others faltered or stalled.⁵⁷ The clusters could not engage effectively with their seniors, and their work was effectively paralyzed by the NCP-SPLM acrimony.⁵⁸ The work of the citizenship cluster froze as the parties traded angry public statements about the status of southerners in the postsecession north, while the security cluster successfully completed its work on unity scenarios, but did not address thorny questions, such as the status of the SPLA divisions north of the border in the Nuba Mountains and Blue Nile.⁵⁹ The first SPLM delegate to that cluster, Daniel Kodi, said it was a political matter outside the cluster's remit. The finance cluster was stalled by the GoS not providing information on its negotiating position or key economic data.

The failure to resolve the status of Abyei or delimit the north-south border also caused problems, putting unfinished CPA business on the postreferendum agenda. The parties established a Joint Political Committee (JPC), to oversee Abyei, the border negotiations, and the clusters.⁶⁰ This committee effectively superseded the Lead Negotiating Panel, which had met only once in the two months after the initial exposure meeting. The SPLM cochair of the JPC was Pagan Amum. Al-Bashir's initial appointee was Ghazi Salah al-Din, but Salah Gosh maneuvered to take the post. Gosh had a reputation as a strategic fixer, but he also followed his own agenda, sometimes departing from the president's. He overshadowed Idris Abd al-Gadir.

The first two weeks of November were crucial. The Panel had taken on the Abyei file (see [chapter 8](#)); the delayed Framework negotiation meetings were due; a high-level delegation led by Senator John Kerry arrived from Washington, D.C., carrying a set of proposals with the backing of President Obama; and the Eid holiday began on November 14. Ghazzali advised: "The President likes to make major decisions after a period of reflection and prayer. He may therefore prefer to take the period of the Eid, either in Khartoum or Mecca, as an opportunity for this."⁶¹ Ghazzali said that al-Bashir had not yet decided whether to lead the Sudanese pilgrimage to the Holy City.

The Other Negotiations: al-Bashir and the United States

Meeting with the Panel, Kerry said, “By necessity, the US is one of the parties at the table.”⁶² For the previous nine years, the US had been a key actor in the Sudanese peace process. Its sanctions had handicapped the Sudanese economy, especially its oil industry. Washington’s listing of Sudan as a state sponsor of terror (SST) left a threat of forcible regime change hanging over Khartoum. The peace process that led to the CPA had been also a parallel negotiation between Khartoum and Washington, D.C., on normalizing Sudan’s standing. A few months after the breakthrough in Machakos, atrocities in Darfur put another toxic stain on Sudan’s reputation. The Darfur peace process had similarly been a parallel exercise. Washington negotiated with Khartoum on the transition from the African peacekeepers to a UN mission. Khartoum complained that the US kept shifting the goalposts. Washington pointed out that Sudan kept committing new atrocities and violating agreements. Moreover, the US sanctions apparatus imposed on Sudan was now so complex—including executive orders, congressional resolutions, and the SST designation with additional requirements of verification—that nothing could be done at the stroke of a pen. Also impeding economic normalization was Sudan’s huge arrears with creditors, including the International Monetary Fund and the World Bank, meaning that any debt relief would be slow and complicated.

The NCP’s other demand was removing the ICC arrest warrant against the president. On this case, the maximum that the US could do would be to support a resolution at the UN Security Council suspending any effort to execute the arrest warrant for a year. Most Sudanese leaders believed that the White House could undo Sudan’s international ostracism with executive decisions, and it was hard to convince them otherwise. The NCP leaders were paranoid, and those who understood how Washington worked, such as Gosh and Taha, were distrusted by their colleagues. What the US needed was to win the trust of the final decision-maker, al-Bashir.

The US appointed a seasoned diplomat, Princeton Lyman, to work alongside Gration (in April 2011, when Gration stepped down, Lyman became the special envoy). He was a strong choice, having been ambassador in Nigeria and South Africa before serving as assistant secretary for international organization affairs. Lyman brought the needed level of diplomatic skill and political analysis to the US team, including knowledge of, and respect for, how the AU and UN worked. Under different circumstances, the personal relationship between a senior US diplomat and the Sudanese president would have been the pivot on which US policy turned. Although the US was not a state party to the

International Criminal Court (ICC), it followed the protocol prohibiting direct contact between its officials and al-Bashir. Lyman passed his messages through intermediaries, frustrated that this was inherently unsatisfactory. At a critical moment, four years later, he discreetly broke the protocol and went to talk directly with al-Bashir (see [chapter 19](#)).

In the meantime, the US dealt with Ali Osman Taha. Secretary of State Clinton wrote to him on October 3. She spelled out the steps:

I want to specifically highlight our position on removal of the State Sponsor of Terrorism designation and implementation of international assistance, including debt relief. As outlined in more detail in the attached paper, upon successful completion of the CPA, demonstrated completion and sustained implementation of post-referenda issues, and fulfillment of USG expectations with respect to Darfur, the United States is prepared to:

- a. Remove the State Sponsor of Terror designation, subject to the standard procedure for doing so;
- b. Rescind remaining economic sanctions (some could be removed, earlier per the steps outlined in the attachment), including working with Congress to amend relevant legislation; and
- c. Support access by the Government of Sudan to financing from international financial institutions, implementation of debt relief consistent with internationally-agreed processes, and continued bilateral development assistance to northern Sudan.

I look forward to continuing our conversations about these important issues in the coming weeks.⁶³ The enclosed “USG [US government] Package” detailed four phases: Phase I was immediate unconditional measures; Phase II included actions the US would take following the successful holding of the referendum; and Phase III included actions on the completion of the CPA (i.e., independence of South Sudan) to occur before Phase IV, which was the “fulfillment of comprehensive peace agreement, post-referendum issues and resolution of Darfur.” Lifting the SST designation was on a specific six-month clock: The president would announce the first step, and after six months, the administration would present a report to Congress detailing the record of the previous six months, after which Congress would have forty-five days in which to comment. At that point, the US could finally act decisively.

Going through the necessary steps would be difficult for any government that was facing domestic turmoil. It would be particularly hard for al-Bashir,

knowing that he could fulfill every criterion and still have the ICC arrest warrant hanging over his head.

In June, Ghazi Salah al-Din had headed a delegation to Washington to meet senior members of Congress in what he described as an “unprecedented” visit.⁶⁴ Ghazi was also doubtful, writing in the Arab media that he saw the Democrats as less pragmatic than the Republicans. He distrusted Clinton, in particular, because it was her husband’s administration that had originally added Sudan to the SST list and had been responsible for the Shifa bombing of 1998, when US cruise missiles had destroyed a pharmaceutical factory in Khartoum that allegedly held chemical weapons.⁶⁵ Four days after Clinton’s letter, Ghazi published another piece, which, without mentioning the missile, characterized US policy toward Sudan as akin to its policy toward Palestine, both rooted in a hubristic belief in “the American exception.”⁶⁶ Al-Bashir trusted the Ethiopian prime minister. That same day, he sent a high-level envoy to Meles, to ask his assessment of the likelihood of Sudan achieving its goals vis-à-vis Washington.⁶⁷

Meanwhile, Sudan needed to see some fruits from its efforts. US officials discussed how to front-load the rewards and bring other donors on board, and also how to link an economic package for the north to the major commitment that the US was making to the south. Responding to a message from Lyman, Special Assistant to the President Gayle Smith addressed “the vision thing”: “How do we paint a picture of economic interdependence that yields tangible gains for people on both sides—and what do we put in the picture. Do we, for example, want to put together a roundtable, with both sides, and look at issues like common projects (and investments)—shared electricity generation, a Nile irrigation grid, etc; consider things like a monetary union, FTZ etc. And if so, when do we do it—before? Or do we let them know before and hold it in Feb?”⁶⁸

The US also pushed its allies. The Europeans, less encumbered by the SST restrictions, had more flexibility. During Kerry’s first visit to Khartoum from October 22–24, he proposed that the US, the European Union, and others should jointly “develop a robust economic package” that assured “access to development finance, investment, access to modern technology in the oil sector,” on the basis of “GoS cooperation with peaceful separation of the South.”⁶⁹

Gosh appeared cooperative in the meeting, handing Kerry a document on a “strategic north-south framework” containing a promise to work with the south after January 9.⁷⁰ Kerry was encouraged by what he called a “surprise proposal.”⁷¹ Gosh, however, said publicly afterward that “we told him that the Sudanese people are despairing of American promises, which are repeated again and again while nothing happens in practise.”⁷²

On November 5, Kerry returned to Khartoum, bringing another letter, this time from President Obama to the GoS.⁷³ Its gist was that the referendum was the moment of truth for relations between the two countries. Kerry explained his mission to Mbeki:

The north has a principal concern about its bilateral relations with the US. To try present the possibilities of change, Obama sent me with a letter. The gravamen of the letter is;

1. State sponsors of terror: they want out;
2. Economic sanctions: ditto;
3. The ICC (not under our control).

I urged the White House and they decided to try to put things on the table to address the north's skepticism, so they know where is the pot of gold at the end of rainbow.

Obama says, we are now prepared to begin the process of withdrawal of SST, immediately on completion of a successful referendum, as soon as we understand that the outcome has been recognized, he will announce publicly he is bringing some sort of rescission. This will take six months, then Congress has 45 days to respond. The decision is at the discretion of the Secretary of State. It has usually taken one and a half years to lift this status. The President makes it clear, that as early as July, SST can be completely lifted.

And with this lifting comes offers to change a number of sanctions on the economy, allowing various projects, exports, communications technology, and the immediate possibility of movement on the economy. Also engaging with creditors/donors on the question of debt, nominating an ambassador.

This proposal will be public after meeting with Pres Kiir tomorrow.

The President offers further sanctions lifting with progress on Darfur. (The second law that is constraining us is the Darfur Peace Act.) I intend to personally undertake to make some changes with respect to the Presidential power to waive sanctions. So more can happen sooner.⁷⁴

Obama's intervention moved things faster than Clinton had indicated in her October letter and directly spoke to al-Bashir's concern over the ICC. Kerry said to Mbeki: "President Obama hopes this will empower you to make a change. The moment is now."

Following his previous visit, Kerry was concerned that Mbeki was being overly cautious when "time is too short to delay."⁷⁵ Both Kerry and Mbeki were worried about the details. Abyei was chief among them—US efforts had failed

to make a breakthrough over the weeks (see [chapter 8](#)). Nevertheless, Kerry repeated the line “this is the moment” three times during that meeting.

Ghazzali translated the Obama/Kerry letter for al-Bashir. On November 8, he reported: “It is being well received; there is still some uncertainty or skepticism; the President is, perhaps, beginning to relax on the US issue.”⁷⁶ The next day, Lyman and Gration reported to Washington that there were indications that, despite political posturing, the NCP was responding seriously to the US offer.⁷⁷

“Nothing Is Agreed Until Everything Is Agreed”

Meanwhile, on November 7—before al-Bashir had the opportunity to meet with Gosh and discuss Obama’s letter—the JPC-cum-Lead Negotiating Panel met in the Council of Ministers. At the beginning of the week-long negotiating session, the Panel presented them with a draft “Framework for Resolving Outstanding Issues Relating to the Implementation of the Comprehensive Peace Agreement and the Future Relations of North and South Sudan.” This contained the “Overriding Principle” of “establishing and sustaining a constructive and meaningful relationship between northern and southern Sudan, which will promote the viability of both the north and south.”⁷⁸ Importantly given the ongoing anxiety about the referendum, it included a commitment that “the parties shall prepare equally for the possibility of unity as well as secession and shall implement either outcome in good faith and a timely manner.” The draft also had the sentences, “renounce permanently any return to war or violence in the conduct of their relations” and “refrain from any conduct that might contribute to insecurity in either north or south.”

Neither side wanted to commit to the “overriding principle.” They both harbored grudges and each was looking to see how it could undermine the other. The SPLM’s Garangists, particularly Pagan Amum, could not bring themselves to support a regime led by their historic oppressors and still dreamed of a New Sudan hoping that the postsecession crisis in Khartoum might be their chance. Many in the northern camp wanted to punish southerners for seceding, which notably led to their refusal to grant dual nationality to southerners resident in the north.

Nonetheless, echoing the words of Yasir Arman, the negotiations repeatedly included the phrase “two viable states.”⁷⁹ The south needed the pipeline to Port Sudan to export its oil, and the north needed the money from southern use of this pipeline. Shared interest did not mean a shared vision. Pagan said that negotiations should be like “the meetings of two mafia dons, they come in and

exchange.”⁸⁰ He saw any commitment to the north’s postsecession economic viability as trading away a vital bargaining chip. The draft framework text proposed binding the north and south in a “special economic relationship” that would require “a level of economic co-operation that will promote their mutual economic viability.”⁸¹ The north wanted to commit to broader “macroeconomic relations,” while the south stressed its postsecession economic sovereignty and cut out reference to a “common economic area.”⁸²

Tensions came to a head over the status of the SPLM in the postsecession north. The dispute began when the NCP requested that a reference to “inclusive governance” be replaced with “good governance,” noting “it is our business if we have inclusive government.” It took a few minutes before the SPLM delegation realized that the removal was targeted at them. Yasir Arman objected, followed by Pagan and Nhial Deng, who insisted, “I want SPLM to have political space [in the north] so that they don’t have to resort to other means.” The NCP response, delivered by Mohamed Mukhtar, offered a grim forecast: “You are now just tackling Yasir’s future. We will take care of it. We will take care of it.” Pagan insisted “it is *our* problem” and pushed for an extension of the United Nations Mission in Sudan (UNMIS) mandate, presumably hoping this would restrict the NCP’s ability to “take care of” the SPLM’s northern sector, but the NCP held steadfast to its position that the UNMIS role would end with the CPA period.⁸³ Meanwhile, the northerners got their way on “good” as opposed to “inclusive” governance, and the agreement was amended accordingly.⁸⁴ These concessions by the SPLM showed that it was willing to sacrifice its northern constituencies to achieve secession.

In the next session, exchanges were fierce over the link, or lack thereof, between demarcating the north-south boundary and holding the referendum. Finalizing the boundary had been held up by interminable disputes and delays in the ad hoc Technical Boundary Committee (see [chapter 12](#)). Salah Gosh made the argument that if the southerners obstructed the demarcation of the border, they were effectively in violation of the CPA and that, as a consequence, there would be no referendum; the southern representatives wanted a safeguard to prevent the north from using the border issue as a spurious pretext to delay the referendum.⁸⁵ With some encouragement by Mbeki and Pierre Buyoya, the parties agreed to remove the reference to boundary demarcation not constituting a “precondition” and to replace it with language recognizing strong but separate commitments to hold the referendum and to demarcate the boundary by January 9.⁸⁶

Abyei was the biggest problem. The two sides’ inability to agree on Abyei prevented them from signing the Framework Agreement. In the CPA negotiations, they had adopted the working principle that, that “nothing is agreed until

everything is agreed” and endorsed it for these talks. This meant that any single issue—in this case Abyei—could block progress on everything else. Abyei had been scheduled to conduct its referendum on January 9, but the parties had been unable to agree on voter eligibility, and powerful constituencies in both the NCP and SPLM with ties to the region had pushed negotiations to the brink. Echoing his line that the north was demanding a “ransom” for resolving the Abyei question, Pagan insisted that the SPLM would not sign the agreement unless parallel negotiations on Abyei reached a conclusion.⁸⁷ Meanwhile, Gosh insisted on bracketing Abyei and ran down the clock, pointing to the beginning of Eid on the evening of November 14 and declaring “we are not going to agree on Abyei.”⁸⁸ Gosh was right.

FROM THE REFERENDUM TO THE INDEPENDENCE OF SOUTH SUDAN

President Omar al-Bashir made four important interventions in the months between December 2010 and July 2011. These affirmed the holding of the referendum, demonstrated respect for its outcome, and welcomed South Sudan's secession. The first occasion was the consultative council (*majlis al-shura*) of the National Congress Party on December 2, at which al-Bashir shut down an acrimonious challenge. The second and third occasions were visits to Juba immediately before the referendum and on the first day of voting to send messages of reassurance to southern Sudanese and the international community. These interventions raised hopes for better relations between north and south. The fourth intervention was on July 9, South Sudan's independence day, when al-Bashir was the first to congratulate President Salva Kiir Mayardit, in a gracious speech. On January 17, Thabo Mbeki and Pierre Buyoya met with al-Bashir, who gave the impression of a man who had had a huge weight lifted from his shoulders.¹ Between January and July, however, any spirit of cooperation and compromise had vanished. The successor state, the truncated northern Sudan, was turning its back on the south and wanted only a sharp separation. The army wanted a hard, defensible border and was prepared to impose that by force.

The south's leaders also wanted a sharp separation. Many thought that a new war was inevitable and were preparing for hostilities following independence. Kiir presided over a disputatious team of lieutenants, managing their conflicts rather than resolving them, postponing real negotiations with Khartoum. The issue of Abyei had blocked the signing of the Framework Agreement

in November, and as the months passed, rancor over Abyei became the thread that unraveled hopes for a comprehensive agreement.

There was no working relationship between al-Bashir and Kiir. The two simply did not want to talk to one another, let alone discuss any shared agenda.

Returning to the narrative of November 2010, al-Bashir returned from his Eid visit to Makkah, prepared to accept the referendum and its result.² On December 2, the National Congress Party (NCP) *majlis al-shura* met to discuss the referendum. It was planned as a two-day meeting. It opened with fiery denunciations of NCP leaders, especially Ali Osman Taha, for having brought them to the current situation of impending secession. It was a challenge to al-Bashir, demanding a last-minute reversal. The president responded by closing the meeting before the end of the first day, telling the council members that the decision was taken. Al-Bashir explained that “we have sacrificed unity for peace” and that war would lose peace without restoring unity. He admitted a vote for secession was imminent and said the NCP should adjust accordingly.³ He tried to assuage concerns about the economic impact of secession by insisting that the north would assert its “sovereign rights” relating to the passage of oil through its territory, as well as expanding the agricultural and mining sectors to bring about a “comprehensive renaissance” in the northern economy.⁴

From this point, al-Bashir acted like a changed man in meetings with the Panel, having gone from a figure described by Ghazzali a few months earlier as “mentally, psychologically, and spiritually exhausted” to a leader who was at peace with the decision he had made.⁵ “A lot of northerners including key people in the NCP do not agree with me,” al-Bashir told the Panel, “but they are wrong and I am right on this.”⁶

On January 4, al-Bashir traveled to Juba to deliver the speech, which publicly signaled that the government of Sudan (GoS) would recognize the referendum result. “Imposing unity by force doesn’t work,” declared the president who had fought so long for that end.⁷ He continued, “but let us provide a good example for brothers in Africa, even if we separate and we do it peacefully, we will co-operate and provide them with the example of how the United States of Africa could be.”⁸ Princeton Lyman wrote to Washington that al-Bashir’s “conciliatory statements” had created “a degree of euphoria” in Juba.⁹ John Kerry described the speech as “extremely encouraging.”¹⁰ Al-Bashir even wrote to Obama to invite him to Khartoum “to be the custodian of a Covenant of Fraternity, Integration and Peaceful Cohabitation between the North & the South.”¹¹

Al-Bashir, however, was in no mood to make further concessions to the south or to the international community. Just two days later, he doubled down on the northern position on dual nationality in an interview with *al-Jazeera*, explaining that if southerners wanted to choose independence, they would have

to accept that they were going to lose citizenship rights in the north. He added that if the Ngok Dinka were to take unilateral action in Abyei, the Misseriyya would declare that Abyei was in the north and another war might result.¹² Al-Bashir returned to Juba on the day of the referendum and made another speech in which he laid claim to America's rewards, insisting that with the 2010 elections completed and the referendum being held on time, it was time for Obama to follow through on his promise to lift sanctions and normalize relations. Al-Bashir also affirmed the "psychological and emotional and social ties between the two peoples" and spoke of a north-south partnership that would show the world how Africans can solve their problems by themselves. But al-Bashir also drew a metaphorical line and stressed his keenness that there should be no international involvement on Sudan's borders, and that United Nations Mission in Sudan (UNMIS) would come to an end, both of which were contrary to the South's positions.¹³ Al-Bashir again promised to celebrate alongside southerners in the case of a secession vote, in contrast with Sadiq al-Mahdi, who said that secession would lead to 'lamentation in the north and joy in the south'.¹⁴

On January 9, southerners headed to the polls amid scenes of jubilation in Juba and other southern cities. Kiir, accompanied by John Kerry, voted at the John Garang mausoleum and announced the referendum was "not the end of a journey, but the beginning of a new one."¹⁵ The African Union High-Level Implementation Panel for Sudan (AUHIP) observation team witnessed the voting in Malakal.

The southerners' euphoria was for the moment. Lyman worried about the South's "revenge thinking," including deep suspicion that the NCP was hiding important things, such as real oil revenues. He reported that despite his relief that al-Bashir had accepted the referendum, Kiir was still "quite negative" on northern intentions: "He thought the NCP still thought of invading the south to take it back."¹⁶

Meanwhile, the northern opposition rounded on al-Bashir, sensing that the uprising in Tunisia, which was already being called the Arab Spring, could herald transformative change in Khartoum. The National Umma Party (NUP), Democratic Unionist Party (DUP), and Popular Congress Party (PCP) all issued statements blaming NCP rule for the secession, and calling for al-Bashir and his cabinet to resign and allow the formation of a national unity government.¹⁷ On January 14, the NCP's Ibrahim Ghandour issued a statement saying the referendum had been "largely transparent" and that it would accept the result.¹⁸ This dismissed any lingering concerns that the NCP would attempt to block southern independence. As it was, the percentage of the vote cast in favor of secession was overwhelming—99.57 percent, according to the South Sudan Referendum

Commission's final tally.¹⁹ One inadvertent side-effect of this near unanimity, however, was that it strengthened the hand of northern identitarians who wished to deprive southerners of the right to dual-nationality postsecession.

Keeping the Ceasefire

The referendum and al-Bashir's acceptance of its outcome did not guarantee a peaceful independence for South Sudan. To the contrary, many in the northern political establishment, including the army command, felt that they had given away enough, and no more concessions should be offered. On the borders, Abyei, the status of southerners in the remaining Sudan, and finance, the north was to take an uncompromising stand. The GoS military drew a line—territorial and political—and forbade the politicians, including the president, from crossing it. General Imad Adawi put it succinctly: "It is impossible to repeat Naivasha, where the politicians sold out the soldiers."²⁰ The Sudan People's Liberation Movement (SPLM) leaders meanwhile felt a combination of empowerment, grievance, and suspicion. Many did not believe that the south would truly be free with al-Bashir and the Islamists in power, whereas others were determined that the unfinished agendas of Abyei and the Two Areas should be settled on their terms. Even before January was out, Sudan People's Liberation Army (SPLA) intelligence was reporting hostile militiamen crossing the border from the north.²¹

The Comprehensive Peace Agreement (CPA), it turned out, was a six-year truce and not a permanent settlement. Many on both sides believed that a new war was inevitable and that therefore they should prepare for it and fight it at the time and on the terms of their choosing. The SPLA decided to win independence first, preparing for war later—preparations that included hosting northern armed opposition groups. The Sudan Armed Forces (SAF) appeared to want at least a limited war to secure the border and would also have welcomed a wider conflict in the south, but it did not want to be seen responsible for starting it. The most important task for the Panel in the months leading up to the independence of South Sudan was preventing this looming war. Getting the technical formulae right was important, but no amount of technical expertise could substitute for political commitment, and that commitment was wavering at best. Sometimes, the Panel used technical discussions simply to keep the parties talking. Sometimes, the parties used technical and procedural details to avoid the bigger issues.

In political agreements it is possible, often desirable, to leave room for creative ambiguity. On matters of security, this is perilous. Ceasefires must be exact.

One of the recurrent problems of the security talks was that issues were left unresolved. In part, this was because they did not have enough time to reach a detailed agreement. Mostly, it was because neither side had abandoned the war option. At critical moments, the Panel or the Ethiopian prime minister stepped in. Tactically, their role was to fix a missing detail; strategically, they were playing for time so that in due course they could facilitate a robust agreement between the two. The stature of the Panel and Ethiopia, and the trust that both parties had in them, was crucial.

Over fifteen months, three armed conflicts broke out: first in Abyei, then in the Nuba Mountains spreading to Blue Nile, and finally a border war. Each was serious and each is treated in detail in a relevant chapter. There was, however, no full-scale or protracted war between north and south, and at no time did the governments in Khartoum and Juba break off talking and turn exclusively to fighting. That was a success, albeit an incomplete one.

In this chapter, I focus on three months of security talks following the referendum. The background to these talks was the CPA security arrangements, the outline of which had been hammered out quickly after the 2002 Machakos Protocol. The SAF were to withdraw north of the internal boundary; the SPLA was to become the army of South Sudan; and the two were to contribute equal shares to a Joint Integrated Units (JIUs) that would provide security in the towns of southern Sudan, Abyei, and the Two Areas. In the event of unity, the JIUs would serve as the nucleus for a new national army. In the event, neither SAF nor SPLA showed any interest in merging their forces, and the JIUs instead incorporated brigades from the two armies, sharing adjacent barracks, some of which cooperated and some of which didn't. The new national army was never born. An entirely different kind of merger happened.

Other armed groups (OAGs) were given no role in the CPA. They became political orphans, required to join SAF or the SPLA or demobilize. Garang had no sympathy for them and presumably intended to force them to disarm. When Kiir took over, he took the opposite approach: He brought them all within a big tent. His challenge was that there were many more militiamen than SPLA soldiers. In the January 2006 Juba Agreement, Kiir made a deal with General Paulino Matiep, commander of the largest of the OAGs, to absorb his forces into the SPLA with each unit retaining its coherence and its commander. This avoided an internal war and also expanded the SPLA. More OAGs followed, many of them led by small unit commanders whom Khartoum had given the rank and pay of "general." In turn, Kiir handed out promotions en masse to long-serving SPLA officers so that their ranks outmatched those of the absorbed militiamen and the SPLA swelled to many times its previous size. It was a "payroll peace."²² This bloated army was kept together by a generous and little-monitored

budget—soldiers' salaries were paid in cash, with no central register of the number enrolled—and by a common commitment to southern independence.

Not all militia commanders took up Juba's offer. Discontented soldiers and political aspirants still ran to Khartoum and got support from National Intelligence and Security Service (NISS) or military intelligence. Meanwhile, northern opposition forces—notably the Darfurians—kept links with Juba, expecting a new patron in a new war. Most significantly, the SPLA divisions in the Nuba Mountains and Blue Nile, numbering many thousand soldiers in capable and battle-hardened units, were about find themselves on the wrong side of the border. Khartoum and Juba each knew it could set the other ablaze, and each kept its box of matches in hand.

When the CPA was drawn up, it had provisions for peacekeepers but did not specify their mandate or number. The GoS was disagreeably surprised when the United Nations (UN) Department of Peacekeeping Operations proposed a mission of more than ten thousand troops with a far-reaching mandate. It never trusted the UN, and its distrust deepened during the Darfur war.

This was one reason why it was ready to accept the African Union (AU). The Panel was a facilitator with no capacity to provide military observers, let alone peacekeepers. Over the following months, Ethiopian Prime Minister Meles Zenawi played an indispensable role.

The "security cluster" consisted of the northern and southern negotiators, some of them soldiers and some of them civilians, tasked with finding a formula for mutual security. It first convened at a workshop in July 2010. There were two external facilitators.²³ General Tsadkan Gebretensae was Ethiopia's former chief of staff who had been advising on the transformation of the SPLA from a guerrilla force to a national army and was a foremost expert on all security issues. As a military adviser to Kiir, however, the northerners did not consider him impartial. Colonel Chris Luckham was British military attaché to Sudan and was seconded to the Panel as a security adviser. The US, not having full diplomatic relations with Sudan, had no military attaché and was handicapped, and the UK had taken a discreet role in facilitating the security track of the Machakos-Naivasha talks.

Tsadkan and Luckham presented a matrix of priorities, focusing on the plan of action for the secession scenario. They had a lot of work to do in a short time. The high-priority tasks (to be completed before the referendum) included the principles for dismantling the JIUs, separating the NISS into north and south, and cooperating on border management. Medium-priority tasks (to be resolved before July 2011) included implementing those agreed plans, as well as "addressing remaining OAGs," including the Popular Defense Forces and the array of tribal militias that still existed inside southern Sudan. On this list was

“formaliz[ing] processes for northerners in the SPLA, southerners in the SAF (including as related to forces in Southern Kordofan/Blue Nile).”²⁴ The outline plan was agreed upon.

The security cluster met eight more times, alternating between Juba and Khartoum. They made more progress on paper than in reality. One problem lay in the mismatch between the two sides’ level of organization. The head of the SPLM/SPLA committee was Paul Mayom with Salva Mathok as his deputy. The two did not work in harmony. Tsadkan observed: “Gen. Salva Mathok sees himself as senior to Paul Mayom and has not been communicating with him. He does not think politically or analytically. Paul Mayom is a lawyer and does not see things through a security lens.”²⁵ Additionally, when Daniel Kodi, led the delegation in October, he struck the question of the SPLM Nuba and Blue Nile divisions from the agenda, saying it was a political issue that did not belong in the security cluster. This was a disastrous decision, rued by his comrades from those two divisions. On other occasions Mayom or Mathok would revisit topics, starting afresh, disregarding the minutes of the prior meetings. Knowing that a signed document—even an initialed set of meeting minutes—would be used to the fullest by the northerners to pin them down, the southerners did their best to avoid signing anything. In a rare exception, Mathok signed the report of the ninth meeting of the cluster on December 6–7, which led to recriminations when others saw it for the first time.

Mayom and Mathok ultimately reported to the government of Southern Sudan (GoSS) Minister of SPLA Affairs (de facto defense minister) Nhial Deng Nhial. Like most senior figures in the Juba government, he was a political soldier. He also had a sharp sense of the strategic issues. But Nhial was also aloof often unreachable, giving the impression that he knew how events would unfold and was not interested in details.

The GoS/SAF delegates were better organized. Ali Hamid, a civilian, headed the committee. He was ready to dive deep into technical details, sign agreements, and then hold tenaciously to them. The military liaison was General Imad Adawi, whom the army had chosen in preference to Mutrif Siddiq, on the grounds that the latter had been “too closely involved in the Naivasha talks.”²⁶ They reported to the minister of defense, Abd al-Rahim Hussein. A longtime friend and close confidante of al-Bashir, Abd al-Rahim was esteemed for loyalty rather than perspicacity. He was comfortable when saying no to any concession or compromise, and both al-Bashir and Imad made good use of that tendency.

The northerners also knew that a political decision was needed from the top to unlock the issues. Unlike the southern side, they were tactically skilled at

hiding behind the pretense that security issues should be handled separately from politics.

The key meeting of the security cluster was held in Juba on December 6–7. The report of the meeting, with an addendum of a joint position paper, signed by Ali Hamid and Mathok, summarized the areas of agreement and disagreement.²⁷ Two days later, Ali Hamid provided the Panel with a poorly reproduced copy of the report and joint position paper. The Panel staff then used this as the agenda for the next meeting, held in Juba on December 13.

There were several areas of agreement. One was how to deal with the JIUs stationed in southern cities and Abyei, as well as the small contingent in Khartoum. They were to be dissolved after the referendum, on “D-Day plus 90” (April 9, 2011).²⁸ Both agreed to withdraw their respective JIU components to their side of the north-south borderline by that date. The one exception, namely, the SAF units composed of southerners, might want to stay in the South. The north agreed to disarm, demobilize, and dismiss these troops and pay their benefits. But no agreement was made on the JIUs in the two areas. The SPLM/SPLA wanted them to remain in place for at least one year after the end of the CPA to allow for the completion of the unfinished political business in those areas. The NCP/SAF wanted them dissolved along with the others in April.

The joint position paper contained an agreement on a plan for the police and NISS. This agreement allowed the northern police and NISS to play various roles in the south after secession. Why Mathok signed it was unfathomable. Tsadkan commented: “The agreement reached on NISS and Police should not be acceptable to the south, as it maintains NISS as the core of the new intelligence service in southern Sudan. The police agreement is also problematic as it provides for northern Sudan to continue to train the police in the south, which means that the doctrines and outlook will be unchanged.”²⁹ He added: “There is a danger of reaching agreements and then finding that they are unworkable, and paying a high price to fix the shortcomings.” In due course, Mayom took positions that contradicted the document signed by Mathok. Although the two ministers of defense confirmed the police and NISS agreements when they met in March, nothing was done to implement any of these plans. Some years later, Khartoum and Juba did begin security and intelligence cooperation, but that was under very different circumstances and had nothing to do with the joint position paper.

There was a major difference on the future status of UNMIS. The south wanted UNMIS to stay until the CPA-related tasks had been completed. The north insisted that the CPA had only given UNMIS a mandate to remain in Sudan until July 9, 2011, and wanted it terminated on that day. This would have

left a vacuum on border monitoring. The north cited the joint monitoring of the Sudan-Chad border by the two countries as an example to emulate; the south wanted a UN force. Southerners saw Khartoum's rejection of a UN border force as evidence of a secret intent to return to war.³⁰

Consensus on some issues was reached with deceptive ease. The details would prove fractious and explosive in due course. One case was the "buffer zone" that would replace the ceasefire zone monitored by UNMIS. In the joint position paper, the SPLM pressed for a substantial buffer zone sixty kilometers wide, stretching an equal distance on either side of the borderline, whereas the NCP insisted on a much narrower buffer zone of five to ten kilometers on either side.³¹ A week later, the SPLM/SPLA backed down, accepting that the broader buffer zone was impractical and instead agreeing that the zone should be five kilometers from either side of the borderline in areas that were not contested, and ten kilometers in those that were.³² Two problems then arose. First, Mayom had accepted the GoS/SAF formula without consulting Mathok, who continued to argue for the bigger buffer zone. Second, the centerline of the buffer zone was easy to specify in theory—the CPA's 2005 ceasefire line—but politically sensitive to do in practice. UNMIS had never delineated a line on a map, and it was never made clear whether the CPA line was the *de facto* ceasefire line (where the two armies frontline forces had reached) or an administrative boundary. It had been the Ceasefire Joint Commission, cochaired by the two chiefs of staff, that determined when one side or the other had violated the terms of the agreement. One particular area, the "fourteen miles" south of the Bahr al-Arab separating South Darfur from North Bahr al-Ghazal, would become particularly contentious, as the question of the ceasefire line was mixed up with the legal boundary.

The final point of disagreement in the joint position paper was small but significant: Although both sides agreed "in principle not to train, organize, or arm or instigate tribal conflicts" across the border, the SPLM/SPLA position added, underlined, "and in particular nomadic pastoralist people."³³ When this issue was raised in the December 13 meeting, the GoS refused to accept the SPLM's position that pastoralists following seasonal grazing routes into South Sudan should be disarmed by South Sudanese police before they would be allowed to cross the border.³⁴ The GoS asked if this targeted Abyei's Misseriyya, whose future status within South Sudan was a stumbling block in Abyei talks. The SPLM response was that it sought to target GoS armed militias, not the nomads *per se* who had wreaked havoc during the previous war.

The most consequential failures were those that were not on the agenda at all: the question of Abyei and the status of members of the SPLA from Blue Nile and South Kordofan.

The Ministers of Defense and the Joint Political and Security Mechanism

The joint position paper created a single crucial opening: a Joint Political and Security Mechanism (JPSM).³⁵ The JPSM was to be a “political decision-making body” cochaired by the ministers of defense to resolve “operational details” and “settle deadlocks.” Decisions were to be made by consensus. The first JPSM meeting would be on “D-Day + 21 days.”³⁶

The Panel seized on the JPSM as the mechanism for north and south to engage. Abd al-Rahim was ready to establish the JPSM, but Nhial said that there was no need to meet until after independence—he said the “D-Day” noted in the document was independence day, not referendum day. Kiir overruled him. Meeting on January 27, Al-Bashir and Kiir tasked their ministers of defense with resolving outstanding issues.³⁷ As the two presidents would have anticipated, this was a new formula for stalemate. Abd al-Rahim did not take political decisions that involved compromise. Nhial carried himself like an aloof aristocrat, rarely deigning to negotiate on details.

The first attempt to bring the defense ministers together was a bad augur. Abd al-Rahim was skeptical that Nhial would be ready to meet, and justifiably so. The Panel invited the two to meet on neutral territory, the Burj al-Fateh hotel in Khartoum where the Panel was staying, on February 16. Nhial was in Khartoum and although he agreed to the meeting, he could not be reached to confirm it on the day. Only when Abd al-Rahim and his entourage arrived at the Burj al-Fateh at the scheduled time, could Nhial be reached on the phone. He was elsewhere in the city and said he could not make the meeting. Mbeki and Abd al-Rahim exchanged pleasantries before the minister departed, fuming.³⁸

After that, in spite of Mbeki writing letters to both al-Bashir and Kiir requesting that they establish the JPSM, the two ministers continued to obfuscate.³⁹ When they eventually met in Khartoum in March, Abd al-Rahim pushed for the JPSM to convene soon as possible, but Nhial objected. Mbeki insisted that a meeting was necessary—as their own presidents had instructed—so the two agreed to meet as ministers of defense.⁴⁰ Abd al-Rahim consented to Juba as the venue but refused to provide a plane or travel on a UN flight, and it was only because Mbeki offered him and his aides seats on the South African presidential jet, that he agreed to attend.

The trickiest issue before the ministers of defense was the status of the SPLA forces in the two areas.⁴¹ The two sides’ positions on this were hardening. The SPLM demanded a new version of the CPA for the two areas and the GoS adamantly rejected it. The crucial point was that Abd al-Rahim did not want to discuss the Two Areas with Nhial, and also did not to meet with South Kordofan

SPLM leader Abdel Aziz al-Hilu in the presence of either southerners or foreign facilitators. Mbeki's response was to insist that the SPLA in the Two Areas was a real problem; that it had to be addressed somehow, somewhere; and that this was the only available forum. He also overruled Abd al-Rahim and insisted that al-Hilu would be invited to participate in the meeting. The Panel also affirmed the principle that military command should align with sovereignty: After secession, the SPLA in the Two Areas would be citizens of (northern) Sudan and could not be loyal to an army of another state.

Nhial and Abd al-Rahim finally met on March 23 in Juba. Although Mbeki and Abd al-Rahim flew ahead, al-Hilu was held up in Khartoum by a delay to the UNMIS flight and arrived more than an hour late. The meeting had already started, with the SPLM side making a series of trivial points of order on whether or not it was necessary to sign the December 7 paper.⁴² This irritated Abd al-Rahim and his delegation. General Imad later gave his explanation: "The SPLM was under pressure to delay, not to sign the signed agreements, because for Abdel Aziz [al-Hilu] they didn't include the 2 areas. So, they just talked until A/Aziz arrived, to show they would not sign anything in his absence."⁴³ By this time, the meeting had become little more than ill-tempered tit-for-tat exchanges. The ministers did not sign the December 7 document, but the Panel issued a press release with the language that they "endorsed the agreed upon items of the Security Cluster."⁴⁴

The Panel also pushed through a four-point agenda for further negotiations at a technical workshop: (1) the name/definition of a security zone along the border; (2) the UNMIS mandate extension/third-party support; (3) JIUs and SPLA forces in and from South Kordofan and Blue Nile; and (4) Southerners associated with SAF. It was becoming a pattern: The parties would discuss issues and the SPLM would refuse to sign on to a document, but the facilitators would find a form of words to indicate that the discussions were moving ahead. Rather than al-Bashir and Kiir leading the process, the technicians would meet to "obtain clarity on the agenda items, so that the Principals can make the required political decisions."⁴⁵

The workshop took place in the Kuriftu resort in Bishoftu, Ethiopia. It was a rustic-style hotel and spa on the edge of small crater lake, a favorite weekend getaway for the Addis Ababa middle class. Although just a few minutes' drive from Ethiopia's main air force base, it had very poor cellphone reception. On the morning of April 1 as the delegates arrived, Debretsion Gebremichael, a graduate in electrical engineering shortly to become minister of telecommunications showed up with his toolbox to fix the cellphone tower. When the delegates arrived, the Sudanese and South Sudanese were impatient to get to their rooms, and the IGAD special envoy for Sudan, the Ethiopian diplomat Lissane Yohannes, turned bellboy to unload their luggage.

The GoS/SAF delegation was headed by Ali Hamid, but SAF sent its highest-ranking serving military officer, chief of staff General Ismat, to participate. The ranking SPLA officer was the former chief of staff, General Oyai Deng Ajak. Buyoya chaired, and in his opening remarks, he gently appealed for the soldiers to energize the political process.⁴⁶ The meeting then split into two working groups. One dealt with the border issues and the UN, and the other with southerners in SAF and northerners in the SPLA.

The UN and the Border Zone

The UN had a close interest in the security talks, not least because the future of its mission in Sudan would be decided there. The mandate of UNMIS was set to expire on July 9, 2011, but UN officials assumed that there would be a wind-down period. They were wrong. Khartoum wanted UNMIS out without a day's delay, and it insisted on that. The south wanted a big role for international peacekeepers, which it saw as a friendly presence, and Kiir had already told the UN that South Sudan would request a "son of UNMIS."⁴⁷ In due course, the UN Mission in South Sudan (UNMISS) was set up with a mandate that included capacity building and stabilization.⁴⁸ Border management required the cooperation of the north, and that was a problem.

The Kuriftu talks quickly became stuck on the buffer zone. The core disagreement was whether a third party—the UN or a similar external force—should help monitor the zone. The north said no, and the south said yes. The GoS arguments were not serious. It said that border issues would soon be settled, that the two sides could work together, and that outsiders would "not be fully aware of the nature of social, cultural and human relations between the parties." But it would accept financial support.⁴⁹ In letters to the UN, the GoS referred to "light passive" and "light active" options, of unarmed UN monitors.⁵⁰ Privately, however, SAF officers acknowledged that they knew other nations would not send observers without reasonably substantial "force protection." The south demanded the strongest possible third-party presence, preferably by granting UNMIS and extension with full Chapter VII powers. It cited a "lack of trust and transparency between the parties," the presence of other armed groups, and the unfinished business of the CPA on the border, Abyei, and the Two Areas.⁵¹

A technical workshop could not reach a political agreement, but the high level of participation meant that it could come close. The outcome was a paper, in which the two sides stated their areas of agreement and disagreement, as an agenda for further negotiation. They agreed on a completely demilitarized

“common border zone” (CBZ), ten kilometers on either side of the border. They agreed to set up security mechanisms that would coordinate police work to prevent criminal activity, in addition to travel corridors for trade and migration, permitting nomads to move with their animals so long as they did not carry weapons.⁵² The two sides agreed that “the zone shall extend for 10 kms north and 10 kms south from the 1.1.1956 borderline.”⁵³ This raised the problem of where that line was. It would have been logical to have referenced the ceasefire line as determined by UNMIS at the time of the CPA, but UNMIS never actually determined any such line. UNMIS maps merely reproduced the existing administrative boundaries on standard government maps, with the disclaimer in the margin that “the boundaries and names shown and designations used do not imply any official endorsement or acceptance by the United Nations.” Indeed, the separate sectors of UNMIS in the north and south had their own maps, which did not correspond.⁵⁴

The paper was verbally agreed but was not signed. Buyoya made a public statement instead.

The two sides also agreed for an immediate follow-up workshop, in the same Kuriftu spa, to learn about other examples of border management.⁵⁵ Some of the SAF generals asked, only half-joking, whether they could bring their families along, and afterward said that it had been a welcome relaxation with charming company. Having been cut off from western military academies for years because of sanctions, they found it an interesting schoolroom exercise. But whatever lessons they may have learned, they had no intention of applying them. For the SPLA generals, it revealed a gap in the various training and capacity-building assistance provided to southern Sudan’s army over the previous six years: Although they had been living and operating alongside peacekeepers, they had not had proper instruction in how the UN worked. They still labored under some misapprehensions. At least one SPLA general assumed that a UN force deployed on the border would equate to a *de facto* defense pact between South Sudan and the UN to resist invasion from the north.

This momentum was interrupted by the elections in South Kordofan and the crisis in Abyei. Valuable weeks were lost. When the border security working group reconvened in Addis Ababa on May 28–30, no progress had been made. The southern delegates arrived not having done the homework they promised, and spent most of the two days debating among themselves trying to agree what they should propose. One SPLA general told panel staff “on the CBZ we are just talking for the sake of talking. We believe after the 9th [July], it is going to be the people’s war.”⁵⁶ The northerners too were just giving a plausible imitation of negotiating. Just hours before session was due to conclude—with the northern delegation on a strict timeline with a plane to catch—the southerners

finalized their proposals. With more time, the two sides might have narrowed their areas of disagreement. As it was, in the truncated final session, the two parties agreed only that the unsigned document from the first Kuriftu workshop seven weeks earlier could now be signed jointly, including the topics on which they agreed, and stating their opposing positions where they did not. The May 30 “Joint Position Paper on Border Security” was, literally, only a step forward on paper.⁵⁷

Southerners in SAF, Northerners in the SPLA

The second working group in the Kuriftu workshop had two agenda items, one supposedly simple (southerners in SAF) and one very problematic (northerners in the SPLA). This was no footnote. The total number of troops in the SPLA's ninth and tenth divisions and other troops from the Two Areas in the SPLA added up to more than one hundred thousand, including many of the specialists in armored units and air defense.

The issue of southerners in SAF was straightforward on paper but filled with the underlying threat that the GoS could covertly undermine South Sudan. Although the northerners said they were already in the process of discharging southerners from its ranks, the southerners said it was more complicated. They identified three groups: (1) officers, noncommissioned officers (NCOs), and rank-and-file soldiers with formal SAF contracts and salaries; (2) southerners from the irregular militias armed and developed during the SAF during the second civil war; and (3) SPLA defectors whom it maintained were “associated with SAF.” The “renegade generals,” the SPLA noted, “are a problem whether in north or south.”⁵⁸ The SAF representative agreed with the first and second categories, but denied the existence of the third category altogether.

The reason the third category was contentious was that southerners were convinced that the north had plans to use SPLA defectors to destabilize the south, either to launch a coup in Juba or stir up a new “southern problem” that would vindicate the old story that the region was incapable of self-rule.⁵⁹ General Ismat said: “If we want to spoil the south we can easily do that. We have hundreds of rebels from the south.”⁶⁰ Meles dryly summarized this strategy: “The US cares about its new baby in southern Sudan, the N[orth] can say, I can kill this new baby of yours. They are playing games with Athor.”⁶¹ George Athor was a veteran SPLA general and Garang loyalist who had been disaffected since 2010, when the Juba leadership overlooked him as an election candidate, leading to him standing as an independent in Jonglei and losing out. His soldiers subsequently rebelled and attacked mainstream SPLA positions in Jonglei.⁶²

The SPLA furiously insisted that Athor had been armed and supplied by Khartoum, providing the AUHIP with what they maintained was a leaked SAF document detailing a strategy to destabilize the south using Athor and various tribal militias.⁶³ SAF generals rejected the document as a crude forgery, pointing out some amateur errors in its letterhead and the terminology used.⁶⁴ Without a doubt, however, Khartoum kept its links to southern generals, keeping its options open. Northern generals had already said they would keep them on the SAF payroll if the SPLA were to “create problems,” using them as leverage to get the south to abandon its divisions in the Nuba Mountains and Blue Nile.⁶⁵

The knotty problem of southerners in SAF, their relationship to irregular militia, and their expectations of postservice benefits when they lost their positions was highlighted by clashes that broke out in February in Malakal. This involved an SAF JIU component under the Nuer commander Gabriel Tang, who had aligned with Khartoum during the war.⁶⁶ It was the third time Tang’s forces had clashed in Malakal since the CPA.⁶⁷ SPLA Chief of Staff James Hoth Mai insisted that Tang’s forces were being armed directly by Khartoum.⁶⁸ An SPLA spokesman said that Tang’s troops had been told to go north, surrender their weapons, and receive postservice benefits in Khartoum, and then to return unarmed to the south, but they had refused.⁶⁹ The southerners argued that the north’s decision to use southern forces in the JIUs was a Trojan Horse, and indeed, General Ismat had specifically mentioned Tang when saying that they could destabilize the south.⁷⁰ The policy also meant that it was easier for Khartoum to avoid responsibility for paying these troops postsecession, passing the buck to the SPLA—a bill estimated at 200 million South Sudanese pounds.⁷¹ The Tang crisis was an indicator of just how treacherous this terrain would be, and indeed, the southerners complained that the north had reneged on its promises to pay southerners in SAF their “after-service financial dues” and settle their pensions,⁷² instead encouraging them to join militias.⁷³

The even bigger counterpart issue was the scores of thousands of Nuba and Blue Nile people who had joined the SPLA. About half were in the SPLA’s ninth division (Nuba Mountains) and tenth division (predominantly Blue Nile) plus the respective JIUs in those states, and the other half were integrated into the main SPLA divisions in southern Sudan. These soldiers had joined to fight for a “New Sudan” and many erroneously believed that the popular consultations gave them the chance to join their home states to South Sudan. Either way, they had unfinished political business, and they were ready to fight. Although the GoS and SAF in South Kordofan recognized the gravity of the threat, Khartoum refused to do so. The international community was also in denial, and by the time the AUHIP took it up in December 2010, they had precious little time to find a solution. The SPLM/A insisted that security arrangements

for the two areas should be linked to the completion of the political commitments in the CPA, but the GoS/SAF refused to countenance extending CPA arrangements or establishing a new formula. The only step forward at Kuriftu was that the SAF chief of staff, General Ismat, was ready to discuss directly and cordially with al-Hilu. But the meeting closed without agreement, except on a follow-up workshop (which, in the event, the GoS/SAF boycotted). On his way back home, al-Hilu, said darkly, “I do not see any light at the end of the tunnel.”⁷⁴

Avoiding War

Without high-level agreement between Khartoum and Juba, avoiding war required that an array of issues be managed to avoid sparks of conflict, or dampen such sparks before they exploded into a wider war. Each of these is detailed in a subsequent chapter. Among them were the status of Abyei, which had become a flashpoint for armed conflict, and which was consuming diplomatic attention ([chapter 8](#)); the Two Areas, which was also on the point of exploding ([chapter 10](#)); the postsecession economic and financial arrangements ([chapter 11](#)); and the disputed and claimed areas along the north-south boundary ([chapter 12](#)). Halfway through the short period between the referendum and the south's independence, precious little progress had been made on any of these issues. If anything, the divide was deepening.

More than ever, political decision was needed. The opportunity for this came on April 7, when al-Bashir and Kiir were due to meet in Juba, and the Joint Political Committee headed by Salah Abdalla Gosh and Amum Pagan was going to meet in parallel. The Panel flew to Juba.

The presidency meeting had three agenda items. First was Abyei, which was still in a holding pattern. Second was the security agenda. Buyoya summarized the key issues from Kuriftu. To his surprise and dismay, al-Bashir and Kiir summarily decided to go ahead with dissolving the JIUs in the Two Areas region. Kiir's ready assent implied he had not been briefed by his security team or had other plans. Third was the economic issue. Mbeki had chaired the economic discussions at Kuriftu, and top of the agenda was a “joint approach” to creditors by South Sudan and Sudan in the spirit of “two viable states.” The rationale was that Sudan would face a financial crisis after the secession of the south, that foreign donors and creditors should assist with debt relief and concessionary finance, and that the case for treating Sudan sympathetically would best be made with the support of South Sudan. The first step should have been a joint letter. Mbeki summarized the meeting in a note for staff, that al-Bashir

agreed, but Kiir asked: “How can I help you with what is going on in terms of destabilization?”; al-Bashir first denied any destabilization but then counterargued that “you are also supporting the Darfurian rebels.” Kiir concluded that it was not clear if he would sign. In short, Kiir was playing the economic card to press al-Bashir to stop his destabilization, and Buyoya added that the deteriorating security situation was “poisoning everything.”⁷⁵

The generals met at the Joint Defense Board that same day. General Ismat proposed that the dissolution of the JIUs in the two areas be deferred. He was giving a last chance for negotiation. He did not announce his timetable, but it was six weeks.

Meanwhile, there were four points on the Joint Political Committee’s agenda: border demarcation, citizenship, gender, and a calendar of meetings.⁷⁶ The meeting would normally have been chaired by one of the Panel presidents, but because they were meeting with al-Bashir and Kiir at the time, Abdul Mohammed and Alex de Waal chaired. It was the day of commemorating the genocide in Rwanda, and de Waal asked for a minute’s silence to remember the victims. During that minute, Gosh was distinctly uncomfortable, avoided Pagan’s gaze, and could not wait for the silence to end. Much of the meeting was then taken up with sparring over the processes of delineating and demarcating the boundary, including how to fund and equip the teams to put the boundary markers in place. No progress was made on any issue. The outcome was to agree to call a meeting of with the ad hoc Technical Boundary Committee (TBC) a week later. On citizenship, substantive discussion was also deferred for a week.

The gender discussion was cursory. Both delegations in this meeting, as in almost every meeting other than on the economic issues, were all male. Pagan suggested, “let us agree in principle to mainstream gender issues on all these issues and [for] the parties to improve on representation of women in their delegation in negotiating session.” Abdul said, “as AU we are guided by our conviction that [the] gender issue is central to peacemaking.” He pointed out that the economic teams had women represented in line with best practice. Mohamed Mukhtar said, “I am not putting token women on my team. I have to go to the Ministry and ask for a woman? No!” After some more back and forth, Pagan said for the SPLM, “We have agreed in principle to mainstream gender.” Gosh responded, concluding the brief exchange: “We accept the point, but it is not an agenda for the political committee. Just a notice to be given to the parties.” In the event, nothing changed in terms of either gender mainstreaming or women’s participation.

The Joint Political Committee met with the TBC in Khartoum five weeks later.⁷⁷ Two tasks were before the TBC, upon neither of which it had made any progress.

One task was to resolve the parts of the boundary that were in dispute and to delimit the boundary line accordingly. This topic is explored in detail in [chapter 12](#). In five places, north and south did not agree where the boundary should run, with Abyei an additional special case. Arguments had gone back and forth for years, and there was no prospect of resolving the complexities in a few weeks. A second task was supposedly uncontroversial: putting up concrete boundary markers along those sections of the border that were not in dispute. But no progress had been made on this either, to the notable irritation of their political bosses. The meeting minutes for April 13 note that “both [Gosh and Pagan] seemed annoyed with the lack of progress by the technical committee and particularly the administrative hurdles causing this.” Despite their political differences, Gosh and Pagan jointly berated the boundary committee for failing to do its job for six years.

The significance of this was that al-Bashir had several times indicated that when the south became independent, his army would need to secure the north’s new international frontier at the “1/1/56” line. Without an agreed separation line, this was a formula for conflict.

The next agenda for the Joint Political Committee was supposed to be citizenship, but as a council of ministers meeting had run over, it was postponed without setting a new date. The security workshop for the two areas began as scheduled on April 18–19, but the northern delegation refused to attend if southern SPLA representatives were present, and the SPLM insisted on including them. The workshop became an academic exercise.

On May 1, conflict erupted in Abyei.

ABYEI

Abyei is small in size, but its dispute is fiendishly complicated and vital to relations between north and south (figure 3). It is just four thousand square miles with a population of about one hundred thousand (although both area and who qualifies as a resident are fiercely disputed). The conflict has proved to be intractable: only amenable to mechanisms to contain it insofar as a definitive reckoning that will stop it acting as a running ongoing sore between the two countries has been repeatedly postponed. The dispute over Abyei has gone to the world's highest court, the Permanent Court of Arbitration in The Hague. Dispute over who is a resident has preoccupied US special envoys over the years. Managing security in the area has involved the most intensive peace support operation in Africa—the United Nations Interim Security Force for Abyei (UNISFA), which had a force ratio of one peacekeeper to every thirty local people.

The Abyei issue was left suspended in the Comprehensive Peace Agreement (CPA), under a formula drafted by US Special Envoy Jack Danforth, that entailed two mechanisms to be undertaken during the interim period, namely a boundary commission to determine the district's geography and a referendum commission to determine who was eligible to vote in the district's own referendum, scheduled to be held concurrently with the southern poll, on January 9, 2011. Neither of these mechanisms worked, and even the smallest technical details became a matter of acrimonious dispute. In proposing these formulae, the US became joint owner of the Abyei problem.

The Panel's approach was to seek a high-level political agreement. This meant entrusting the matter to Omar al-Bashir and Salva Kiir Mayardit. This

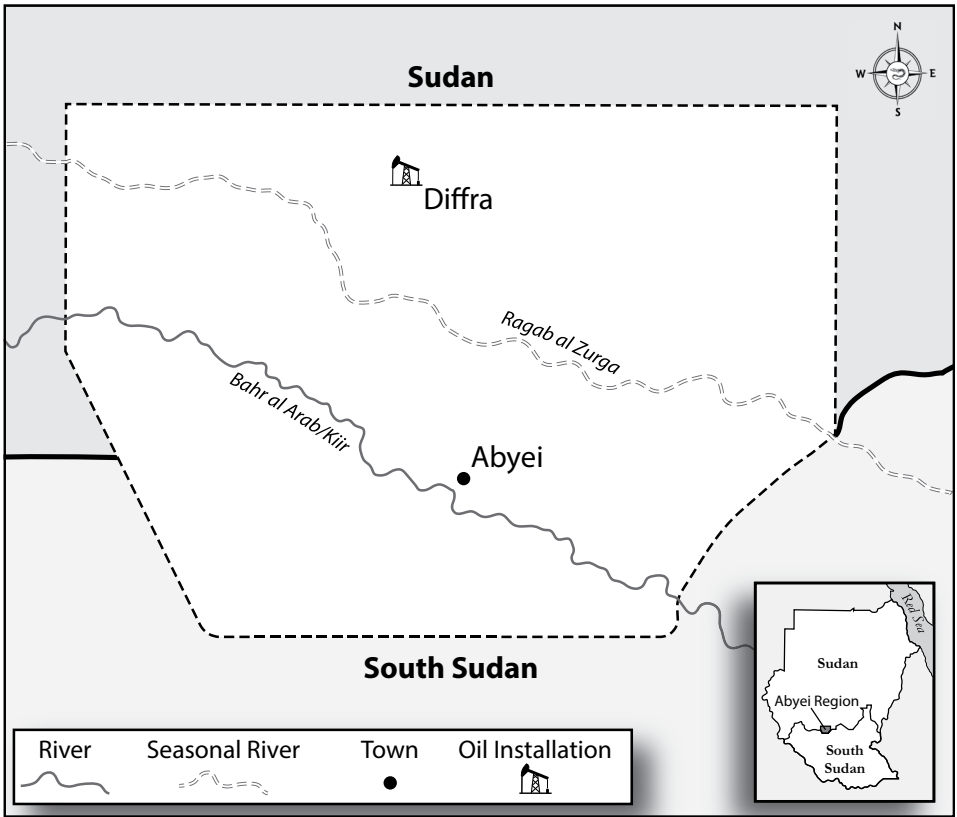


FIGURE 3. Abyei. Created by John Wyat Greenlee/Surprised Eel Mapping.

did not work either. Neither president was ready to seek a compromise that overruled their subordinates. Two men emerged as the veto wielders. Deng Alor, a Ngok Dinka and high-ranking Sudan People's Liberation Movement (SPLM) member, insisted that no deal was better than any further compromise. Dirdeiry Mohamed Ahmad, a Misseriyya and high-ranking National Congress Party (NCP) figure, played a similar role for the north.

In January 2011, Abyei was still deadlocked. Thereafter, the Panel's overriding goal was to avert war, and it worried that Abyei could be the flashpoint for such a war. Both sides brought this to the brink. In this event, Abyei was subjected to yet another holding operation, postponing a final settlement. The temporary arrangements agreed on in Addis Ababa in June 2011 remained in place, incompletely implemented and essentially unchanged for more than a decade after the independence of South Sudan.

Historical Background

The Abyei conflict is rooted in contrasting readings of history. Abyei area is claimed by both the Ngok Dinka and the Misseriyya Arabs, who are part of the Baggara (cattle-owning) confederation.

Both Ngok and Misseriyya had arrived in Abyei in the eighteenth century. For many years, the two communities enjoyed mutually beneficial relations, based on the shared use of pastures along the river, known to the Dinka as Kiir and to the Arabs as Bahr al-Arab. With the rise of the riverain mercantile class in the nineteenth century, however, the Baggara formed alliances with the slave-trading companies that raided Dinka communities to their south. The Ngok were attacked, although their chiefs avoided the worst depredations by making pacts with the Misseriyya.¹

When Anglo-Egyptian rule was established in 1900, relations between the Ngok and Misseriyya were relatively stable, despite sporadic raiding. In 1905, the British decided to bring the administration of the Ngok under Kordofan, hoping that this would allow for better management of intercommunal tensions.² The principle was that it was preferable to have the two conflicting local parties under the authority of a single colonial administrator.³ By the 1920s, however, the Condominium government adopted a “southern policy” that entrenched the north-south divide and sought to tie the Ngok to the south. The Ngok paramount chief Kuol Arob rejected any administrative transfer, not wanting to surrender the land north of the river to the Misseriyya. After the southern policy was reversed in the 1940s and preparations were underway for independence, the British offered the then chief, Deng Majok, the opportunity of either being incorporated into the recently created Misseriyya rural council or joining Bahr al-Ghazal. Deng Majok, in a decision that split Ngok opinion, chose to remain within Kordofan. Majok’s main fear was loss of land when the boundary was drawn. He saw two other advantages to the status quo. First, as a modernizer who wanted government education for his many sons, he correctly anticipated that he would be better served in the north than in the south.⁴ Second, Deng Majok’s strong personal relationship with the paramount chief of the Misseriyya, Babo Nimir, encouraged him to believe that remaining within the same province was a formula for harmonious intercommunal relations. This was not the last occasion on which Khartoum’s deference to local chiefs was to create problems in Abyei. On national independence in 1956, the administrative boundary between Kordofan (“north”) and Bahr al-Ghazal (“south”) ran to the south of Abyei. At no time during the colonial half-century had the British drawn an administrative boundary line between Ngok and Misseriyya.

After independence Abyei, like the southern provinces, was subjected to policies of Arabization and Islamization by northern-dominated regimes. Southern teachers from Bahr al-Ghazal were removed and replaced by northerners. Meanwhile the educated Abyei youth began to identify with the movement for southern self-determination, and when the first civil war broke out, many joined the Anya-Nya rebels. Meanwhile, tensions between Ngok and Misseriyya became violent. Misseriyya raids upon the Ngok recommenced with tacit government backing, and the Ngok began obstructing the pastoral movements of the Misseriyya. In 1965, Ngok were among the two hundred southerners burned alive by Misseriyya in Muglad and Babanusa. Deng Majok now regretted joining the north.⁵

The situation of the Ngok partially improved following the 1972 Addis Ababa agreement, which implicitly granted Abyei the right to leave the north after defining the “Southern Provinces of Sudan” to include “any other areas that were culturally and geographically a part of the southern complex as may be decided by a referendum.” In practice, Nimeiri repeatedly intervened personally to prevent the referendum being conducted. Nevertheless, the Ngok won the right to run their own subdistrict, and Majok’s son Francis Deng, at the time a minister of state in the Ministry of Foreign Affairs, was able to secure US funding for a major development project. This was heralded as Abyei serving as the “bridge” between north and south. The Misseriyya, whose grazing lands in Kordofan were stricken by recurrent drought and being encroached upon by rain-fed agriculture, were furious not only that the Ngok had their own internationally aided territory but also that the new southern administration had the right to control the seasonal movements through which they accessed seasonal pastures. They formed *murahaliin* militias, which although formally intended to safeguard the movements of the pastoralists, increasingly targeted Ngok civilians and burned Ngok villages. In response, Ngok intellectuals and politicians formed the Abyei Liberation Front, securing arms for local Ngok citizens to defend themselves from raids; as the second civil war broke out after 1983, the Abyei Liberation Front integrated itself into John Garang’s Sudan People’s Liberation Army (SPLA), just as the *murahiliin* were armed by the government.⁶

The Abyei Protocol and Its Problems, 2004–2009

As the government of Sudan (GoS) and Sudan People’s Liberation Movement/Army (SPLM/A) began negotiating in earnest in 2002, the question of Abyei once more came to the fore. But while all the other negotiating tracks made

progress, Abyei was stalled. Under pressure to resolve it—or at least to agree a formula that would not make it a block to wider negotiations—the NCP and SPLM agreed to consider a proposal from US Special Envoy Danforth. In April 2004, his draft was accepted by exhausted negotiators, unchanged and without discussion on the substance. It became the Abyei Protocol of the CPA. Abdul Mohammed later lamented that the “meddling of outsiders” had complicated the situation, as “Americans drafted the protocol, made it legal, planting the seeds of future conflict.”⁷

The Misseriyya were suspicious of the Abyei Protocol, maintaining that Francis Deng as a prominent Ngok with ties to the US government must have been responsible for its content, but the GoS accepted it.⁸ The Abyei Protocol determined that there should be a referendum in Abyei, in which “the Members of Ngok Dinka community and other Sudanese residing in the area” would be entitled to vote. This definition—a mix of tribal identity and residence—was to become controversial. Another key provision was that before any final settlement or indeed any referendum, the boundaries of Abyei area would have to be determined. The Protocol provided for an Abyei Boundary Commission (ABC), composed of five representatives appointed by Khartoum, five by Juba, and five international experts. The experts were tasked with interpreting the area that comprised “the nine Dinka Ngok chiefdoms transferred to South Kordofan in 1905.”⁹

The contentious issue was Abyei’s northern boundary. The SPLM and Ngok argued that the nine kingdoms had extended as far as the line of sand dunes known as the Goz (a generic term for sandy soils), well to the north of the Bahr al-Arab, at the time of transfer. The NCP maintained that the northern limit of Abyei ran along the Bahr al-Arab and that only a small area of territory to the south of the river had been transferred. The historical evidence was limited. Few colonial officials had visited the area, especially during the rainy season when communities moved northward and were confused as to the actual location of the Bahr al-Arab. Colonial officers had not drawn a fixed boundary between the Ngok and Dinka, leaving the management of shared grazing lands to custom and ad hoc negotiated arrangements. The ABC experts identified a “shared rights zone,” but the imperative of political cartography required them to draw a line on the map, turning shades of rights of access and use into definitive ownership. They determined this centerline ran through the Goz, thus supporting the SPLM and Ngok position. The ABC’s boundary also extended to the east, incorporating the area of Heglig, which was also the main oil-producing area within northern Sudan.

Misseriyya argued that the terminology was biased against them. By identifying the land as “belonging” to “resident” Ngok, and defining the Misseriyya as

“nomads,” the members of the ABC were pushed to accept any account of Ngok presence as evidence for settlement but to disregard any report of Misseriyya presence on the assumption that they were only nomads.¹⁰ The reality of the shared zone, they said, was that both communities utilized that area in a semi-nomadic manner.

When the report of the experts was released, the GoS rejected it, particularly angered by the ABC decision to include Heglig. Meanwhile Garang, who counted the Ngok among his most loyal supporters, backed it emphatically. Garang’s commitment to unity might have sweetened the pill for the northerners, but he died shortly afterward.

In 2008, fighting broke out in Abyei, and the army and militia burned Abyei town and drove out the Ngok community. This crisis alarmed the US, which pushed the NCP and SPLM back to the negotiating table, where they signed a “Memorandum of Understanding on the Main Issues of the Abyei Agreement.” The key point was to refer the ABC report to the international arbitration under the aegis of the Permanent Court of Arbitration (PCA) at The Hague. Officially, the purpose of the ad hoc tribunal was to establish whether the ABC experts exceeded their mandate. When it delivered its decision in 2009, it found that the experts had indeed exceeded their mandate, and it went further to shrink the size of Abyei to the north and east, notably excluding Heglig.

Al-Bashir welcomed the decision, declaring that the GoS had won the case, and in spite of the shrinking of the territory, the decision was also positively received by Salva Kiir and Riek Machar. But the Misseriyya rejected the PCA decision, just as they had rejected the Abyei Protocol and the ABC report.

The next knotty issue was who qualified to vote in the Abyei referendum. The Abyei Protocol specified that “Members of the Ngok Dinka and other Sudanese residing in the area” were entitled to vote.¹¹ It left the definition of “other Sudanese residing” to a body yet to be constituted, the Abyei Referendum Commission. The Misseriyya maintained that their seasonal movements into Abyei gave them the equivalence of residency rights for the purpose of voting. Initially, Khartoum, satisfied now that the oilfields were outside Abyei, did not back them, and in 2009, parliament passed the Abyei Referendum Act, which replicated the language of the Abyei Protocol.¹² The NCP faced a backlash when the Misseriyya stormed out of parliament and accused the two parties of striking a deal without consulting them.¹³ The act was also criticized in the northern press, which argued that granting voting rights on a tribal basis was a violation of the constitution.¹⁴

The NCP began to backtrack. Parliament obstructed the formation of the Abyei Referendum Commission, rejecting all SPLM candidates for the position of chair. Then Salah Gosh reversed the GoS position, declaring that the PCA

had failed to resolve the dispute, and the NCP demanded voting rights for the Misseriyya once more.¹⁵ Gosh remained powerful and enigmatic, confident that he could play his cards and secure an Abyei deal at the right time.

The Panel Engages, July–August 2010

Abyei was shifting from the list of items of unfinished CPA business to the postreferendum issue. On both counts, it fell within the Panel's mandate. The US had led on the Abyei issue, and the NCP and SPLM both felt that if the US were able to broker a solution, it should be given the chance to do so. Mbeki was ready to defer to the US, but he also wanted to consult the two communities to gauge their views. In July 2010, he flew to Muglad to talk to both Ngok and Misseriyya leaders. Over the following weeks, he listened patiently to delegations from both sides as well as independent experts.

The two sides were far apart, in their stories about the past and proposals for the future. The Ngok wanted a strong international hand to decide voter eligibility, conduct the referendum, and provide a UN force with mandate and capacity to protect civilians.¹⁶ Misseriyya leaders lamented that they had never been properly consulted, and the GoS was ready to sell them out.¹⁷ One Misseriyya leader would later complain that while Ngok chiefs were included in SPLM delegations, the NCP negotiators, “don’t know the difference between Babanusa and Papa Costa [a Greek restaurant in Khartoum].”¹⁸ The Misseriyya narrative worried Mbeki. He said that it was important to “to take on board the thinking of the Misseriyya. Understand their thinking as they understand it. If they genuinely believe this [account], we have a problem.”¹⁹

Mbeki's view was that the problem was being posed in a manner that made it insoluble—a zero-sum game in which the Ngok and Misseriyya, the SPLM and NCP, all held vetoes. He wanted to develop Francis Deng's concept of Abyei as a “bridge,” explaining “once you come to that position, you guarantee co-ownership of this area by M[isseriyya] and D[inka], which means that the referendum becomes less threatening, and the issues about eligibility become less contentious.”²⁰ In August, the Panel agreed on a strategy. It had two components: implementing what was already agreed upon and seeking a high-level political agreement. Mbeki met with Salah Gosh and Pagan Amum to assess their positions. His note of the meeting encapsulated the place of Abyei in the next two years' negotiations: “Pagan: Abyei being held hostage by NCP: what ransom does NCP want?” Gosh did not give a straight answer. Instead he said it was necessary to “solve all the problems—not just legal [ones]—but also social, security etc.”²¹ For now, however, the Panel would pass the baton back to the Americans to come up with a suitable formula on eligibility to vote in Abyei's referendum.

The Americans Try Again, September–October 2010

Washington put an extraordinary amount of effort into making the CPA Abyei Protocol work. This effort was made not only because the US felt responsibility for that formula and an obligation to make it work but also because of America's principled commitment to respecting a ruling of the highest international court (the PCA boundary decision) and the democratic wish of the majority (the Ngok Dinka voters). For the US special envoy and his staff, throughout 2009 and 2010, the challenge of Abyei occupied almost as much time as southern Sudan's referendum. Most internal US correspondence and public statements spoke of *two* referenda.²²

On the sidelines of the UN General Assembly, Foreign Minister Ali Karti requested the US to convene talks. As he expected, this was immediately endorsed by the SPLM. Special Envoy Scott Gration held a first round of talks at the Greentree Estate in Long Island, a retreat center made available for discreet UN events, on September 25–26. Gration put all the elements of a solution on the agenda, but to his surprise, having been the ones to request the meeting, “the NCP did not come prepared to reach agreements on any of these issues.”²³ Gration concluded that the NCP had been “caught off guard” by his proposals, and he hoped that it would come better prepared for round two a week later.

That meeting took place as scheduled at the Hilton Hotel in Addis Ababa and lasted for nine days. Rather than drawing up an overall package, however, the negotiations quickly took a deep dive into the most contentious details, specifically the criteria for eligibility for voting in the Abyei referendum. During fraught, intense negotiations, different proposals were tested to the point at which it became clear that no formula could be agreed to by the two sides. Midway through, Gration thought that a breakthrough had been achieved when the delegates emotionally vowed that they should never return to war, but this moment of togetherness proved transient. The meeting notes show that the negotiations went round and round in circles, not least because senior figures from each side rotated into the talks and reintroduced old demands and shifted the dynamics within their respective delegations. On the SPLM side, it was not clear whether Deng Alor or Pagan Amum was in charge; on the GoS side, it was not clear whether Dirdeiry or Salah Gosh was calling the shots.

The details of the talks are fascinating in that they show how the minutiae of formula that everyone knew would be impossible to implement in practice became the script for a show of posturing and manipulation. A combination of personal animosities and legal rabbit holes, alongside occasional bursts of awareness that the two sides needed to live together if they wanted to avoid

mutual destruction, turned the nine days of talks into a microcosm of the following years' negotiations.

The SPLM and GoS representatives opened with starkly different proposals. For the SPLM, residency should be based on either membership of the Ngok Dinka or permanent residency in Abyei since 2005. The GoS suggested basing eligibility only on a three-month period of residency, which would have enfranchised a far greater number of transhumant Misseriyya than the SPLM proposals. After the parties mutually rejected each other's opening gambits, Gration then proposed substituting the three-month residency period proposed by the GoS for an eight-month period, which was then haggled down to just over six months by the Sudan government's negotiators.²⁴ Gration then established a new package in which the figure of 185 days per year would have to be consistent across three years, attempting to sell this to the SPLM on the basis that "this would show a majority of an individual's time was spent in Abyei during the year."²⁵ From the SPLM perspective, however, basing eligibility on any period of short-term residency was risky given that the Sudanese government might attempt to demographically engineer the referendum result by facilitating the mass settlement of Misseriyya from its militias.

Another problem concerned how exactly residency would be measured. The GoS proposals had replaced previous language regarding living in a "home village or traditional home" with a reference to an individual's "habitual home." Dirdeiry explained that this would represent a more inclusive measure for those "not having houses." Deng Alor immediately picked up on the intention as being to "giv[e] the nomads a chance to vote," declaring "if that is the intention we need to review it," further insisting "we need to explicitly exclude the nomads" when Dirdeiry confirmed this was his intention. The GoS rejected what they maintained was an attempt to impose a tribal understanding of residency and voting rights, insisting "if there is any nomad who is qualified as an individual, you cannot say no."²⁶ The SPLM accused the GoS of systematically changing the demography by settling Misseriyya in the area.

This discussion continued for some time, descending into rancor. After Gration threatened to declare the SPLM intransigent, both parties agreed to refer the proposal to the traditional leaders. While the Ngok accepted, the Misseriyya refused.²⁷ At this point, Gration and Princeton Lyman (who had joined the talks) came to the conclusion that it was impossible to determine voter eligibility in a manner that would allow the referendum to be held peacefully, and thus they began to explore options for bypassing it altogether. They proposed two paths forward: (1) transferring the whole PCA-defined Abyei area south, while alleviating Misseriyya concerns by granting them political rights in the new nation; and (2) partitioning Abyei so that the Misseriyya would obtain

one-third of the territory on a temporary basis, and the other two-thirds would go south. The GoS refused a transfer south outright, whereas the SPLM would accept partition only if the GoS would be willing to give up Misseriyya grazing rights around the Bahr al-Arab river, which the GoS also rejected.²⁸ (Thereafter, the US categorically refused to consider partition options.) The GoS then attempted to return to the original CPA position that there should be a referendum, offering more flexibility on the residency requirements. The SPLM held firm to its new position that Abyei should be transferred south, maintaining that they would not accept any referendum unless all Misseriyya were forbidden from voting.²⁹

The trajectory of the negotiations was summarized in an internal note:

During the afternoon of 10 October, the atmosphere in the talks became more positive. The Americans delayed their departure again. Then they reached another impasse. During 11 October, it appeared that an agreement was on the cards based on “out of the box” thinking, involving leapfrogging the referendum and going straight to final status negotiations as part of a comprehensive package. However, this fell apart in the evening of 11 October, leaving the parties unable even to agree on a joint statement.³⁰

Later, one of Gration’s team, Joseph Tucker recalled the moment when they stopped the talks: “[The] seminal moment was when Salah and Pagan realized that if they forced it any further, they would jeopardize other things, [i.e.] if this is pushed any further it will scuttle the southern ref[erendum]. . . . Thankfully in 2010 we stopped the talks with enough oxygen not to scuttle everything.”³¹

The public posturing was more alarmist, despite Gration’s efforts to get the delegations to make reassuring public statements. Pagan said to Reuters: “This round has failed . . . We are left with 90 days. The time is very critical. If the parties fail to sort out these issues this could lead to an end of the peace process itself. And the peace may unravel in Sudan.”³² Gration understood this as posturing and emailed Washington on October 12: “While it was disappointing not to get a signed agreement at the conclusion of these Trilateral Talks, I believe the Administration’s considerable efforts have helped the parties reach clarity in each other’s positions—in Pagan’s words, we figured out what is being held hostage and began to determine the ransom. If ‘success’ is movement toward a goal, then we were all highly successful.”³³

Meles Zenawi, who had foreseen that the talks would not reach agreement, had a slightly different take. He did not think Abyei was a “hostage” for bargaining between the GoS and SPLM, but a means for the GoS to stall until it got tangible progress on key issues with the US.³⁴ A few weeks later, Dirdeiry

emailed Gration: “In Addis Ababa you said the solution for Abyei will be something that leaves everybody angry but no one ‘really mad.’ That is absolutely true General, but throughout the now long history of this process people just don’t do it.”³⁵

The African Union High-Level Implementation Panel for Sudan Takes Over the File, October–December 2010

The view of Mbeki and Haile Menkerios was that Abyei would have to be resolved by the two presidents. After the failure in Addis Ababa, Gration passed the issue to the Panel. The SPLM had misgivings about this, while the GoS and Misseriyya said they welcomed it, as they had long distrusted the Americans and preferred the African Union (AU).³⁶

In late October, the Panel had a new round of meetings with the leaders of the two communities. Over the previous months, the mood had darkened. The Misseriyya were particularly angry. One chief shouted, “No force on earth can remove us: we are ready to face them all, AU, UN, US.” They wanted to bypass the GoS and negotiate directly with the Ngok. Another chief explained, “We have been trying our best with the Dinka to ask them to be liberated from the political shackle of SPLM; we are ready to do the same with the NCP.”³⁷ The view of the SPLM, its advocates, and the Americans was that the Misseriyya rejection of the ABC was a result of the pro-NCP leadership being manipulated by Khartoum; as such, they believed that the Misseriyya would back down when a bargain was struck with al-Bashir.³⁸ According to John Young, who was in South Kordofan at the time, the US underestimated local Misseriyya rejection of the ABC and PCA.³⁹ It also underestimated the extent to which it was the Misseriyya who were exercising leverage over Khartoum rather than vice versa.⁴⁰ Mbeki understood this. He lamented in an internal meeting: “The US are taking the position to ignore the Misseriyya. I am not sure that we should do that—when they say that there will be no solution without us. They are against all the agreements because they are constructs—they were not consulted. When they start shooting, what are we going to do?”⁴¹

The next day, Mbeki met with Ngok chiefs to ask them when and how they might engage in direct talks. The Ngok did not rule out talking but insisted that the problem was with al-Bashir, who was instructing the Misseriyya to behave as they were.⁴² This meeting ended with the Ngok divided over whether to engage with the Misseriyya, and so Mbeki asked them to consult and transmit their formal decision to him.

The Americans were still engaged at the highest level. Senator John Kerry brought a message from President Obama on Abyei. He met with Mbeki on November 6, and explained that “we believe there is a way forward on Abyei” and reported that the Obama administration was putting an offer on the table, hoping that it “proves the US’s determination, its readiness to go the extra distance.” The substance of the proposal was that Abyei would go to the south, with provisions to cater to the Misseriyya, including legal rights for grazing and dual citizenship, along with an economic package.⁴³

The Misseriyya rejected the package. A delegation met with al-Bashir, and extracted a pledge from him that the Misseriyya would vote in the referendum. Al-Bashir’s translator, Ahmad Ghazzali—himself a Misseriyya, from Darfur—said that “the implicit pledge was also that Abyei will never go to the south.”⁴⁴ Ghazzali also said that al-Bashir “no longer holds the key.” He was not going to make the decision on Abyei.

There was a reciprocal dynamic between the Ngok and Kiir. Mbeki’s reading was that the SPLM leaders from Abyei were insisting that they would handle the matter themselves, fearful that if Kiir went to speak with al-Bashir, he would agree to a compromise.⁴⁵ This was the American understanding too, even while time was running out. Al-Bashir was scheduled to fly to Saudi Arabia for the Eid on the evening of November 14, heading a large contingent of Sudanese notables, and voter registration would begin the day after.⁴⁶ Meanwhile, as discussed in [chapter 6](#), it was the GoS and SPLM failure to agree on Abyei that prevented the signature of the “Framework on Outstanding Issues,” at the close of a week’s negotiations on November 13.

The Panel was able to do something that the US could not do, namely take the question directly to al-Bashir. But the two leaders’ reluctance to meet and take a lead became graphically evident the next day. At the urging of Mbeki, al-Bashir and Kiir agreed to meet in Khartoum on November 14, in the hours before the president left for Mecca.⁴⁷ Kiir was in his home district the day before and United Nations Mission in Sudan (UNMIS) sent a flight to bring him from the nearest airfield, in Wau. On arriving in Wau, Kiir refused to take a direct flight, saying that protocol demanded that he fly from Juba and that he wanted to use a southern Sudanese plane and crew. This caused several hours’ delay. Meanwhile, al-Bashir—having reluctantly made space in his schedule—was fuming. Kiir finally arrived at Khartoum airport after midday and went to SPLM headquarters, from where he called al-Bashir’s personal number. Al-Bashir’s assistant saw who was calling and observed that the president was leaving the phone to ring. He told Ghazzali, who called de Waal, proposing that Mbeki call Vice President Taha and suggest that he convene a meeting of the three members of the presidency at the presidential meeting room at the

airport. This game of circuitous phone tag resulted in an agreement to meet at the airport, and four different motorcades struggled to make their way through the packed Khartoum traffic, but they did not have enough time to clear the roads or enough presidential vehicles and motorcycle outriders to intimidate the city's drivers to pull over to let them pass. The military side of the airport was packed with the pilgrims ready to board the chartered flights to Mecca. Al-Bashir, Kiir, and Taha met, but exchanged little more than formalities before al-Bashir—his mind already on the Eid—made his apologies and went to greet the dignitaries who had come to see him off.

As Ghazzali had indicated, al-Bashir spent the week of the Eid holiday reflecting on his position and the fate of Sudan. He accepted that he had lost southern Sudan but also drew a mental red line: no more concessions. A week after al-Bashir's return from Mecca, Ghazzali said: "The best chances for resolving Abyei at a political level have now been missed, and the leadership has passed to the community leaders. There is not a possibility that President Bashir and FVP Salva Kiir can agree. Both are helpless. They may both say the same thing, which is that the working committee of the two parties and communities should work on it."⁴⁸

But, he went on, both the Misseriyya and the Ngok are hardening their positions. Meanwhile, the Panel had been preparing a paper that outlined various options for resolving the Abyei dispute—not as a proposal, but as a basis for discussion on each side. While the talks were in recess over the Eid, the Panel staff drew up six different options. The key ones were the last two, which drew on Graton's proposals at the close of the October talks in Addis Ababa. They were as follows:

1. To follow the CPA Abyei Protocol and PCA ruling, and hold the Referendum as planned.
2. To transfer Abyei to southern Sudan by presidential decree, offering the Misseriyya developmental support in the area to the north of Abyei as compensation.
3. To keep Abyei within northern Sudan, giving the Ngok Dinka dual citizenship, protections against displacement from their land and a favourable economic package.
4. To place Abyei under the temporary supervision of an AU or AU-UN authority, which would work with the parties to resolve the issue before the end of the CPA interim period, and make its own ruling on Abyei if the parties failed to agree before the end of this period.
5. To transfer Abyei, as defined by the PCA, to southern Sudan via presidential decree, granting the Misseriyya at least one third representation

in the state legislature, executive and police force, as well as the right to bear arms to protect their cattle.

6. Partitioning the PCA-defined Abyei region so that one third of the territory (to the north of the Ragab al-Zurga) would remain in the north, while the remaining territory would be transferred south via Presidential decree. A soft border would remain between the two territories.⁴⁹

The first two proposals had already been discussed extensively in the previous two months and deemed nonviable on the grounds that option one was impossible to implement because of the difficulty of resolving voter eligibility and option two would alienate the Misseriyya too much.⁵⁰ As such, the Panel put forward these proposals mainly to demonstrate their nonviability. It further warned that the third option risked alienating the Ngok and presented the fourth option largely as a fallback. Therefore, options five and six remained open. Option five was similar to the last-ditch proposals floated by the Americans. The US now made it clear that it was strongly opposed to option six for several reasons: The US had committed itself to the geographic delimitation of Abyei under the CPA and PCA; revisiting the PCA ruling would set an unfortunate precedent of allowing one party to undo an international arbitration agreement; and they thought it would be impractical.⁵¹

Mbeki arranged to meet with al-Bashir and Kiir to hand over the paper on the evening of November 27, at al-Bashir's residence within the army headquarters. Dirdeiry and Deng Alor were present. The meeting was brief: The task was to present the document and arrange a follow-up. The plan was that only the two presidents should speak briefly, but Deng Alor spoke up to say that the Misseriyya were nomads who had no entitlement to Abyei's land, after which al-Bashir gave Dirdeiry the chance to respond.⁵² Neither leader was ready to override his lieutenants. They agreed to meet again on December 2.

On the steps the president's house, Mbeki spoke to the press and explained that the plan was for the two presidents to reflect and reconvene immediately following the European Union-Africa summit, which was being held on November 29–30 in Tripoli.⁵³ This was, as it happened, the first public indication that Colonel Gaddafi had invited al-Bashir to attend. Gaddafi had not beforehand informed the European leaders who planned to come, who were not prepared to be seen with a man wanted by the International Criminal Court for international crimes. Several European leaders stayed away, while Gaddafi disinvited al-Bashir, creating a rancor between the two that escalated over the following months as Sudan began actively supporting the opposition in Libya.⁵⁴

In the event, no meeting was held on December 2. Lyman had a “long and relaxed” meeting with Kiir. Kiir began, there is “nothing in the paper for us” and ended by saying that the Americans had to come up with a solution.⁵⁵ Al-Bashir rejected compromise too, telling the NCP Shura Council that he would never accept the Misseriyya being treated as “second class citizens.”⁵⁶ Ghazzali admitted, “The President is not succeeding in handling the intensive pressure from the Misseriyya community.”⁵⁷

There were a few glimmers of compromise. Al-Bashir brought some Misseriyya leaders to Khartoum to float the partition option, but he did admit how far south the African Union High-Level Implementation Panel for Sudan (AUHIP) proposal placed the boundary line. Dirdeiry later said, “We talked about the idea of partition and not the details.”⁵⁸ Kiir and Luka Biong were ready to discuss option five—transferring Abyei south but awarding some rights and ongoing access to the Misseriyya. The veto wielders would not accept either proposal, and the presidents’ abdication of leadership meant that any senior party member was able to block any suggestion. Deng Alor was the most vocal, demanding at the next presidential meeting on December 7, that al-Bashir either accept option two and transfer Abyei south or face a unilateral Ngok referendum—a position he subsequently made public.⁵⁹ Each minor offer made by one side was adamantly rejected by one or other on the other side.⁶⁰ Issues such as allowing nomads to carry personal weapons for self-protection as they crossed into Abyei were raised to matters of high principle.⁶¹ Southern offers of constitutional safeguards did not impress the Misseriyya.⁶²

On January 9, 2011, as their brothers and sisters in southern Sudan voted in their long-awaited referendum, the Ngok Dinka were left disenfranchised. The Abyei referendum, long promised and long denied, was chalked up as yet another agreement dishonored. The status of the Ngok remained suspended without a clear end in sight.

Al-Bashir and Kiir Refuse to Decide, January–March 2011

Neither side had been negotiating Abyei on its merits. The south wanted to find out what the north was ready to accept to release what its delegates called “the Abyei hostage”; the GoS wanted to know what the Americans would deliver. But prevarication raised the stakes and complicated the bargaining. In late January, Kiir admitted to Lyman that the SPLM’s approach had failed and proposed that Abyei should put under UN administration.⁶³ Talks to salvage local

reconciliation were convened with practical proposals for managing community relations, but they failed to address the big issue.⁶⁴

As they had promised, al-Bashir and Kiir met in January and committed to resolving the problem by the end of March.⁶⁵ Two weeks before that deadline, however, they told Mbeki that they were passing the matter back to the Panel to resolve. Neither had overruled their hard-liners. It's likely that neither had tried. Meanwhile, relations between north and south had soured over security arrangements and tensions were rising in South Kordofan ahead of its ill-timed election.

Panel staff flew to Juba and met with Deng Alor, Nhial Deng, and Kosti Manibe, exploring options and introducing the idea of a stronger peacekeeper presence to hold the ring. Deng Alor closed the meeting with the remark, that "If we resolve Abyei by the end of April the rest of the issues will be business-like."⁶⁶ He was hostile to any partition. Luka Biong, however, was ready to accept it as the least bad option.⁶⁷ On the northern side, Misseriyya were converging around a new partition, frankly accepting that it would mean that they controlled the northern third of the territory and no more.⁶⁸ However, Dirdeiry and Salah Gosh ruled it out,⁶⁹ while Gosh dismissed transfer south as "non-sense, we cannot accept."⁷⁰ Gosh said that the issue couldn't be solved now and that deferring it for three to five years would be a "success." But he rejected a new peacekeeping force.

Nothing that Gosh said can ever be taken at face value. But if anyone other than al-Bashir could sell an Abyei compromise, it would have been him. On April 26, al-Bashir suspended Gosh, who had overstepped the mark again, keeping important dealings secret from the president.⁷¹ Presenting himself as "presidential security adviser," Gosh had held unauthorized meetings with political parties and had not been reporting on the proceedings of the Joint Political Committee: The file in the president's office was empty.⁷² Gosh's political ambitions, which had grown since he entered parliament following the 2010 elections, disconcerted al-Bashir and others in the party. There was a public spat between Gosh and Nafie Ali Nafie.⁷³ The Joint Political Committee was suddenly left leaderless. Some in the media suggested al-Bashir had dismissed Gosh to enable the NCP to step back from previous positions the government had taken on Abyei, but if that were the case, no new policy emerged.⁷⁴ Al-Bashir asked Ghazi Salah al-Din, but he was unwilling to take the poisoned chalice. Gosh had leverage with the Misseriyya, Ghazi did not. Ghazzali observed, "This means Abyei is left to its fate."⁷⁵ As the dry season wore on and Misseriyya herders moved south, local conflicts sparked and the community leaders did not put in place the promised measures.⁷⁶ Nomads accused the SPLA of blocking migration and Ngok claimed Misseriyya militias attacking them. Both sides sent troops to Abyei.⁷⁷ On April 19, Kiir told Lyman, "Bashir

is arrogant and wants to take Abyei by force.”⁷⁸ Khartoum accused the SPLA of putting soldiers in police uniforms and planning military action. On April 26, Juba produced a map of South Sudan for their transitional constitution that included Abyei.⁷⁹

The Abyei Crisis, May 2011

On May 1, members of the South Sudan Police Service—in reality an armed regiment of SPLA soldiers in police uniforms—attacked a convoy led by a Sudan Armed Forces (SAF) Joint Integrated Unit (JIU) unit near Todach in Abyei. Eleven SAF soldiers were killed. The SPLA maintained that its troops had responded to an attempt by the SAF to advance its position, although the SAF insisted that its movements had been approved by the Joint Defense Board. UN staff who visited the scene said that the positions of vehicles and bodies indicated a prepared ambush and confirmed that the convoy had been authorized. The SPLA story did not add up, but SAF had been saber-rattling, too. Lyman reported, “The SAF is understandably very angry about the situation and has threatened to retaliate by moving 5,000 troops into the Abyei Area to match the 5,000 SPLA currently present.”⁸⁰

More than a decade later, unanswered questions remain about who instigated the clash and why. The material evidence on the ground points to the SPLA mounting an ambush. Context and motives imply that SAF had most to gain.

Pierre Buyoya, Menkerios, and Lyman flew to Juba on May 5. They met with Kiir and the SPLM leaders and made it clear that they held the SPLA responsible for its share of provoking the crisis. In a tense meeting, Kiir blamed al-Bashir for the outbreak of fighting but agreed to withdraw forces, recommit to the local security agreements, and remove references to Abyei from South Sudan’s upcoming constitution so long as the GoS did the same.⁸¹ The minister of parliamentary affairs Michael Makui Lueth publicly contravened this position immediately afterward, however, stating that Abyei would be included in the new nation’s constitution.⁸²

Although it had been preparing for war, the SAF command had not flexed its political muscles up to this point. The generals were impatient with the NCP negotiators, saying that, in contrast to their southern counterparts who had long experience in the SPLA’s guerrilla struggle, none had military experience.⁸³ The day after the ambush, senior officers met with al-Bashir at his residence and said they would keep him informed of their actions. They did not say they would consult him first or await his orders. The army had taken over in South Kordofan. The generals had a plan for a lightning offensive that would occupy

all of Abyei as far as the Bahr al-Arab. They just needed a pretext to launch the attack. They could rely on the SPLA to provide one. Over the following days, Misseriyya militiamen ratcheted up the tension. They fired upon Zambian UNMIS peacekeepers and then attacked a SPLA JIU unit killing four soldiers. The inevitable confrontation happened on May 19, when SPLA forces clashed with SAF troops escorted by UNMIS, killing several soldiers. The SPLM said fighting erupted spontaneously after the SAF overreacted to a shot fired in the air, although the UN internal report pointed the finger at the SPLA. The GoS said the attack was orchestrated by the senior SPLM official in Abyei.⁸⁴ Subsequently, a US intelligence report claimed that the attack was staged by dissident SPLA forces cooperating with SAF to create the pretext that SAF wanted.⁸⁵ What happened next is not ambiguous. The SAF mounted a well-prepared offensive and occupied all the land north of the river, displacing nearly one hundred thousand Ngok Dinka.⁸⁶ They looted and burned Abyei town.

It looked like the first battle in a new war that would spread to South Kordofan and the oilfields of Unity State and Upper Nile. The independence of South Sudan, barely seven weeks away, was suddenly in jeopardy.

Luka Biong, the most pragmatic of the senior Ngok within the SPLM, resigned from the Government of National Unity, writing to al-Bashir: "The way you are leading Sudan is making you not only a liability to the Sudanese people and your party but also to the continent and indeed to the world at large."⁸⁷ When Mbeki met with al-Bashir the next day he refused to talk to Kiir over Abyei, maintaining that it would be pointless because the "final decision" was with Deng Alor, not the southern president, and he would not engage with Alor.⁸⁸ Al-Bashir was in a rough mood, grimacing repeatedly, and indicating that SAF would secure the entire border before July 9. He was angry at what he saw as double standards by the international community, saying, "Shooting at UN forces is a war crime. If we did it what would you be saying?" And he made it clear that he could not ask SAF to withdraw, because they were already blaming him and the civilian leadership for failing to stand up to the SPLA. After the meeting, Ghazzali—who had been translating—remarked quietly: "Abyei has gone beyond politics."

The next day, Mbeki met with Kiir, who insisted that al-Bashir "must pull out the invading forces."⁸⁹

AVERTING WAR BEFORE INDEPENDENCE

The Abyei crisis was both a trigger for and symptom of the deepening confrontation between north and south. It preoccupied the leaders on both sides, froze other activities such as the conference of the governors of border states, and consumed diplomatic time and energy. It paralyzed the negotiations on oil and finance, making the obvious win-win formulae on the oil pipeline and joint action on debt relief into something worse than a zero-sum game. For this reason, the Panel organized a “super group” of the heads of each of the different clusters, with a view to hammering out an overall package.

A second explosive issue—foreseeable but neglected by the main international actors—also thrust itself to the top of the agenda. This was South Kordofan, where state elections ended in a dangerous impasse (see [chapter 10](#)). In the aftermath, the government of Sudan (GoS) dispatched its forces into South Kordofan while the Sudan People’s Liberation Army (SPLA’s) ninth division crossed the border from the south. On May 23, the Sudan Armed Forces (SAF) chief of staff (CoS), General Ismat, took the step he had deferred six weeks earlier. He wrote to his SPLA counterpart, General Hoth instructing him that the Joint Integrated Units (JIUs) in the two areas were dissolved with immediate effect and all SPLA forces, including the JIU brigade in Kadugli, should withdraw south.¹ The final sentence of the letter read: “SAF is about to redeploy its forces to all the areas north of the 1/1/1956 borders starting from June 1.” It was a de facto declaration of war. Panel staff alerted Thabo Mbeki who wrote to Omar al-Bashir on May 26.² His letter covered the crisis in Abyei and a demand

for the army to cease looting and to permit humanitarian access. He appended a proposal for the role of the United Nations (UN) in the border zone, under the aegis of the Joint Political and Security Mechanism (JPSM). He asked for the dissolution of the JIUs to be suspended while the Panel convened an extra security meeting to cover the two areas on May 31.

The Panel had scheduled a meeting of the security cluster on border security in Addis Ababa on May 28. There had been no discussions since Kuriftu in April and the question of where the “1.1.56” line actually lay was no closer to resolution. As the SAF and SPLA generals assembled on May 27, both sides said separately that it was the beginning of hostilities between north and south. In response to the Panel proposal to convene an extra session on security in the two areas, Agar refused to come unless Ismat rescinded his order. Alex de Waal emailed Mbeki:

In the last 24 hours, the SAF has begun to implement the preparatory activities for its proposed action against the JIUs in the two areas and the forcible removal of the SPLA from the two areas. It has instructed UNMIS to remain in their camps. The CoS has also issued an order that the SAF will secure all borders with the south in the coming days. This is taken by both parties to include the contested border areas, and the military occupation of those currently administered by the south (Kaka) or indeterminate (Bahr al Arab) will be taken by the south as an act of aggression.

Pres. Bashir has publicly informed his divisional commanders that they have the authority to respond at once to any incident without seeking approval from GHQ. (This was told to me by the SAF generals).³

He followed this email with a second message the next day recommending agenda items for Mbeki to raise with al-Bashir and adding that the next round in Addis Ababa “may of necessity be akin to ceasefire talks.”⁴

Al-Bashir was unavailable, and Ali Osman tried to call Mbeki on May 29, but the phone line kept dropping. The same happened when Mbeki tried calling back. Instead, Mbeki wrote a five-page letter and emailed it late that same night.⁵ This covered all the outstanding security issues, including the borders and Abyei. War, however, was imminent. Panel staff proposed a “security summit” for the most senior military commanders on each side to meet and resolve all outstanding security issues, including Abyei. The rationale was that the soldiers were making the decisions. Mbeki, Meles Zenawi, and Haile Menkerios decided that a summit was needed.

Preparing for the Summit

The goal was to achieve the withdrawal of SAF from Abyei and the creation of an effective security mechanism with African (almost certainly Ethiopian) troops and “to assure everyone that Abyei will have a political solution.”⁶ Al-Bashir and Salva Kiir Mayardit would then discuss overall security and economic arrangements, and the “supergroup” would hammer out all the details for the postindependence package.

Lissane Yohannes, the Intergovernmental Authority on Development (IGAD) special representative for Sudan and also a close adviser to Meles, strongly advocated for the summit. He later reflected: “It was a good idea. What we failed in was that we didn’t know these two men sufficiently. They didn’t have the willingness to sit down and talk . . . [nor] to override the others. But they didn’t have the guts to do that.”⁷

Meles proposed June 12–13. In the meantime, war broke out in South Kordofan on June 5 and that was added to the agenda.

The immediate focus remained Abyei. On June 8, Panel members and staff debated their options internally and decided to work up an “option 5 plus,” that transferred Abyei south with a four-year transitional period during which the northern third remained in Kordofan, administered by the Misseriyya, who would gain permanent rights within Abyei after the end of the transition, when the northern third joined the rest of the territory.⁸ Later in the day, there was a lively discussion with Princeton Lyman, Menkerios, Derek Plumbly, and their senior staff. Part of the meeting focused on the worry that anger at the UN Security Council (UNSC) over the atrocities in Abyei alongside no evident progress in negotiating an agreement would lead to a UNSC statement, or even resolution, that would increase the stakes and make it even harder to get al-Bashir to back down. Menkerios had counseled the UN to be cautious and not insist on a deadline or any specific measures, and Lyman reported that Ban ki-Moon had said that the GoS’s actions in Abyei were “not ethnic cleansing yet.”⁹ That word “yet” was a warning sign: Western activist lobbies would likely press a UNSC resolution for the International Criminal Court (ICC) to take on the case. Coordination among the Panel, US, UN, and Ethiopia was essential to ensure that no international steps inadvertently derailed the process and to signal to al-Bashir and Kiir that there was no alternative to the summit. That was achieved—but even with this exceptionally focused effort, a positive outcome was uncertain.

The meeting debated the mix of pressure and incentives needed to obtain an SAF withdrawal. They were not certain how best to accomplish this. Menkerios said that “[t]he North has reached 2 conclusions. (1) No reward for good

behaviour. (2) No consequences to negative action [he paused] . . . this is not yet concluded.” Abdul Mohammed wondered aloud, “will the international community contribute to incentives for the North? Or just pocket the withdrawal?” He was referring to the pattern of offering rewards to Sudan for complying with international demands, and then failing to deliver, instead asking for something more. Lyman was tougher on Khartoum: “There should be no incentives to reverse something they shouldn’t have done in the first place.” He added a new piece of information: “The USG sent its counter-terror chief to Khartoum just now, we needed to move fourteen mountains for that, but the President said, continue.” Lyman was pointing to a pattern of US-Sudanese cooperation, hoping it would influence al-Bashir’s thinking.¹⁰

The widening war was also generating its own logic. The SAF generals had felt very confident after their military takeover of Abyei, but in the Nuba Mountains, the SPLA was on the offensive. Menkerios suggested, “War in South Kordofan will convince people in Sudan far more than any resolutions over Abyei.”

The discussion moved to the “option 5 plus” proposal. Lyman asked whether the headline would be that Abyei was going south, or that Abyei was being partitioned. Everyone agreed that any formula would be very difficult for one side or the other to swallow, but they could not reach consensus on what would be the best—or least bad—proposal to make. Lyman still pushed for a definitive agreement, “let’s do a final resolution, anything else is WAIL—war after I leave.” He had consistently worried that temporary arrangements would become permanent.¹¹ But with just a month to go before South Sudan’s precarious-looking independence, Lyman was ready to support a fallback option if no alternative emerged. The discussion switched to a holding arrangement. This would entail the withdrawal of SAF, the reinstatement of a civilian administration, and an international force that would secure the area.

That evening, the Panel met with Meles. He was contemplating the implications of Ethiopia taking responsibility for peacekeeping. He said: “I saw the draft proposal. Some of us think we are getting into a corner [by sending troops to Abyei]. My argument: if Sudan blows up we are in a tighter corner. We must contribute our share. The framework is acceptable.” Abdul Mohammed asked how a possible conflict between the Sudanese parties and Ethiopian forces would affect relations between Ethiopia and the two countries. Meles responded: “Here, people say we may alienate either [side] or both. But if Sudan blows up it doesn’t matter. We have to have the patience to take the punches, the casualties. . . . There is a risk and I am personally prepared to take that risk.”¹²

Given the animosities, it was still uncertain that al-Bashir and Kiir would agree to attend the summit. On June 9, Mbeki flew to Khartoum. On al-Bashir’s instructions, his first meeting was at the Ministry of Defense: a signal that Sudan

was on a war footing. The generals made a presentation on the military situation.¹³ On the question of international troops for Abyei, Minister of Defense Abd al-Rahim Hussein said: “We can accept, on condition that we sign and agree the mandate in details. We have learned the hard way!” He was referring to the way that the UNMIS and UNAMID numbers and mandates had been expanded against the wishes of the GoS, leaving Khartoum feeling tricked and suspicious. That evening, the Panel met with al-Bashir. He said he was willing to pull out his army. The next day, the Panel flew to Juba. Kiir began the meeting saying he “saw no reason to meet [with al-Bashir].” Mbeki convinced him otherwise.¹⁴

The summit formula was in focus: an agreed plan for an SAF pullout, Ethiopian peacekeepers, and a restored local administration, with a political solution put on hold.

The Summit

The summit was convened in the Jubilee Palace in Addis Ababa on the morning of Sunday, June 12. Along with al-Bashir and Kiir, the three presidential members of the Panel were there and the host, Meles. The summit met its minimum objectives, but only those.

The first session involved all six men. The Panel had its proposals ready, but Mbeki wanted the presidents to provide leadership and outline a shared solution, after which they might request a document and assistance with details. He anticipated that if they were given a prepared document, the discussion would immediately descend into a fruitless debate over minutiae. By the coffee break at 11 a.m., no progress had been made, so the Panel and Meles decided that the two presidents should be given the chance to speak privately with one another. Lissane accompanied them to a room for their one-on-one talk, and left them there, saying that the Panel would be on standby when they concluded. Lissane then encountered the rest of the Sudan People’s Liberation Movement (SPLM) delegation. He said that “they were furious, saying that our president will not sit with al-Bashir alone. They wanted to hang me!”¹⁵ Lissane went back and asked Kiir if he would like an assistant. He said, yes, so Nhial Deng and Sayed al-Khatib were chosen to join them. When Lissane reentered the room with the two advisers, it was clear to him that the presidents were not even talking. “An hour and half was wasted,” said Lissane. He went back to Mbeki and Meles and said that the direct talks were not working. Mbeki and Meles went in to join them. It was almost lunchtime. Nothing substantial had been said. “That’s how it ended,” said Lissane. Meles reported back, “These guys aren’t interested in solving the problem, they want to fight.”

There was no option of waiting for the conflict to become “ripe” for resolution.¹⁶ Instead, Mbeki, Abubakar Buyoya, and Meles switched to pressing for a temporary arrangement. As expected, al-Bashir and Kiir requested a document to study for the morning. Mbeki reported back to the staff on the need to revise and sharpen the draft for temporary arrangements, focusing on how a new administration for Abyei could be formed. He noted a dozen specific issues that would need resolution, covering the administrative and oversight structures needed, how they would be set up and how they would function, the roles of the Ethiopian troops including their mandate, and the return and protection of internally displaced people (IDPs).

The staff produced a revised draft proposal shortly after midnight, entitled “Proposal for Temporary Arrangements for Administration and Security of Abyei Area.”¹⁷ This document for the first time made mention of the Interim Security Force for Abyei (ISFA) and the Abyei Joint Oversight Committee (AJOC) as well as the interim structure of the Abyei Area Administration—the skeleton of what would become the agreement a week later. It specified: “The ISFA shall consist in one brigade (armoured) provided by the Ethiopian National Defence Force. The Force Commander shall be an Ethiopian officer of general rank.” The plan was to demilitarize Abyei. A new Abyei police service would be needed “drawn from all communities in Abyei.” That wording, apparently uncontroversial, nearly derailed the negotiations a week later.¹⁸ The summit reconvened in the morning and concluded in the middle of a thunderstorm at 3 p.m. Neither al-Bashir nor Kiir had studied the proposal let alone discussed it between them. Instead, they had passed it to their delegations to deal with.

Temporary Agreement on Abyei

The next day, the negotiations shifted to the Sheraton Hotel in Addis Ababa, a palatial building owned and financed by the Ethiopian-Saudi billionaire businessman Mohamed al-Amoudi. The Sudanese and South Sudanese delegations, the mediation team, and its partners, took over much of the hotel for the following two weeks. Khartoum’s team was headed by Nafie Ali Nafie, theoretically the third most senior figure in the government. With his reputation as a hard-liner, the Panel assumed he could be relied on to stake out robust positions in line with al-Bashir’s. In this case, Nafie was under political assault from within the National Congress Party (NCP), with disastrous consequences.

In preparing for the summit, the Panel had drafted successive drafts for an agreement. Version 5, written on June 10, added a paragraph sketching out an “African-led international mission for Abyei.”¹⁹ This mission would need a

robust mandate and capacity and would need to be able to defend itself and protect civilians, in line with Ngok community views²⁰ and contrary to the GoS, which was adamantly opposed to a strong international force.²¹ Nafie feared that once the UN was involved, it would insist on its prerogative to determine the mandate, number, and composition of the peacekeeping mission.²² As it happened, on that Tuesday, US Secretary of State Hillary Clinton was in Addis Ababa on a visit arranged long before. Her trip was foreshortened because a volcanic eruption in the Danakil depression just inside Eritrea was pumping ash into the atmosphere and the pilots feared that the region's air-space would be closed. Before she left, Clinton held a brief meeting with Nafie, in which she laid his fears to rest: the US would accept the details in the Abyei agreement as the ISFA mandate. Susan Rice phoned to confirm. Meles then stepped in with his guarantee. Lyman noted: "As we suspected, Prime Minister Meles provided the high level leadership to get the final compromise."²³

Any assumption that the negotiating teams would act in the spirit of agreement was quickly confounded. It took four days of haggling before a text was ready for signature on June 18. Clinton called both Kiir and Nafie and secured the support of both.²⁴ In a drama characteristic of the negotiations, however, a fractious forty-eight hours followed, in which a small detail in the text demanded meetings with the three Panel members, the intervention of Meles, and intense staff work, to resolve. The details are worth recounting as an illustration of the difficulties of securing agreement between reluctant parties.

Deng Alor had joined the negotiating team in Addis Ababa, and once more tried to bypass Kiir and block the deal. The issue was the wording on the police in paragraph 25: "An Abyei Police Service shall be constituted drawn from the communities of Abyei. Its size and composition shall be determined by the AJOC."²⁵

Deng objected to the word "communities." The Panel had chosen that word because both sides agreed that it should be a local force, and the word "residents" had become contentious because of its implications for eligibility to vote in the referendum. Neither side had raised a reservation about using "communities"—until Deng Alor. He said it opened a door whereby the GoS would claim that Abyei belonged equally to two communities.

Deng met with Mbeki and Meles on the evening of June 18, who recognized it as a valid concern. Meles's view was that the text of the agreement could not be altered, but the issue would be addressed in the implementation. His fear was that reopening the text would invite the GoS to reverse a handful of concessions it had made. The Panel's legal adviser, Afako, drafted a notice to be appended to the agreement that explained nothing in the agreement changed the substance of the Abyei Protocol in the 2005 Comprehensive Peace Agreement (CPA) and

that this notice would have the same force as the agreement. Al-Bashir and Kiir both agreed by phone. Mbeki considered it a done deal and asked for a signing ceremony at 10 a.m. the next day.²⁶

Pagan Amum said that he was ready to sign straight away but insisted that he understood Mbeki's comments to mean that text could in fact be adjusted. Lyman pointed out that Kiir had already signaled his approval to Clinton, and "he did not want to tell the Secretary [that] President Kiir does not speak for his government."²⁷ When Mbeki's letter with the additional notice was delivered to the SPLM, just before midnight, they stalled.²⁸ Deng confronted Panel staff, insisting, "I will never sign this." In the morning, his objection was supported in writing by a legal opinion from a staff member of the Public International Law and Policy Group (PILPG) which was advising the SPLM.

Twenty-four hours of chaos ensued as senior US and UN officials pressed the SPLM to relent.²⁹ News of the draft deal was met with polarizing opinions in Khartoum and Juba. The Islamist press did its best to caricature Ethiopia as a proxy for a US project to remove Abyei from Muslim control,³⁰ while a senior SPLM member, Edward Lino, wrote a letter to Mbeki, which was leaked to the press, condemning the Panel for shielding the GoS from the wrath of the UNSC.³¹ It looked as though the moment for a deal might have been lost, and Abdul Mohammed took a personal initiative to sound out the views of the most senior NCP member present, Sayed al-Khatib (Nafie had briefly returned to Khartoum). Staff members found him drinking tea outside the hotel business center and brought him down to the terrace.

"How are things looking for you?" asks Abdul. Sayed [al-Khatib] answers, "that wasn't why you asked me to come here. What would you like me to do?" We explain the stakes and the options: could the NCP make an offer to change the language in that one paragraph, no 25? He is very doubtful and explains how difficult it had been and how President Bashir had accepted, on the condition that not a comma should be changed. Their own five reservations had been dropped.³²

The staff printed out a revised version with a new paragraph 25, which dropped the word "communities," to read: "An Abyei Police Service shall be established. The AJOC shall determine its size and composition." Menkerios took it on himself to take a copy with this single change to the SPLM, giving another copy to al-Khatib. He and Abdul didn't want the Panel to be visibly engaged in this kind of bargaining.

The SPLM then did exactly what the mediators had feared. They delivered another letter, in which they attacked the proposal as "incorrect, immoral and unfair."³³ Observing what was happening—and doubtless having their own

means of finding out the contents of the SPLM letter—the GoS delegation was getting paranoid because some of them believed that the PILPG staff were US government employees—despite the evident personal coldness between the State Department staff and the young US lawyers who were drafting the SPLM correspondence.

Reluctantly, that evening, Mbeki decided that it would be necessary to make an appeal to the GoS to make the concession. In fact, Abdul had already set this in motion. The following morning (June 20), al-Khatib reported that he had persuaded al-Bashir to admit this revision, but solely on the basis of an absolute guarantee that there would be no more changes.³⁴

Having levered open one crack in the agreement, the SPLM wanted another concession too: They demanded the Abyei Administration and not the AJOC to constitute the police, which would be a substantive change as the administration would be predominantly Ngok. When the SPLM delegation went to meet the Panel and Meles early that afternoon, they made this demand, but the mediators categorically rejected them. Leaving the meeting, Deng's face was clouded with anger and he refused to speak to Panel staff. Pagan said they had agreed, but with a troubled look.

It was 4:20 p.m. Seizing the moment—and knowing that Deng and other SPLM hard-liners might still scotch the deal—the Panel organized an immediate signing ceremony. This was held just twenty-five minutes later, with Deng scowling and Idris Abd al-Gadir looking uncomfortable, knowing that he had been cornered into making a concession he had vowed to resist. “I will need force protection when I return to Khartoum,” he said, not entirely in jest.³⁵ Immediately afterward, Mbeki and Menkerios joined a video teleconference with the UNSC, which had been scheduled for 5 p.m. and had been on hold while the “Agreement between the GoS and SPLM on Temporary Arrangements for the Administration and Security of the Abyei Area” was signed.

Integral to the agreement was the Ethiopian promise of a brigade of peacekeepers for ISFA. This could have been a major obstacle and a cause for delay. Recurrently, whenever the issue of peacekeeping troops was introduced into a peace process, the initial insistence that their role should be strictly in support of a political process was inverted, and the questions of the composition, mandate, financing, and safety of the troops became the overriding considerations for the international community. Meles made it clear that he did not want these procedures to impede the deployment, but he also said that Ethiopia had its preconditions. First, the mission would be mandated by the UNSC under Chapter VII and paid for by UN assessed contributions. The AU had neither the authority nor funds for such a mission. Second, the mandate, size, and composition of the force had to be determined by the troop contributor and the

parties to the agreement, not by the UN. This went against the established procedures at the UN, whereby the UN Department of Peacekeeping Operations made proposals on all these issues to the UNSC. Also, no precedent existed for a single country—and a neighboring state to boot—to provide the entirety of a peacekeeping force.

The GoS distrusted the UN and feared that the UNSC would overrule the agreements made in Addis Ababa. While Meles's offer of troops for Abyei also opened the door to Ethiopian peacekeepers playing a role on the north-south border and in the Nuba Mountains, Nafie and the SAF generals were not ready to make any further concessions until the UNSC had met and issued its resolution. During the seven days between the signing of the Abyei agreement and the UNSC meeting on June 27, they stalled. On the day when the UNSC was due to meet, their worries were deepened when they saw that Abyei was not listed on the UNSC agenda for that day. There was some disquiet about the unorthodox process of authorizing the UNISFA. According to the chatter in New York during the intervening week:

Council members also seem to be expecting to receive a draft on the mandate for the Abyei interim Ethiopian security force from the US delegation today [June 23]. The negotiations on this resolution are expected to take some time given the complexity of the situation in Abyei and the implications for future relations between Sudan and South Sudan. Council members seem to be wary of the interim security arrangements agreed to by the parties creating an environment on the ground that locks in future political agreements on the final status of Abyei.³⁶

France reportedly thought it was a bad precedent not to entrust the assessment of force size and the mandate of the mission to anyone other than the UN. As the head of Department of Peacekeeping Operations was a French diplomat, it felt a special obligation to protect that department's privileges and procedures. A full debate on UNISFA threatened to unlock a host of issues that would cause delay. So the US got the resolution adopted without a debate. The press release notes that "The meeting started at 10:40 a.m. and ended at 10:45 a.m."³⁷ The only speaker from the floor was the French permanent representative, Ambassador Gérard Araud, who put his concern on the record: "While recognizing the urgency posed by the tragic conditions on the ground and the imminent independence of Southern Sudan . . . France would like to recognize the need to have an overall vision, both for coordinating the missions and for determining the total strength of the peacekeeping operations."³⁸ The official listing of Security Council resolutions includes resolution 1990 as "Reports of

the Secretary-General on the Sudan.” It was only when the Ethiopian and Sudanese ambassadors in New York were able to confirm that the US had indeed delivered on its pledge on UNISFA’s mandate, that Khartoum’s delegates were ready to meet on border security. The Ethiopian brigade, under the command of General Tadesse Werede, was already preparing to travel to Abyei in one of the fastest-ever peacekeeping deployments.

The agreement left the provisions of the Abyei Protocol, including the referendum, intact, but it also committed the parties to engage with the Panel on resolving the final status of Abyei in accordance with a time frame of their choosing. Meles asked Mbeki not to put forward any proposals until UNISFA was in place and SAF had withdrawn, for fear that the Sudanese generals would keep their forces in Abyei and block the implementation of the temporary agreement.³⁹ Thirteen years on, the status of Abyei remained as it was during those frantic hours, frozen.

Freezing Abyei made it possible for South Sudan to become independent with a veneer of calm. But it kept the prospect of the north-south “package deal” on ice. At that time, the SPLM told the Americans what they hoped for.⁴⁰ Its three elements were fair commercial arrangements for the oil sector; the south helping the north with transitional financial arrangements; and the north helping the south by “returning” Abyei and ceasing support for anti-SPLM militias. Without Abyei, the SPLM lost interest in negotiating an oil deal and backtracked from its earlier positions.

Border Security

During the June 12–13 summit, the two presidents went through a checklist of outstanding issues. They agreed to set up the JPSM and confirmed that a border security regime was needed. The details were left to the security cluster, which met daily over the following two weeks. A British general, Chris Brown, joined the Norwegian brigadier Jan-Eric Wilhelmsen and the US colonel Michael Bailey to assist the Panel.

As before, a dive into technical details obscured the basic political question. The southerners feared further military action from the north, overt or covert, and wanted an international (i.e., western) presence to deter it. The northerners were convinced that the south had ambitions for regime change or territorial aggrandizement and that western countries would give a green light to such actions. Neither would admit this openly.

The security cluster Joint Position Paper of May 30 (see [chapter 7](#)) provided an agenda for the talks, but no obvious way to bridge the difference. Fortunately,

both sides trusted the AU and Ethiopia to provide guarantees. Crucial was the position that Ethiopia had carved out as an autonomous African actor respected by the US: The north had confidence Ethiopia would not succumb to western agendas, and the south knew that Ethiopia had served as its strategic ally for decades. The Sheraton Hotel was within sight of the Ethiopian foreign ministry, where the IGAD Declaration of Principles had been drafted back in 1994, the urtext for southern Sudanese self-determination.

The southern delegation continued to push for a much-expanded role for the UN, including independent force protection, while the GoS/SAF continued to insist it was not necessary. Some SPLA generals took the radical position of wanting the UN Mission in South Sudan (UNMISS) to be its reserve line of border defense against invasion. The deadlock was broken with the Ethiopian peacekeepers for Abyei, which opened the door to UNISFA becoming a border monitoring mission.

The security cluster resumed in earnest on June 15. The talks faced a de facto deadline of June 29 as all the senior SPLM officials were due to leave for Juba that day with assignments to prepare for independence day. Over the first eleven days, the Joint Position Paper went through eleven revisions, with inputs and critiques from both sides.⁴¹

The SPLA's General Mathok put forth his case: "We need UN force [of] 50,000 but will not complain with 10,000." The UN was willing to provide a maximum of ten thousand troops for the combined missions in South Sudan, Abyei and the border. It had planned seven thousand troops for UNMISS and was ready to raise the ceiling when the Ethiopians insisted on forty-two hundred for UNISFA, but it would not go higher. Mathok's explanation of the south's hardening position was punctuated by references to ongoing attacks across the north-south border including air raids (which SAF said were targeting Darfur rebels) and an attack on a train. "There is a problem with militias," he said, "our home village was attacked the day before yesterday." The northerners introduced the ominous issue of the map: They demanded a definitive agreement on where the border actually lay. General Imad gave a bleak assessment, rejecting the border force proposal saying that the talks were destined to fail.⁴² The negotiations became stuck on minor details. The south wanted the border monitoring teams to operate in four sectors, each with its own headquarters; the north wanted just three sectors. The south wanted regular patrols; the north said patrols should be organized as needed.

June 28 would be the last full day of talks and the two sides were far apart. The mediation team was getting anxious. The delegates seemed much less concerned. The SPLA generals were more than an hour late for the first meeting of the day. They had been asked to examine a twelfth version of the draft to see

what they were prepared to amend in light of new mediation suggestions, including assessment of the logistical and force protection needs made by the Ethiopians. Mathok began, “[there is] no change we are still maintaining our document.” His team insisted that they needed more than the numbers assessed by the Ethiopians.⁴³ The northerners were content to challenge the southerners without making any proposals. Both sides were also keeping an eye on the parallel negotiations on a humanitarian cessation of hostilities in the Nuba Mountains: If those broke down, they expected the war to spread.

The security cluster met that evening, from 9:50 p.m. to 1:00 a.m. Hopes that “v12” would be the final, mutually agreeable text, did not survive the first exchanges. The issue of the map of the boundary and the disputed areas had been a landmine waiting to be stepped on and now it went off. The meeting notes begin: “SPLM wants to demilitarize the entirety of the disputed areas, let the UN be there.” Quite apart from the procedural matter of reintroducing the UN into the discussion, there was a matter of practicality in this proposal. The biggest of the disputed areas, Kafia Kingi, was 4,800 square miles of thick forest bordering the Central African Republic. It was a haven for smugglers and marijuana growers and was also where Joseph Kony, fugitive leader of the Ugandan Lord’s Resistance Army, was reputed to be hiding out.⁴⁴ A very large international force would be needed to control this area.

There was a heated argument over this. The north’s Ali Hamid said they had always taken ten kilometers on either side of the current borderline (CBL): “It is in all the documents we have signed.” General Rabi Majong insisted, “We want to demilitarize the disputed areas and give the security and administration to the third party” (i.e., the UN’s Ali Hamid would not budge). The soldiers did not have the authority to determine where the legal boundary lay. Mathok conceded the point: “We will agree when the border committee has agreed, until now we don’t know where the border lies.” As Mathok offered this compromise, SAF’s Imad reiterated his demand that the boundary be finalized. At this point, the GoS/SAF delegation had an unusual open disagreement among its delegates. Ali Hamid, a civilian, was the head of the delegation. Imad was the ranking military officer. Imad said, “We cannot reach an agreement on this. . . . It is very difficult for them to convince us, and vice versa.” Ali Hamid interjected, “We are near to each other, Imad be patient.” Mbeki then intervened: “Our point of reference is the current administrative line observed by all states along the border, not to prejudge what is going to happen according to the border committee. When the border shifts the military will shift according[ly]. As of now let us use the CBL which is used by all government institutions N and S. . . . let us not as military not enter the debate as to where the borderline is.”⁴⁵

This settled the issue. There was too little time to resolve the other areas of disagreement, such as the number of sectors and whether patrols would be routine or in response to incidents or requests. The revised draft of the border security proposal stripped out many details that had consumed days of talks, leaving them for future decision by the force commander and the JPSM. Paragraph two dealt with the concerns in two parts. Its first two sentences renamed the CBZ out of deference to the south's concerns: "The Parties shall establish a Safe Demilitarised Border Zone (SDBZ, formerly 'Common Border Zone'), where the forces of the two Parties shall be redeployed 10 kilometres outside from the north/south 1/1/1956 borderline, pending the resolution of the status of disputed border areas and the final demarcation of the border. This shall take effect by D-Day + 10 days."⁴⁶

Its third and fourth sentences reproduced Mbeki's formulation: "The administrative common border line shall be used for those areas that are disputed. The Technical Boundary Demarcation [sic] Committee shall provide the required maps."⁴⁷ The committee did not provide the maps, and this formulation did not resolve the question of whether the widely used administrative maps or the de facto administration on the ground should be the basis for the line. This ambiguity later became crucial with regard to the "Fourteen Miles" south of the Bahr al-Arab where the administrative maps favored the north and the local administrative arrangements in place favored the south.

The text sought to resolve the operational details of the joint border monitoring and verification mission by deferring the issue to the UNISFA assessment and decision by the JPSM. This draft was presented to both sides at 12:15 a.m. But Imad was unhappy, saying that the wording on the JPSM authority wasn't sufficiently watertight. Ali Hamid overruled him.

At the signing ceremony for the agreement on Border Security and the JPSM on the morning of June 29, General Imad walked out, reserving his darkest look for Ali Hamid. Mathok signed, the last official agreement entered into by the regional government of Southern Sudan before its transformation into an independent sovereign state. He and the other southern delegates had packed their bags already and left at once for the airport to fly home and to celebrate their independence day.

Lyman reflected on why the issues had not been resolved.⁴⁸ Number one was that Abyei had diverted attention and cost precious time. The South Kordofan crisis had contributed, too. Second, neither GoS nor SPLM shared the international community's sense of urgency, and the SPLM was confident it would secure a better deal after independence. Third, the AUHIP process became so complicated that it stretched the capacity of both mediators and negotiators. And last, the souring of the relationship between the two sides meant that the

final weeks saw more backtracking than moving forward. Lyman had not, of course, personally witnessed the breakdown in relations between al-Bashir and Kiir and their shared disinterest in finding a mutually beneficial solution. The Panel's efforts had been a salvage operation, ensuring that although no political agreement was within grasp, at least no war had erupted between Sudan and South Sudan.

Independence Day

On July 9, 2011, South Sudan officially joined the community of nations as an independent state. South Sudanese spent the day in a delirium: This was something for which they, and their parents and grandparents, had dreamed, struggled and suffered. Kiir told the crowds, "Our martyrs did not die in vain . . . we have waited more than 56 years for this day."⁴⁹ It was the first independence day in Africa in the new millennium and a formidable array of international leaders, along with celebrities and well-wishers, participated.

Yasir Arman offered one foreign attendee the more skeptical observation that "South Sudan will never be truly free until Sudan is free."⁵⁰ Northern extremists, meanwhile, gleefully marked the day as a death sentence for Arman's New Sudan vision. Al-Tayyib Mustafa mocked northerners' laments, explaining that the south should have been granted self-determination fifty years earlier. Referring to the first generation of South Sudanese nationalists, Mustafa sardonically asked, "Oh Arman and Pagan and Agar, did southerners in the mould of Buth Diu and Joseph Oduho and Aggrey Jaden request unity on a new basis, or secularism, or a new Sudan project?"⁵¹

Both al-Bashir and his predecessor Sadiq al-Mahdi attended the celebrations. Al-Mahdi expressed his regret in media interviews, citing South Africa and the US as countries with worse histories of racism that had nevertheless remained united.⁵² Al-Bashir offered his congratulations but spoke of African brotherliness in terms that were decidedly conditional. Before leaving Khartoum, he said publicly that he wanted South Sudan to be "secure and stable," but noted that "brotherly relations" would occur only so long as it refrained from intervening in Sudan's affairs.⁵³ That was a reference to the war that had broken out in the Nuba Mountains, and al-Bashir's rejection of a framework for peace, which is the topic of the next chapter.

THE TWO AREAS

The Two Areas region of South Kordofan (which includes the Nuba Mountains) and Blue Nile state posed the biggest conundrum to any attempt to divide Sudan into “north” and “south” (figure 4). The issues in the Two Areas are an amalgam of the issues that animated the crisis in Darfur, made more complicated by the intimate links between the Sudan People’s Liberation Movement (SPLM) in the Two Areas and in southern Sudan. Insurgents in the Two Areas had joined the SPLM because of John Garang’s commitment to a united Sudan. Throughout the civil war and peace negotiations, the Two Areas were treated as footnotes. Neither the government of Sudan (GoS) nor the SPLM fully acknowledged the implications of the insurgencies there and international actors insisted on seeing the war primarily as north versus south.

The Comprehensive Peace Agreement (CPA) formula for the Two Areas was premised on the CPA delivering national unity. South Kordofan and Blue Nile were excluded from the right of self-determination awarded to southern Sudan—and extending the right to those areas would have led to insuperable divisions among and within the communities living there. The Two Areas were both the finest potential exemplars of a “new Sudan” that embraced unity in diversity and those with most to lose in the case of southern secession. As soon as secession loomed, the limitations of the CPA became a recipe for new war. This danger was sharpened by the postponement of the South Kordofan state elections, which meant they would happen on the very eve of independence,

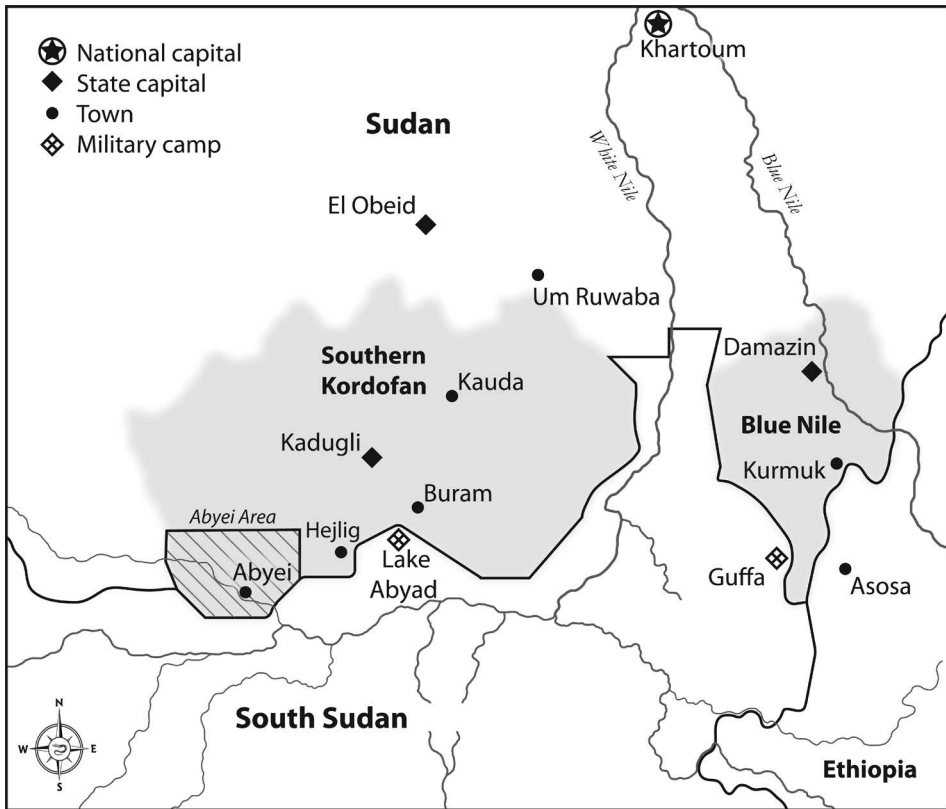


FIGURE 4. The Two Areas. Created by John Wyat Greenlee/Surprised Eel Mapping.

and the failure to address the Sudan People's Liberation Army's (SPLA's) ninth and tenth divisions within the security cluster. A serious dispute was certain, the only question was whether it would cause full-scale war.¹

During the CPA interim period, neither the United Nations (UN) nor international partners treated the issue of the Two Areas with the seriousness that it warranted. The US did not pay attention—as late as August 2010, briefing notes for the special envoy on the key issues for discussion with the National Congress Party (NCP) and SPLM completely failed to mention the Two Areas.² The African Union High-Level Implementation Panel for Sudan (AUHIP) paid attention, but it failed to prevent the outbreak of war in South Kordofan on June 5, 2011. Its engagement, however, laid the groundwork for swift negotiations that led to a Framework Agreement signed in Addis Ababa

just two weeks later. Tragically, in one of the most regrettable about-faces of the entire period, Omar al-Bashir repudiated this agreement, condemning the Two Areas to unending war and poisoning relations with South Sudan.

Background

The contemporary states of Blue Nile and South Kordofan are both situated within lands that have been on the margins of the Khartoum-centered system since the violent expansion of the Turco-Egyptian regime in the nineteenth century. Although neither South Kordofan's Nuba peoples nor the Ingessana, Uduk, and other non-Arab ethnic groups of Blue Nile have been historically understood as "southerners," in the social world of nineteenth- and early twentieth-century Sudan, all were known as the *Sudani*. The Nuba tried to escape enslavement by the armies of Muhammad Ali and the Egyptian and riverain trading companies following the establishment of the *Turkiyya* in 1821 by retreating into hills, but lowland areas were taken over by Baggara pastoralists who had been migrating into the area since the eighteenth century.³ Close to the Blue Nile, within the lands of the historic Sinnar kingdom and in the path of the expansion of the Khartoum traders, the Ingessana and Uduk were directly exposed to state penetration.⁴ Many of them came to serve in the colonial army.

One *Sudani* officer, Ali Abd al-Latif, took on a leading role during the White Flag movement of 1924.⁵ The British feared the role of the *Sudani* in the nationalist movements of the 1920s, and as a result, both the Nuba Mountains and what was then known as the "Southern Funj" district of Blue Nile Province were subjected to policies akin to the broader "Southern Policy" that sought to separate these territories from riverain Arab-Islamic influences and foster tribal identity and customary forms of governance. The leaders of the area were compelled to identify with their "tribes," which were frozen, as if in an ethnographic museum. Part of southern Funj was also temporarily joined with southern Sudan. Meanwhile, education was entrusted to missionaries, who taught in a mix of English, local vernaculars, and romanized Arabic.⁶ The approach was reversed as independence loomed. Critics have decried these "closed district" policies as a manifestation of divide and rule, but many Nuba activists and writers have maintained that they did not go far enough, insisting that the British remained reliant on Baggara chiefs and riverain traders as agents of subaltern colonialism.⁷

In short, the Two Areas represent a deeply historically rooted challenge of diversity, with precolonial and colonial hierarchies of governance overlaying ethnic, linguistic, and religious differences.

Following independence in 1956, the new government subjected both areas to policies similar to those it was applying in southern Sudan. General Ibrahim Abboud (1958–1964) expelled missionaries and subjected the Two Areas to Arabization and Islamization.⁸ The regions escaped the first civil war but the Nuba Mountains General Union, established in 1957, demanded the reestablishment of a separate province for the Nuba Mountains, recognition of their “African” identity, and a greater representation in government. They did not demand self-determination. Nuba regionalist groups successfully contested parliamentary elections in the 1960s and 1980s.⁹

Local grievances increased as central governments alienated land for mechanized agricultural schemes.¹⁰ Resistance to Khartoum emerged independently from the rebellion in the south, but the leaders of what were initially nonviolent cultural movements were attracted by Garang’s political creed and joined the Sudan People’s Liberation Movement/Army (SPLM/A). In 1985, SPLA units launched their first assaults on Blue Nile and South Kordofan. In response, the Khartoum government armed Baggara *murahiliin* militias which began to target Nuba civilians.¹¹ The insurgency and militia raids and security crackdowns intensified.¹² After the 1989 Islamist coup, the government adopted ambitious policies of forcible social transformation under the banner of *jihad*. The governor of Kordofan commissioned a group of local *ulama* (clerics) to issue a *fatwa* that “an insurgent who was previously a Muslim is now an apostate, and a non-Muslim is now a non-believer standing as a bulwark against the spread of Islam, and Islam has granted the freedom of killing both of them.” The government began a massive campaign to resettle five hundred thousand Nuba civilians in “peace camps” in which women were segregated from men and forced to marry soldiers and militiamen. The onslaught failed, and the government shifted toward what it called a “peace from within” strategy, coopting Nuba SPLA leaders and local chiefs and incorporating some into the Popular Defense Force (PDF) paramilitaries.¹³ Although this strategy sowed divisions among Nuba communities, many young men were by this point now integrated into the SPLM/A, which also served as a major constituent of Garang’s forces in the south.¹⁴

The conflict in the Blue Nile followed a roughly similar pattern, but the proximity to Ethiopia and the strategic importance of the Roseires Dam meant that the stakes were higher. The government armed the nomadic Arab Rufa’a al-Hoi, which burned local villages, driving Uduk and Ingessana to flee into Ethiopia.¹⁵ In 1987 and again in 1989, the SPLA briefly captured the town of Kurmuk with cross-border support from Ethiopia.¹⁶ In 1997, the SPLA and Ethiopians captured Kurmuk, this time holding onto it.¹⁷

As the GoS and SPLM moved toward peace, the SPLA commanders in the Two Areas found themselves in an uncomfortable position. The government

had conceded the right to self-determination for southern Sudan, but it adamantly refused to concede the same right to any others.¹⁸ The SPLM's partners in the National Democratic Alliance shared the NCP position. For the SPLM Nuba leader Yousif Kuwa Mekki, and the man who succeeded him on his death in 2000, Abdel Aziz al-Hilu, and Blue Nile's Malik Agar, the priority was the New Sudan vision, and they feared secessionism. They demanded the right for self-determination, which could mean either an autonomous territory within a secular and decentralized political system, joining an independent South Sudan, or even in principle creating an independent state.¹⁹

The Nuba Mountains was put at the center of the political road map in late 2001 when the US special envoy, Senator John Danforth, flew there on his first visit to Sudan and put US efforts behind a Swiss-mediated ceasefire and a Norwegian-staffed monitoring mission. This was a swift, focused, and limited mediation exercise and a light-footprint and highly successful peace mission.²⁰ Perhaps it was too successful for its own good: The issue of the Two Areas was again consigned to the political margins, while CPA negotiations proceeded. The GoS insisted that the agenda for the negotiations in Kenya should be concerned solely with southern Sudan, excluding the Two Areas.

The compromise was to hold parallel negotiations facilitated by the Kenyan government in Karen, outside Nairobi, which reached a separate protocol for the Two Areas.²¹ The SPLM delegates felt pressed into an unsatisfactory compromise. The protocol, which became [chapter 5](#) of the CPA, denied the Two Areas the right of self-determination and offered instead self-government under the federal constitution and "popular consultations."²² The popular consultations would be organized by the elected assemblies in each of the Two Areas and would address the question of whether the formula for self-government in the CPA was satisfactory. Ad interim, the CPA established a power-sharing arrangement whereby the NCP would obtain 55 percent of the parliamentary seats in each state assembly and the SPLM would obtain 45 percent, while the NCP and SPLM would alternately provide a governor in each state, until elections. The fatal flaw in this plan was that the governing arrangements for the two states were meaningful only in the context of a united Sudan in which central power was shared. This flaw became more salient when the midterm elections were postponed. In Blue Nile, as with the rest of the country, the elected government took office with barely six months to go before the referendum in the south. In South Kordofan, the state elections were further delayed following a dispute over the census and took place in April 2011, when the independence of South Sudan was a few weeks away.

The security arrangements for the Two Areas were also problematic. The formula that made the SPLA the de facto army of southern Sudan, with the

Sudan Armed Forces (SAF) confining itself to the north, was structured for secession. The Joint Integrated Units (JIUs) were in reality colocated units of the two armies, rather than the nucleus of new national army. In southern Sudan and Khartoum, the JIUs were chiefly symbolic, but in the Two Areas, they were crucial: They were supposed to be the only SAF and SPLA forces permitted in the states. The deployments were asymmetrical. While SAF, the National Intelligence and Security Service (NISS), and PDF units were stationed on the northern boundaries of the Two Areas in locations with good road access, the SPLA's ninth and tenth divisions were relocated to remote camps just south of the 1/1/56 line, where they were forgotten by the UN and international partners.

The SPLM leadership had promised two things to its local supporters in the Two Areas: first, that they would have self-determination; and, second, they would keep their SPLA units in their lands. After the signing of the CPA, many SPLM members from the Two Areas felt betrayed.²³ Al-Hilu left for the United States after the CPA and spent more than a year there before he could be persuaded to return. None of his deputies had the needed qualities. Daniel Kodi was appointed governor and exercised his duties with little energy. He often stalled on problems rather than seeking solutions, including objecting to the census results and thereby delaying state elections. In the second half of the interim period, the governor was an NCP appointee, Ahmad Haroun, and al-Hilu took the position of deputy. The two men forged a good working partnership, and South Kordofan became a model of the peace dividend. In 2009, US representatives held a joint meeting with Haroun and al-Hilu—it was low key because of the International Criminal Court (ICC) arrest warrant against the former—to “encourage the positive contribution both have made to peace.”²⁴ Meanwhile, in Blue Nile, Malik Agar was appointed governor and also brought energy to the task of rebuilding the state.

Among the many ironies of the Two Areas is the fact that for most of the CPA interim period, the governing partnership between NCP and SPLM in Kadugli and Damazin was cordial and effective. The NCP and SPLM leaders in both states were champions of the *tamazuj* initiative. Both states enjoyed a period of unprecedented stability, showing the tangible benefits of peace and reconciliation.

The Popular Consultations

Although the provisions of the CPA were explained to southern Sudanese in workshops organized by the SPLM, local nongovernment organization (NGOs), and international peacebuilding organizations, there were no such efforts in

the Nuba Mountains or Blue Nile. Most SPLM supporters were under the impression that “popular consultation” was a self-determination vote, and the SPLM did not disabuse them. The CPA stated that “Popular consultation is a democratic right and mechanism to ascertain the views of the people of Southern Kordofan/Nuba Mountains and Blue Nile States on the comprehensive agreement.”²⁵ The idea was to subject the CPA “to the will of the people . . . through their respective democratically elected legislatures” and to allow those legislatures to rectify shortcomings of the agreement. The fine language, however, meant little in the shadow of the main question of South Sudan’s independence. And, until the last moment, many local people believed that popular consultations were their chance to choose to go north or south.²⁶

In theory, elections should have been held in 2008, followed promptly by the popular consultations. The formal mechanisms were set up in 2009.²⁷ But the timeline was so compressed that there was no chance to implement any “rectifications.”²⁸ In vigorous debates—an experiment in democracy—people spoke candidly about self-determination or autonomy, historic land seizures, sharia law, and the status of SPLA soldiers.²⁹ The NCP wanted to restrict the discussions as much as possible, but SPLM members used them to promote the New Sudan vision. At one session, Malik Agar argued that the process could have “broader implications for the country.”³⁰ It was often hard to discern Malik’s ultimate position. He told the Panel: “The Two Areas went to war for their own objectives. The minimum objective of the south is our ultimate objective.”³¹

The Panel was enthusiastic about popular consultation. Drawing on its experience of town hall-style meetings in Darfur, it saw them as a step toward democracy. In October 2010, as the Panel finalized its plan for the north-south Framework Agreement, it also proposed that the NCP and SPLM should reach a “holistic political agreement” before the consultations opened. This might include, for instance, a truth and reconciliation process that also resolved land issues, or granting the Nuba population specific quotas in power-sharing arrangements.³² This consultation did not get far. The GoS and SPLM showed little interest, and international focus was on the referendum in southern Sudan. And, in any case, it was too late.

The Blue Nile consultations began on September 18, 2010.³³ At first, the state government held both “citizen hearings” and “thematic hearings” on land, cultural rights, and power-sharing. Continuing NCP-SPLM cooperation made possible a smooth launch. Malik Agar had retained his governorship after the elections, while the NCP majority in the state parliament shared his goal of winning more resources and attention.³⁴ In January and February 2011, 64,429 people attended 108 hearings across Blue Nile. The scope was impressive. But John Young, attending as a member of The Carter Center delegation, reported

that sessions degenerated into a contest in which party leaders instructed their members to advocate for either “federalism” or “autonomy,” reproducing formulaic language. It also entrenched divisions between indigenous groups, including Malik’s Ingessena community, and Arabs and West African origin groups known in Sudanese Arabic as Fellata. Malik said, “If we had the ability we could have chased them away years ago.” Opinions registered for “autonomy” or “federalism” were being tallied as for a referendum, which effectively brought the consultations to a halt.³⁵

In South Kordofan, Haroun and al-Hilu cooperated in preparing for the consultations. They set up a technical committee and a Council of the Wise tasked with generating consensus on areas of potential conflict.³⁶ Relations between Haroun and al-Hilu began to break down, however, and Nuba figures used the preparatory meetings to demand restitution of lands seized by riverain Sudanese and called for self-determination.³⁷

The Elections in South Kordofan

The state elections in South Kordofan were held in April 2011, the most inauspicious possible time. At stake was not just control over the state legislature and executive but control over the state security committee. With armed conflict brewing next door in Abyei, and the generals on both sides planning for a new north-south war, control of South Kordofan would be strategically critical. The state was on the frontline.

The South Kordofan elections were highly competitive. The campaigning was open, the turnout of voters was high, and the process of tallying the votes was the most closely monitored of any election in modern Sudan. A dispute over the outcome was foreordained. What was lacking was a preelection pact between Khartoum and Juba for how to handle the escalating risk of armed conflict. The internationals’ attention was on holding a free and fair election, not on managing its aftermath to prevent war.

The candidates for the governorship were Ahmad Haroun (NCP) and al-Hilu (SPLM). Their partnership turned into bitter rivalry as the elections approached. Provocatively, al-Hilu campaigned as SPLM, not SPLM-North. This was legally correct as Sudan was still one country and the SPLM remained a unified party. Al-Hilu, however, brought senior southerners to support his campaign; the party flag was identical to the flag of the about-to-be-born Republic of South Sudan; and among his slogans was “star or fight”—a warning of war should he lose. Instead of campaigning as the new SPLM-North and positioning the party within northern Sudan, it was as though Garang was still alive, running his political and military horses at the same time.

On May 2, the day before the vote, Panel staff proposed that United Nations Mission in Sudan (UNMIS) convene a security meeting in Kadugli to prepare for all eventualities. Menkerios, the head UNMIS said this would not be necessary, and his political officer was dismissive, saying, "What can al-Hilu do? A few demonstrations and it will fizzle out."³⁸ This blasé attitude was not confined to the UN. Few saw the danger.

Pierre Buyoya traveled to South Kordofan to monitor the voting on May 3–4. Alex de Waal stayed in Kadugli for two weeks, initially to observe the vote counting. He shuttled between the offices of al-Hilu and Haroun trying to dampen dispute over the polls and encourage the formation of an inclusive state government. But the two men had become antagonistic and refused to meet. Deadlines passed and positions hardened. Haroun alleged that al-Hilu was being manipulated by militant communists in the SPLM headed by Yasir Arman. While Haroun maintained he was still open to viewing al-Hilu as a partner, al-Hilu insisted that the partnership had broken down, boasting that the South Kordofan SPLA were now far better armed than when war previously arrived in 1984, and he spoke openly of regime change. He also said that Nafie Ali Nafie had come and "made him an offer" to settle—presumably a material incentive—a claim that Haroun denied a little too strenuously.³⁹ Al-Hilu insisted no progress would be made unless Khartoum abandoned sharia; Haroun threatened that the SPLM (in any form) would be banned outright in the north if al-Hilu did not abandon his agenda.

A year previously, disputed election outcomes—such as in Blue Nile—could be smoothed over with political deals. In South Kordofan, the high level of international investment in making sure the elections were free, fair, and procedurally correct, ironically shifted attention away from such dealmaking. The focus of local dissension and international debate was on the legitimacy of the vote numbers. On May 18, the National Elections Commission declared Haroun the winner by 201,455 votes to al-Hilu's 194,955. It also announced that the NCP had won a majority in the state parliament, obtaining thirty-three seats to the SPLM's twenty-two. The SPLM actually won the popular vote in the parliamentary elections, but lost out in Sudan's first-past-the-post system because its voters were concentrated in certain constituencies.⁴⁰ A dissident SPLM member, Telefon Kuku, ran as an independent and garnered 9,130 votes, more than the difference between al-Hilu and Haroun.⁴¹

As the votes were tabulated, al-Hilu said he was losing confidence in the election process and would refuse to recognize the result. He faced the problem that the election was exceptionally well monitored, and SPLM party agents had signed off on every single reported tabulation. The Carter Center, the most prominent international monitoring body present, declared that "despite a climate of heightened insecurity and instances of procedural irregularities

that removed an important safeguard to the process, South Kordofan's elections were peaceful and credible."⁴² In his favor, al-Hilu had numerous reports of irregularities, from gerrymandering constituencies to manipulating the tabulation, which might have been sufficient to swing the results.⁴³ He also had the vociferous backing of well-organized pro-SPLM advocacy groups, especially in the US.⁴⁴ John Young, a Carter Center expert, dismissed most criticisms—he had been present on the ground and the foreign critics had not—and noted that the SPLM was also potentially guilty of malpractice and had alienated some potential voters.⁴⁵ The AUHIP did not make any formal judgment about the validity of the elections, but its private spot-checks aligned with The Carter Center.⁴⁶

Al-Hilu rejected the results outright and declined Haroun's invitation to participate as the junior partner in an inclusive government.

The Status of the Two Areas SPLA Divisions

If the stakes, timing, and competitive nature of the South Kordofan elections were a formula for political crisis, the neglected and unresolved question of the SPLA's ninth and tenth divisions all-but-guaranteed a shooting war.

As mentioned in [chapter 7](#), the CPA's security arrangements for the Two Areas created one six-thousand-strong JIU for each state, composed equally of SAF and SPLA brigades, and relocated the ninth and tenth divisions to the wilderness south of the border. The ninth division set up camp at Jau, on the shore of Lake Abyad in Upper Nile. It was a rudimentary barracks with soldiers living in huts. The tenth division was located at Guffa, a forested area in Upper Nile, also with rudimentary living conditions. Those divisions were huge. In 2008, General Jugod Maker told the journalist Julie Flint that the ninth division, under his command, consisted of three brigades of three thousand men each.⁴⁷ The tenth division was slightly smaller. Haroun disputed these figures, saying the true numbers were lower.⁴⁸ The SPLA was busy recruiting, and some estimates ranged as high as twenty-two thousand.⁴⁹ There were also many Two Areas troops in other divisions in the SPLA in southern Sudan, including officers and technicians in Juba's air defense and armored units—perhaps totaling forty thousand.⁵⁰

Unlike other divisions of SAF or SPLA headquartered near cities, these forces were isolated in remote areas. "For six years we are here, not in the towns, waiting for peace," said General Izzat Kuku of the ninth division.⁵¹ For the international guarantors of the CPA, tens of thousands of battle-hardened

soldiers were out of sight, out of mind. For five years, the SPLA commanders in Jau and Guffa reported that not a single UNMIS senior staff member nor international diplomat had come to see them. It was an astonishing and costly oversight, especially because there was no feasible plan for their future in the case of secession.

During the interim period, the JIUs provided security in the Two Areas. In both cases, the SAF and SPLA commanders cooperated well, but no meaningful integration occurred. The CPA specified that the JIUs “would be dissolved and the component parts integrated into their respective forces” in case of secession.⁵² This implied that they would be integrated into South Sudan’s SPLA. Nevertheless, they would also be citizens of Sudan with homes in the Nuba Mountains and Blue Nile. The ninth and tenth divisions posed an even bigger problem. This issue arose in the first meeting of the security cluster in October 2010. The SPLM delegate, Daniel Kodi, said, “I refused to discuss the issue of the Two Areas in that forum, because it is a combined military and political issue. We discussed JIUs, and proposed that they remain in the Two Areas until the popular consultations.”⁵³ But he left the ninth and tenth divisions orphaned, and entirely left out of the joint security planning. The GoS stuck to its opening position that all SPLA troops should join their “mother” forces.⁵⁴ The SPLM wanted the JIUs in the Two Areas to remain until the Popular Consultations were complete, extending the Joint Defense Board (JDB) for another year.⁵⁵

As soon as the final security cluster report was delivered to the Panel in December 2010, staff members identified the danger (see [chapter 7](#)). It raised the issue in the cluster meeting of December 13, and the SPLM demanded that the GoS outline a clear position on how the JIU members would be integrated into the post-2011 security services, or managed through the JDB. The GoS representatives stonewalled, however. When the AUHIP mooted the possibility that the status of these units could be put on the agenda of the postreferendum talks, the GoS simply averred that their fate would be resolved through the popular consultations.⁵⁶

De facto, the Panel was now dealing with the interests of three parties: the GoS, the Government of Southern Sudan (GoSS)/SPLM in southern Sudan, and the SPLM/A in the Two Areas. But neither the GoS nor the GoSS/SPLM wanted to recognize the SPLM/A in the Two Areas as a distinct entity. Salah Gosh articulated the GoS position during the November discussions for the Framework Agreement, saying that the SPLA troops from the Two Areas were soon to become citizens of the state of (northern) Sudan, and their status would be resolved outside the north-south talks through dialogue with Malik and al-Hilu as “our citizens.” The SPLM’s Paul Mayom responded that “they are the soldiers of the

movement, not Malik and Hilu.”⁵⁷ The problem was, of course, that a hitherto unified “movement” was about to become a government in one country and an opposition in the other. Even after the referendum result was announced and the date for South Sudan’s independence confirmed, the SPLM and SPLA in Juba took no steps to disentangle themselves from their comrades in arms who would not be South Sudanese. This began only at the talks in June 2011.

Shortly after the referendum, the Panel proposed that the two ministers of defense meet on unresolved security issues, and put the Two Areas on the agenda (see [chapter 7](#)). In the meantime, it asked UNMIS to arrange the first and only high-level international mission to visit Jau and Guffa. The visit took place on February 10–12. Panel staff accompanied by the UN and other internationals visited the SPLA ninth division at Guffa and then flew by helicopter to Jau to meet with the ninth division. This visit made the scale and urgency of the issue clear.

The commander of the tenth division, General Ahmad al-Omda, opened his presentation to the delegation by saying, “As members of SPLA we are still serving under our Commander in Chief, Salva Kiir Mayardit, FVP. The issue of our citizenship is a political question.”⁵⁸ He went on: “Our future is clear. We were struggling for our own political objective, which is New Sudan.” His counterpart for the ninth division, General Jugod Maker, had a similar message. He added: “In the Popular Consultations there is no clarity on what happens to fighters. The issue was left alone. Since that time we are afraid. Can they disarm us and release us? We are surprised that the international partners didn’t see this. We are not few.”⁵⁹ He added: “If I go and tell people, we failed in our political objective, now we will all surrender, they will kill me.”

In Kadugli, Haroun saw the danger but struggled to convince his superiors in Khartoum. He agreed with al-Hilu to form a joint military committee to address the situation of the soldiers in the Two Areas. The SAF side was led by General Graham Mohamed (himself a Nuba), the SPLA by Jugod. According to Haroun: “The committee met twice. It agreed that the final target is the full integration of the SPLA from SKS [South Kordofan State] into SAF.”⁶⁰ Its third meeting was scheduled for February 7 but was postponed awaiting the ministers of defense meeting, which was also postponed. The joint committee was then suspended, according to General Imad Adawi, because the SPLA position had shifted.⁶¹ When the defense ministers’ meeting did finally go ahead on March 23, Abd al-Rahim objected to having al-Hilu attend the meeting and having the issue of the Two Areas raised at all, saying it was purely an internal matter for northern Sudan. Mbeki overruled that objection. In the event, al-Hilu was late for the meeting because of a flight delay, and the Two Areas were not discussed substantively. Outside the meeting, Abd al-Rahim and

al-Hilu got into a fierce argument. The Panel then overruled the GoS objections again and used the substantive points raised in the meeting—all of them points of disagreement—to put the Two Areas on the agenda for a three-day workshop to be held ten days later.

This security workshop was added to the already-scheduled special session of the lead negotiating panel at the Kuriftu resort in Bishoftu, Ethiopia, on April 2–4. Al-Hilu was invited. Campaigning for the South Kordofan election was due to begin on the final day of the workshop, and he was reluctantly dragged away from the launch of his campaign.

The Kuriftu meeting was the first serious discussion and the last possible chance to agree on security in the Two Areas. Daniel Kodi had been correct when he said that it needed a political resolution. But Khartoum considered the political decision made—by southern secession—and what remained was politically orphaned waifs and strays to be dealt with one by one. Al-Hilu was not amenable to Khartoum's inducements. To his supporters, he was principled, to his critics, intransigent. In May, Haroun lamented: "I hear that Daniel Kodi, Ismail Jellab, [are] all unhappy with al-Hilu. I wanted give and take . . . but after reaching into my pocket so many times, my pocket is empty or my hand is tired."⁶² Al-Hilu was also exhausted, saying, "I don't see any light at the end of the tunnel."⁶³

The SAF generals also said that the sheer numbers of SPLA soldiers made it unfeasible to integrate them, especially with their existing ranks. They disparaged the educational and training levels of Two Areas fighters and insisted that SAF as a national institution should be the ones to screen and evaluate any recruits. The great majority, said SAF, would have to return to civilian life.⁶⁴ Some, Haroun maintained, were new recruits who were underage anyway.⁶⁵

The SPLM refused to decide which horse to run. Al-Hilu and most of the SPLM/A from the Two Areas were ardently committed to the New Sudan vision, which also required a "new SAF." This entailed a new war or a new Naivasha-style agreement, which at a minimum necessitated extending the CPA until the completion of the popular consultations. The SPLM had already argued (implausibly) that the CPA provisions required the JDB to be extended for another twelve months, and it also wanted UNMIS to continue.⁶⁶ Al-Hilu was adamant that the problem of South Kordofan could not be solved locally but needed a new national dispensation, including a secular state and a new national army. The ninth division commanders made the same point. All were acutely aware of the racial hierarchy separating Arab commanders and Nuba officers within the existing SAF, which dated back to the Condominium period and the era of military slavery that preceded it.⁶⁷ They said that if the existing SAF generals were in charge of integration, they would disqualify most SPLA fighters and give them the lowest ranks.

In Juba, the SPLA high command's number one concern was the unity of their army. They couldn't afford to lose the tens of thousands of Nuba and Blue Nile men in SPLA uniforms and could see no feasible way to demobilize and disarm them. So they did not even entertain ideas for how to do it. When the topic was raised with the SPLA chief of staff, General James Hoth Mai, he replied by saying the popular consultations would bring the Two Areas into South Sudan.⁶⁸ Kiir refused to entertain a GoS proposal that the SPLA should disarm them, and at one point, he suggested they should remain in South Sudan as SPLA soldiers with dual citizenship, returning when their period of service was complete, another idea that was a nonstarter not least because dual citizenship had already been taken off the table.⁶⁹

Hoth and his senior generals were expecting a war. They pressured Kiir not to allow his negotiators to accept the separation of the ninth and tenth divisions from the main SPLA.⁷⁰ In early 2011, Hoth ordered the heavy weapons from these divisions to be reallocated to other SPLA divisions in the south—an instruction that the divisional commanders refused to implement.⁷¹ A few months later, when the SPLA negotiators belatedly conceded that northern citizens could not serve in a South Sudanese army, they stalled on setting any timelines for demobilization.⁷²

The problem for the AUHIP facilitation, and for avoiding war, was that these issues had all been left until too late. A technical formula could at most buy time for a political agreement. Complex issues were only being aired with weeks left to agree, let alone to implement.

The AUHIP prepared a document for the Kuriftu workshop that could at least open a discussion. It proposed a Joint Command Mechanism (JCM). This complex proposal tried to identify a workable formula that stayed within the political red lines. It is worth detailing because it illustrates not only the technical challenge facing the mediation but also the false allure of a complicated compromise without a shared political vision—the shortcoming and the legacy of the CPA. The JCM proposal accepted Khartoum's premise that the soldiers in the SPLA ninth and tenth divisions were Sudanese citizens who could not be under the command of another country's army, and that the CPA institutions such as the JDB would cease to exist on July 9. The proposal accepted the SPLM/A case for a new interim period, albeit under a different name. The UN was not mentioned. It was a strictly bilateral mechanism but opened the door for international engagement through a "basket fund" to pay for the process. The JCM would be cochaired by the SAF chief of staff and the SPLA senior commander from the Two Areas. It would liaise with the southern-based SPLA leadership on the logistics of the integration. The JCM proposal could thereby affirm the "sovereignty and territorial integrity of Sudan," the "unity and

centrality of SAF command,” and the principle that “SPLA members from the Two Areas are citizens of the Republic of Sudan and their future lies in the Republic of Sudan.”⁷³ Meanwhile, it sought to assuage SPLA concerns by reiterating the need to implement the popular consultations, linking the JCM to this political process, and including security sector reform.⁷⁴

As expected, each side objected to the parts of the JCM proposal designed to appease their opposite numbers. The SAF were happy to explore the idea but objected to security sector reform.⁷⁵ They wanted an expedited military process delinked from political timetables—which turned out to be the stumbling block to signing any agreement. General Ismat said he had no authority to discuss political issues, and in any case, the GoS could not accept any rerun of the CPA that recognized a second army within the country linked to a political process. For his part, al-Hilu was unpersuaded by the prospect of parallel but not formally interlinked security and political processes.⁷⁶ Salva Mathok also objected to the SPLA (South Sudan) being excluded from the JCM, holding to the position that the CPA guaranteed the continuation of the JDB until January 9, 2012. Mathok asserted that a subclause to an annex implied that the dissolution of the JIUs should take place over a six-month period postsecession, which was also al-Hilu’s position.⁷⁷ They were prepared to entertain the JCM as a way of maintaining the JIUs but not to extend it to the ninth and tenth divisions, arguing that the SPLA should remain as it was until the popular consultations had been concluded, and that the SPLA chief of staff would have to be involved in their assembly and reorganization.⁷⁸ Al-Hilu, in particular, was wary of making any concessions that might weaken the military position of the SPLA with the elections in South Kordofan still pending.⁷⁹ Underlying these differences was a question of timing and sequencing the military and the political. The GoS was ready to accept the JCM on the basis that it would be a short-term bridging provision with at best token linkage to the popular consultations. The SPLM/A wanted a multiyear mechanism that guaranteed that their forces would have de facto autonomy until the political fate of the Two Areas was settled.

On the sidelines of the discussions, the Panel floated the idea of an international “security and military advisory team,” with a hint that this could be provided by Britain or Ethiopia. The idea was to prepare the parties—especially the SAF—for the possibility that an external ingredient might be injected to break a deadlock.

As so often was the case, the Kuriftu workshop clarified the disagreements rather than resolving them. The only concrete follow-up action was that both sides agreed to a technical workshop later in April. In the event, SAF refused to send a delegation to that second workshop because SPLA commanders from the south were attending, insisting they would work only with SPLA from the

Two Areas.⁸⁰ Al-Hilu instructed General Jugod not to discuss integration into SAF. As a result, the workshop turned into an educational exercise for SPLA commanders to listen to presentations about disarmament, demobilization and reintegration and security sector reform experiences elsewhere in the world.

The immediate challenge was the looming deadline for the dissolution of the JIUs on April 9. At a minimum, if the state election was to go ahead without a crisis, the existing security arrangements needed to be kept in place. The GoS public position was that the deadline was not negotiable, although when Buyoya counseled Ismat to be flexible, the Sudanese chief of staff said it was difficult but not impossible (and proposed a compromise to the JDB four days later). Meanwhile, Mathok denied that the deadline had ever been agreed in the first place, insisting that Kiir had never signed off on it.⁸¹

When the Panel met with the two Presidents on April 7 in Juba, Buyoya took the opportunity to raise the issue to the highest level, expecting that Kiir would seize the opportunity to ask for an extension, which would have allowed the Panel to press al-Bashir for more time. Instead, Kiir summarily waved away any concern and said that the JIUs should be dissolved on schedule.⁸² It is fair to assume that al-Bashir was astounded that Kiir had capitulated without even being pressed, and he naturally concurred. On the ninth and tenth divisions, al-Bashir's unchanging position was that the soldiers would have to be sent back north across the border unarmed, after which they could have options, including selective recruitment to the army.⁸³ Kiir rejected this, demanding first a political settlement linked to the popular consultations, with military options modeled on how the Anyanya were absorbed into the SAF following the 1972 Addis Ababa agreement.⁸⁴ The Panel's impression was that either Kiir had not been briefed on the outcome of the Kuriftu workshop or that he had paid no attention to it. Either way, Kiir and al-Bashir showed no interest in preventing war.

Whatever the reason, it posed a problem for the Panel: How should it deal with a danger that the two principals were determined to ignore? Immediately after the Juba meeting, Mbeki, Buyoya and staff discussed the issue and agreed that the risk of war was high and they needed to be proactive. Three days later, Mbeki sent letters to both presidents proposing to defer the dismantling of the JIUs until an "overall agreement concerning the members of the SPLA who come from South Kordofan and Blue Nile States" had been reached.⁸⁵ As it happened, Ismat had already postponed the dissolution of the JIUs at a meeting of the JDB. But he gave no timeline and could revoke his suspension at any time.

This brought a temporary respite, although the SPLA JIU soldiers complained that they received only half of their rations and salaries, and some of their vehicles were withdrawn and the fuel for the remainder had been stopped.

They patrolled using donations of diesel from local people.⁸⁶ The SAF JIU commander shared the view that their continued presence and cooperation was essential, hinting that he thought his superiors' plans for military action were misconceived.

By mid-May, at least half of the SPLA ninth division had crossed the border north, while SAF was bringing additional troops into the state, as well as deploying armed units of NISS and the Central Reserve Police on the streets of Kadugli.⁸⁷

Mbeki visited al-Bashir at the Republican Palace on May 22 to press to deescalate the tension. He said that the two components of the JIUs were still working together and could play a role in preventing a conflict that was nearing by the day. However, al-Bashir was in an uncompromising mood. He grimaced repeatedly and looked uncomfortable, presumably because he had already taken the decision to fight. But he agreed to consider Mbeki's request to defer the dissolution of the JIUs.⁸⁸ General Imad hinted that they might delay the order for one week for the Panel to negotiate.⁸⁹ But the next day, SAF delivered an answer, through a letter sent by the Ismat to James Hoth, his opposite number as chief of staff of the SPLA, demanding that he relocate all SPLA forces, including the JIUs, south of the border, by June 1. Ismat's letter noted that the army was following a direct order from the president.⁹⁰ In reality, the generals had already told al-Bashir that they would be informing him of decisions, not waiting for his order (see [chapter 8](#)), while Haroun had already communicated his advice to maintain the JIUs.

That same day, Yasir and Malik traveled to Kadugli to meet with al-Hilu. De Waal traveled there, too. He reported on how Ismat's letter had been received: "Views on this within NCP/SAF are divided, with Haroun saying that he advises against. SAF commanders in SKS [South Kordofan State] are also concerned. The SPLA simply says that such an action would lead directly to war."⁹¹ Mbeki intervened from South Africa, writing Ali Osman in bold font, repeating his "humble request" that no action be taken to dissolve the JIUs until the security meeting had considered the matter. It was too late.⁹²

The War in South Kordofan

The fear of war was palpable in Kadugli in May. As the impasse over the elections deepened, and as SPLA troops crossed the border and SAF readied for action, the streets became quiet and people became fearful. People kept close to their neighborhoods and the city became *de facto* partitioned into different zones. The UNMIS battalion, stationed outside the city toward the airport, was

invisible. An UNMIS team that tried to drive to Jau to see whether the ninth division was still there turned back after an SPLA soldier threatened them.⁹³ Ismat's letter was as clear a warning of war as could have been asked for. Yet the UN and the international partners failed to act. They focused only on Abyei. When de Waal warned a senior UN official that war was imminent in Kadugli, his response was, "What will this mean for Abyei?"

By the time the SAF deadline for disarming the SPLA JIU expired on June 1, that unit was no longer in Kadugli. Al-Hilu slipped away from his house on the edge of town. The two armies took positions across the city. On June 5, they exchanged fire at nearby Um Durmain and the air force started bombing raids, and reports emerged of PDF militias arresting and summarily executing Nuba civilians in Kadugli. Between six and seven thousand IDPs fled to the UNMIS compound.⁹⁴ The Egyptian soldiers offered them no protection. It was a dereliction of the responsibility to protect that passed unmentioned in New York. Al-Hilu broadcast a speech from a hidden base calling for a fight to oust the NCP regime.⁹⁵

The South Kordofan war was a chance for hard-liners in the NCP and Islamic movement. Al-Tayyib Mustafa and the Just Peace Forum declared a *jihad* which all citizens were duty-bound to join because of "the entry of the enemy into Muslim land." Although the JPF did not explicitly declare SPLA Muslim fighters apostates as progovernment *ulama* had done two decades earlier, they came close to reproducing that logic.⁹⁶ NCP leaders avoided the language of *jihad* in favor of national territoriality, describing it as "an armed insurgency and rebellion contrary to law, in co-operation with foreign forces [i.e., South Sudan] and some of the internal opposition."⁹⁷ Nevertheless, al-Tayyib Mustafa pressed his nephew, al-Bashir to screen the civil war-era jihadist television program *Fi Sahat al-Fida'a* (In the fields of sacrifice) once again.⁹⁸

General Ahmad al-Khamis, responsible for mass killings in Kadugli in the 1990s,⁹⁹ returned to the city and is alleged to have ordered the execution of 410 SPLM sympathizers.¹⁰⁰ UNMIS personnel reported seeing bodies of detainees who had been executed en masse in military compounds.¹⁰¹ Khamis was later rewarded with the position of governor of West Kordofan.¹⁰²

Support for al-Hilu from the rest of the SPLA was incomplete. There was no sign of a coordinated SPLA military strategy. Malik Agar officially stayed neutral, something for a which al-Hilu would later try to blame the AUHIP.¹⁰³ Daniel Kodi and other SPLM/A Nuba figures criticized al-Hilu, seeing him as responsible for the war.¹⁰⁴ Some evidence suggests that Kiir regretted the outbreak of the conflict and the risk it posed to the smooth transition to independence, but he could not risk disavowing the rebellion given the importance of

South Kordofan and the support al-Hilu had received from the remaining Garangists. The Nuba SPLA bore the same emblems, followed the same lines of the command, and hoisted the same flag as the rest of Kiir's army, and it would continue to do so even as the war continued after independence.¹⁰⁵ Kiir gave another perspective, speaking to the Panel on June 10. He said this was "the resumption of a new war . . . South Kordofan is the base for [the north] attacking three states in the south."¹⁰⁶

Negotiations in Addis Ababa, June

As the Panel prepared for the emergency summit on Abyei, it was clear that it would also need to bring the GoS together with the Two Areas SPLM to address the new war, alongside all the other north-south agenda items. At the Panel's request, the GoS delegation was headed by Nafie Ali Nafie. Given his reputation as a hard-liner, the Panel anticipated he would bring the most uncompromising sectors of the security and party establishment over to any agreement signed. That was not a correct assumption.

For Nafie, losing the south was acceptable if it ensured the NCP's survival, preserved sharia and spelled an end to Garangism.¹⁰⁷ Although he had a pragmatic attitude toward the Juba SPLM, he would not compromise with the northern opposition.

In the presummit visits to Khartoum and Juba, the Panel raised the Two Areas. At the Ministry of Defense in Khartoum, Abd al-Rahim indicated that the GoS could accept a joint government in South Kordofan, provided that al-Hilu accepted the election result.¹⁰⁸ Meanwhile, Kiir gave special permission to Malik Agar to represent the SPLM on matters relating to the Two Areas—a belated beginning of disentangling the two SPLM sectors.

The talks began in Addis Ababa on June 14 at the Sheraton Hotel. Over the next two weeks, Nafie and Malik identified the necessary political compromise and struggled to bring their respective parties to support it.

Panel staff drafted a proposal for a pause or cessation of hostilities and for a joint declaration by the GoS and "Sudan People's Liberation Movement/Army of Blue Nile and South Kordofan States." The thinking was to get a humanitarian cessation of hostilities first before moving to the politics. It didn't work. The war had created a new reality. Both SAF and the international partners had underestimated the capacity of the Nuba SPLA to make rapid territorial gains. The Nuba commanders were not willing to abandon their advances, and were adamant that any truce should "freeze" the troops in their current positions. The northern generals, humiliated by their failure to achieve the victories they

had promised, did not want to recognize the on-the-ground realities. Instead they insisted on a “restoration” of the SAF and SPLA to their original positions, meaning that the SPLA should withdraw south of the border.

Attempts to stop the war were hampered by the fact that neither side had a unified position. While they were meeting with one another, Nafie and Malik were also engaged in often vehement debates with their own sides about what should be proposed and agreed to.

Malik was desperate to find a formula for compromise. He was still governor of Blue Nile State and therefore an official in the GoS. His territory lacked the hilly redoubts that helped the Nuba, and he had fewer troops. But he could not overrule al-Hilu. Malik quietly approached Mbeki and said he needed to speak to al-Hilu in person.¹⁰⁹

The Panel asked UNMIS to fly to al-Hilu’s field headquarters in Buram in South Kordofan. Malik and Yasir Arman would travel with them, to consult with al-Hilu first, and the Panel and several other diplomats and specialists would then meet them all. Among the group was the Norwegian general Jan-Erik Wilhemsen, commander of the internationally sponsored Joint Military Commission that had monitored the ceasefire in South Kordofan before the CPA.¹¹⁰ The trip was scheduled for June 16. In advance, the Panel insisted to the SAF high command that they should cease hostilities for that day. On the morning of the departure, Imad said he could not guarantee their security. Panel staff responded that they were confident he would do his part to ensure that the Panel members could travel and return safely. That evening, the Panel heard that Imad had gotten into trouble with his superiors for permitting the Panel’s visit to go ahead.¹¹¹

A UNMIS plane first took them to Malakal, from where they flew in two UNMIS helicopters to Buram. They arrived in a town pock-marked with bomb craters and emptied of civilians. More than half of Buram, including the marketplace, had been burned to the ground. Yasir and Malik had asked for a prior internal meeting with *al-Hilu*, whom they had not met since the outbreak of hostilities. This was, de facto, the first meeting of the SPLM-North.

After that, the SPLM leaders met with the Panel. Al-Hilu vented his ire against the NCP and SAF, recounting a lost list of betrayals and abuses, including the “empty promises” made by Haroun during the years of their political partnership, al-Bashir’s statements that Sudanese identity would be based on Arabism and Islam after secession, the allegedly rigged elections, and the mass ethnic killings perpetrated in the previous eleven days.¹¹² The war was already being fought across half of the state. Al-Hilu promised: “We have guns. We can select the NCP and SAF and kill them.” He insisted that unless the NCP were either removed from power or forced to accept a “secular democracy,” then

“fires will just break out everywhere, here, in Blue Nile, in Darfur, and [you] will be a fire brigade.” The AUHIP members understood the SPLM’s grievances and goals, but they counseled al-Hilu to consider his tactics. The three SPLM leaders next agreed to the principle of a cessation of hostilities, but they were adamant that this should “freeze” the troops in their actual positions.¹¹³ Al-Hilu also insisted that there could not be permanent ceasefire before a political agreement was reached.

The Panel returned to Addis Ababa that evening. The visit had confirmed the scale of the war and the challenge of stopping it before it escalated and became intractable. All the issues that had been raised in April and May were on the table. The Panel might not have prevented a war, but the formal and informal negotiations had at least defined the questions and clarified the parties’ positions. The SPLM asked for day’s grace to produce their proposal. In parallel, the mediation team began drafting a political framework document, in the form of a joint mechanism and road map for talks.¹¹⁴ It proposed a Joint Political Committee of the parties, chaired by the AUHIP. As a first step, the Panel proposed a seventy-two-hour pause in hostilities.

When the SPLM delivered its document late on the evening of June 18, it was more of a political declaration than a technical plan for a cessation of hostilities. It covered all the ways in which the SPLM wanted to see northern Sudan transformed. It could not serve the purposes of speedily reaching agreement or on stopping the fighting.

Mbeki called al-Bashir that evening to request a humanitarian cessation of hostilities. Al al-Bashir rejected it, claiming that the SAF had turned the military tide and that any pause in the fighting would be used by the SPLA to resupply its forces. Al-Bashir also averred that al-Hilu was acting on orders from Juba, to install Malik as ruler of northern Sudan.¹¹⁵ General Imad was “dead against” any ceasefire. When a senior UN official presented a plan for humanitarian access to stricken communities to Colonel Tariq Abd al-Karim, the assistant to the minister of defense, Tariq read it quickly and slapped it face down on the table, saying “rejected!”¹¹⁶ He said it would be rewarding the SPLA for aggression.

Negotiations are sometimes modeled as a “two-level game” in which the two parties are simultaneously negotiating with each other and with their internal constituencies and rivals. In this case, neither Nafie nor Malik could be secure in the backing of their colleagues at home. Al-Bashir summoned Nafie back to Khartoum for two days of talks, and Malik and Yasir flew to Juba. Nafie had the use of a government plane, but as the SPLM delegates were at the mercy of Ethiopian Airlines schedules and the flights were also overbooked. Lissane Yohannes had to twist the arm of the airline managers to find seats. Malik’s return to Addis was delayed for a day when he missed his flight from Juba on

June 19 (Lissane failing to persuade Ethiopian Airlines to hold the plane for an hour), by which time Nafie had left for Khartoum. With no goodwill on either side, logistical hiccups made the negotiators irritated.

Putting a ceasefire first was not going to work. So the mediation strategy shifted to putting the political issues first, with a cessation of hostilities to follow. That ran into the problem that Malik insisted that he would sign just one document—raising the familiar fear of disconnecting the military and political tracks.

Malik, al-Hilu and Yasir concurred in a political agenda that went beyond the Two Areas. In his first meeting with Nafie, Malik said that since the war in South Kordofan had been declared in Khartoum, any peace agreement must address “power at the center,” including matters of wealth sharing and national identity, “respecting the perspective of the CPA.” Nafie’s response was remarkably restrained, given his visceral hostility to the CPA. He said that these issues were being dealt with nationally, and Blue Nile and South Kordofan would be involved, but any agreement with Malik must cover only the Two Areas. Malik, however, insisted that the agreement must be tied to the postsecession constitutional discussions that had begun in Khartoum, which the NCP at that point was attempting to run in consultation only with the historic Khartoum-centered political parties likely to favor a religiously orientated constitution.¹¹⁷ For Malik and Yasir, Nafie’s tactics were simply a return to the Khartoum’s strategy of making tactical concessions in particular regions to undermine the overall New Sudan vision. For three days, the two delegations debated the process, exchanging documents that were diametrically opposed, and rehearsing their long-standing positions. Malik insisted on the “need to develop [the] North as a coherent, united entity which respects diversity.”¹¹⁸ Yasir warned Nafie that his approach reproduced the old “there is no problem in Sudan, there is a problem in South Sudan” rhetoric with regard to the marginalized northern regions, and suggested that this would lead to the secession of those regions just as it had led to the secession of South Sudan.¹¹⁹ This was calculated to inflame Nafie, and it did. A few months later, Yasir was to openly talk of the Two Areas representing a “new south.”¹²⁰

Nafie was at least ready to concede that the problem needed to be settled politically. Perhaps surprisingly, the one area of dispute that was resolved relatively quickly was the question of GoS recognition of the SPLM-North. Yasir expressed his exasperation that in spite of the fact that SPLM representatives had twice visited Nafie to discuss the question of the status of the SPLM in the postindependence north, the GoS had invited every other party but the SPLM to discussions on the postsecession constitution. Nafie simply responded that the SPLM had every constitutional right to form a party in the north, whether under its current name or another, and that the NCP had no right to object. Whether or

not Nafie was dissembling with the intent of outlawing the SPLM in the north, he was happy to sign an agreement declaring that “the parties affirm the right of the SPLM-N to continue as a legal political party in North Sudan.” Indeed, the Framework Agreement was now to be signed by the GoS and the SPLM-N. Nafie was quick to insist that “we won’t base our relation with SPLM-N on the basis of SPLM in the south. We won’t allow them to meddle or vice versa.”¹²¹

Nafie also signed up to a joint committee with the SPLM-N, that would cover “a constitutional review process” based on the principles of “citizenship, democracy, and recognition of the diversity of Sudan.”¹²² This effectively committed the NCP to roll back on al-Bashir’s declaration “that there will be no time to speak of diversity of culture and ethnicity.”¹²³ In return, however, Yasir agreed to forego his demand to include language that would involve the SPLM-N in the resolution of the Darfur conflict, which had been a demand as he had been pressing for the concerns of all the marginalized areas of the north to be dealt with collectively.¹²⁴

Another obstacle was the dispute over the legitimacy of the South Kordofan election result. Al-Hilu had cited alleged election fraud as one of the motives for his call to topple the NCP, and it had become an article of faith across the SPLM that the NCP had cheated. If the SPLM-N compromised on its electoral claims, it risked delegitimizing its insurgency. On its side, the NCP would not forfeit an internationally recognized election result. Nafie proposed the formation of an “inclusive” government in South Kordofan, effectively rehashing an offer that Haroun had made in May but al-Hilu had rejected. Mbeki and Meles Zenawi tried to persuade the SPLM-N that what exactly “inclusivity” meant could be debated by the parties subsequent to the agreement and that participation in government did not have to amount to a formal recognition of the election result, but to no avail.¹²⁵ Ultimately, the only thing the parties could agree on was to defer the dispute, and thus the draft incorporated no statement as to whether the election was valid or what form the government would take. Instead, it declared that “the issues of governance in Southern Kordofan shall be discussed and resolved amicably by the Joint Political Committee within thirty days.”¹²⁶

The security issues became problematic as soon as they went into specifics. The SPLM-N insisted that talks over disarmament and integration into the SAF could not proceed without agreeing to simultaneously disarm the regime’s militias, particularly the PDF. In the SPLM-N view, its army was a citizen army defending the Nuba, and the PDF were an army for the “Arab tribes,” so if one were disarmed and not the other, this would create an existential crisis for the Nuba.¹²⁷ Malik insisted that disarmament had to go beyond looking at the formal military and had to understand the “racial element” in the province, pointing out that new PDF militias were being mobilized as *mujahidin* in the camps established by the governor of North Kordofan. Nafie denied that

the regime's new campaign was driven by a jihadist and Arabist ideology, insisting that the militias in question were just the PDF not the *mujahidin*, and that they needed to be kept as a form of "compulsory military service" in support of the SAF.¹²⁸ The draft was revised to postpone this issue for later.

The details for the cessation of hostilities were no less troublesome. Each side had tactical concerns, such as fear of the other using a pause in fighting to regroup or resupply. They also knew that how the ceasefire was conceptualized would set the trajectory of the political talks, especially the vexed issue of the future status of the SPLA divisions. The SAF generals began to show signs of abandoning their original demand to restore the exact positions of June 5, recognizing that this, in practice, would leave their units exposed in a number of areas. On June 20, Imad presented a formula with joint committees to agree on the return of the SPLA to "designated areas."¹²⁹ He also proposed that "symbolic integration" should take place before July 9 and that a system to implement it be agreed by that date. This was a welcome sign of flexibility, but SAF still wanted the SPLA demobilized before the popular consultations concluded. Malik and his team rejected it. The references to integration in the draft were watered down, stating that the process would occur "over a period of time and with modalities to be agreed."¹³⁰ In short, another difficult issue was postponed.

The generals' proposal also granted SAF the right to deploy immediately north of the 1/1/56 border upon the cessation of hostilities, a proposal that dovetailed with its strategy of encircling the Two Areas SPLA and cutting them off from their supply routes in the south.¹³¹ Malik attempted unsuccessfully to block a clause that referred to the "inviolability of national borders."¹³² The final text of the accompanying framework agreement on cessation of hostilities included the principle that the SAF might be able to deploy north of the 1/1/56 border, although this was listed as one criteria among others that would guide the parties' Joint Security Committee in agreeing to positions.¹³³ The SPLM-N, however, consented to the idea of the JCM, which was included in the final paragraph.

Once the principles of the cessation of hostilities had been agreed on, the parties still needed to choose a third party to monitor it. This was not straightforward. As the SPLM-N was quick to observe, the only international party that was capable of monitoring redeployment on the ground was UNMIS. The UNMIS mandate would expire on July 9, and the GoS refused even one day's extension. UNMIS staff were at this point in the process of compiling a list of violations against UNMIS by GoS security forces since June 5, including the forced detention of forty-five UNMIS personnel and the killing of one independent contractor.¹³⁴ Nafie spoke of UNMIS with a tone of barely veiled contempt. Meanwhile, the SPLM-N had reason to distrust UNMIS, particularly given its failures to protect citizens targeted by security forces and what

it regarded as the pro-GoS bias of the Egyptian contingent. Both parties were more willing to trust the AUHIP, but it had no monitoring capacity. This created an obstacle that Meles, briefly called in to the talks, removed through what Mbeki hailed as a “Solomonic judgment.” The AUHIP, said Meles, should be entrusted as the principal third party but also given the right to request the support of other third parties in the execution of its mandate, whether that be UNMIS before July 9, or any other parties thereafter. Thus, UNMIS resources could be employed without “internationalizing” the conflict. In side discussions, the GoS seemed ready to accept the agreed-on Ethiopian forces for Abyei, but Nafie made a parting shot at UNMIS: “If they are going to be of any use [before July 9] . . . we can live with it.”¹³⁵

The final, signed version of the Framework Agreement reads as a charter of hope for post-secession northern Sudan. It committed both sides to a “vision inspired and informed by a shared belief in a peaceful and prosperous future for all Sudanese people,” and to a host of principles for democratic governance, peaceful settlement of disputes, and an inclusive process leading to constitutional reform.¹³⁶ The following decade in Sudan would have been very different had it come into effect.

The framework document went through numerous revisions, almost each time toward streamlining and simplification.¹³⁷ Rather than a solution to the conflict, it was a commitment to solve it. Despite the hopes and efforts of the Panel and Meles, the backing of neither al-Bashir and Imad nor Kiir and Hoth was assured. Hillary Clinton called Nafie on June 25, to emphasize the need for an immediate cessation of hostilities.¹³⁸ At the signing ceremony, Imad was visibly angry, an augur for how the military would react. Meanwhile, al-Bashir went ahead with a scheduled official visit to China, and Mbeki’s attempts to get hold of the President were made more complicated by the flightpath of his plane, which would not fly through the airspace of a country that might force him to land and arrest him to hand him over to the ICC. Al-Bashir’s arrival in Beijing was delayed after his plane was diverted back to Iran when flying over Turkmenistan because of uncertainty on that issue.¹³⁹ Meles was unimpressed by al-Bashir’s decision to go ahead with his China visit without first having signaled his support for Nafie. After Nafie signed the Framework Agreement, Meles shrugged his shoulders and said, “let’s see.”¹⁴⁰

The Framework Agreement Unravels

No sooner had it been signed, than the “Nafie-Malik” Framework Agreement became the subject of a deluge of derision and hostility in Khartoum, generated

by military and Islamist hard-liners. An article in the army's official newspaper *al-Quwwat al-Musallaha* on June 30 insisted that "forming a party for the SPLM in the north after the 9th of July is a betrayal of religion and the nation," given its allegiance to what would become a "hostile state," complaining that this would allow Arman and Agar to appear on television and oppose the government in the north and then "break bread with Salva Kiir in South Sudan."¹⁴¹ Senior SAF officers had always been skeptical about signing any agreement with Malik; although they may not have been in a position to retake Juba, they believed that his forces in Blue Nile could easily be crushed.¹⁴²

Sensing that he might have misjudged the depth of negative reaction, Nafie gave an extremely circumspect press conference on his return to Khartoum, offering only short answers to a few questions from journalists and then departing abruptly, leaving the rest of the questions to be fielded by Mutrif Siddiq.¹⁴³ Rather than staying in Khartoum to defend the agreement, Nafie flew to London,¹⁴⁴ dodging a heated meeting of NCP leaders in which his fellow Islamists accused him of signing without the permission of either the party or government.¹⁴⁵ Although the AUHIP had hoped that Nafie's status as a hard-liner would make the deal stick, Nafie had many enemies with the ruling party who attacked the deal out of personal animus.¹⁴⁶ Even moderates within the NCP who did not reject the agreement in principle rejected it in practice as poorly timed, arguing it would demoralize the army to politically accommodate a man the government had only recently denounced as a rebel.¹⁴⁷

Al-Bashir was coming to fear Nafie's political ambition. While he was on his landmark visit to China, the President was not unhappy with the political chaos that unfolded in Khartoum. As soon as he saw the Framework Agreement, he reportedly said it was not going to work. Ibrahim Ghandour delivered what the media characterized as a confused press conference,¹⁴⁸ in which he tried to maintain that the Framework Agreement was "an agenda that specified what was being negotiated," building upon the CPA.¹⁴⁹ Meanwhile, the newspaper *al-Ahram* called on militant Islamist shaikhs, including Abd al-Hay Yusuf and Muhammad Abd al-Karim, "to transform their Friday prayers into a revolt against the agreement of delusion and deception, Naivasha II," insisting "we must all lead an uprising against the campaign of deception . . . practised by four of five members of the NCP against the benighted Sudanese people."¹⁵⁰

"Return to Sudan, Oh President," appealed the article, "to see what the *Naivashiun* [partisans of Naivasha] have done to us." The next day, al-Bashir, back in Khartoum, addressed worshippers at the al-Nur Mosque in Kafouri following Friday prayer. He advised them that al-Hilu "is a rebel, and will remain a rebel until captured and brought to justice . . . it is not possible for a rebel to return to being an ordinary citizen after he killed people, and burned and destroyed." Al-Bashir restricted himself to largely secular language and focused

on al-Hilu individually, as opposed to the SPLM-N in general, implying that he could still deal with Malik. Nevertheless, his declaration effectively foreclosed the possibility of any NCP-SPLM-N partnership in the governance of South Kordofan State, at least insofar as it would involve al-Hilu. One Islamist journalist, using language that foreshadowed the regime's future prosecution of the conflict, argued that al-Bashir's address delivered "the fatal bullet" to the agreement, so that "there will be no-one to bury its corpse, or to meet at its funeral pavilion to perform the duty of consolation (*wajib al-aza*)."¹⁵¹

Why was Nafie willing to sign an agreement that did him such political damage? His rationale was probably not that different from those who signed the CPA and chose not to oppose the secession of the South. He likely viewed the war in South Kordofan as unwinnable, and prioritized regime survival, which would be achieved by restricting the spread of the New Sudan agenda, and stopping a conflict that would reignite the US agenda of isolation and regime change. Where he failed, as the Khartoum media would later observe, was in explaining his strategy to the military and the press.¹⁵² Remarkably, the point that Nafie conceded most easily—the recognition of SPLM-N—was what was most strongly condemned by his critics. This showed how the NCP politicians, so often caricatured as masters of manipulation, were divided and incapable of developing an internally coherent strategy at a critical moment. Having intensified its anti-SPLM-N propaganda earlier in June, the government had made it very difficult to justify an subsequent agreement that made it look, in the words of al-Tayyib Mustafa, "like a frightened mouse."¹⁵³

On July 3, the day after his fiery speech at Kafouri mosque, al-Bashir flew to Addis Ababa for an Intergovernmental Authority on Development (IGAD) summit, where he met with Mbeki.¹⁵⁴ Sudan's president explained that the reason he would not accept the agreement as it stood was that he wanted a specification in the first part on "political partnership" that the NCP and SPLM-N negotiations would take place in Sudan and that they would not be externally facilitated.¹⁵⁵ He maintained that he was happy to move forward with no changes to the second part of the agreement, covering security matters—although it had always been the sequencing of the "political" and "security" elements that had been so sensitive. After the summit, Ghandour continued to insist the NCP had not abandoned the Framework Agreement, but al-Bashir had already dispatched Ismat to South Kordofan to step up operations.¹⁵⁶

The War Expands

After al-Bashir torpedoed the Framework Agreement in his Kafouri speech, fighting continued. As relations between Khartoum and Juba deteriorated,

Malik's status as the only SPLM governor in Sudan became increasingly difficult. As with the Nuba, the Blue Nile SPLA had defied Ismat's command to move south of the border, and SAF had increased its presence in the state.¹⁵⁷ Malik, however, tried hard to avert war in his home state. Al-Bashir had only condemned al-Hilu rather than the principle of an agreement, and there were signs he believed that he could reach an accommodation with Malik even while the war continued in the Nuba Mountains. He was reportedly willing to offer him the position of vice president.¹⁵⁸ When Malik canceled a meeting with al-Bashir in Khartoum, scheduled for the end of July, under pressure from militants in his movement, Meles invited him to Addis Ababa to discuss how Ethiopia could help resolve the crisis.¹⁵⁹ They met on August 9. Malik protested that he, al-Hilu, and Yasir still wanted to work through the Framework Agreement but that the situation was escaping beyond his control. Aware of the SPLM-N's recent talks with opposition groups in Kampala, Meles told Malik that, as the most mature of the SPLM-N's leaders, it was his responsibility to avoid the agenda of regime change, noting that "an implosion in Sudan would be far more dangerous than in Somalia," and that if he pursued this route, his movement would fall into the hands of "fanatic utopians."¹⁶⁰

Meles then made an exceptional move. Responding to a request from al-Bashir, he offered to join him and Malik for a meeting at the Republican Palace in Khartoum to try to broker an agreement.¹⁶¹ For a head of government to put himself on the line in this way was a rare opening. Malik flew to Addis Ababa, and the two continued to Khartoum together, meeting with al-Bashir late at night.

Despite al-Bashir having initiated the meeting, he offered nothing substantive. He and Malik spoke angrily at one another for hours until the meeting concluded at 4 a.m. According to Malik, al-Bashir promised that he would not launch any attack on him, and proposed that the three should meet again in two weeks.¹⁶² There was nothing more. Nafie came to see Meles off at Khartoum airport and said he had no more to offer. Meles remarked, "I thought Nafie was a bulldozer, but he's a pumpkin."¹⁶³ The puzzle was why al-Bashir came empty-handed to the meeting. Possibly, he was intimidated by his lieutenants. Perhaps he was just exhausted.

Al-Bashir did indeed invite Malik to Khartoum, but Malik refused to come. After some coaxing by Princeton Lyman, Malik hinted at accepting a proposal from Ali Osman Taha to send an envoy to Damazin, if the June 29 Framework Agreement was to be the starting point and there was to be AUHIP involvement.¹⁶⁴ Unfortunately, events moved too fast.

On the night of September 1–2, shots were exchanged between SAF soldiers and an SPLA JIU component making its way out of Damazin, leading to one

SAF casualty.¹⁶⁵ Malik claims that soon afterward he received a call from Ali Osman's office manager, saying that this was an "isolated incident," and promising that dialogue would begin soon.¹⁶⁶ The next day, however, al-Bashir dissolved the state government, designating Malik as a rebel and replacing him as governor with the SAF commander in the state.¹⁶⁷ In private, Ali Osman would later say that Malik was detachable from al-Hilu and Yasir, maintaining that it was Yasir who went behind Malik's back to stir up the Blue Nile rebellion.¹⁶⁸ Nevertheless, when he arrived in Damazin, Ali Osman delivered a speech in which he accused Malik of "treachery, rebellion and departure from legitimacy," instructing SAF to "cleanse the state of traitors."¹⁶⁹ Although his language was largely secular, local militants mobilized new PDF battalions using the language of *jihad*. The war went badly for Malik. He had few defensible positions, and Ethiopia was not going to provide him with the kind of support it had during the previous war. The conflict also divided the Blue Nile SPLM-N, as many chose to remain in the post-Malik government.¹⁷⁰ On November 3, SAF captured Kurmuk, the Blue Nile SPLM-N's largest stronghold, on the border with Ethiopia, laden with symbolism from battles there in the 1980s. Al-Bashir traveled to the town to participate in the *Eid al-Adha* prayers.¹⁷¹ Although the rebels still held a few areas, al-Intibaha declared gleefully that the capture of Kurmuk was evidence that "*jihad* and nothing other than it brings victory."¹⁷²

The war in both states intensified. The GoS showed disinterest in talking with a new proposal that started from scratch, included only security arrangements, and ignored political issues altogether.¹⁷³ Mbeki wrote back, noting that it "suggests that the GoS/NCP have now completely and unilaterally repudiated the Framework Agreement" and it was "nothing more than a demand that [the SPLM-N] 'surrender.'"¹⁷⁴ When al-Bashir met with Mbeki on October 25, the Sudanese leader showed no willingness to engage in dialogue with the SPLM-N. Mbeki asked him directly if the war would continue, and al-Bashir replied, rehashing the words of the military and Islamist hard-liners, "yes, they imposed it on us. There will be no more south in the north, no more Naivasha II."¹⁷⁵ The same month, the program *Fi Sahat al-Fida* reappeared on national television, al-Bashir having apparently acceded to his uncle's request for its return. As was the case before its post-CPA cancellation, the program was still run by the Islamist hard-liner Ishaq Fadlallah, although it was now to be confined to analysis of the conflict rather than direct mobilization.¹⁷⁶

Meanwhile, with no peace talks in sight, Yasir Arman began to spell out the changes he envisioned in SAF for the SPLM-N forces to be integrated into it. In an interview with the opposition newspaper *al-Hurriyyat* in August, Yasir explained that his problem was not with the Sudanese army as a historical

entity, but the Sudanese army as it had been transformed by the Islamist purges. The army, explained Yasir, was “a victim of the NCP,” and a “national army” could be created only by severing the military’s ties to the ruling party.¹⁷⁷ Yasir explained that the army needed to recreate “the infrastructure and the doctrine” that had given rise to officers such as Ali Abd al-Latif and other men associated with the 1924 White Flag uprising against British colonialism. The men Yasir referenced were mostly officers of Nuba and southern heritage.¹⁷⁸ Yasir was appealing for the racial hierarchies introduced after that date, and sustained ever since, to be abandoned.¹⁷⁹ He would have known that this would be sympathetically received by Nuba officers and soldiers within SAF, some of whom had defected, and some of whom were facing en masse dismissal.¹⁸⁰

On November 11, 2011, the SPLM-N made its next move, entering a formal alliance with the three largest Darfurian armed groups, namely the two Sudan Liberation Movement (SLM) and Justice and Equality Movement (JEM).¹⁸¹ The newly formed Sudan Revolutionary Front (SRF) aimed to remove the regime by either military or political means. This immediately showed that Nafie and al-Bashir’s strategy of keeping the SPLM-N in the Two Areas, and attempting to isolate al-Hilu, had failed. Indeed, the SRF appointed al-Hilu as the chief of staff of its combined forces.¹⁸² From this point on, Yasir was adamant that any talks would not be used to create a divide between the different revolutionary factions. Nevertheless, the war in the Two Areas remained deadlocked. The SAF struggled to make progress on the ground, while its superior air power prevented the SPLA-N from making serious advances.¹⁸³ SAF also tried to cut the SPLA-N supply lines from the south but repeatedly failed.¹⁸⁴ The formation of the SRF also finally killed the UN strategy of pursuing a separate and parallel peace process for Darfur, although it took another two and a half years for the Security Council to act on this.

Poisoning Relations with the US

The war in the Two Areas became the single most important issue standing in the way of the US normalizing relations with Khartoum and also establishing a strategic partnership with Juba. As soon as the fighting erupted, the Nuba Mountains threatened to become a new Darfur, energizing a coalition of UN activists to denounce Khartoum for its atrocities. In July, the Satellite Sentinel Project published further evidence of the presence of mass graves, and the leaking of the UNMIS report into the abuse perpetrated by the PDF and other security forces put increased pressure on diplomats to denounce Khartoum outright.¹⁸⁵ In the following months, as more Nuba civilians became displaced

and hungry, and the GoS refused to allow relief aid to reach them, the humanitarian crisis became the top agenda item. The GoS worsened matters by repeated bombing raids into South Sudan, including hitting camps for refugees from Blue Nile.

Frustrated though it was over the war, the Obama administration was determined to keep the door open to Khartoum, not least because there was unfinished business in the north-south talks. Equally important, the Americans were furious with the South Sudan, which continued to supply the SPLA-N and send troops across the border while denying that it was officially doing so.¹⁸⁶ When Lyman met with General Hoth in Juba in August, he acknowledged Juba's ongoing support to the SPLA-N "only obliquely."¹⁸⁷ Kiir made matters much, much worse. When he traveled to New York to attend the UN General Assembly as the head of state of its newest member, he met with President Obama. South Sudan had extraordinary levels of goodwill in the US, and the US president had intended the meeting to focus on the ways in which the US could assist the new country. But when Obama gently rebuked Kiir for South Sudan's support for the SPLM-N, Kiir simply denied it: "Mr. President, if your satellites are telling you we are sending weapons across the border, you had better check on your satellites."¹⁸⁸ The meeting did not recover. Nor did Obama's appraisal of Kiir.

Susan Rice took Kiir to task after the meeting, and Kiir's office subsequently sent a letter acknowledging "new information" relating to the claims of cross-border support, only for Kiir to subsequently deny the letter had been sent and further alienate US officials.¹⁸⁹ Kiir held a press conference in which he vehemently denied supporting the SPLA-N and condemned accusations as "nothing other than smoke screens to mask Khartoum's own activities in support of the armed dissidents that are fighting its proxy war [in South Sudan] . . . [and] intended to justify his own pending invasion of the South."¹⁹⁰ He used precisely the same words in a briefing to diplomats.¹⁹¹ In reality, Juba's support for the SPLA-N war effort continued unabated—material, men, command, and control. Lyman noted that there was little effort to hide it "except in statements to foreigners and the GoS."¹⁹²

Washington was reluctant to close the door to Khartoum, knowing how long it could take to reopen it. In October, the US government offered Sudan that it would "begin the process of delisting Sudan from the list of SST [state sponsors of terror] if the Government of Sudan would by December 20 end bombing in the Two Areas, allow international humanitarian access, and resume negotiations with the SPLM-N."¹⁹³ Come December 20, the GoS gave no response, the offer lapsed, and the US froze the delisting process indefinitely.¹⁹⁴

NATIONALITY AND CITIZENSHIP

Secessions redefine states and nations, disrupting people's identities and often forcing many to abandon their homes. Every nation is an assemblage of more-or-less settled, usually ambiguous concepts. Partition or secession not only places people on one side or other of a divide—by force or by choice—but redefines how both the new state and the old, now smaller, successor state relate to the people who are overnight placed on each side of the dividing line. In this process, some identities are affirmed and celebrated, while others are neglected or broken altogether. Of all the issues around secession, citizenship is the one that can be most traumatic for individuals.

The nationalisms of Sudan and South Sudan are too complex to be explored in this book. [Chapter 2](#) referred to how Sudanese could not agree on how to define their nation. As well as the north-south “war of visions,” the respective elites in north and south never settled their internal debates.¹ There was no doubt which vision was triumphant in the referendum of January 2011, and indeed the die had been cast when the principle of self-determination was enshrined in the Comprehensive Peace Agreement (CPA).

Southern Sudanese nationalism was still a work in progress when its nationals became citizens of the Republic of South Sudan. In the years preceding the historic vote, southern Sudanese debated what their new nation should be called—a dozen names, including “Nile Republic,” “Kush Republic,” and “Imatong” were proposed. In the end, their leaders settled on “South Sudan,” a name that captures both continuity and ambiguity—at once still joined to its northern neighbor and defined as distinct from it. In many postcolonial territories,

the shared language of education and administration is that of the former colonizer. South Sudan explicitly excluded Arabic as one of its official languages, but “Juba Arabic” is the most widely spoken lingua franca, and government leaders often use it when addressing the public.

Although southerners rejected the north and its legacies, notions of the southern Sudanese people were still not fully defined and were, on occasion, expansive. As explained in [chapter 2](#), “Sudanese” identity and nationalism was born in the south’s encounter with the north, and efforts by postcolonial regimes to redefine Sudanese identity around Arab-Islamic orientation was fiercely contested by separatists and by John Garang’s New Sudan project. Separatists tended to look backward to tribal origins, while Garang and his vanguard looked forward to a new Sudanese identity politically refashioned. When Salva Kiir Mayardit succeeded Garang, the former was ascendant, but the latter remained inside Kiir’s big Sudan People’s Liberation Movement (SPLM) tent. These two visions cohabited even during the secession process, which ultimately allowed a relatively generous formula for South Sudanese citizenship.

Who Are the South Sudanese?

What is the South Sudanese nation? Barely a year before Europe’s imperialists assembled in Berlin to draw lines on the map of Africa, which delineated what became African national boundaries a lifetime later, the French historian and philosopher Ernest Renan famously wrote, “A nation is a soul, a spiritual principle.” This, he argued, consisted of an element from the past (or more precisely, memory) along with an element in the present. “One is the possession in common of a rich legacy of remembrances, the other is the actual consent, the desire to live together, the will to continue to value the heritage which all hold in common.” A nation is a legacy from ancestors sanctified by their sacrifices, but also, “The existence of nation (pardon this metaphor!) is an everyday plebiscite.”² Like Berlin’s maps, varieties of Renan’s two-legged definition, some leaning more toward the ethnic and cultural, others toward the civic and rational-modernist, live on in contemporary African understandings of nationhood, whether scholarly, legal, or popular views.

For the people of southern Sudan who went to the polls on those days in January, it was no “everyday plebiscite,” but a historic opportunity that had been denied their ancestors and, should they fail to grasp it, would likely be denied their descendants, too. It was not a verdict on whether the governance

arrangements of the CPA were satisfactory, but rather an affirmation of subjective or “spiritual” nationhood. Everyone understood this. It meant that the negotiations between the SPLM and government of Sudan (GoS) leaders on citizenship and the boundary were deeply emotional. The task of the facilitation was to find a legal-rational solution on an issue that went far deeper than could be circumscribed by legal-rational formulae. The most pressing immediate issues for the facilitators were the rights of individuals who risked becoming either unrecognized aliens in their home countries, or stateless altogether. The wider issue was whether and how the division of Sudan could be compatible with the African project of bringing the peoples of the continent closer together.

Thabo Mbeki expressed his hope in these words: “In the case of secession, the multi-ethnic, multi-religious African country of Sudan will divide into two countries, north and south; both of which are equally African, and both of which will of necessity embrace diversity.”³ What happened was that a combination of polarizing identity politics—notably bitter, introverted sentiments in the north—alongside cynical politicking by both delegations, which used the citizenship issue as a bargaining chip, led to a very different outcome. Each side rejected diversity but in very different ways. About two million southern Sudanese resident in the north were due to lose their citizenship, without clarity on either their residence status or on how they would acquire South Sudanese citizenship—and, in some cases, not knowing whether they would be entitled to any citizenship at all. About eighty thousand northerners resident in the south, and possibly a similar number of Sudan People’s Liberation Army (SPLA) fighters from the Two Areas, had no opportunity for dual citizenship, although South Sudan proved welcoming.

South Sudanese nationalists justified their independence by maintaining that they were treated as second-class citizens by the north. This had deep historical roots. From the sixteenth to the nineteenth centuries, the Funj and Fur Sultanates raided for slaves across their southern borders, deeming it religiously permissible because they lay outside the *Dar al-Islam*.⁴ This has fed the contemporary racist practice in Sudan of calling people whose dark skin indicates that their ancestors originate from these areas as *abid*, or slaves. Meanwhile, for centuries, the elites of central riverain Sudan signified their status by owning slaves.

The British entrenched and further racialized the distinction between the so-called northern Arab elites, and the Sudani or Black populations of southern Sudan and the Nuba Mountains and Ingessana hills. The 1930s Southern Policy sought to “build up a series of self-contained racial or tribal units with structure and organization based . . . upon indigenous customs, traditional usage and beliefs.”⁵ Its language foreshadowed references to “indigenous communities”

and “ethnic communities” in the South Sudan Referendum Act and South Sudan’s nationality laws.⁶ What Southern Policy meant in practice was that law in the southern region was based on tribal custom, as understood by the colonizers, whereas the Arab elites of urban northern Sudan were ruled through a combination of a sharia and a British-drafted legal code based, at least ostensibly, on the principle of equality before the law. This distinction between “Arab” and “indigenous southern” mapped onto Mahmood Mamdani’s distinction between “citizen and subject.”⁷ Although nominally designed to protect southerners from the depredations of the north, in practice, the policy exploited southern labor by giving the region its own lower pay scales.⁸ The “closed districts” became the source of labor reserves. This policy was reversed in the 1940s and, at independence, Sudan’s new rulers officially committed themselves to the principle that all its long-term residents were citizens of the country.⁹ In the 1960s and 1970s, leftist governments dismantled the Native Administration system, unifying the legal and administrative codes. Regardless of whether they identified principally as Arabs, Muslims, Africans, or Christians, all were indisputably Sudanese.¹⁰ Political Islam injected an important inflection, through an expansive vision of Sudan as part of the broader Islamic community (*umma*). In the 1990s, the government enthusiastically granted citizenship to nationals of Arab and Muslim countries, as well as diasporic Sudanese. The *Fellata*—West African migrants and their descendants—were belatedly granted citizenship, partly because they accounted for an Islamist constituency.¹¹ The 1994 Sudan Nationality Act made dual nationality legal for the first time and simplified the process of naturalization.¹² This was designed to advantage Muslims and Arabs. Confirming the double standard, as the South Sudanese referendum approached, the National Congress Party (NCP) was adamant that dual nationality could not be extended to South Sudanese.

For southerners, every encounter with the state confirmed that their citizenship was second class.¹³ Identity cards were a critical test. Although all were entitled to them, access was unequal, and they were used to police the boundary between the metropolitan center and the marginalized regions more than to enforce national boundaries.¹⁴ The police mounted sweeps (*kashas*) of urban areas with southern populations, telling their favored groups to carry identity cards to avoid being identified as “vagrants” and deported to the countryside.¹⁵ After the 2005 peace agreement, many returnees from the south, lacking the documents needed, found it difficult to prove their citizenship.¹⁶

But where were the boundaries of the South Sudanese people to be drawn? Several categories did not fit neatly. The most contentious group included individuals of southern ancestry who had lived for generations in the north. Many had intermarried with northerners or had served in the government and army.

The descendants of the leaders of the White Flag movement could lay claim to the most authentic, if overlooked, Sudanese nationalist credentials. The south wanted them home and the north wanted them gone, regardless of their individual preferences. Another group was never politically visible during the negotiations, namely fighters from the Nuba Mountains and Blue Nile and their families, who had joined the SPLA and served in the south (see [chapter 10](#)). The south accepted them without question, and the north did not want them back.

From Self-Determination to Separate Citizenship

The 1994 Intergovernmental Authority on Development (IGAD) Declaration of Principles, the foundational document for the CPA, referred to the Sudanese at times as “people,” at others as “various peoples,” rather than a nation as such. Although it recognized Sudan’s cultural diversity and described maintaining unity as a “priority,” it had argued, in a passage that set up a crucial passage of the Machakos protocol, that “the rights [*sic*] of self-determination of the people of South Sudan [*sic*] to determine their future status through a referendum must be affirmed.”¹⁷

This formulation simultaneously defines a “people” as an ethno-national identity group and in accordance with the postcolonial formula of the residents of territories within existing borders. In due course, eligibility to vote in the southern Sudanese referendum and to gain South Sudanese citizenship was established based on both ethno-linguistic criteria and residence. As discussed in [chapter 12](#), South Sudan also tried to define its northern boundary according to where southern tribes had historically lived. Meanwhile, some ethno-linguistic groups in the north, notably the Nuba, also demanded self-determination as “peoples.” In many ways, this was the antithesis to the New Sudan vision of incorporating multiple peoples within a single nation. For the northern identitarians, it was a chance to exclude “peoples” who did not conform to their Arab-Muslim cultural vision.

When Garang arrived in Khartoum in July 2005 to be sworn in as first vice president in the Government of National Unity, he embodied the New Sudan vision. He was greeted by the capital’s largest ever crowds. For him, the identitarian logics were to be swept aside in his expansive definition of a nation renewed. His helicopter crashed twenty-two days later. Few southerners were ready to accept that Garang’s death was an accident: It stoked their fears of an Arab-Islamist conspiracy to thwart their emancipation. On what came to be known as “Black Monday,” southerners and others who had pinned their hopes

on Garang rioted. They targeted, and were targeted by, members of riverain Arab communities.¹⁸ The riots stoked elite fears that the war would finally come home to Khartoum, with one Kalakla resident telling the press “southerners should stay in the south and northerners should stay here.”¹⁹ An NCP member wrote that “northerners . . . ceased to see southerners as compatriots.”²⁰ The government described the violence as the work of a “fifth column,” a term long used to imply that southerners were aliens in the capital.²¹ Northern champions of secession, led by Just Peace Forum and *al-Intibaha*, were invigorated. For southern nationalists, who had long seen migration to the north as a betrayal, the events only confirmed that it was time for their people to come home. In the aftermath of Black Monday, more than a million southerners moved south, including many who had never lived there before.²² In southern towns, northern merchants (*jallaba*) were attacked, with 250 stores in Juba looted and burned.²³

Kiir was a secessionist, and when he replaced Garang, he saw his task as primarily serving as president of the government of South Sudan (GoSS), uniting the south in preparation for independence. The CPA’s rhetoric of unity and nation building was reduced to a formality. So, too, was any joint NCP-SPLM project of making southern Sudanese into Sudanese citizens in the truest sense, either in north or south.

Article 9(c) of the 2005 Interim Constitution of Southern Sudan defined, a Southern Sudanese as follows:

- a. any person whose either parent or grandparent is or was a member of any of the indigenous communities existing in Southern Sudan before or on January 1, 1956; or whose ancestry can be traced through agnatic or male line to any one of the ethnic communities of Southern Sudan; or
- b. any person who has been permanently residing or whose mother and/or father or any grandparent have been permanently residing in Southern Sudan as of January 1, 1956.²⁴

These same passages were then incorporated into the Southern Sudan Referendum Act in 2009 and South Sudan’s citizenship law. For the purposes of southerners in the north, and indeed outside of Sudan, it was the passage referring to “indigenous ethnic communities” that was most important. Although “southern Sudan” was defined as a territory with reference to the colonial-era administrative boundary line, the “southern Sudanese” were defined by ethnic identity, that is, ancestry. In the absence of formal documentation, the authorities asked elders to act as tribal “identifiers” to establish who belonged to these “indigenous ethnic communities,” emphasizing “the prioritisation of blood over paperwork.”²⁵ As such, the colonial-era logic whereby northerners were governed through legal-rational order and southerners were governed as

members of “tribes” continued.²⁶ All the while, however, the amalgam that was the SPLM included many who did not fit this definition or who did not sympathize with it, among them many committed fighters from across northern Sudan. South Sudan would ultimately offer these people a home.

Seeking an African Formula

The Sudanese controversies over citizenship rights were familiar terrain for Africa’s leaders—Pan-Africanists, the “founding fathers” of independent African states, and those who led the African Renaissance and founded the African Union (AU). Mbeki had participated in these debates throughout his life, and his position was famously expressed in his poetic speech to the South African parliament in 1996, on the occasion of adopting the country’s new constitution, which begins “I am an African.” He explicitly included as “Africans” all those who came to South Africa from Europe and Asia. He welcomed a constitution that “rejoices in the diversity of our people and creates the space for all of us voluntarily to define ourselves as one people.”²⁷ It was a people-centered approach.

Mbeki rarely expressed his outrage at the readiness of the government of Sudan (GoS) and the SPLM to disregard African and universal norms. On one occasion, during the negotiations over the framework document governing postsecession arrangements, he snapped. It occurred when the GoS and SPLM were on the point of agreeing to deprive all southerners of Sudanese citizenship, immediately on southern independence, with no exceptions—the antithesis of a people-centered ethos. Mbeki said:

This disturbs me greatly, it really does. Here I am, a southern Sudanese living in the north of Sudan and I qualify according to the law, I was born here, I grew up here; politicians met in Naivasha and made these decisions [and] because they say I qualify [to vote in the referendum], I lose my nationality. Why are we being so inhuman? It is not right. These people weren’t consulted about whether they want to be eligible or not? And you are imposing this burden on them. I honestly think this is inhuman. We are trying to create a humane Sudan, in one or two parts, and we are imposing this on them. These people are sweeping the streets of Khartoum, and suddenly we are . . . it is about ordinary people. Is this our attitude towards ordinary people? It is not right, it is just not right. We are imposing a pain on ordinary people who are not responsible for any of these decisions. Why? It is not right.

They have never heard of this CPA, but someone took a decision, I who never set foot in southern Sudan, because someone said I am entitled to vote, I have lost my citizenship. Why? What is the reason for it?²⁸

Pierre Buyoya was outraged, too. Above all it was a simple question of humanity. But all three members of the Panel were also champions of the hard-won principles enshrined in the treaties of the AU that protected human rights and promoted Pan-Africanism.

The Panel hoped that the two sides would agree to dual nationality or individuals' right to choose. When it became clear that this was not going to happen, the Panel instead pushed each side separately to adopt legislation that minimized the danger of statelessness. It also focused on protecting the "four freedoms" of residence, movement, employment, and property ownership, which were also a bedrock of the two-viable-states strategy.

When the postreferendum talks began, a cluster was formed to focus on citizenship. The cochairs were John Luk and Mohamed Mukhtar. It made slow progress, with the GoS twice pulling out of scheduled meetings and work becoming entangled in the referendum controversies.²⁹ On September 25, the information minister Kamal Obeid, declared: "If [the southerners] vote to secede, then they will not enjoy citizenship rights, residence, jobs or benefits in the north. They will not be allowed to buy or sell in Khartoum markets. And they will be denied treatment in the north's hospitals: we will not even give them any medical care in our health centres, not even a needle in the hospitals."³⁰

NCP Speaker of Parliament Ahmad Ibrahim al-Tahir said that although southerners were not "second class citizens," they would become so if they chose independence.³¹ The SPLM was furious, Yasir Arman observing that this was pushing Sudan into becoming a "New Rwanda."³² Atem Garang declared the statements evidence that Islamists had always wanted the south to go so that they could create an Islamic state in the north.³³ Formally at least, the two NCP leaders were making their threats to encourage unity.³⁴ Omar al-Bashir distanced himself slightly from Obeid and al-Tahir, promising to protect southerners and their property rights in the north if they choose to secede, but never explicitly repudiated what they said about citizenship.³⁵ When the Panel met Nafie Ali Nafie, he restated Tahir's position.³⁶

As negotiations opened on the overall north-south Framework Agreement in November 2010, Mohamed Mukhtar showed little interest in discussing the Panel's suggestions. The African Union High-Level Implementation Panel for Sudan (AUHIP) proposed dual citizenship, adding as a fallback that both southerners and northerners should have the right to choose their nationality and that all individuals' livelihoods should be protected whatever their citizenship

status.³⁷ The GoS pushed back hard. The Panel put forward another draft, but Mukhtar vetoed the language guaranteeing employment rights. Idris Abd al-Gadir explained this was because “the Kamal Obeid objection is permitted,” showing that the Islamist’s diatribe did represent GoS policy, after all.³⁸

The discussion on citizenship came to a head two days later. Mukhtar had not moved. He repeated that should southern Sudanese vote for secession, they would immediately and collectively cease to be Sudanese citizens. It was at this point that Mbeki intervened with the outburst quoted earlier, condemning this inhumane approach. Mbeki later confirmed that his words sprung from anguish at the parallels between Khartoum’s proposals and the Apartheid policy of using Bantustans to deprive Black South Africans of citizenship. He added that an exclusionary policy like this would damage efforts to rehabilitate Sudan in the wider African political community.³⁹

Unfortunately, Mbeki’s words had little impact. Mukhtar defended his position, maintaining he was concerned with the rights of the “ordinary northern Sudanese citizen” who was “not happy with separation.”⁴⁰ On the southern side, Nhial Deng thanked Mbeki for his intervention and moral judgement on the GoS’s “extreme position,” but very explicitly chose not to push the issue further, simply stating “we will accept this. I share your sentiments, your excellency, but we cannot force them.”

At this point, the GoS had accepted the inevitable outcome of the referendum, so its position was not an effort to deter southerners from voting for secession. Nhial Deng suggested that they simply wished to punish the southerners. He said, “it reminds us of the French colonies,”⁴¹ alluding to how France stripped independent Guinea of its infrastructure and resources when Sekou Touré’s refused to join the French currency union and security pact.⁴² Salah Abdalla Gosh implied such a policy was being pursued: “There is a price to be paid by the northern citizen, by the southern citizen, and if they are not going to pay the price they are not going to resolve this.”⁴³

Pauline Okelo was a Panel staff member for the citizenship discussions. She thought that Khartoum was also playing a tactical game: “At the table [the GoS] had to play hardball, because this was one of the very few areas where they had an upper hand, and I think that was pretty much the crux of the matter, really, they could squeeze the South Sudanese, and get something else in return . . . there was this concept of ‘nothing is agreed until everything is agreed,’ and this played a very big part in the citizenship discussion, because then they could push for other concessions in other negotiations.”⁴⁴ As mentioned in [chapter 7](#), northern secessionists also contemplated an economic model that systematically exploited noncitizens’ labor. Allowing southerners to remain in the north with limited rights would serve this end. In a previous discussion on employment

rights, Mukhtar had clarified that the GoS aimed to prevent ex-citizens from serving in the civil service and military, explaining that southerners would be able to work “according to permit” because “we can use foreign labour.”⁴⁵

The southerners took a reciprocal hard line on refusing citizenship in South Sudan for Baggara pastoralists, especially for the Misseriyya in Abyei (see [chapter 8](#)). In an earlier meeting, the GoS had floated the idea of dual citizenship for communities living along the border zone, with nomads in mind.⁴⁶ The SPLM rejected it, arguing the numbers were far too high and that a separate treaty and visa-free zone would be enough to safeguard rights of pasturage. It is likely that the GoS proposal was aimed at provoking precisely this response, which would then justify its position. The two sides were converging on a common hard-line policy that gave ordinary people no choice over their future.

The SPLM’s position on citizenship was in fact more complex, or perhaps undecided. The southern nationalists were asserting the new state’s claims over all southern peoples, which meant accepting the sovereign right of the rump northern Sudan to act in the same way. They often had little sympathy for southerners who lived in the north, seeing them as possible “collaborators” with Khartoum.⁴⁷ Those who still held to the New Sudan vision, or who were northern Sudanese, felt differently. Although by now Arman knew it was a destined to fail, he continued to push for individuals to have the right to choose.⁴⁸

With the prospect of compromise vanishing, the Panel shifted to framing the way ahead as each state determining its laws separately but in a manner that took account of the rights and welfare of the people affected. The version of the “Framework for Resolving Outstanding Issues” approved by the two sides on November 13, 2010, reads: “The parties recognise that citizenship issues are causing anxiety among the population, and further that any decisions taken on nationality and citizenship will invariably affect the political, social and economic stability and viability of the north and the south as well and may also impact adversely on the rights of individuals. Accordingly, the parties shall ensure that all decisions in the north and the south on nationality and citizenship rights are informed by this reality.”⁴⁹

A month later, the Panel brought the negotiators together for a last chance to agree a common formula. All had accepted that the majority of southerners in the north would not be able to obtain dual nationality, but the door to them having an option to choose Sudanese citizenship was not entirely closed. Mukhtar, however, was inflexible. He observed: “Our position arises from not wanting to reproduce the problem. You say you have a problem and you want the right of self-determination. Now you’re saying that some of your people want to stay, and [in our view] this will reproduce the problem, and they’ll claim they’re third, second class citizens.”⁵⁰

Mukhtar had rehearsed this argument publicly using similar language and received plaudits in the Islamist press.⁵¹ Gosh made a similar point, arguing the “southern problem,” had bedeviled Sudan since independence and self-determination was a fifty-year old southern demand.⁵² In the 1980s, the New Sudan vision had challenged this narrative by suggesting the “problem” was the whole of Sudan’s.⁵³ Now the NCP negotiators maintained there could be no New Sudan and no new southern problem. They repeatedly told the SPLM that they could not “have their cake and eat it.” The idea that not every individual southerner might want to go along with the majority decision was not considered—the collectivity was what counted. Mukhtar asked: “If they want to stay in the north, why would they choose to leave?” He dismissed SPLM objections that southerners who voted for unity “shouldn’t be punished because the majority voted for secession.”⁵⁴

Mass statelessness was the biggest fear of the United Nations (UN) and the Panel. They worried that thousands, possibly tens or even hundreds of thousands, would caught between the two states, citizens of nowhere. The GoS said it did not consider itself bound by the 1961 Convention on the Reduction of Statelessness, which Sudan had never signed. It did concede, however, that it would only exercise its right to withdraw citizenship from southerners only “after they obtain the citizenship of the new state.” The question then shifted to the time period in which this would happen.⁵⁵ The December cluster meeting focused on how long South Sudan would be granted to issue the necessary documents. The SPLM proposed one year, the GoS a maximum of six months.⁵⁶ Both were unrealistic. The new South Sudanese state would need to pass citizenship laws, design and produce its documents, set up offices across northern Sudan, train staff, and then identify and register all its citizens. No one familiar with the southern Sudanese bureaucratic infrastructure expected this to be possible, raising the prospect that millions of southerners would find themselves without any official identity cards, effectively stateless. The last meeting before the referendum ended with the two sides far apart.

Parallel Negotiations for Parallel Regulations

On January 9, 2011, southern Sudanese living in the north voted without knowing what secession would mean for their future in a place that, for many, had been the only home they had known. As the votes were being counted, the Panel raised this with the two presidents. Kiir promised that South Sudan’s citizenship law would be passed before July 9 and that it would be applied in such a

way that no one would be deprived of citizenship.⁵⁷ Al-Bashir did not compromise. The issue that remained was then the length of the transitional period for settling everyone's status and issuing the necessary documents. The Panel proposed two years.⁵⁸ Al-Bashir did not reject it outright, passing the matter to the Joint Political Committee.

The Joint Political Committee met a few days after the official confirmation that nearly 99 percent of all southerners had voted for independence. The atmosphere was at once "lighthearted" and "acrimonious."⁵⁹ The southern team, headed by Pagan Amum, argued for a one-year transition subject to extension. The GoS stuck to six months, telling the southerners to "do your homework."⁶⁰ Gosh insisted that quickly identifying and removing southerners was necessary for the GoS to reorganize its security forces and civil service. Pagan thought the northern timeline was deliberately unrealistic, saying that it took a full two years after 1956 before Sudan began issuing its travel documents and that the country's elites relied on Egyptian passports until then.⁶¹ This didn't impress the GoS delegates, who cited the 99 percent vote for secession as justification for treating southerners as a collective without exceptions. They rehearsed al-Bashir's speech in Gedaref, maintaining: "We don't want any more talk of minorities and marginalized and their rights."⁶²

Pagan raised the 1 percent. He gave the example of a northerner, Amin Akasha, who was a long-term resident of the south and came to be considered a southerner because of his commitment to supporting the cause of southern unification in the 1970s, which had led him to be arrested by Nimeiri's regime.⁶³ For Pagan, loyalty to a political cause was more significant than membership of an indigenous ethnic community. This was a straw in the wind. The GoS did not budge. Mukhtar reiterated the official position that there would be no deportation of southerners, but then added the barbed caveat "except through judicial process."⁶⁴

Meanwhile, southerners in the north were on the move. In the six months on either side of the referendum, more than 264,000 traveled south—high numbers but only half those anticipated.⁶⁵ Just 14,000 were in transit on referendum day,⁶⁶ and more than 1.5 million remained in the north.⁶⁷ More began to set off in April and May, carrying what possessions they could. Al-Tayyib Mustafa asked the GoS pointedly, in the event of new conflict in South Sudan causing these people to flee north again, what measures "have you taken to prevent such a movement, which would return us to square one?"⁶⁸

Buyoya took the lead on the citizenship issue. His strategy was to press the two governments to draw up their respective legal and administrative frameworks on citizenship and residency in parallel and to share them with one another and the Panel. The Panel could then cross-reference them, identify

gaps, and minimize the danger of statelessness. The south's minister of legal affairs, John Luk, was reluctant to share draft citizenship legislation, on the grounds that it was a sovereign privilege. But Buyoya kept pressing him, insisting on the need for the south to provide unilateral guarantees, and Luk finally agreed to provide the document and to accept the "four freedoms."⁶⁹ The north dug in its heels, refusing either to use the language of the "four freedoms" or to provide a document, even when Mbeki wrote directly to Idris stressing that the matter was urgent.⁷⁰

The Panel tried one last time, during the "super group" negotiations in Addis Ababa in June just before independence, to an extract a commitment from the GoS on citizenship and, failing that, on civil rights. Panel staff prepared a draft "Agreement on Citizenship and the Rights and Freedoms of Common Nationals," which incorporated the rights of residence, movement, work, and property ownership. The draft further committed the parties "not to deprive any person arbitrarily of their nationality" and "to prevent statelessness as a consequence to secession."⁷¹ Both sides refused to sign. Each introduced reasons to block progress. The GoS insisted that its new citizenship law would permit dual nationality, as it had done in the past, but that those wishing to obtain it would have to apply first. The implication was that southerners would automatically lose citizenship before they attempted to regain it.⁷² Meanwhile, the southerners objected to the term "common nationals," saying this term was contrary to their sovereignty.⁷³ The northerners were unworried about what would actually happen on July 9. One said: "It will be an ordinary day and people will be able to continue as normal."⁷⁴ At the end of the day, Khartoum and Juba split their difference on a transitional period—agreeing on nine months—and the south abandoned its nationals in the north rather than make concessions on other issues to win protection for them.

Avoiding the Worst in the Aftermath

After independence, hard-line rhetoric in the north intensified. Al-Tayyib Mustafa made the case that the secession of South Sudan was unique because the new nation aspired to "occupy the mother country." If the south left "millions of its sons" behind in the north, the government would be unable to monitor hostile SPLA "sleepers cells." The "four freedoms," he wrote, were a "Trojan horse for the New Sudan Project." Suffusing his writing with racist tropes, he wrote that after southerners began departing, crime, illiteracy, and AIDS levels had all gone down.⁷⁵

Having run down the clock on the Panel's appeals for transparency if not cooperation, the GoS was now in a position to amend its nationality law.

The new legislation, passed in August, specified that any individual who became a South Sudanese national “de jure or de facto” would automatically lose Sudanese citizenship. They could then reapply for dual nationality, but each case was subject to presidential approval, making it almost impossible in practice. The amendment interacted with the new South Sudan Nationality Act, in precisely the manner the Panel had sought to prevent. South Sudan turned its criteria of eligibility to vote in the referendum into its definition of citizenship. Given the large numbers of people with some southern ancestry in northern Sudan, who could be said to be South Sudanese nationals regardless of their wishes, the GoS now had carte blanche to remove their citizenship.⁷⁶ Exclusionary practices that had earlier deprived people of urban residence rights could now be used to take away their right of citizenship. Ironically, the category at risk included southerners who were long-term members of the Islamic movement, prompting furious criticisms by the government’s Islamist opponents.⁷⁷

As feared, South Sudan was slow at registering its citizens in Khartoum and even slower in other northern cities.⁷⁸ The southern authorities encouraged their citizens to travel to *Juba* to register there, both because it was convenient and also as part of its strategy to get its people back home.⁷⁹ Sudan wanted them gone, too, which was a rare point of agreement. A month after the referendum, north and south signed a memorandum of understanding committing themselves to cooperate on the return of those who wished to be repatriated. They argued, however, over the best means of transportation and blamed each other for disruptions and blockades. Juba said that Khartoum was unlawfully obstructing its steamers, and Khartoum responded that Juba was using the boats to move military equipment.⁸⁰ Rather than seeing the returnees as citizens, each saw them as a chance to create havoc in the others’ state.⁸¹

The environment in the north became more unfriendly with every passing month, and the High Commissioner for Refugees (UNHCR) worried that it did not have the capacity to deal with a sudden flood of people moving.⁸² Donor governments noted the lack of any South Sudanese preparations to reintegrate these people should they move.⁸³ As it was, more than 120,000 citizens expressed their desire to be “repatriated,” of whom the UNHCR, GoS, and the South Sudanese authorities were able to successfully transfer only one-tenth. Many others, traveling south by land and by steamboat, were stuck en route. In Kosti, on the White Nile, it was reported that thirteen thousand people were “crammed in a space intended for only 3000.”⁸⁴ Independence came, but without the feared panic or mass expulsion. The GoS had enough issues to handle without further inflaming its problems by trying mass deportations.

The nine-month transition period ran until April 9, 2012. As the deadline neared, the Panel and humanitarian agencies became worried. A few weeks before the date, the Panel asked the two governments to meet in Addis Ababa.

It tried to persuade them to extend the transitional period. They refused. They did, however, initial a “Framework Agreement on the Status of Nationals of the Other State and Related Matters” on March 13, which incorporated the four freedoms, albeit somewhat watered down from the Panels’ previous draft, and not using that title.⁸⁵

Unsurprisingly, any hint of compromise was poorly received by the Just Peace Forum, which launched a campaign against the agreement in mosques and local media. Idris Abd al-Gadir, however, who had initialed the agreement on behalf of the GoS, defended it strongly to the press, while being careful to stress that it did not incorporate any commitments on dual nationality.⁸⁶ He condemned the Just Peace Form for “provoking racism,” called it “the greatest threat to national security,” and attempted to defuse its campaign in the mosques by observing that “most imams” had been “calling for an agreement that would prevent the shedding of blood of Muslims.”⁸⁷ Unfortunately, the outbreak of the Heglig war just two weeks later led the GoS, including Idris, to change their tone (see [chapter 15](#)), and progress toward a full agreement was stalled.

BORDERS

For the African Union (AU), the breakup of an African country was an affront to its founding principles that could only make sense within the context a commitment to the continent's economic, social, and political integration and making national borders less and less significant. The northern and southern Sudanese retreated from Africa's norms of boundary-making and border management, into a bitterly conflictual approach (figure 5).

African boundaries were infamously drawn in Europe, on large-scale maps without regard to the peoples who were divided by these arbitrary lines. Sudan was no exception, but it had the particular feature that its frontiers followed the reach of nineteenth-century African armies. Sudan's first occupier was Egypt, albeit nominally part of the Ottoman Empire and later occupied by the British.¹ Its frontiers followed Egypt's military expansion. The border between Sudan and Ethiopia corresponded, more or less, to the escarpment where the armies of Ethiopia met those of Sennar and later the Mahdists.² The Sudan-Chad border lies roughly where the Turco-Egyptian state, following its conquest of Dar Fur in 1874, marked out its boundaries with Wadai.³ Its southern boundaries lay where the forces of the Khedive Ismail reached in their campaigns of plunder in the third quarter of the nineteenth century, subject to negotiations with the British, French, Belgians, and Ethiopians who sent expeditionary forces from other directions. The marchlands separating northern and southern Sudan lay roughly where the administered territories of northern, Muslim kingdoms—Dar Fur and Sennar—transitioned to lands where they raided for

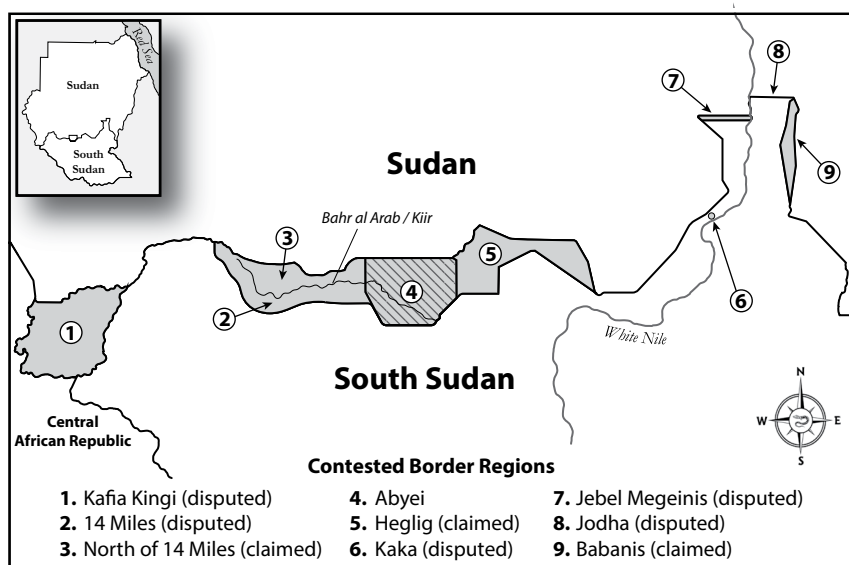


FIGURE 5. Disputed and claimed areas. Created by John Wyatt Greenlee/
Surprised Eel Mapping.

slaves and pillage.⁴ Ironically, the historical fact that Sudan's borders are not entirely arbitrary, has made them all the more contentious.

As Sudan prepared to divide into two, a legal-rational exercise in ascertaining where one country ended and the other began was colored by deeply held concepts of territory and belonging and histories of enmity. Drawing the boundary was done in parallel with determining citizenship and was no less emotive. The geography of the Sudanese nation and state was inscribed in the sentiments and ideology of the leaders of Khartoum and especially its soldiers. President Omar al-Bashir had proudly insisted that Sudan, from Wadi Halfa to Nimule, was one. Most southerners had long seen Sudan as two nations, unequal in power and status.

Although citizenship was a political question for civilians, drawing the boundary line was a security imperative for soldiers. They demanded to know which land they were supposed to defend. During the negotiations, generals on both sides conflated the legal boundary with the ceasefire or security line and shoved aside the lawyers and cartographers. It proved impossible to agree a boundary while the two countries' armies were facing each other, combat ready, in the border zone.

On July 9, 2011, the new international boundary between South Sudan and Sudan instantly became one of the longest in Africa, at more than 1,300 miles or

2,100 kilometers.⁵ It was also among the most complicated and contested. The Comprehensive Peace Agreement (CPA) defined it as the administrative line between the northern and southern districts as they existed at the time of Sudan's national independence on January 1, 1956. This simple formula concealed the extraordinary difficulty of determining where that line lay on that day. Many Sudanese and South Sudanese assumed that the records of the Anglo-Egyptian Condominium authorities—in practice, the British—contained all the documents and maps needed to settle this question. It was not so simple.

International legal practice for determining a boundary is based on a hierarchy of sources. An international treaty is the most authoritative followed by diplomatic correspondence. These did not apply. For an internal administrative border, the top source is an official gazette entry specifying the location of the boundary, using coordinates or geographic markers (such as rivers or mountains). Problems arise if those geographic markers are vague (e.g., a grove of trees), ambiguous (some place names refer to different locations), or changeable (e.g., the bed of a river whose course may change). The next best source is administrative records, such as official correspondence. After that, the arbitrator can turn to maps, which also have a status hierarchy: officially gazetted maps, administrative maps, and other maps. Because the reference day was Sudanese national independence—1/1/56—only sources before that date were relevant, and anything that had happened afterward was not. Suddenly the colonial archives and the scholars who studied them became sought-after assets. Customary settlement and use are relevant only in exceptional cases, such as the special instance of Abyei, although it is to be taken into account in best practices for soft-border management. The views of elders about customary landownership are not relevant, in contrast to elders' prominent role in deciding who qualified as an authentic southern Sudanese for the purposes of voting.

Part of the problem faced by the experts, lawyers, and negotiators was that the hierarchy of sources was not understood by the populace at large. Many people believed that local custom decided the border. For example, the Bahr al-Arab or Kiir River was widely assumed to serve as the north-south boundary. Many southerners firmly believed that place names in the Dinka or Nuer languages proved that such-and-such a location belonged to South Sudan. Others were convinced that the British possessed a master map, which they had not revealed. Salva Kiir Mayardit called on the British Government to provide it and was disappointed when London could not provide authoritative answers.⁶ A map of areas where different languages were spoken, based on the 1955 census, seemed to combine both vernacular and colonial authority and was often referenced by southerners as where the “real” boundary lay.⁷ On several occasions, southerners brought tribal elders to the discussions of the Technical

Boundary Commission (TBC), where they made eloquent presentations about who had lived where over the generations, which carried no legal weight.

The process of finalizing the boundary begins with its *delimitation* by documentary evidence, followed *delineation* of the line on a map, and finally its physical *demarcation* on the ground using markers, such as concrete pillars. Where demarcation had been done, in an authorized manner and correctly, the boundary was rarely in dispute. But in some places, boundary markers were placed incorrectly or were moved, either by natural forces, such as erosion, or by human error or mischief. In Joda on the Nile, the correct placing of boundary marker was disputed.

Confusion was deepened by Abyei, because the methods used to determine its northern boundary were unique (see [chapter 8](#)). The Abyei Boundary Commission and the Permanent Court of Arbitration used historical records for ethnic settlement as evidence, because there was no Condominium-era gazette, administrative record, or map for that boundary. This created the misleading impression that communities' customary settlement patterns were relevant for the border as a whole.

Best practice for African border management includes the principle of a soft border under which local communities carry out customary social and livelihood activities regardless of the frontier. Given that many boundaries cut arbitrarily through communities, farmland, and pasturelands and that local people have kin ties and trading relationships across the borders, this assists social peace. The soft-border principle was especially pertinent for a newly established border. For many southerners, however, the whole point of the border was to separate them from their former overlords.

The CPA set up an ad hoc TBC to delimit, delineate, and demarcate the border. It was inaugurated in September 2005 and optimistically expected to complete delineation within six months, followed by the ground demarcation. In fact, it took eight months to become fully staffed and another eighteen months to agree to its rules of procedure and to collect records, documents, and maps—and even after that the southern representatives suspected that their northern counterparts were concealing vital information.⁸ It was only in 2009 that the committee completed reviewing the materials, but the cochairs still could not agree on a report to submit to the presidency.

The TBC had eighteen members. In theory all were technocrats. It was headed Professor Abdalla al-Sadiq Ali, head of Sudan's National Survey Authority (NSA) and a recognized expert who had worked on various AU and United Nations (UN) border programs.⁹ In practice, al-Sadiq ran every decision he took by the two NCP ministers overseeing the committee's work, Idris Abd al-Gadir and Mohamed Mukhtar.¹⁰ Meanwhile, the northern press complained that seven southern members were politicians and not technocrats.¹¹

As so often was the case, the southerners suffered from a shortage of qualified personnel to fill the long list of technical and political positions cataloged in the CPA. Riek Degoal, the committee's southern cochair, later served as a minister in Unity State.¹²

In TBC meetings, the two sides showed profoundly different understandings of their task. Northern committee members came to meetings with meticulous documentation and well-prepared legal arguments. Southerners brought witnesses such as local chiefs who testified over customary ownership. The southern delegates constantly suspected they were being tricked and were acutely aware of the political risks of being seen to concede land to the north. The northern side introduced one dispute (the town of Kaka), which they expected to lose, just to use it as a bargaining chip. Frequent disputes over procedural details repeatedly paralyzed the TBC. Al-Sadiq claimed that they had been held up for four months debating the translation of a single English word.¹³ He was a master prevaricator, insisting that many disputes should be referred to the presidency. He was right, however, that a technical committee could not solve political problems.¹⁴

Only rarely, did al-Sadiq's and Degoal's political overseers intervene to push the process forward.¹⁵ The politicians found the details of the boundary vexing and the paralysis of the TBC even more so. That was partly disingenuous: Politicians hid behind the impasse at the TBC to avoid making decisions that might anger their constituents. In February 2010, al-Bashir ordered the committee to begin demarcation.¹⁶ It finally sent a team to put up boundary markers along the stretch between Blue Nile and Upper Nile states—the one place northern and southern members could agree upon. The cochairs then complained that, despite help from the United Nations Mission in Sudan (UNMIS), the logistical effort meant a delay to their report on the disputed areas.¹⁷

The Five Disputed Areas

Twice in early 2010, the African Union High-Level Implementation Panel for Sudan (AUHIP) team met al-Sadiq and Degoal who explained the demarcation process. The two initially agreed on the map for the border with the exception of four areas.¹⁸ From west to east they were:

1. The Hofrat al-Nahhas/Kafia Kingi area, disputed between South Darfur and Western Bahr al-Ghazal;
2. The small town of Kaka on the White Nile, and possibly a surrounding area, wholly enclosed by Upper Nile but (according to the north) administratively part of South Kordofan in the colonial era;

3. Jebel Migeinis, located where the Upper Nile, South Kordofan, and the White Nile meet; and
4. A small slice of land in the agricultural area of Joda on the east bank of the Nile on the White Nile-Upper Nile boundary.

A fifth disputed area was later added:

5. A fourteen-mile-wide strip of territory immediately to the south of the Kiir/Bahr al-Arab river, on the border between South Darfur and Northern Bahr al-Ghazal, sometimes known as the “Munro-Wheatley” strip.

These areas were the “disputed areas”: locations that the TBC had agreed needed delimitation. Later on, South Sudan was to add more places to the list: these were called “claimed areas.”

Kafia Kingi

Kafia Kingi is the far west of Sudan, where South Darfur and Western Bahr al-Ghazal meet Central African Republic. Speaking to the media in late 2011, al-Sadiq declared “the region of Hofrat al-Nahhas has never been attached to the south, the number of Muslims there is practically 100 percent, it is settled by Darfurian tribes and they are northern tribes, no doubt about that.”¹⁹ In this public forum, al-Sadiq jettisoned his technical-legal approach for one based on identity, mirroring the arguments he had rejected when the southerners made them. The Islamists still saw the boundaries of the Islamic *umma* as transcending mundane secular boundaries.²⁰ History and anthropology tell us that identity of the region’s peoples was far more flexible. Many in the area identified as Fertit, a term for an ethnic group that was used for a period by the Dar Fur Sultanate to denote those who lay outside their realm and were seen to be enslavable, but which for the Fertit signified independence from state control.²¹ On the ambiguous borders of the Sultanate, ethnic identity was marked by “mutability.”²² The Sultanate mined copper at the eponymous Hofrat al-Nahhas. The British had, in the 1930s era of “southern policy,” tried to eradicate this zone of ethnic fluidity by burning the town of Kafia Kingi and transferring the population of the area. “Muslims” were relocated to Darfur and “Indigenous” groups to Raga in Bahr al-Ghazal, with a cordon sanitaire between the two.²³ But the separation policy never worked. After it was reversed in the 1940s, the late-colonial, early postindependence governments encouraged northern pastoralists to return, particularly when copper mining intensified in the 1960s.²⁴ In practice, ethnic fluidity remained—as Craze has noted, its population “does not fit into any model of what ‘northerners’ and ‘southerners’ might be.”²⁵

According to the standard legal procedures, the case for Kafia Kingi being awarded to the south was clear. The Condominium regime had always treated it as part of Bahr al-Ghazal. Although there were no gazette entries, it was consistently shown on maps. The southern case was indirectly confirmed by the maps that the northern side wanted to introduce, which had been doctored following the transfer of Kafia Kingi north in 1959. Because this transfer had occurred three years after the decisive date, these maps could not support the northern case. According to Douglas Johnson, when the TBC initially met, it was content to allow Kafia Kingi to go south, but it changed its policy after the governor of South Darfur intervened and insisted that the territory and its hardwood forests belonged to his state.²⁶ A northern lawyer advising the TBC privately told a Panel staff member that if the north won Kafia Kingi, it would be only because of the legal incompetence of the southern side. He also indicated that the government of Sudan (GoS) intended to hold onto the area and if necessary, trade its claim on Kaka for keeping Kafia Kingi.²⁷

Kaka

The town of Kaka on the river Nile had an uncertain status that could be traced back to the Closed District Ordinances of the 1920s, whereby the colonial government had sought to separate both the Nuba Mountains and the south from northern Sudan. The policy had left the Nuba Mountains needing a new outlet for trade, so the administration transferred Kaka, originally in Upper Nile Province, for this purpose.²⁸ The southerners said that Kaka had been returned to Upper Nile's administration when the Nuba Mountains had been reincorporated into Kordofan in 1928; however, unlike the 1923 transfer, because this was not officially gazetted, it was harder to prove.²⁹ Also, the 1923 transfer had had never been shown on any map.³⁰ The northerners argued that Kaka should be regarded as a northern enclave within the south.³¹ The case was further complicated because the documents did not make it clear whether the transfer was just the town or an undefined surrounding area. The northerners relished the Kaka ambiguities because it allowed them to prevaricate, and it gave them a card to play in any future deal involving a swap of territory.

Jebel Migeinis

The map of the border at Jebel Migeinis was a classic example of an ambiguity in the colonial-era archive. The three-province corner point was specified by a geographic feature, namely a beacon associated with a hill. Unfortunately, there were two beacons, one on the summit and the other on the flank, and

it was not clear which should be used. Also, modern Global Positioning System (GPS) data put Jebel Megenis in a slightly different location to that on the colonial maps.³²

Although the specific point of contention was the location of the beacon, the Jebel Migeinis dispute also highlighted the clash between customary rights and administrative boundaries. In this case, the customary lands of an Arabic-speaking cattle-herding *Baggara* tribe, the Seleim, identified with northern Sudan, lay inside southern Sudan.³³ The disputed area around Jebel Migeinis was only a small sliver of this land, so the formal boundary dispute was, at best, of marginal concern to the Seleim, but their tribal claim still intruded into the TBC.

In colonial-era maps and documents, the land on the western bank of the White Nile south of Jebel Migeinis is identified as “Dar al-Selim.” According to Douglas Johnson, this was because Seleim pastoralists had negotiated land use rights with the indigenous Dinka and Shilluk communities.³⁴ This may be correct, but the boundary-making procedures do not recognize such customary agreements. The earliest relevant entry in the colonial *Sudan Gazette*, from 1905, noted “the Selim Baggara Arabs . . . though they may be partly north of the boundary, belong to the Upper Nile Province” (in the south).³⁵ A few years later, the Seleim as a tribe were transferred to come under the authority of White Nile Province (in the north),³⁶ while keeping grazing rights in Upper Nile.³⁷ Every map showed “Dar al-Selim” on both sides of the border. When the southerners at the TBC made their case over Jebel Migeinis, they quoted a colonial gazette entry that defined the south’s boundary as including “Dar el-Seleim.”³⁸ The irony was obvious: They were using a tribal reference in the records to claim land, while at the same time, they were denying members of that same group any claim to citizenship, including refusing to recognize their language (Arabic) as an Indigenous language of South Sudan.

This was too good an opportunity for provocation for their northern counterparts to pass up. Al-Sadiq responded with the argument, made with a straight face, that since the Seleim were “northern,” their land should also be “northern.”³⁹ This was intended to irritate the southerners, which it did. Northerners drew the obvious contrast with Abyei, where the Dinka Ngok had used tribal landownership to override the principle that the 1/1/56 border was sacrosanct.⁴⁰

Joda

The debates over Joda were ostensibly about a single boundary marker, but they also related to decisions taken on either side of Sudanese independence, when the tiny agricultural scheme was a flashpoint of the first serious political crisis

in Sudan's postcolonial history. The scheme was worked by historically Umma Party-supporting Baggara cotton farmers, who rioted in February 1956 when the owners of the scheme, who backed the National Unionist Party, denied them a share in the excess profit obtained that year. In a confrontation with police—also dominated by National Unionist Party sympathizers—forty people were killed. The police then rounded up members of the local population and detained them in the barracks at Kosti, where 194 suffocated.⁴¹

The Joda Scheme was established in 1953. The location of the project on the border between White Nile and Upper Nile meant that it suddenly became important to determine exactly where the province boundary line ran, to ascertain which province had jurisdiction over which parts of the scheme.⁴² Two months before the “Black Hole of Kosti” disaster—a few weeks before national independence—the two governors decided to rectify an error in the *Sudan Gazette* of 1920 and to push the boundary a few hundred yards to the north.⁴³ This meant that when in the years after the “Joda incident” the project's new administrator, Kamal Bedri took a seat in Abboud's Central Council, he did so as a representative of Upper Nile.⁴⁴ The relevant change in the borderline, however, was officially gazetted only in July 1956.⁴⁵ The lapse between the decision when it was gazetted created a problem for the TBC, because the key date of 1/1/56 fell in the middle.⁴⁶ The two sides disagreed. The northerners held out, both as a bargaining tactic, and also to defend their ownership of an important agricultural scheme.⁴⁷ Meanwhile, the local Abialang Dinka population insisted that the historic north-south boundary was many miles farther to the north.⁴⁸

The Fourteen Miles

The final area of dispute, the Fourteen-Miles area between the boundaries of South Darfur and North Bahr al-Ghazal, was a special case. The northerners on the TBC argued that the area was not initially in dispute because the border had been clearly delimited in 1924, but that they had agreed to include it under instructions from the Joint Political Committee.⁴⁹ Al-Sadiq sometimes referred to the disputed areas as “four plus one.” Degoal maintained he had challenged it from the start but that al-Sadiq had refused to listen. What made the Fourteen-Miles area special was that the final boundary line became entangled with the controversy over the centerline of the Safe Demilitarized Border Zone (SDBZ), the de facto ceasefire line.

The Rizeigat (Darfur) and Dinka Malwal (Bahr al-Ghazal) communities had conflicting claims to the Fourteen Miles. At first, the Condominium drew the tribal boundary between the two territory along the Bahr al-Arab/Kiir

River. At the time, Dar Fur was a de facto independent state under Sultan Ali Dinar.⁵⁰ Then, to reward Rizeigat assistance in the 1916 conquest of Darfur, the British extended the boundary forty miles south of the river in 1918. Resentment at this decision fed into the 1921 Ariandhit rebellion. In 1924, the British governors of Darfur and Bahr al-Ghazal, Patrick Munro and Mervyn Wheatley, consulted Dinka and Malwal leaders over the boundary, and subsequently signed the agreement that bears their names.⁵¹ This document brought the line—and the de facto provincial boundary—closer to the river, but still fourteen miles south of where it had been before 1918, albeit with Malwal grazing and fishing rights on the south bank guaranteed.⁵²

At an intertribal conference eleven years later at the small riverbank town of Safaha, colonial officers complained of the “inability on the part of [Dinka] Malwal generally to appreciate the ruling of the Munro-Wheatley agreement, that the boundary of Dar Rizeigat lies 14 miles south of the River. The fixed idea, that the river is the boundary and the South bank theirs, has not yet been eradicated from the Malwal brain.”⁵³

The rationale for the decision was not relevant to the TBC. On the face of it, as the northerners argued, the agreement was clear and the case was closed. The southerners disagreed. First and foremost, they claimed that Munro-Wheatley tampered with a tribal boundary and did not establish an administrative one, and it had never been recognized by the governor general or included in the *Sudan Gazette*. They argued it had never been recognized by the Malwal, who were hostile to the colonial administration at the time of the agreement.⁵⁴ Finally, they insisted that it had only given the Rizeigat grazing rights, rather than rights to settle, and modifications to the agreement in the 1930s had recognized Malwal claims.⁵⁵

Agreements between the Malwal and Rizeigat held out hope for an amicable settlement of community rights in the area. In contrast to Abyei, relations between the two communities had never been broken entirely. In the 1980s, Rizeigat militia had devastated the Malwal and massacred them (and other Dinka) in the Rizeigat-dominated town of al-Da'ien.⁵⁶ By the early 1990s, however, Rizeigat chiefs had recognized the disastrous consequences of Khartoum's militia policy and reestablished a *modus vivendi* with the Malwal, making local agreements to hold a “peace market,” secure seasonal grazing, and enable safe passage of migrant workers and traders.⁵⁷ After the CPA, these agreements were consolidated.⁵⁸

The Fourteen Miles was militarily important to both armies. It was the only section of the boundary that ran close to a defensible natural geographic feature—the river—and it connected southern Sudan and Darfur, and therefore the SPLA and the Darfur armed movements. In any new war, control of the

two bridges over the Bahr al-Arab/Kiir River would be strategically significant. This issue was forgotten during the CPA interim period but emerged with a vengeance in the years following secession (see [chapter 17](#)).

Referendum Without Borders

With the TBC deadlocked and the GoS threatening to use the issue to delay the referendum, Mbeki visited the Committee office in August 2010 to find out the reason for delay and see what could be done. Al-Sadiq and Degoal agreed on one thing: Political factors had held them back. Al-Sadiq observed sardonically: “The committee is over five years old. In this long period the committee has achieved these things: writing down the mandate for its work.”⁵⁹ He thought that without “political sensitivities,” they would have finished by 2008. Degoal, however, distrusted the NSA and wanted an “independent or neutral agency” to replace it.⁶⁰ Al-Sadiq was proud and possessive of the NSA, insisting that it was the oldest such institution in Africa and had provided expertise across many countries.⁶¹ The personal animus between the two men was evident. They could not even agree on how to submit the report to the presidency. Mbeki could at least solve that problem: He received the report himself and handed it to al-Bashir and Kiir.⁶²

The presidency could not solve the problem. Kiir bluntly told the Panel that it was “safe to assume” that the five contentious areas would not be agreed on before the referendum. He said that the referendum should go ahead and that all that was needed was a start to demarcation.⁶³ Meanwhile, NCP leaders suspected that the SPLM was holding back the demarcation so that it could use an ambiguously defined border to mobilize its northern allies after secession.⁶⁴ When al-Bashir and Kiir tasked Pagan and Gosh to head the Joint Political Committee, they gave instructions to resolve the borders. That also turned out to be fruitless.

The Panel hoped that it could help defuse tensions on the disputed areas with a commitment to a soft border that would make the exact borderline less consequential. It wrote up a text with a promise to “adopt laws and maintain policies that facilitate the peaceful and free movement of peoples and interaction among border communities. “This would allow citizens of both countries to cross the border without needing a visa, and avoid “trade barriers, customs, taxes or levies on trade or movement of goods” between the north and south. A key provision was to “facilitate the traditional rights of peoples to graz[e] cattle and move across borders.”⁶⁵ The idea was to reduce pressure in areas where administrative boundaries and customary rights were mismatched.

The plan drew on the Tamazuj conferences held by the border states.⁶⁶ For southerners, however, the Tamazuj concept was tainted by the Islamist leanings of its architects, and its meetings had avoided discussing how cooperation would work if the south seceded.⁶⁷

As with other elements of the November 2010 Framework Agreement negotiations, north and south verbally endorsed the idea but would not formally commit. The soft border was another casualty of the Abyei dispute and deepening distrust. The SPLM wanted to defer negotiations on trade and economic cooperation, seeking to assert their economic sovereignty first.⁶⁸ Most southerners saw the soft-border agenda as conceding privileges to nomadic Arab herders without comparable benefits for them.⁶⁹ Some said that the grazing lands of the south were a southern national resource, not to be shared with the former oppressor.⁷⁰

The leaders most committed to a soft border were the two vice presidents: Ali Osman and Riek Machar Teny. Neither president showed an interest, and no political decision was made to reduce the salience of the borderline. With no agreement in prospect before southern independence, the SPLM floated the option of international arbitration. It had raised it earlier, trusting that foreign lawyers and an international tribunal would deliver favorable decisions. Nhial Deng pressed for this in the framework negotiations, while Gosh and Mukhtar refused. Gosh demanded confirmation that only five areas were in dispute, whereas Pagan, Nhial, and Paul Mayom wanted to keep the door open to add extra “disputed areas” later. Gosh was not having this: “[This is a] new position from the SPLM: the entire line in the central and western sections is now in dispute. E.g. Heglig; they have intention to raise new points, new disputes. If this is the tendency it is a tendency for war.” The SPLM did not take the bait. Nhial switched the topic back to the need for third-party assistance in demarcating the border. As the talks neared a close, Gosh again raised the threat that the referendum should not take place without a demarcated boundary.⁷¹ This was not a credible threat, and he backed down the next day.⁷²

In the hope that the former colonizer could resolve the matter, Kiir had asked British Foreign Secretary William Hague for his help. Hague agreed to provide technical support. British embassy officials downplayed SPLM expectations, knowing that the colonial archives were unlikely to yield anything that wasn’t available in Khartoum.⁷³ When it was delivered in January, the British white paper did not produce the definitive map.⁷⁴ The paper disappointed the south in suggesting that the way ahead was a compromise that gave two of the areas to the north (Joda and the Fourteen Miles—for which it confirmed the northern reading of the Munro-Wheatley agreement), gave two to the south

(Kafia Kingi and Kaka), and divided the third (Jebel Migeinis). It also cautioned against both arbitration and extensive discussions with local communities.⁷⁵

The two sides had no immediate option but to continue with the existing process. Gosh and Pagan resolved to push it further. They faced the total paralysis of the TBC under its feuding cochair. Al-Sadiq blamed the southern members for leaving for Juba, which Degoal denied.⁷⁶ When the Panel asked al-Bashir and Kiir about the status of the TBC report, twice the presidency referred them back to the TBC.⁷⁷ The only progress the TBC had made was to set up a subcommittee to determine the size of the disputed area around Kaka, which the subcommittee could not agree.⁷⁸ This meant that al-Sadiq refused, apparently defying al-Bashir, even to start demarcating the fully agreed-on eastern segment of the border, on the basis that the entire map had to be finalized first.⁷⁹

Finally, Gosh and Pagan met face to face with al-Sadiq and Degoal. In a twist on the standard pattern of confrontation, Gosh chastised al-Sadiq, cutting short his lengthy prelude on the reasons why nothing had been done.⁸⁰

Salah Gosh: [We are] fed up of hearing history we want to hear the detailed arrangements of what you need to begin: cars, money, engineers, for practical crash programme, come tomorrow 11 am with the plan.

Pagan: Is it clear we want you to do demarcation and other tasks at the same time, is it clear?

Al-Sadiq was jolted into action. At the next meeting, he and Degoal agreed to demarcate all the agreed areas by the end of April.⁸¹ But they did not follow up. For instance, they promised to send a team to locate the contentious boundary marker in Joda, but the mission never materialized.⁸² By the time Pagan and Gosh met the TBC for the third time, on April 13–14, little had happened. Staff from the African Union Border Program offered of their services. Al-Sadiq then gave a long-winded explanation for how the engineers committee, the capacity-building committee, the budget committee, and the mapping committee, plus two subcommittees, were working—or not. Both Gosh and Pagan were visibly annoyed with the lack of progress and jointly berated the TBC for again failing to do its job. Al-Sadiq and Degoal looked appropriately chastised. The minutes read: “In a unique moment of harmony, the chair and deputy chair agreed that it was unrealistic to expect border demarcation to be finalised by 9 July.”⁸³

Al-Sadiq and Degoal continued to blame one another for the lack of progress. Degoal complained that his office had been closed by the GoS as it began removing southerners from central government positions.⁸⁴ The question was now how the GoS and SPLM would use the TBC failure for other political ends. The AUHIP tried to revive the principle of the soft border in the June

negotiation, but the southerners objected: “We can’t have a soft border before we have it [i.e., a border]. We need to define it before it becomes soft.”⁸⁵

By May, another deadline was creeping up. The plan for oil extraction (“lifting” in the industry parlance), marketing, and revenue allocation for July—the first month of South Sudanese independence—needed to be finalized with the oil companies. Some of the oilfields were transboundary, however, and a precisely delineated boundary was needed to enable this to proceed.⁸⁶ The critical oilfield straddled Unity State and the Heglig area of South Kordofan. As anticipated by the GoS, the south raised its claim to Heglig/Panthou as a sixth disputed area. Luka Biong later said that it submitted the claim in writing on June 28, 2011, the very last day of negotiations.⁸⁷

The other place that was exploding was the Fourteen Mile area. The SPLA had reinforced its positions along the river, in the middle of the contested area, just before the referendum, and the dispute had the makings of another Abyei. The only thing on which everyone could agree was that it was complicated. A young man from the Malwal Dinka candidly told a researcher: “This issue of Mile 14 is confusing. But for my decision I can tell the international community that if they allow us to fight, where we reach will be the border. . . . let us fight and the border will be demarcated.”⁸⁸

ECONOMICS AND FINANCE

The overriding principle of the postreferendum talks was the goal of two viable states. The challenge, for the economic relations between the two, was that these two viable states were to be forged from a single dysfunctional state with an unsustainable and inequitable economy (figure 6). Sudan's economy was forged in imperial era through the violent exploitation of the labor, land, and other resources of the peripheries, and that legacy lived on. The African Union (AU) Panel on Darfur had identified it as the root cause of the "Sudanese crisis in Darfur." Southerners had felt the whip and shackle of this predatory system even more sharply.

The people of southern Sudan did not vote for secession solely because they considered themselves a different people to the northerners. They left because of two centuries of material abuse and exploitation. Their bodies had been enslaved and their lands, and everything that grew on them or could be found beneath them, had been plundered. The material evidence of this was evident for any southerner traveling to the north.¹ When the Comprehensive Peace Agreement (CPA) was signed, Juba looked like an overgrown village, a decayed garrison town, and a camp for displaced people. It hardly had a two-story building. Pedestrians could wander in the middle of its unpaved streets without worrying about traffic. There was just one bridge over the Nile in the whole of southern Sudan, a rudimentary iron construction. By contrast, Khartoum was a booming Middle Eastern-style city, with high-rise buildings, traffic jams, shops selling consumer luxuries, and eight multilane road bridges over the Nile. The city consumed one-third of the electricity produced in the country.

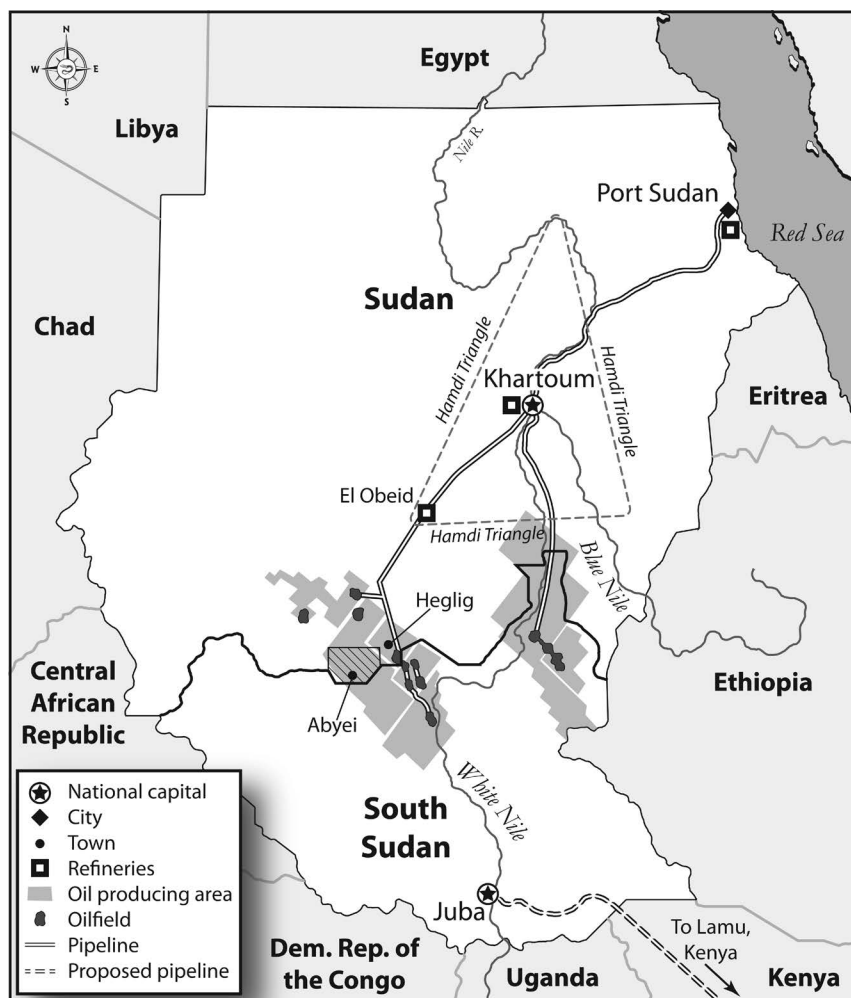


FIGURE 6. Economic map. Created by John Wyatt Greenlee/Surprised Eel Mapping.

Its spectacular growth had been fueled by oil, most of which had been pumped from under southern Sudan, from places where scorched earth campaigns had left local communities living as refugees in their own country.

In the decades before oil was first exported in 1999, Sudan's metropolitan elite had created a state of private wealth and public debt.² Oil did not create this dysfunctional system, but it both accentuated and concealed the problem. Petro-revenues funded a bloated government payroll and army. None of the oil funds had gone to paying down the ballooning debt or laying the foundations

for a productive economy when oil began to dwindle, as was expected by the 2020s. Sudan's elites—north and south—had become addicted to oil. Like a psychotropic drug, it accentuated the state's personality disorder.

Oil distorted Sudan's economy. By 2009 it was 10 percent of the gross domestic product (GDP) but 55 percent of government revenue in the north and 97 percent in the south. Agricultural growth slowed from 10.8 percent in the 1990s to 3.6 percent in the 2000s, with exports dwindling. Tax revenue was just 6.2 percent of GDP, half of the levels in Egypt and Kenya. The World Bank argued that "Sudan needs a new, more balanced growth vision that is less reliant on oil, while using the oil wealth to create an economic foundation for a diversified, inclusive and sustainable growth path."³

The CPA floated on oil. In 1999, the year the first oil was pumped, the government budget was under \$1 billion. Seven years later it was \$12 billion.⁴ This extraordinary expansion in revenue created incentives for peace. The Sudan People's Liberation Movement (SPLM) feared that it would be unable to withstand a rearmed Sudan Armed Forces (SAF), while the oil funds made compromise attractive. The incoming Bush administration was interested in the oil and suggested that a major US oil company would invest if there were peace. The gush of cash enabled Khartoum to offer a "payroll peace" that papered over the political divisions.

For the proponents of Naivasha, oil money opened the door to transformation engineered by an activist presidency. The southern Sudanese were tempted by the prospects of living the high life of a petrostate. Khartoum's political business managers dreamed that they had enough money to bribe enough southerners to keep the system going, as one country.

As the referendum approached, therefore, the Sudanese—north and south—faced two daunting tasks. One was to negotiate the terms of secession. The other was to reform a nonviable economy—redressing the distortions of the oil boom and the historic inequities of the colonial-legacy political economy. Thabo Mbeki's hope was that the referendum offered "the first real opportunity since Sudan's independence in 1956 for the people of South and North Sudan to restructure their relationship to define an equitable and mutually beneficial mode of peaceful coexistence."⁵

The starting point was "two viable states." The November 2010 Framework Agreement acknowledged "historic links" and the need to "maintain a special economic relationship."⁶ This language was a nod to the CPA, and the SPLM did not object, but for many southerners, the purpose of secession was precisely to sunder those historic links, from which they believed no good could ever come. In fact, relations were to descend into an economic war in which each side tried to damage the other.

Contrasting Economic Visions

The central question for Sudanese political economists had been how to achieve growth and welfare that redressed the colonial legacy of inequality that had sparked recurrent rebellions in the south, west, and east of the country. There were five strands of thinking about the political economy of the emergent two Sudans.

Number one was state-building from a *tabula rasa*. Three weeks after southern independence, Salva Kiir Mayardit declared: “The Republic of South Sudan is like a white paper—*tabula rasa*!”⁷ This idea appealed to international technocrats, who saw in this new country as a blank slate on which the best developmental blueprints could be inscribed.⁸ Some southerners championed this approach, particularly Riek Machar and Information Minister Benjamin Marial who approached potential foreign investors. A small army of advisers and consultants from the United Nations (UN), World Bank, US Agency for International Development (USAID), and other development agencies took up residence in Juba’s hotels. The UN identified forty-four essential governance tasks, and enthusiastically collaborated in drawing up plans with its national counterparts. South Sudan was a landlocked country with a limited financial sector, its economy hampered by long-term underdevelopment, corruption, and chronic insecurity, which had deterred all but the most opportunistic foreign investors. Most commercial interest was in oil and other as-yet-untapped minerals. Donor agencies, led by the US, focused on the agricultural sector, by far the largest source of livelihoods and employment.⁹

South Sudan’s ambitious dreams were encapsulated in the government’s “Vision 2020.” It included a new capital city, Ramciel (described as a “costly distraction”), and a competition to redesign each state capital.¹⁰ The winning entry (amusingly) reshaped each city to resemble that state’s insignia (including a giraffe and a rhinoceros). This was a sign of the euphoria of the moment: Anything was possible. South Sudan looked to join a Chinese-funded railroad project linking Juba to East African capitals and ports. The World Bank’s 2011 *World Development Report* on conflict and fragility gave an optimistic gloss.¹¹ The Bank did not publish the more skeptical country report on postsecession South Sudan that described it as a “rentier political marketplace.”¹²

The second vision was John Garang’s New Sudan, which originated in Marxist critique of Sudan’s unequal development. As the war ended, Garang’s idea was that the marginalized “African” majority should not secede from the state that had been built with their sweat, blood, and the fruits of their soil, but that they should claim possession of it. This agenda was popularized with slogans such as bringing the towns to the rural areas through massive infrastructural

investment and service delivery.¹³ After Garang's death, this vision was championed by precession oil minister and unity advocate Lual Deng.¹⁴ It also shaped the outlook of the SPLM-N, Darfurians, and the Sudan Communist Party. Orthodox Marxism had long since died as a political force, but occasionally its views surfaced. Abd al-Wahab Abdalla wrote a critique "on the reactionary nature of the Sudanese provincial revolutions: liberating the Bantustans."¹⁵ He savagely opposed both secession and equalizing infrastructural development to ameliorate the hardships of the peasantry. What was needed, he said, was seizing the state. His argument echoed a famous paper by the Communist Joseph Garang (no relation to John Garang), "Dilemmas of the Southern Intellectual," which lambasted southern secessionists as "rightists" and called for "an alliance between the southern national groups and the working class, led by its political organization, the Communist Party."¹⁶ But Abdalla was a lone voice. He wrote under a pseudonym: Sudan's communists—whether they remained inside the Sudan Communist Party, had joined the SPLM, or had abandoned active politics—were not ready to publicly support a logic that entailed abandoning their comrades and condemning their long struggles as futile.

The third strand was the mainstream one: maintaining rentierism. The National Congress Party (NCP) believed that Sudan could continue to thrive with minor tinkering to its economic policies. In 2010–2011 the ruling party shifted from denial about the implications of secession to anxiety about how it would expose the oil-based economy as unsustainable. The NCP was keenly aware that it owed its political survival to the increase in living standards in the northern cities, much of it based on subsidies on food and fuel alongside a huge expansion in salaried employment. The Arab Spring uprisings reminded them of the fate of Nimeiri in 1985, who fell after removing subsidies.¹⁷ Their overriding economic goal was to avoid destabilizing austerity measures and to keep their rentier political system running. Instead of an economic vision, the NCP had a survival strategy. That entailed squeezing South Sudan for every possible dollar.

In practice, the SPLM also adopted oil rentierism for its governing system. Many believed that the CPA-era oil boom was just the beginning. It was confident that the south's oil reserves were far greater than the fields already in production and that oil companies would clamor for a share. Oil funded 98 percent of South Sudan's first state budget.¹⁸ Existing fields were set to begin depleting as soon as 2015, so those new reserves needed to be brought quickly into production.¹⁹ The southerners also thought that the north was cheating them, on price and on reporting the amount sold, and hoped for a new pipeline linking them to East Africa that would give them a fairer deal. Most immediately, the CPA formula for wealth sharing gave Juba only half of the revenue from the oil extracted from southern Sudan. The other half went to Khartoum. If the

Government of National Unity had lived up to its name and had prioritized the development of the south with allocations of central resources (as reparations for historical wrongs, or as catch-up development), then southerners might have welcomed economic cooperation, even if they had not been persuaded to find unity attractive. The CPA period saw neither north-south infrastructure nor northern investment in southern development, so the revenue-sharing formula just incentivized separatism.

Both sides knew well that the other needed oil rents to survive. Zero-sum thinking from the security talks infected the economic ones. Northern generals wanted to shut down the pipeline on the logic that “it will hurt us but it will kill them.”²⁰

Strand four in economic thinking was northern separatism, the counterpart to al-Tayyib Mustafa’s cultural vision for an Arab Muslim Sudan. At first this was a minority view but became influential as the reality of separation dawned. The logic was articulated by Abd al-Rahim Hamdi, an influential Islamist economist who was minister of finance in the 1990s. In a paper published shortly after the signing of the CPA in 2005, Hamdi advocated managing the impact of secession by focusing development on “the geopolitical body . . . which I call henceforth Dongola + Sinnar + Kordofan axis.”²¹ This area later became known as the “Hamdi triangle.” The argument ran as follows: (1) this part of Sudan was the most developed and productive and therefore stood the best chance of attracting FDI [foreign direct investment] and domestic investment with assurances of good returns; (2) such investment would pull the rest of the economy up; and (3) most radically, the zone had the potential to be an independent state, jettisoning the peripheries. Although Hamdi feared the economic consequences of secession, he maintained “even if the others have separated, this axis could continue as a viable state. This is true in the case of the separation of the south and it is equally so though in a different way in the case of the secession of Darfur.”²² As Abdalla argued in his “liberating the Bantustans” essay, it would be easier for the mercantile elites to exploit the laborers of the peripheries if the latter were guest workers hailing from a foreign country.²³

The fifth strand was to see secession within the context of wider African integration. South Sudanese independence neared when the AU and the New Partnership for Africa’s Development (NEPAD) had set an agenda of economic integration agenda and Africa appeared well-positioned to “claim the 21st century.”²⁴ Fifty years earlier, during the decolonization era, most African states had adopted strategies that combined modernization with trying to break the shackles of dependence on exports of primary commodities to the markets of the former colonizer. Separatism was thus an economic as well as political anathema. Sudan was a prime example. The failure of state-led development

had led to structural adjustment programs, which often reduced the state to a position in which it could not even provide the basics of governance. In the new millennium, Africa's economic renaissance involved "bringing the state back" alongside regional economic integration and new partnerships with international donors.²⁵ Africa needed integration for many reasons: to achieve economies of scale; to overcome the state rents trap in small economies, whereby the disproportionately large role of natural resource rents distorted incentives away from value creation; to try to limit capital flight (licit and illicit); and to encourage African investment in Africa.

For Mbeki and other leaders of the African Renaissance, the principle of self-determination could be meaningful in this context of continental development. A number of Sudanese economists, including in international institutions, subscribed to these views, and some served in the government in Khartoum or Juba.²⁶ Few, however, were part of the mainstream of economic decision-making process. Economic integration was followed piecemeal rather than strategically. Thus, Sudan tied itself to Ethiopia's power, water, and transport grid and deepened its already substantial ties with the Arab world; in contrast, South Sudan sought membership of the East African Community primarily for political reasons. When the government of Sudan (GoS) and SPLM thought about common markets, they did not think about one another.

How to Unscramble an Egg

Mbeki described the challenge of secession as "unscrambling a scrambled egg." To achieve this, the first requirement was knowing the ingredients and the recipe. The north possessed the data and documentation; the south did not. But Khartoum was painfully slow to share its files. The process of disclosure had three elements. The first was empirical: the actual data. The north knew much more than the south, but it did not know everything, and it had not organized the data in a single place where it could be shared. Second was the international dimension. Most important was that the US was coming with a proposal on sanctions and debt relief. For Khartoum, the economic deal was trilateral, and Washington, D.C., was the senior partner, ahead of Juba. Whatever package the GoS was prepared to agree on with the south depended on what the US offered to them. The final element was analytical or strategic: What was each side's overall goal in terms of economic strategy?

Northerners, southerners, and facilitators gradually gained a stronger evidence base for negotiating. In parallel, the bigger picture came into focus, and it was truly daunting. The northern technocrats knew enough to be scared of

the economic implications of secession, but they were more immediately scared of being the bearers of bad news to their political masters. Without an agreed strategy from al-Bashir, Sabir Mohamed Hassan and his team shared the minimum and stuck to discussing what was safe—the technicalities. In Juba, the SPLM worried about the short-term damage that Khartoum could inflict through punitive actions, but it was unworried about the south's longer-term prospects. As the true scale of the economic challenge emerged, however, it drove the two sides further apart. At every meeting, the issues became more complicated, the depth of the impending crisis became more immense, and the time left to address it became shorter. As the GoS grew increasingly nervous, the SPLM became more prepared to push to the brink. Most important, the economic talks took place alongside the political discussions, and for the SPLM, financial concessions were a ransom to be paid for the north letting go of Abyei.

In contrast to the CPA negotiations, which took place while government budgets were expanding at 25 percent each year, the postreferendum talks were overshadowed by the dark clouds of contraction. In Naivasha, the NCP could think generously and the SPLM had incentives to agree; seven years later, Khartoum was haggling over tight margins and the SPLM was confident it had both right and might on its side. The bottom line was an impending crunch. Regardless of the formula adopted in the negotiations, oil production was expected to peak in the years following secession.²⁷ Both sides knew this. Salah Abdalla Gosh told the Panel: "The north has accepted that it will lose the revenue and accept budget cuts. But the oil will last for 10 years only in any case."²⁸ Even without secession, Sudan had been set to become a net importer of oil within six to eight years, and although potential reserves had been identified in Darfur, efforts to drill there had yielded unpromising results.²⁹

Another problem was that Sudan's creditors were eager that it should not carry on simply failing to pay its fast-escalating arrears and penalties on unserviced debt. The debt had been invisible: Most of it had not been serviced for years, and Sudan had managed its unmanageable debt simply by not paying anything. This gave a misleading impression that the north and south could proceed while the questions about the debt—who owed it and how it would be paid off—were left hanging. But the creditors needed clarity. They, therefore, became a third party to the negotiations. The US role was doubly crucial because its sanctions prevented any action to reschedule or relieve debt by the World Bank, International Monetary Fund (IMF), or Paris Club. The complexity and size of the debt meant that even with an expedited process it would be several years before Sudan could reap any benefits from measures such as the Heavily Indebted Poor Countries (HIPC) initiative. For the southerners,

secession might have seemed like an opt-out clause from the north's economic crisis, and many saw it that way. Indeed, they made the moral point: Why should they pay for their oppressor's borrowing? But law and finance were indifferent to ethics. The donors knew that the nonoil economy of southern Sudan was weak and poorly managed, as had been shown by the economic crisis that hit when the price of oil fell in 2009.³⁰ The south was also exposed to any adverse decisions taken in Khartoum, from restricting trade to the ultimate weapon of shutting the oil pipeline.

The talks began in a promising manner. In July 2010, the postreferendum negotiations Joint Working Group on Economic, Financial, and Natural Resources (JWG-EFNR) was set up. The delegations were headed, respectively, by Sabir Mohamed Hassan and Kosti Manibe (later also Gabriel Changson). They assured the Panel that they could resolve most issues between themselves, setting up four subgroups: currency and banking; oil; assets, debts, and liabilities; and water. Later, a subgroup on transport and communications was added. The Swiss government and the IMF were invited to assist with currency and banking, while the Norwegians assigned a team under their special envoy for oil, Anders Hannevik, to provide technical guidance.

Four months later, the subgroups had made little progress. The GoS threw a series of obstacles in the path. From the southern perspective, it looked like coordinated but camouflaged sabotage. Manibe detailed how Khartoum been slow in responding to Juba's proposals, had failed to show up for meetings, or had canceled them without due notice, while the subgroup on debts, assets, and liabilities had not even met once. The promised shared "data room" had not been set up. Manibe complained: "Documentation for this Data Room is in the sole custody and control of the GoS/NCP. The GoS/NCP has not, however, made available a single document and as such, to date, the Data Room has not opened."³¹ The international experts agreed, noting that "the South cannot be expected to take on assets and liabilities unless they know what they are."³²

The GoS counterclaim was that the south was forwarding unrealistic proposals and that it was refusing to discuss the agenda as a stand-alone item, instead insisting that the economic and financial issues needed to be part of a holistic package. That charge did not carry much water. Sabir was governor of the Central Bank of Sudan (CBoS) and had access to the official data, as well as a team of technocrats. Manibe and Changson, although eminently well qualified (Changson had founded the first bank in southern Sudan, the Ivory Bank), could not match the GoS command of data and analytics.³³ Meeting with the Panel in November, the GoS claimed, "We have gone quite far in the economic cluster."³⁴ It wasn't true. The first substantive meetings had been held just ten days earlier, convened by the Panel along with the Assessment and Evaluation

Commission (AEC) and key donors and experts. Laura James, the AEC's economist, supported the discussions and then went on to be economic adviser to the Panel, joined by the Ghanaian lawyer and economist Paatii Ofusu-Amaah. Mbeki was himself an economist with unrivaled experience in economic policymaking.

At this stage, the international entities focused on the negotiation process, not substantive issues. The donors adopted a "wait and see" approach—let each side appraise the situation and one another and put forward their options.³⁵ They had a generally rosy assessment, that the two sides would see the mutual advantage in cooperation and seek an outcome that was optimal for both. The US was also awaiting Khartoum's response to its preconditions for lifting sanctions, and the experts knew well that "the NCP was playing as much to the international community—demanding northern debt relief in exchange for full CPA implementation—as it was playing to the South for some kind of debt swap."³⁶

Coordinated by James and Hannevik, the experts drafted a section for the Framework Agreement. It included one paragraph on assets and liabilities, committing the parties to "explore fully the options."³⁷ It was silent on debt. On water, they were hopeful that it would remain nonpoliticized.³⁸ Currency was problematic. The IMF recommended a currency union, noting that "any new arrangement [would be] likely to fail without cooperation."³⁹ It warned that the southerners' preference for a new currency was complicated and risky, estimating that Juba would need \$1 billion in foreign exchange reserves to make it work. They feared that the GoS might preempt a new currency by introducing new banknotes that would make notes circulating in the south no longer legal tender and would cause an immediate crisis. The experts' proposed text included a commitment to cooperate, a transitional period of currency union, and a commitment to "develop specific joint mechanisms for transparent and equitable decision-making, and regulation of monetary policy and currency issues."⁴⁰

Oil was the biggest issue. Hannevik put several options on the table, all of them workable, and he was confident that the two sides would quickly reach agreement. Drawing on expertise and experience from oil industry negotiations, his team hoped to reach "heads of agreements" by the end of the year, which would be the basis for exact calculations.⁴¹ The plan incorporated short-term financial arrangements and fixed incentives for cooperation to export oil in the long term. Sabir and Manibe seemed to assent to this, although the US worried that their level was "too low" to make a binding decision.⁴² The oil experts reported that "the key issue that has not yet been agreed is the concept of an economic transitional arrangement. . . . [We] believe the SPLM is ready to

accept this, but it's one of their strongest cards to play, and they want to keep it until the end."⁴³

Beyond a general commitment to cooperation for mutual benefit, the language in the draft text dealt with procedure, not substance.⁴⁴ Hannevik's eight-point agenda was: "institutional cooperation for maximized value creation; environmental management; access to and ownership of export infrastructure; development of updated legislation on the sector; mutually beneficial arrangements for contract areas crossing the North South border; relationships with oil companies and contractors; ownership and participating interests of Sudapet and Nilepet;⁴⁵ access to refined products; a transition period; transparency and exchange of information."

The wording of the Framework Agreement, Section E, "Specific Commitments on the Petroleum Sector," remained virtually unchanged.⁴⁶

Going into the Framework Agreement discussions, it seemed that economic issues were the least of the challenges facing the Panel. In their bilateral meeting with the Panel in the afternoon of November 8, the GoS shrugged off worries.⁴⁷ In their evening bilateral, the SPLM said they were happy with the Norwegians' outline on oil, but they raised other issues. They feared the GoS might leave them with \$2 billion in unredeemable Sudanese currency, and they feared it might sell off assets before the south seceded.⁴⁸ When the two sides debated the relevant paragraphs over the following days, currency redemption was contentious, but there were only minor differences on trade and economic cooperation.⁴⁹ Mbeki was hopeful that the path to agreement was smooth.⁵⁰ Meeting with Gosh and Amum on November 28, his notes under the heading "economic cluster" were brief: "1. Need some political decisions. 2. Need cross-cluster coordination. 3. Too much time with experts—need to maximise [their value]. 4. Good progress re: currency, oil, water—not enough re: assets & liabilities + information."⁵¹ As the referendum neared, the north and south appeared to be heading toward a sharp but amicable separation. The future appeared to be "two viable states."

Perhaps unexpectedly, one issue hardly raised its head at the talks: the Nile waters. The addition of a new riparian country to the Nile basin was expected to alarm Egypt and thereby to entangle Cairo more deeply in the politics of the Sudans. That did not happen. One reason is that South Sudan had limited capacity for damming the Nile or its tributaries, and if the Jonglei Canal across the Sudd were to be revived, it would increase the flow of the river. The downstream states had no immediate cause for concern. Although Egypt strongly favored a united Sudan and might have used its muscle to try to ensure that outcome, popular protests brought down the government and consumed Egyptians in their internal politics.

Debt for Peace?

Debt was a huge issue. President Obama and John Kerry had promised to initiate the process of lifting sanctions, but that would begin after six months and there was no guarantee that Congress would make it smooth or painless. North and south had not even begun substantive talks on the debt, and the GoS had not yet opened its files. The GoS's opening position was that the international community should grant full debt relief and the north should retain all national assets. It was a maximalist starting point. If that was not possible, they proposed that debt should be divided according to ability to pay, with the south taking a share proportionate to its oil revenues. The SPLM position was diametrically opposed: It said that the south should not pay for a debt built up while the GoS was waging war on its people and that it would take on responsibility only for loans for projects physically located in the south. It wanted national assets, such as forex reserves and foreign embassies, to be divided equally.⁵²

James believed that the “zero-option” was most realistic. This entailed the northern successor state retaining all national assets and liabilities, including physical assets located abroad, and all debts except for those associated with specific projects in the south. It had the virtue of simplicity. The US Treasury worried that this proposal was “far ahead of the parties,” and the north would reject it. The alternative was a “debt swap” whereby the south would take on a share of the debt on the understanding that creditors would forgive it—but this relied on an “unprecedentedly rapid, proactive and coordinated international response.”⁵³

While voting was continuing in the south, Mbeki visited the Central Bank of Sudan.⁵⁴ Sabir, the governor, and his staff explained the problem. Sudan's external debt had reached \$35.6 billion. Of this, just 43 percent was principal, of which less than one-third was loans taken out to fund projects, almost entirely dating back to the 1970s. Seventy percent of the principal was additional loans taken out to cover balance-of-payments imbalances, often during debt rescheduling in the 1980s. Fully 57 percent of the debt was interest arrears and penalty interest—the latter growing exponentially, from \$56 million in 2000 to \$16.6 billion in 2009. The Paris Club was owed 31 percent, non-Paris Club creditors were owed 37 percent, multilateral creditors were owed 15 percent, and commercial lenders were owed 13 percent. Sudan's debt had increased by 6.39 percent over the previous year simply because its arrears had accumulated.⁵⁵

The debt prevented Sudan from obtaining soft loans and deterred foreign investment. Since 1997, an IMF staff-monitored program had reported satisfactory economic management, but without debt rescheduling, Sudan had to rely

on commercial loans. At a purely technical level, Sudan had done what was necessary to unlock the door to HIPC. It met the four criteria for HIPC eligibility: the debt was unsustainable, the economic performance was satisfactory, they had a strategy to deal with arrears, and they had a strategy for poverty reduction. Sabir's staff explained that the World Bank and IMF knew this and were sympathetic. A technical working group led by the UK also involved the US. The CBoS proposed that the north and south should work together on debt relief. Even if the debt burden were to vanish, however, the CBoS forecast a hard currency shortfall of \$1 billion after the loss of the south's oil.⁵⁶ It doubted the viability of the postsecession northern economy. Mbeki agreed that a rescue package was a priority. He had already done his homework and sent staff to meet with the international financial institutions and key creditors.⁵⁷ The British were coordinating with the Paris Club and Qatar was doing the same for Arab lenders.

Three weeks after the referendum, Mbeki met Manibe, Changson, and Lual Deng.⁵⁸ He explained that he was reaching out to Sudan's creditors, to get them "to recognize that Sudan can't pay the debt and it should be written off. And to say that the debt should be dealt with urgently, not in a routine manner." Lual endorsed the plan: "We should call this the Mbeki initiative, a debt for peace swap."⁵⁹ They then moved to the question of the south's economic plans now that independence was within grasp. Lual, who had shared Garang's vision and had long been frustrated by the SPLM's loss of direction since his death, said "there are pieces, such as the [World Bank's] 2005 Joint Assessment Mission, but there may not be a single model."⁶⁰ The SPLM team had a clear idea of specific challenges—for example, Changson said that even with the most ambitious debt relief effort at least \$8 billion in residual debt would be remaining—but as yet no integrated analysis. Manibe reported that the "referendum taskforce sub-committee for 2011 and beyond" had identified ten thematic areas, with fifty-nine objectives and their responsible government units. He expected "a pretty comprehensive plan for how GoSS can move for the next 3–5 years."⁶¹

Another cluster member, David Mayo, expressed the optimistic spirit of southerners at that time. He said he was unworried about the southern economy, which would double its oil revenue after independence. Mbeki responded by explaining how South Africans had inflated expectations after the end of Apartheid: "We have to be precise, so that in a year, the GoSS doesn't get challenged by the people because the resources aren't there. So I am worried about the South, though I'm glad that Kosti [Manibe] has a plan."

A few days later, the northern team flew to Juba for the economics cluster talks. Sabir prioritized debt relief, saying there could be no agreement on oil before plans for debt had been agreed.⁶² Meanwhile, Mbeki and the Panel's

economic advisers reflected on the two main approaches to the debt question. Apportioning the debt between north and south was more logical, but the criteria for implementing looked incredibly complicated. If the south were to take on debt for projects in the south, they would need to go back to the 1970s and find out exactly how much was borrowed for what, and the recordkeeping of that era was notoriously incomplete.⁶³ The GoS would need to do the investigations and provide the data and the SPLM would need to trust them.⁶⁴ Also, a final allocation required the creditors to reach a decision point on debt relief, which was at least two years away. Another possible approach was dividing the burden based on relative levels of human development, or on ability to pay.⁶⁵ None of these were practicable. A theoretically workable plan whereby the south took all the debt and got rapid debt relief was ruled out as politically unpalatable.

To cut this Gordian knot, the Panel proposed the “zero option”: The GoS would take all national assets and debts. It put this on the table at a meeting in Ethiopia in early March. The north accepted on the preconditions of a “commitment from the international community to provide comprehensive debt relief” and “commitment from South Sudan that both parties would jointly approach the international community” with this request. The south had won the point, but pressed further: Its assent was conditional on resolving other outstanding issues, including Abyei and the borders.⁶⁶ This aligned with the US position.⁶⁷ In April, the two sides met again, and agreed on the zero option, with a fallback of apportionment if this failed to work out. Mbeki noted that they “put in place a dateless road map towards debt relief” and that the GoS “agreed South Sudan should be born debt free, if there were joint [north-south] approach to creditors.”⁶⁸ He flew from Ethiopia to the spring meetings of the World Bank and IMF, where he joined a meeting of the Sudan debt technical group (the Paris Club members). The creditors agreed that the “zero option seems reasonable.” The US was supportive but cautioned about its legislative constraints, saying that “joint outreach to Congress is important.”⁶⁹

No sooner was the debt relief package within reach than it slipped out of Sudan’s grasp. The reason was the SAF invasion of Abyei. The Supergroup of lead negotiators met later in May. At that meeting, Luka Biong—himself a son of Abyei as well as an economist with a clear view of the entirety of problem—reminded the northerners that the creditors had attached conditions to debt relief, which would be reviewed now that “Abyei can be declared a warzone, thanks to the stupid behaviour of some people.”⁷⁰ He continued: “The Sudanese people shouldn’t take debt relief as a right. It’s a test, for the Sudanese to show how they’re living and committed to peace and implementation.”⁷¹ Khartoum failed the test, and debt relief went up in smoke along with Abyei town. By June,

Sabir had given up on trying to secure immediate debt relief from Washington. He turned to the Gulf States for a bailout, lamenting that “they seem to be under pressure from superpowers [which] will not give them a green light.”⁷²

Impasse in the Shadow of Crisis

Before the Abyei war, the economics cluster was making good progress. Oil was its next big focus. The oil agenda was long and potentially contentious: How the south paid the north for the use of the pipeline (transit fees and tariffs); how the assets of the two government-owned oil companies (Sudapet and Nilepet) should be divided; whether and how the south would get access to the refinery in the north (given that the south’s demand for refined petroleum products wasn’t big enough to warrant its own refinery); who should market the south’s oil; and what special transitional financial arrangements (TFA) should be in place to soften the massive postsecession economic shock that would hit the north. The Norwegians had crafted various formulae that involved the two sides making different trade-offs on these issues.

The April meetings of the economic cluster were held at the Kuriftu resort in Bishoftu, Ethiopia, in April 2011, in parallel to the security talks. The two sides found common ground. Each state would have sovereignty over its natural resources. The south would pay the north a “transit fee” for using pipeline and contribute to the TFA, in a combined formula. The north wanted very high transit fees, scaling down over five years.⁷³ The south wanted low transit fees and tariffs, comparable to other international pipelines, and suggested that the TFA meant they should not have to pay a transit fee at all.⁷⁴

The two sides also clashed over shares and equities belonging to Sudapet. Although it owned only 5 percent of the Greater Nile Operating Petroleum Company, Sudapet generated revenues from the concessions granted to Chinese, Malaysian, and Canadian firms and had developed major equity.⁷⁵ The GoSS wanted it out, replaced by the southern based Nilepet, which was, at the time, a much smaller enterprise. Following the principle that assets should be allocated on a territorial basis, they insisted that Nilepet should take over “all of Sudapet’s equities/participating interests in the south,” which meant most of Sudapet’s equity.⁷⁶ The north called this “confiscation” and countered that because it was a “financial asset,” not a “fixed asset,” its equity should not be divided on a territorial basis.⁷⁷ In March, the GoS had offered to split Sudapet’s equity on a 50/50 basis.⁷⁸ As relations deteriorated, however, it insisted that because the north had agreed to take on all domestic and external debt, Sudapet should not be divided at all—it should remain entirely a GoS entity.⁷⁹

On the Khartoum refinery, the two sides shared a starting point, which was that the north would process southern crude and return it south. The devil was in the details: how the logistics and contracting mechanisms would work and how much of the refinery capacity should be allocated to the south's needs. Juba wanted ten thousand barrels per day—anticipating rapidly expanding demand—and Khartoum counteroffered five thousand barrels per day based on existing usage.⁸⁰ For the southerners the point was emotional. They protested that the north had held back the south's development for far too long (see Pagan's earlier comments).

Holding to the vision of a coordinated economic strategy for north and south, Lual Deng had earlier proposed to Kiir that he should agree to a joint production and marketing plan with the north to be implemented after independence. Kiir refused.⁸¹ When the Supergroup met in May, the GoS pushed for joint marketing until an agreement on TFAs and transit fees had been established. The southerners saw this as trying hold the TFA hostage, and clung firm to the sovereignty principle, insisting on handling its own sales. John Luk said that when he had served as energy minister in Khartoum, he had wanted a role for southerners marketing the oil, but the NCP had refused. He said they simply could not trust the north with their resources. When Pagan formally confirmed the south would market its own oil, the north conceded.⁸²

Because the Sudans relied so heavily on oil for foreign exchange, the currency issue was intimately related to oil. The option favored by the IMF and World Bank—a currency union or (failing that), a joint currency board—was rejected by the south, which took the tough line that its new currency would begin on July 9 in line with its national sovereignty. The question was, how to find \$1 billion in reserves to back it. During the CPA period, Khartoum had been paying Juba in Sudanese pounds only, and a 2007 plan for allocating some forex reserves to the Bank of Southern Sudan had not worked.⁸³ The southerners suggested that the Sudanese pounds circulating in the south, which had a nominal value equivalent to \$1.5–2 billion, could be redeemed for dollars at full value. This was an opening gambit rather than a realistic proposition, because central banks issue national currency worth many times greater than their reserves. Another option was for South Sudan to retain Sudanese pounds and redeem them through trade with the north.⁸⁴ In March the currency subgroup agreed on a practical interim measure: The Sudanese pound would continue to be legal tender in South Sudan for six to nine months after secession.⁸⁵ This also required each side to be confident that the other was acting for the common good. The north wanted the south to sign on to extensive terms and conditions as to how the currency would be used. Manibe agreed, but on the condition that the GoS should not do anything to affect the value of the currency in that period. Sabir responded fiercely: “No, this is MY currency, you want to impose

conditions on how to deal with it? . . . this is a sovereign question, what I do with my currency is my job.”⁸⁶ By May, the Panel assessed that there was “significant progress on most issues. Redemption/handling [Sudanese pounds] in the South to be discussed by Super Group. Multiple sub-committees formed and functioning. Disclosure requests outstanding (both ways).”⁸⁷

The TFA was on the agenda from January 2011, although it took some months before the negotiators realized the magnitude of the sums involved. One early proposal from the south was that any funds it transferred should focus on assisting Darfur and the other “war-affected” regions “as a show of our generosity.”⁸⁸ Another was that it should “support the fiscal gaps in specific budgetary allocations in war affected areas of Blue Nile and South Kordofan.”⁸⁹ The southerners reveled in the fact that TFA came down to the south aiding the north. Pagan rhetorically asked why the exploited were paying compensation to the exploiters and not the other way around? He formulated it this way: “If we calculate the cost of separation from the south, from the slaves and ivory and oil exploitation over the years, you’ll find that cost is very big. Now we’re required to finance the north so that they can maintain the same level. We have major expectations in the south. We’ll have difficulty if we give money to the north to build schools, when our needs are so big to reach the level of the north.”⁹⁰

Pagan liked to call the transfers “aid” to humiliate the northerners but agreed to the more anodyne TFA. The Panel proposed—and both sides accepted—a general principle that responsibility for covering Sudan’s fiscal gap should be split three ways, between Khartoum, Juba, and the international community.

In the May meetings of the Supergroup, once again at the Kuriftu resort, the TFA was top of the agenda. Mbeki’s notes from the meeting include the following observations, which distill the core positions:

SPLM

Any assistance by GoSS—sovereign decision in its national interests.

GoSS may avail GoS financial assistance re: two viable states—subject to resolution of all CPA + [post-referendum] matters.

NCP

Soft landing for northern economy + South access to infrastructure.

Proposed 7 year period to transition to zero.

Effects of secession: 20 percent drop in GDP, 66 percent [loss of] forex, inflation to 175 percent in 3 years because of impact on foreign exchange stability.

Pagan accused the GoS of exaggerating the likely extent of its postsecession economic crisis, saying that its gold revenues were forecast to increase, and that the north would save money because it would no longer have to administer one-third of its territory and one-third of its population.⁹¹ Gold, however, earned the treasury about \$830 million that year, scarcely a tenth of the revenue from oil.⁹² Pagan also complained about the GoS's continuing secret financial dealings and resistance to sharing information, drawing the obvious conclusion that the south was being shortchanged. The GoS responded to these with a veiled threat, saying that it was hosting several million southerners in the north: "We won't harass them to leave, they'll stay there. But if people in the north feel that there are new hardships because of the South and because of the oil loss, it can translate into new social tensions."⁹³

Each specific issue was amenable to compromise, and indeed the Norwegian formulae laid out ways in which both sides could meet their interests. Within the broader political context, however, economic issues were now bargaining chips. The northerners insisted that the TFA package must be agreed to first, while the southerners held fast to the old CPA mantra that "nothing is agreed until everything is agreed." "Everything" included not just currency and oil but also Abyei and the border.⁹⁴ Pagan repeated his long-standing point about Abyei being a hostage held to ransom: "We can't assist the North if it's claiming part of our territory. If they assist us [by] not making unfounded claims, and respect the desires of the Ngok Dinka, we can help them."⁹⁵

Sabir's brief was confined to the economic and financial issues, and after each round, he faced the prospect of going home with nothing in hand. At the next set of negotiations in June, he reacted angrily to suggestions by the external experts, describing them as "totally unbalanced and very biased," telling the Panel "we expect a draft like this from the SPLM, not facilitators."⁹⁶ He then presented the GoS estimates for the fiscal gap, which included \$10.4 billion over three years, two-thirds of the \$15 billion gap in balance of payments, and more than the \$7.8 billion budget gap.⁹⁷ The talks continued for a week, grinding out little but frustration. Sabir argued the TFA should incorporate not just the sum required to cover the fiscal gap but also funds to cover a six-year reform program, including "three years for austerity measures, three years for structural adjustment." The southerners protested that "you cannot download all your economic restructuring burdens on [us]."⁹⁸ Sabir remained obstinate, but others in the GoS were flexible. Sayed al-Khatib was in favor of using the framework, unless something better was on offer. Pagan said he was willing to work with a package and challenged Khartoum—and the Panel—to "first—objectively define [the] gap."⁹⁹

No agreements on oil, currency, or the TFA were signed during the last days of frantic negotiations at the Sheraton Hotel in Addis Ababa in June. In the

final session on June 28, the two sides agreed only to continue talking, show flexibility, and not backtrack on the issues already agreed—that is, the allocation of territorial assets, the ownership of Sudapet and Nilepet, and the zero option on external debt. South Sudan became independent without agreements on a host of crucial issues.

All had preferred a phased strategy for introducing a new South Sudanese currency. It did not happen.¹⁰⁰ Both governments printed new banknotes. Khartoum stopped supplying notes to the south, causing a cash shortage that meant that the new nation could not pay its government employees in the first month of its independence.¹⁰¹ The South Sudanese pound became legal tender nine days after independence. Sudan introduced new banknotes, giving southerners no opportunity to change them before a short deadline.¹⁰² As a result, between \$700 million and \$1 billion in old notes were instantly valueless.¹⁰³ Cross-border trade was hampered by the lack of an interbank agreement. On independence day, Sabir wrote to Mbeki, threatening that in the absence of agreement on a TFA, the GoS “will be forced to use its jurisdiction and ownership of the oil infrastructure to impose usage and transit fees.” The letter concluded with a stay of execution: “freez[ing] the application of these decisions” until the end of the month “so as to give you some time to assist us in . . . resolving this particular problem.”¹⁰⁴

Part IV

**POSTSEPARATION
CONFLICTS:
2011-2013**

THE OIL SHUTDOWN CRISIS

President al-Bashir was the first officially to recognize South Sudan on July 9. But from day one, relations between the two governments were acrimonious. They could not agree on their common border, each was supporting rebels in the other's territory, and they radically disagreed over their economic relationship. Top of the agenda were the interlinked issues of oil and transitional financial arrangements (TFA). These arrangements were a mixture of technical and political issues, and over the following six months, the politics took an extraordinary and unforeseen turn, in which the Republic of South Sudan (RSS) shut down its entire oil production. No country had ever done this before, let alone a country reliant on oil revenues for 97 percent of its budget. More than a decade later, no one has fully explained why the south made this extraordinary decision. This chapter provides details.

During the negotiations, the Panel did not speak publicly, even when under high-octane public criticism by one or both of the parties. Thabo Mbeki told his team that the job of the mediator was to enable the parties to find a solution. "We do not negotiate in public," he repeated. He said that public reprimands, and even explaining the Panel's proposals and views, could make that task harder. So, it proved. The public silence of the African Union High-Level Implementation Panel for Sudan (AUHIP) on its draft proposals, put before the government of Sudan (GoS) and the RSS in January 2012, meant that it was possible to resume negotiations with the two parties in confidence some months later, and reach agreements that otherwise would have been much more difficult.

Negotiations over financial issues—which in theory can be boiled down to a monetary figure—should be relatively straightforward. When the postreferendum negotiations began, all assumed that the financial and economic issues were technically challenging but politically less contentious, because each side needed the other. It was shocking that this was the issue that brought the Sudans to the brink of mutually assured destruction.

The crisis was political, but the technical details were important. Fees and tariffs for the pipeline included payments for the transport, transit, storage, and processing of oil and use of the maritime terminal in Port Sudan. Standard formulae for calculating these exist. Some are payments for necessary services, others are rents. Some are paid to, or by, oil companies and commercial operators. When the pipeline opened in 1999, the Crude Oil Transportation Agreement between the GoS and the consortium of oil companies set a ceiling of \$6 per barrel to be paid by the companies, which after index-related adjustments had increased to \$7.4 per barrel in 2011.¹ These were not controversial. A producing state using the infrastructure of a transit state also pays fees and tariffs. These were the sticking point. A comparable case, cited by the southerners, was \$0.41 per barrel paid by Chad to Cameroon for using the pipeline across its territory. Adjusting for the longer Sudanese pipeline, an amount of \$0.70 per barrel would be expected. Total tariffs and fees might typically add up to \$3–4 per barrel. This was what the RSS called a commercial deal following international practice.

By contrast, when the GoS spoke of a “commercial” deal with the RSS, it meant that the two sides should simply bargain, each using its leverage to seek its best possible outcome. Given that the north controlled the only pipeline to the sea and that building an alternative to the East African coast would cost at least \$3 billion and take four years, Khartoum would be in a position to impose its terms.² At one point, it suggested payments adding up to \$25 per barrel. The south called this “extortion” and the Panel privately agreed (see details in this chapter). The GoS later raised its demand to \$32.20 per barrel, about one-third of the market price at the time. The oil companies resisted setting rates like this, partly because it was an awkward precedent, and also because they feared what would happen if the oil price fell from its peak of more than \$100 per barrel. The north preferred an agreement based on fees and tariffs because it was indefinite; the south disliked it for precisely the same reason.

A second issue was assets and liabilities, including all the fixed infrastructure and shares in the two oil companies, Sudapet and Nilepet, which had been resolved *de facto* on the territorial principle: The RSS got to own what was in the south, and the GoS what was in the north. But rancor endured. Each had a sense of entitlement to the assets and wanted compensation from the other for taking them. A third issue was arrears on past payments due. The GoS failed to remit

money to southern Sudan in the last two months of the united Sudan, and the RSS demanded its due. After independence, in the absence of an agreement, the south paid no fees or tariffs at all to the GoS—an amount that mounted daily and caused indignation in Khartoum. The issue became so some entrenched that the AUHIP set up a separate negotiation channel to manage it.³

The third issue was the TFA. Having adopted the principle of “two viable states,” the RSS had promised to assist Sudan cover its postsecession “financial gap.” This gap had two elements—a balance of payments gap, the shortfall in foreign exchange earnings once it stopped exporting oil, and a fiscal gap, the budgetary deficit that opened up. The GoS was more concerned with balance of payments, as it affected the value of the Sudanese pound and could only be financed by hard currency grants or loans, whereas the fiscal gap could be covered by domestic borrowing. The southern negotiators understood this well but nonetheless used the fiscal gap as a negotiating tactic. They disputed the north’s figures for the fiscal gap. The Panel turned to the International Monetary Fund (IMF) for an independent assessment, which produced a figure of \$7.8 billion.⁴ This was close to the Central Bank of Sudan (CBoS) estimate, and the south accepted it as a benchmark. After Mbeki initiated his “debt for peace” discussions with Sudan’s creditors, the two sides accepted a formula whereby the gap would be divided three ways: one-third to be covered by Sudan’s austerity measures, one-third by South Sudan’s TFA, and the final third by international assistance.

The underlying bargain was that South Sudan would pay the north to secure its border and get a favorable deal on Abyei. For the GoS, the deal was workable only if the internationals, led by the US, paid their share. This created a variant on the classic “two level game” beloved of conflict resolution theorists—the principals were also negotiating with the international community.⁵

The Postindependence Negotiating Format

South Sudanese independence signaled a shift in the structure of the negotiations, which were now taking place between two different countries. In theory, the AUHIP mandate had expired, given that the “implementation” referred to the Comprehensive Peace Agreement (CPA) and it was “for Sudan,” not South Sudan. In practice, there was no option but to continue. Princeton Lyman asked, “Where do we go from here?” He wanted a simpler and more direct negotiating structure, noting that in the weeks leading up to independence, “[The] AUHIP process became too complex so that it stretched the capacity and focus of panel and negotiators.”⁶

The Panel carried on and the process was simplified. The cluster groups were out, and the negotiating teams were centralized under Idris Abd al-Gadir and Pagan Amum.⁷ The Joint Political and Security Mechanism (JPSM), headed by the two ministers of defense, served as a second, intersecting forum. The Panel's base of operations became Addis Ababa.

In the last week of July, the Panel brought the negotiators to Addis Ababa. Some progress was made: The JPSM agreed upon a timeline for instituting a border security regime, and the economic negotiators agreed that they would use the IMF's calculations as a basis for talks on TFA.⁸ They could not agree, however, on how much South Sudan should pay, and the bills kept rising. From August 10, when the last oil shipment based on the ratios agreed under the CPA was set to leave, until the end of September, the north was set to lose \$400–500 million, and it asked Juba for \$200 million to help cover the gap. Kosti Manibe was open to this figure, but Pagan stonewalled, offering only \$75 million.⁹

Over the following months, Pagan challenged the Panel's legitimacy as a facilitator. Meanwhile, al-Bashir declared that he wanted to end the disputes "without any foreign mediation."¹⁰ Deng Alor took umbrage at al-Bashir's statement, explaining that the AUHIP process was still going ahead as far as the south was concerned, adding, "our experience with Khartoum has made clear to us that the relationship grows tense when we negotiate without a mediator."¹¹ Salva Kiir Mayardit also wanted the Panel present, vetoing al-Bashir's proposal for direct negotiations between the two.¹² For some in the south, there was another rationale too, rarely mentioned in public. Lyman added in parentheses to a report from Juba, "Note: I heard Kiir and Bashir met alone, [and] Ministers have no way to be sure of the details of their discussion."¹³ Southerners distrusted one another and wanted a witness.

On October 9, Kiir visited to Khartoum for the first time as a head of state. He and al-Bashir promised to "reach final solutions on all outstanding issues."¹⁴ They agreed three separate fora: The presidents would negotiate directly on Abyei, border security would fall within the ambit of the JPSM, and TFA and oil matters would be covered by Pagan and Idris with the support of the Panel. They also established technical committees to cover immigration and humanitarian affairs.¹⁵ Ten days later, on the eve of the Peace and Security Council (PSC) meeting to review the Panel's report and renew its mandate, Mbeki traveled to Khartoum. His plan was to support the talks of the joint ministerial committees that were scheduled in Juba, but the Sudanese delegation delayed its flight because the preparatory technical committees could not agree on details.¹⁶ The bilateral talks were suspended for a month, to his frustration.¹⁷

On October 20, the PSC renewed the Panel's mandate for a year, "to enable it to facilitate completion of the outstanding issues."¹⁸ "Outstanding issues" meant

anything requested by the parties or identified by the Panel. Hard-liners in the GoS, however, wanted the Panel closed. After the Sudan Armed Forces (SAF) captured Kurmuk from the Sudan People's Liberation Movement-North (SPLM-N) on November 3, Information Minister Kamal Obeid declared that no "outstanding issues" remained between north and south.¹⁹ Indeed, after Juba accused Khartoum of bombing refugee camps south of the border, it appeared that the bilateral talks might not reopen at all.²⁰

Protracted Negotiations, Minimum Results

In Mbeki's view, the Panel was a facilitator. Throughout, its method was to request the parties to put forward their own proposals and to engage directly with one another. Only when they requested assistance, or became stuck, would the Panel step in with its own proposals. Once the International Monetary Fund (IMF) had provided its authoritative figure for the financial gap, the AUHIP asked each side to formulate its proposal.

Skeptical that the Americans would deliver on their share of the TFA, the GoS proposed levies on the south's oil that would fill its entire financial gap. Mbeki reminded Sabir Mohamed Hassan of the consensus that the gap should equally be filled from the north, the south, and the international community.²¹ The GoS plan was to unilaterally divert a share of the south's oil in lieu of payment, and it threatened to take unilateral action. Challenged by Mbeki, the GoS agreed to wait until October 30, but said that if no agreement was reached by that date "they will seek direct commercial negotiations, to be concluded by mid-November, and if these fail, will act in [the] national interest."²² Mbeki told Sabir that the south would undoubtedly reject the proposal and did not forward it to Juba.²³

The RSS position was skewed the opposite way. It consolidated a long list of financial claims against the north, including the arrears on transfers from Khartoum to Juba, which had halted two months before secession.²⁴ The RSS's calculation resulted in a net transfer of \$877 million from the GoS to RSS in the current year, defeating the purpose of the TFA and in practice rendering the northern economy "even less viable."²⁵ Mbeki refused to pass on this proposal to Khartoum.

The Panel put forward its own proposal on November 14. It was framed as a combination of a substantial package of TFA alongside tariffs and fees, at rates close to international standards. Mbeki flew to Khartoum to present it in person. He arrived in a city where the president was gripped by insecurity. For twenty-two years, al-Bashir and his lieutenants had scattered the seeds of

mayhem to all corners. In 2011, they began to reap the whirlwind, from every point of the compass at once. The secession of the south left the Khartoum establishment reeling, and the GoS leaders seemingly unable to realize that the leaders of South Sudan were now acting with the self-assuredness of a sovereign, independent state. Although the GoS wanted finally to end all unfinished CPA business for northern Sudan on July 9, they also wanted to continue relations with the south in its spirit—keeping an entitlement to half the oil under South Sudan’s soil. The alternative, al-Bashir feared, was a perfect storm of regime collapse.

Over the preceding months the Arab Spring had blown away Arab regimes that had seemed like fixtures of nature. Long-standing rulers were now in exile or prison, or dead. Al-Bashir had a long-running love-hate relationship with Egypt’s President Husni Mubarak, but he would have empathized with the old ruler behind bars, not with his jailers. Sudanese Islamists and intelligence officers played an active role arming and training the Libyan opposition and rejoiced when Muammar Gaddafi fell. They would have shuddered at his gruesome murder in a ditch near the town of Sirte on October 20. When Sudanese officials spoke of the Arab Spring, they did so with sarcasm and dread—they foresaw that the revolutionaries’ democratic dreams would not be realized, but they knew that their ilk would be the first casualties of the wind of change.

The spark for the uprisings in Tunisia and Egypt had been increases in the price of bread. By the end of October, inflation in Sudan had hit 22 percent, and the Sudanese pound had lost 40 percent of its value against the US dollar in just two months. Sudanese businessmen were moving their capital abroad; foreign investment had halted. The reality of the loss of the south was worse than the worst-case scenario foreseen by the GoS economists. Meanwhile, the Khartoum opposition under the National Consensus Forces was openly calling for an uprising.²⁶ In December, Hasan al-Turabi brought three thousand party members to his party’s general conference and called for the toppling of the National Congress Party (NCP) regime.²⁷ Al-Bashir had been courting the more conservative sectarian parties, however, bringing the sons of both Sadiq al-Mahdi and Mohamad Osman al-Mirghani into government as presidential advisers.²⁸ This appeared to work, as leading members of al-Mirghani’s “original” Democratic Unionist Party (DUP) entered the government amid major internal clashes, and al-Mahdi went into another phase of vacillation.²⁹

Al-Bashir was being outflanked to the right by an ad hoc coalition of hardliners, including army generals and al-Tayyib Mustafa. Mustafa, who was heading the campaign for a post-2011 Islamist constitution, sought to block all compromise with the opposition, openly attacking the al-Mirghani and al-Mahdi families as representatives of “sectarianism” in the wake of their

rapprochement with al-Bashir, and personally opening a court case against Yasir Arman for consorting with a hostile state after he addressed the US Congress.³⁰ Although Mustafa remained a card-carrying member of the NCP, many perceived that he was trying to establish the Just Peace Forum (JPF) as an alternative power center.³¹

As any hope for a post-2011 Islamist consensus fell apart, Khartoum's hoped-for deal with Washington was unraveling, too. President Obama's promise of lifting sanctions had come with conditions, and Sudan was not meeting them. The crucial new issue was the war in the Two Areas and, in particular, humanitarian access to the starving. The deputy director of the National Security Agency Denis McDonough joined Lyman to meet with GoS officials on November 20, "to convey the US decision to begin the process of delisting Sudan from the SST [state sponsor of terror] if the Government of Sudan would by December 20 end bombing in the Two Areas, allow international humanitarian access, and resume negotiations with the SPLM-N."³² If al-Bashir hoped his discreet collaboration with North Atlantic Treaty Organization in Libya, along with a decade of intelligence cooperation with the Central Intelligence Agency against Usama bin Ladin, would win him a reprieve in Washington, D.C., he was mistaken. Nobody in the administration trusted him. Congress loathed him. Khartoum did not respond to Lyman and McDonough's offer-cum-ultimatum.

The only hope for the GoS to salvage its plight lay in Addis Ababa, in negotiations with South Sudan under the AUHIP, possibly leading to a bailout.

The same day that the Americans made their offer, the Panel presented its proposed oil and finance formula in Khartoum. The proposal tried to square the circle of international standards for tariffs and fees with Sudan's urgent financial needs. In line with the earlier debt-for-peace plan, it proposed splitting the GoS's \$7.8 billion financial gap into three roughly equal shares, to be covered by the GoS, the RSS, and the international community. Whereas the GoS contribution would be covered by "policy measures," the RSS contribution would consist of "(i) cash transfers [and] (ii) transit fees for South Sudanese oil transported through the Sudanese pipelines and Port Sudan," not to amount to more than \$2.589 billion with contributions to be paid monthly.³³ This was not, however, how the NCP negotiators saw the issue. Their bottom line was that they needed \$125 million per month in hard currency to close the balance of payments gap. They had given up on getting a contribution from the international community and had decided to extract the resources from South Sudan by imposing whatever charges they deemed necessary, regardless of international best practice for oil transit fees.³⁴ Weak though they were, the GoS negotiators followed the logic that the southerners were even weaker and should give way first.

Mbeki, Abdulsalami Abubakar, and Pierre Buyoya met with al-Bashir the following day. Most of their discussion was on the financial crisis. Mbeki's notebook includes the following four lines, summarizing the Sudanese president's position:

Have reached limits re: waiting for resolution of TFA.

Econ situation can produce an "Arab Spring."

Convinced internal forces + GoSS + external want Arab Spring or coup d'état.

Will attend negotiations.³⁵

Another item on that day's agenda was the Panel's map of the centerline of the Safe Demilitarized Border Zone between the north and south—a topic that was only briefly touched on by al-Bashir and that became controversial because the line ran along the Bahr al-Arab/Kiir River and not fourteen miles to the south (see [chapters 12 and 15](#)).

As al-Bashir promised, the GoS team did fly to Addis Ababa to attend the talks, but they did not negotiate seriously. The meetings lasted five days, from November 26–30. The GoS delegation was led by Sabir and the RSS was led by Pagan, along with John Luk. On the first day, each side presented its views, on the situation as it was developing, on the Panel's paper, and on one another. Each side then fashioned its position in writing.

Pagan and his team were confident. They knew that Khartoum was feeling the heat and needed a settlement soon and that the GoS demands for exorbitant tariffs would rile the international community. Pagan opened by reminding everyone that oil and TFA were part of an overall package that included settling Abyei and the border. He and Luk said that the south was ready to provide its share of financial support to bridge the GoS's fiscal gap, but that in a few years' time, Sudan should be able to stand on its own feet. The north's preferred option of very high tariffs would lock the south into subsidizing the north indefinitely: They wanted an arrangement bound by a strict time limit. Luk also pointed out that viability was mutual: The south also had its needs to meet and described the GoS position as "I will solve my problem at your expense."³⁶ The southerners accepted the AUHIP paper as the basis for negotiation.

Sabir noted that the "reality [is] even worse than projected" and gave a remarkably candid assessment of the political consequences of economic crisis, saying that unrest or an uprising would threaten the viability of the state.³⁷ If he thought that the RSS would sympathize, he totally misunderstood them. For decades, Pagan and the believers in a New Sudan had longed for exactly this. In the 1990s, John Garang had aired three scenarios for ending the war—military victory, a peace deal, and a "protected *intifada*," in which civilian protesters

and rebel fighters made common cause.³⁸ Along with his old comrades-in-arms in the SPLM-N, Pagan was beginning to wonder if this might finally be the route to the liberation of Sudan.

Sabir rejected the AUHIP proposal as a basis for negotiation. One reason was that “[it is] wrong to assume the international community will help [as it] has never done this.” He insisted that there was a \$10.4 billion gap in the balance of payments (i.e., not the fiscal gap), specified that the assistance needed was \$7.4 billion, and concluded with a threat to take what Khartoum needed. Mbeki summarized the GoS position: “[We] need adequate TFA otherwise we will act unilaterally” and added a large asterisk to his meeting note.³⁹ The following day the GoS put its proposal on paper: a set of fees and tariffs that added up to \$36 per barrel. Sabir called it “commercial,” and Luk called it “punitive.” The RSS counterproposed, with low fees and tariffs totaling \$2.6 billion in TFA. Sabir said he would “study” the RSS document but warned that the GoS would not continue to accept a status quo in which the south was exporting oil without paying anything at all. Its calculation of the southern package amounted to \$8 per barrel, so it proposed additional fees adding up to \$25 per barrel. In the margin of his notes for the meeting, Mbeki wrote, “extortion not a commercial deal.”⁴⁰ The back-and-forth continued, partly over the numbers, and partly over the justifications for them. There was an acrimonious exchange over how the pipeline was paid for: The north said they had paid for it, and the south said it was not out of the blue but from revenue from southern oil—a view with which Mbeki privately concurred.

Progress stalled, and both sides overlooked the fact that the oil companies needed to be incorporated because, in some cases, fees would be owed to them and by them.⁴¹ As the talks neared their final day without a breakthrough, Mbeki proposed an interim formula whereby the GoS would continue to allow the pipeline to be used, whereas the RSS paid fees in lieu of a permanent agreement. The GoS issued a press release in which it implied a positive attitude toward this approach, but no sooner had the meeting ended without a deal than it began taking unilateral action.⁴²

On December 6, the GoS minister of finance, Ali Mahmoud Abd al-Rasul wrote to the RSS minister of petroleum, Stephen Dhieu Dau, demanding that the RSS pay fees amounting to \$32.20 per barrel or the GoS would detain oil tankers. The deadline was December 25. Khartoum instructed the oil companies that they should not communicate with the RSS over this matter.⁴³ The RSS told the companies that if they complied, they would no longer be permitted to do business in the south.⁴⁴

Meanwhile, the deadline in the Lyman-McDonough démarche passed without the GoS taking any steps to meet the conditions laid out, which were for

humanitarian aid to the Two Areas and ending aerial attacks on civilians. Twice the GoS postponed the visit of United Nations (UN) Humanitarian Coordinator Valerie Amos. On December 21, Lyman wrote to Buyoya, who was heading the Panel in Addis Ababa at that time, indicating that the US deadline had passed the previous day without GoS action.⁴⁵ Four days later, the US chargé d'affaires in Khartoum told the GoS that "we are not now proceeding with the process of removing Sudan from the SST."⁴⁶ Quite independently, the prosecutor of the International Criminal Court (ICC) requested an arrest warrant against the minister of defense, General Abd al-Rahim Hussein, a step that hardened the generals' opposition to humanitarian access. General Imad told Abdul Mohammed, "you have already talked about indicting us, now you just want to gather the evidence."⁴⁷

The GoS's own deadline was December 25. It detained two oil tankers carrying 1.6 million barrels of crude oil, prohibited another two with a capacity of 1.2 million barrels from entering the port, and ordered the oil companies to deliver 550,000 barrels to the refineries in Khartoum and el Obeid.⁴⁸ The total value of the illegally seized oil was \$335 million, about one-third of South Sudan's total oil sales for the month. There was no international outcry: The diplomatic world was on holiday that week. Many of the special envoys and other diplomats assigned to the Sudans were weary of what appeared to be endless bickering between the two governments. On their agenda was war in the Two Areas and the deepening humanitarian crisis, the border and border security, Abyei, the looming expiry of the transitional period for resolving citizenship questions, and this conflict over oil and money. The Panel pressed for a meeting of the JPSM and the lead negotiating panel. Juba said it was losing confidence in the Panel's effectiveness and asked Kenya to step in, but it was not an attractive proposition for any other would-be mediator.⁴⁹

January 2012: Over the Precipice

In January 2012, relations between Sudan and South Sudan went over the precipice into outright economic war that threatened mutual destruction. Khartoum had made its intention clear by confiscating southern oil and was also building a new pipeline spur to connect the refinery in Khartoum.⁵⁰ It added new demands: \$3 billion in unspecified claims by northern citizens against the RSS and other arrears and overdue amounts that totaled \$7 billion.⁵¹ Petrodar reported that GoS security forces had compelled them to divert South Sudanese oil to a tanker chartered by the GoS.⁵² As other similar reports followed,⁵³ Juba responded with the threat that it would shut down the pipelines at the southern end.⁵⁴

Until this point, the threat of an oil shutdown had come from the north.⁵⁵ The generals complained that they were fighting a war while their civilian masters allowed their enemy to sell oil to buy arms and pay their soldiers' salaries. They claimed—and the Sudan People's Liberation Army (SPLA) privately confirmed—that four divisions of the main SPLA were supporting the two SPLA-North divisions fighting in the Two Areas.⁵⁶ All were wearing the same uniforms with the same insignia, and reports circulated that the ninth and tenth divisions had been paid from Juba as recently as October. In November, the SPLM-N came together with the Justice and Equality Movement (JEM) and other Darfurian rebels to form the Sudan Revolutionary Front, which had clear backing from South Sudan and Uganda. What stopped SAF shutting down the oil was a counterargument from the GoS leadership, which ran something like this: We will certainly face massive international condemnation; we cannot afford to lose our sole international interlocutor (the AUHIP) while we still have a (remote) chance of a financial deal; and, in the meantime, there's a middle way (i.e., stealing enough oil to keep us going).

Southerners had occasionally raised the idea of living without oil. For example, in May 2011, Paul Mayom told Khartoum, "South Sudanese people were alive without oil, and we'll survive without oil if need be. The pipeline, which you built quickly through oil doesn't mean that you can twist the south's arm. We lived for 20 years without budgetary arrangements, and we can go back if need be."⁵⁷ They also said it was better to keep the oil in the ground for future generations than pump it today for the benefit of the north.⁵⁸ But nobody took these threats seriously. The RSS revenue was almost entirely dependent on oil, the elite enjoyed a lavish lifestyle, and it paid the salaries of soldiers and civil servants. The south needed oil even more than the north.⁵⁹ For its threat to be credible, it had to be dialed up in public. And so it was: The oil shutdown became a rallying cry for nationalist fervor in Juba. The president addressed parliament,⁶⁰ and Riek Machar announced that it signaled South Sudan's "economic independence."⁶¹ The oil companies were summoned and instructed to begin an immediate shutdown, waving aside their technical objections. Moreover, once the shutdown was on the table as a *southern* initiative, the logic of war financing was reversed: Why should the south allow any portion of its oil be used to support an enemy occupying its territories and killing its people?

It took a few days for the Panel to assess what was happening. Its initial idea was to use a scheduled JPSM meeting to push for a nonaggression pact while reconvening the lead negotiating panel. This was quickly shelved, because the RSS minister of defense, Nhial Deng, showed no interest in turning up. Also, Pagan was setting the agenda. Meeting with Buyoya on January 22, he said the priority was "to avoid complete shutdown of oil negotiations, which would end

all other negotiations.” He prefaced this by saying, “[we have] no time now to engage in lengthy processes, crisis has reached point of break.” This put the focus on the oil and TFA. But Pagan also wanted all the other issues to follow: “We believe this must be a final agreement, we are ready to sign. So it has to include all the issues. Including Abyei: if we pay the GoS assistance to manage the economic crisis, we expect them to recognize that Abyei is part of South Sudan. Also we [can] demarcate the border.” The old mantra, “nothing is agreed until everything is agreed” hung like a cloud over the negotiations.⁶²

The following day, the south began closing the oilfields. The oil companies had warned that the shutdown was a technically complex operation that required expertise that was not readily to hand. For example, four million barrels of oil in a pipeline from the Upper Nile needed to be flushed out with special fluids. If that were not done properly, the waxy Dar Blend would congeal, turning the pipeline into a useless asphalt-like tube.⁶³ Another four million barrels were in tanks and at the pumping sites. This total would fill ten to fifteen tankers and far exceed the storage capacity anywhere along the pipeline, threatening spills and environmental disaster. A properly controlled shutdown, they stressed, should take forty days.⁶⁴ About \$3 billion worth of infrastructure was in immediate danger. And they had just two or three days to avert this disaster.

Buyoya and the oil team briefed Meles Zenawi at midday on January 23. The Ethiopian prime minister had already proposed a special summit of the Intergovernmental Authority on Development (IGAD) on January 27, two days before the annual AU summit would open in Addis Ababa. As chair of IGAD, he would put the crisis on the IGAD agenda under “any other business.” He came to the Sheraton Hotel for the meeting. Meles’s immediate assessment was as follows:

I’m not worried about shutting the pipeline. Not sure they can do it. If they can, [it is] not the end of the negotiations, but part of the negotiation. . . . The shutting itself is not a cause for alarm. The cause for alarm is the political calculation.

My guess is that they cannot survive a permanent shutdown, and they know it. People have got into the habit of spending quite a bit of money. A new pipeline could take 5–6 years. The SPLM cannot survive without oil for one year. So either, they are not convinced by the technical arguments, or they will not go the full length. They may suspect the companies are telling a nightmare scenario that isn’t necessarily true. The SPLM won’t commit suicide knowingly but may do so unknowingly.⁶⁵

Abdul Mohammed said: “What bothers me, is how calm and collected the southerners are. But there is no centre of power and so they are not susceptible

to pressure. Brinkmanship in the absence of restraining system. They aren't bluffing. Their rhetoric is that the end justifies the means. They say, this is our second liberation."

Meles responded: "This is *kalam faadi* [empty talk]. The bottom line is that the SPLM cannot exist outside oil money. This I know 100 percent. They won't risk a permanent shutdown of oil. The SPLM used to exist outside of oil, but not now." He said, "I'm not against them playing brinkmanship," but agreed that neither side was skilled at the game. The GoS had a habit of overreaching and only pulling back when it got badly burned. In the RSS, the most passionate voices were the most hard line and Kiir usually deferred to them. Nonetheless, Meles continued, there is "no use appealing to goodwill. Each must test the limit of the other. . . . They will know who dies first and make the concession."

Meles's proposal was as follows. First, the north should be pressed to release the ships, and the best way of doing that was through the Chinese. "So we must talk to the Chinese." Second, work on the technical proposal. "Push an agreement, don't expect agreement at the expert level." Instead, Meles suggested that the Panel and he jointly present it to al-Bashir and Kiir, press them for agreement, and then announce it at the summit so they could not back down. He was not certain it would work.

Meles's immediate step was to meet with the RSS delegation. "I won't try to convince the SPLM not to shut down, just to see if they understand the implications."⁶⁶ He called for them to come to the meeting room in the hotel. At 3:30 p.m., he met again with Buyoya and the Panel staff. He said: "The SPLM was better informed than I had thought. But more reckless than I had thought." He pressed them not to make irreversible decisions before the summit, and proposed a temporary delinking of the financial issues from Abyei and the borders. He had also met with the GoS and reported that the RSS's bold move had shocked them into being more reasonable.

Brinkmanship is a high stakes and delicate exercise. The two sides need to have centralized command and control, clear communication, and a fine judgment over how and when to blink. Mediators cannot dissuade them from staring each other down: If they intervene too early with proposals, they risk spending their political capital for nothing. What they can do is provide a channel of communication and help the two sides craft a formula. Part of the formula is substance and part is façade. Neither side can lose face, and if they can avoid losing face by blaming the mediator, then it is the mediator's job to accept that blame, regardless of whether or not it is fair. During the critical days in January, the three crucial mediators—Buyoya and Meles, soon joined by Mbeki—said next to nothing in public, while the Panel's substantive proposal stayed under wraps. It was almost exactly the same as the formula accepted

eight months later, but had it been made public at the time, it would have been killed at the moment of release. Indeed, Mbeki frankly told Pagan, “you can blame me,” and Pagan did.

Meles’s analysis was accurate and he delivered his part. He communicated with the Chinese ambassador and spoke to al-Bashir who agreed to release the tankers, although he would not announce this until the summit. Meanwhile, Juba hosted Kenyan Vice President Raila Odinga, who announced his intention to build a new pipeline to the Kenyan coast.⁶⁷

The first version of the Panel’s proposal was ready on January 24, drafted by Anders and his team along with James and Paatti. The substantive element had two parts. An “Intermediate Agreement” terminated unilateral measures and resumed normal operations with a supply of southern oil to northern refineries under a monitoring committee. The second part included the “draft terms for the comprehensive agreement on oil, transitional viability and related issues.” In its basic concept, this followed the south’s approach: The weight of the financial transfers lay in the TFA, while the fees and tariffs for oil production were modest. The figures were those of the two parties, with the idea that the negotiators would simply bargain over the final figure. The crucial provision was article 1.1: “The RSS shall pay to Sudan a total amount of USD [2.6–5.4] Billion as direct cash transfers, to be paid in monthly instalments.”⁶⁸ The lower figure was the RSS’s figure from November, and the higher one was calculated by adding the transit fee to Sudan’s lowest figure for the TFA.⁶⁹ Important details were that South Sudan would deliver thirty-five thousand barrels per day to Sudanese refineries, at market price; the transit fee would be \$3 per barrel, indexed to inflation; and arrears claims would be resolved by an agreed process. The cover agreement provided thirty days to reach full agreement.

As foreseen, both delegations played tough and did not want to come to agreement before the summit. The north did not like the concept of the proposal, which was based on the RSS framing. “Reading the main concept, we strained to find something that looks at our concern as a party to this crisis. We couldn’t find any,” said Sayed al-Khatib when he first saw the outline.⁷⁰ On January 26, the GoS presented a document in which they had revised the Panel’s proposed text, crossing out what they did not like and adding in new elements.⁷¹ The edits gutted the document and radically tilted the balance—it was a rejection. When the GoS met with the Panel on the evening of January 26, however, Sayed al-Khatib made the presentation. True to his reputation as a moderate, he said there was something to work with: “With the \$5.4 bn figure we can accept. With the \$2.6 bn figure we have to work with the figures of tariffs and charges etc., make them more substantive so the whole package is more acceptable.”⁷² Al-Khatib also explained that the GoS acceptance of any figure was conditional

on what the international community was ready to offer, although he observed that the AU had no power to insist on that. While he was offering this opening, the SAF generals seemed unperturbed by the prospect of the south fulfilling its threat—they could hardly believe that the RSS was willingly choosing the step they had not dared enact.

When the Panel's paper was first delivered to the delegations, Pagan immediately dismissed it in writing: "Shockingly and to our astonishment and dismay, the AUHIP has responded to these new circumstances with a new proposal which now calls upon the RSS to provide more than double the wealth transfer to the Republic of Sudan for the same four year period: from \$2.6 bn to \$6.5 bn (via RSS payment of a \$5.4 bn in crude and cash and \$1.1 bn in transit fees)."⁷³

Pagan said the same thing in public. Buyoya advised the staff not to respond to his misrepresentation.⁷⁴ In the meantime, Pagan also briefed Panel staff and diplomats: "We can only break free from the colonial mentality of Khartoum, achieve real independence, equality, respect, if we break our dependence on the oil pipeline."⁷⁵ Pagan was asked: "Aren't you falling into the NCP trap? They want the shutdown but not the blame: now they will get it and you will get the blame." He responded, "We don't care about the blame." To Mukoni Rabwoni, Mbeki's adviser, he said: "The north cannot survive longer than 8 months, the regime will collapse, that scenario is good for the south because forces that will come in will be more friendly to the south [and] will resolve Abyei, borders, etc. The south has sufficient money to survive for a year. Reserves. [We have] no problem with the SPLA because it is an army of volunteers."⁷⁶ Pagan also raised the stakes with a counterproposal that offered \$1.7 billion (with deductions for the May–July 2011 arrears) conditional on the north recognizing that Abyei belonged to the south, withdrawing all its claims to disputed territories, and a number of other demands.

Meeting with the Panel a few minutes after the GoS delegation had left the room on the evening of January 26, Pagan refused to even look at the GoS proposal on the table in front of him. When he stood up to leave, the document remained in place untouched by his hand.⁷⁷ Tactically, he had won the initiative. The north was the one contemplating concessions.

As Meles had foreseen, the delegations were not prepared to make concessions and each instead tried to intimidate the Panel. Any solution would have to come from the heads of state. The two presidents arrived that evening. Both stayed a week. It was to be Kiir's first AU summit as president of South Sudan. He booked a presidential villa at the Sheraton Hotel previously used by Gaddafi. This cost \$15,000 per night, although he got the sixth night free as a bonus from the hotel.

Al-Bashir arrived in a dark mood. For the first time, members of his entourage actually used the word “paranoia.” His translator, al-Ghazzali said that his president was more than ever convinced that the Americans and the South Sudanese were “out for regime change” and working together to that end.⁷⁸ Ghazzali repeated what his president had said about the CPA, namely that it was a recipe for secession and that none of its three promises (peace, unity, and normalization with the US) had been met. He now reported on a fourth, not expressed before, which was that al-Bashir had predicted that the US would instruct the south to shut off the oil. Ghazzali also confirmed that the fates of Mubarak (standing trial) and Gaddafi (murdered) were on al-Bashir’s mind. Mubarak had been Washington’s staunchest ally, but he was now facing the rest of his life in prison. After September 11 and the invasion of Iraq, Gaddafi had, like al-Bashir, done what the Americans asked of him (giving up his nuclear weapons), and yet they turned against him at the first opportunity.

At 11:30 a.m. on January 27, Mbeki, Buyoya, Meles, and Kenyan President Mwai Kibaki met with al-Bashir and Kiir.⁷⁹ Kiir had apparently refused a bilateral meeting with al-Bashir, and the Sudanese president had agreed to the larger meeting only on the condition that Ugandan President Yoweri Museveni would not be added to the list.⁸⁰ Al-Bashir knew that Museveni tended to dominate meetings, with longwinded presentations in which he assumed the right of speaking on behalf of South Sudan. Instead, Meles sent his foreign minister Seyoum Mesfin to Kampala to meet with Museveni at the same time.⁸¹ Al-Bashir was accompanied by Idris Abd al-Gadir and Sayed al-Khatib, while Nhial Deng accompanied Kiir, who arrived from Juba and had not been present for the last few days of negotiations. Pagan disappeared. Panel staff members were sent looking for him, but the south’s chief negotiator decided to absent himself.

In that first, closed door meeting, the disparity between the two sides was evident.⁸² Al-Bashir had arrived fully briefed. Kiir had not, and Nhial’s initial rambling presentation showed this. The international diplomat most sympathetic to Kiir, the UN Special Representative for South Sudan Hilde Johnson, later conceded: “SPLM preparations for the summit were not adequate. Salva K [was] not in a position to take a decision over the table.”⁸³ Kiir insisted that Khartoum’s unilateral actions had irredeemably changed the situation. The south’s bottom line, as articulated by Nhial, was that TFA was off the table unless all outstanding political issues were resolved, and until that point, the RSS would accept a commercial agreement only (in the sense of applying standard rates for fees and tariffs). They also hinted that the immediate step by al-Bashir to release detained vessels could unlock the crisis. Buyoya then explained the Panel’s proposal, which Kiir and Nhial had not studied. Kenya’s foreign minister, Moses Wetangula, urged an immediate signing of the Cover Agreement. Meles posed

the question whether the GoS could do something to undo its previous unilateral action. Kiir's final point was to agree that the "Panel document is good but [he] cannot sign without making [his] own input."⁸⁴

They broke for lunch so that Kiir could consult with his team. Kiir then met again with Meles, who emphasized that the Cover Agreement was a commitment to negotiate within broad parameters, which were in fact almost identical to the parameters laid out by his negotiators, rather than a definitive agreement. Kiir assured Meles that he would sign.

As the summit opened in the Sheraton ballroom at 5 p.m., the Panel staff member Neha Erasmus made copies of the proposal ready for signature. At the summit, after adopting the agenda—including "any other business"—Meles announced to applause that the two parties were, in spite of their reservations, willing to sign the document. He asked the two presidents to speak. While Meles was talking, Kiir had turned his head to a whispered conversation with Laam Chuol, one of Pagan's aides, who had tiptoed into the conference room.⁸⁵ Kiir then took the floor and apologized to the attendees. He declared that his delegation was still discussing and "might not be able to sign." Everyone else in the room gasped. Meles paused. He offered the floor to al-Bashir, who said that he had many important things to say, but would confine himself merely to confirming that he was indeed prepared to sign. Meles then said he would switch to discussing the summit's other agenda items, to create time in case the South Sudanese delegation was able to complete its discussions and commit to signing.⁸⁶

The summit concluded its formal agenda items quickly and then went into a closed session with al-Bashir and Kiir. Meles identified two options. The first option, which was preferred, was to sign the document as it stood and then negotiate the details. The second was to continue negotiating over the coming days. But there was no option of revising the document then and there. Kiir explained that the RSS did not trust the north to honor the agreement and that he was uncomfortable with the draft terms. Mbeki and Meles reemphasized that this part could be negotiated so long as the Cover Agreement was signed, and Kiir appeared to concede the point.⁸⁷ The meeting concluded at 6:50 p.m. Al-Bashir left, saying: "I agreed, I agreed." Kiir left in silence.

At 8:45 p.m. that evening, Pagan delivered a press conference that shut down the negotiations and showed who was making the decisions for the RSS. He called the Sudanese government "thieves" and declared that unless they committed to "not stealing Southern oil" the "shutdown will be complete . . . and we will discuss with Kenya, Ethiopia and Djibouti for future oil operations. It's a tough decision we had to make." Questioned by the media, Pagan outright denied that anyone in the SPLM had initially wanted to sign the document. He then rounded on the AUHIP, declaring that the GoS was "trying to

use the Panel to steal more of what is due to us. And unfortunately, the Panel is letting them.”⁸⁸ In the subsequent internal meeting, the Panel staff lamented that Pagan was launching a “misinformation campaign” to discredit the Panel and marginalize Kiir.⁸⁹ Mbeki counseled silence. The South Sudanese president had been publicly humiliated, and nothing could be gained from advertising that.

Al-Bashir and Kiir remained in Addis Ababa for another four days for the AU Summit. Each day there was a glimmer of hope. At lunchtime on January 28, the GoS held a press conference and announced the release of the ships and that they expected that the two sides would sign before the end of the day. Having first told diplomats that he would be ready to sign when the GoS released the ships, Kiir then said he would do so when they had sailed from Port Sudan, and finally said that he would not sign at all.

The Reckoning

Whether by design or accident, Sudan and South Sudan had now cut the economic umbilical cord. Two days after leaving Addis Ababa, al-Bashir issued a statement that they were now “closer to war than peace.”⁹⁰ Kiir’s words were uncompromising as Pagan’s, calling al-Bashir a “thief” and saying he should surrender to the ICC.⁹¹

South Sudan faced economic calamity. Laura James had prepared a memo for the Panel on the shutdown’s consequences.⁹² She wrote that the reserves might be sufficient to keep the government running normally for two to three months; she feared that devaluation of the South Sudanese pound would boost inflation—already around 70 percent—possibly toward a hyperinflationary spiral. Loss of salaries for civil servants and soldiers would cause rapid hardship, worsened by the likely influx of seven hundred thousand or more returnees from the north. Hilde Johnson passed on similar estimates from the UN in Juba.⁹³ She said that foreign exchange might cover ten months of imports, but budgetary allocations would last just three; the RSS, however, “doesn’t necessarily understand the difference and perhaps they think they have reserves for 10 months.” The Americans were alarmed, not least because they expected Juba to call on them for a bailout. Hillary Clinton and Susan Rice both called Kiir to tell him that the consequences would be “very grave” if he did not back down.⁹⁴ Rice, the SPLM’s staunchest advocate in the US administration, later recalled the shutdown as a “self-defeating step.”⁹⁵ The World Bank concurred, warning that the government that it faced an unprecedented economic contraction—oil was 82 percent of gross domestic product.⁹⁶ Its officials were dismayed by Juba’s

failure to provide a plan to manage the crisis. Only a handful of South Sudanese spoke against the decision, notably Lual Deng.⁹⁷

Sudan also faced a crisis, although it was less immediate and less severe than South Sudan's.⁹⁸ There were immediate job losses in the oil sector, and it would need to buy oil on the international market. Without the TFA, tariffs, and fees—and with vanishing prospects of relief from sanctions and debts—the GoS faced harsher austerity measures than it had hoped for. Most diplomats thought that the prospect of a popular uprising in Sudan was fanciful and expected the regime to outlast any protests. Some Sudanese cautioned against this. At a small, closed-door seminar convened by the Panel to reflect on the Sudanese predicament, Abdalla Hamdok, then at the UN Economic Commission for Africa, said that in the coming years, “the north may collapse . . . the danger to the north is *intifada* [popular uprising] not rebellion.”⁹⁹

In this context, it suited the south to try to undermine the mediators. Kiir, publicly denying that he had ever intended to sign the document, continued Pagan's attack on the AUHIP, describing its reaction to the shutdown as “extremely disappointing.”¹⁰⁰ He told the press that the Panel's draft agreement was “vague.”¹⁰¹ He went on to make a number of incorrect statements about it, including erroneously claiming that the draft had required South Sudan to pay \$6.5 billion to Sudan and that it had not provided reimbursement to Juba for the oil taken by Khartoum.¹⁰² Kiir was moving to a hard-line position from which he would find it difficult to back down. Mbeki was privately frustrated but publicly silent.¹⁰³ Meles was exasperated and stepped back from active mediation.¹⁰⁴ Kiir went further, telling diplomats “the AUHIP-facilitated negotiations have reached an impasse and as a result, we must consider carefully whether the facilitation will lead to a negotiated solution without significant changes in vision and format.”¹⁰⁵ In private conversation with US officials, he vented his anger more openly at the Panel, insisting it had been biased against Juba from the beginning.¹⁰⁶ One of the changes that the RSS apparently wished to engineer was the removal of the Norwegian oil team. Pagan had summoned the Norwegian Envoy to complain about its performance, lambasting it for turning Ethiopia against the shutdown and supposedly manipulating the Panel into producing a pro-GoS set of proposals.¹⁰⁷ Mbeki was skeptical toward Juba's rhetoric, having decided that it would be best to play a waiting game. He observed presciently, “if we remain silent, then they can come back later and accept it, maybe six months.”¹⁰⁸

Pagan wanted a more substantial role in the talks for the US, assuming it would be more favorable to the south.¹⁰⁹ He may have been correct. Lyman wrote to Rice: “I can understand why the RSS did not sign, because it got relatively little for having to reverse the shutdown.”¹¹⁰ After a later meeting with

Mbeki and Buyoya, he wrote: "I was surprised at how negatively they feel toward the RSS and how little they empathize with South Sudan's feeling of vulnerability. They were quite insensitive to the underlying emotions and reservations that the RSS has about Khartoum."¹¹¹ He judged the AUHIP process "a near failure" that needed to be rescued, suffering "a loss of confidence in it from the parties themselves as well as the international community."¹¹² Lyman's distance from the AUHIP position belied his reputation in advocacy circles as a supposedly pro-Khartoum dove.

Nevertheless, and unfortunately for Pagan, Juba was fast losing its political credibility in Washington, D.C., particularly after Kiir's disastrous meeting with Obama. Different members of the RSS gave different preconditions for reopening the pipeline, indicating that they had not agreed a position on either the shutdown or how to manage its implications.¹¹³ Southern officials were frustrated with even the modest US pressure and suggested that China should get involved, as it had more leverage over Khartoum.¹¹⁴

The advantage of Chinese involvement would have been that Beijing had investments, and influence, in both countries. Historically, China had been far closer to Khartoum than to the SPLM. At a time when US-led sanctions had prevented Western companies investing in Sudan's new oil sector, China had stepped in. The state-backed China National Petroleum Company (CNPC) dominated Petrodar and the Greater Nile Petroleum Operating Company.¹¹⁵ As it became clear that southern Sudan was set to secede, Beijing had to reconsider its alignments. On a visit to China in 2007, Kiir reportedly showed officials the Machakos Protocol alongside Sudan's oil map and told them "you figure it out."¹¹⁶ From that point, China pursued a balanced strategy of enhancing relations with Juba, while carefully preserving its links with Sudan. Worried that it might be evicted from South Sudan on independence, the CNPC launched an economic charm offensive, building a computer lab at the University of Juba and helping to resurface Juba's international airport in preparation for the independence celebrations.¹¹⁷ These efforts worked, and although Juba did not fully trust the Chinese companies, it pragmatically continued dealing with them.¹¹⁸

China was probably more invested in ending the shutdown than any other nation. Sudan and South Sudan constituted one-quarter of the CNPC's full output in 2011, and when the pipelines were closed, its overseas production dropped for the first time in the company's history.¹¹⁹ The problem for the Chinese companies was that the postsecession oil deal had included, in spite of their intense efforts to negotiate a modification of the relevant article, a passage that granted the RSS oil minister "complete or sole discretion" to take whatever action necessary should Khartoum confiscate South Sudanese oil. It further

stipulated that Juba would not be required to take on any liability or provide any compensation should it take the decision to shut down production.¹²⁰ This gave Beijing every incentive to prevent the crisis.

Mbeki wrote to China's special envoy to Africa, Liu Guijin, on December 23, requesting his assistance. He pressed the Chinese to "strongly urge" the GoS to avoid unilateral measures and the RSS "urgently to agree to a reasonable interim agreement."¹²¹ China engaged discreetly. Meeting with Buyoya on January 21, the Chinese ambassador to Ethiopia and the AU, Xie Xiaoyan, said he had not yet received specific instructions from Beijing on what he described as "crisis point," but he noted that the oil companies had been permitted to engage with both the GoS and RSS.¹²² As the crisis deepened, the oil companies drew up their own proposals, which they discussed with the AUHIP after the failure of the January 27 summit. The companies' main goal was to protect themselves, their assets, and their profits, and their formulae were more or less in line with the Panel's, with creative ideas such as allowing the companies to purchase South Sudan's oil directly at the wellhead, and then to take responsibility for its transit through Sudan themselves.¹²³ In spite of encouragement from the AUHIP, however, the Chinese did not have any success. Part of the problem was that China was, in spite of its increasing awareness of its newfound economic power, reluctant to compromise its long-term policy of nonintervention in the internal affairs of states.¹²⁴

Lingering South Sudanese lack of trust in the companies was another problem. Southern officials made a claim that Petrodar and its associated companies had been cheating Juba by underreporting oil output. Company officials maintained that this misconception was due to a difference of volumes brought about by water being added during the refining process.¹²⁵ South Sudan was not convinced and, claiming that the companies were taking Khartoum's side, expelled Petrodar President Liu Yingcai in February.¹²⁶

The pipeline shutdown was managed by the oil companies with relatively minor damage to the infrastructure—the one success of their intervention. The eight million barrels in the pipelines were flushed out so that the pipelines could later reopen with modest cost. Juba's press releases spoke of "close cooperation" between the commercial operators and South Sudan's Ministry of Petroleum and Mining.¹²⁷ Pagan spoke publicly about early contacts to develop an oil pipeline to East Africa, although any such efforts would have taken years to build and might not have been commercially viable.¹²⁸ The costs of restarting production from some oilfields that were nearing the end of their productive lives were such that they were no longer economical. Overall, the RSS suffered severe reputational damage vis-à-vis oil corporations, and their friends in the diplomatic community told them so.

For the South Sudanese, some things mattered more than commercial reputation. The racist epithet '*abid* (slave) was still in use in the northern Sudanese vernacular. The north's continuing exploitation of the resources of an independent south left their exposed vulnerability for all to see. The north had provoked the crisis with a sense of contempt for the southerners, deliberately offering them a price for freedom that the southerners felt was demeaning. Bargaining for one's freedom from one's former masters is more a matter of dignity than getting to the deal.

Al-Bashir, the Islamists, and the generals had come to the talks in a spirit of bitterness thinking that that they had nothing left to lose. They felt that every concession they had made over the past ten years had been gobbled up by the international community and the south, which then came back to the table to ask for more. The always-astute independent commentator Magdi el-Gizouli wrote:

The failure to agree upon a mutually beneficial arrangement to share the only resource at their disposal, irrational as it is, reflects a political rationale of the first order. To survive Khartoum and Juba need to disagree, the more suicidal the confrontation seems to be the better. Co-operation, by its mere occurrence, would rob the regimes of the very foundation of their rule, the liberation championed by the SPLM and the "good riddance" claim marketed by the National Congress Party.¹²⁹

It was the rule of force. By the same historical logic, there could be no safe demilitarized border. Two centuries earlier, northern traders and soldiers had been partners in conquering the south, and they had set the boundaries of Sudan at the limits reached by their money and guns. In finally dismembering that empire, the southerners had repeatedly offered to pay money to get back the lands they considered theirs. Having decided to discard the money, it was logical that the southerners would turn to guns.

BORDER WARS

At the time of the oil shutdown, disputes over the north-south boundary transformed the conflict between north and south from destabilization by proxies to direct military engagement. The escalation of the conflict empowered hardliners on both sides, unraveling nascent progress on citizenship, the “four freedoms,” and soft borders.

South Sudan became independent without a border delimited (in a treaty), delineated (on a map), or demarcated (on the ground) and moreover without any agreement on a “soft border” that would make the absence of these agreements uncontentious. Sudan’s recognition of South Sudanese independence was freighted with a problematic claim: “The Republic of the Sudan Declares: its recognition of the Republic of South Sudan as an independent and sovereign [sic] State as of July 9th, 2011, in accordance with the existing boundaries between North and South Sudan as of January 1st, 1956 and as they were when the Comprehensive [sic] Peace Agreement (CPA) was signed on January 9th, 2005, and in accordance with the norms and principles of the international law relates to [sic] recognition of states.”¹

The presidential statement introduced a new basis for delimiting the boundary—the maps produced by the United Nations after the Comprehensive Peace Agreement (CPA). It trapped Sudanese officials, who could not walk back from the erroneous claim that there was a definitive CPA map. The Sudan Armed Forces (SAF) chief of staff had informed the Sudan People’s Liberation Army (SPLA) that SAF would “redeploy its forces to all the areas north of the 1/1/1956 borders.”² The border, as defined from Khartoum, looked to be a ceasefire line.

The South Sudanese were debating among themselves where they should draw their northern boundary. For ten months, they did not issue an official map, and when they did, it was a map never seen before, that claimed three more areas. One, long hinted at, was Panthou, better known by its Arabic name Heglig. A second was a strip of land called Bowth/Babanis along the Blue Nile border. The third included territories north of the River Kiir, known to the northerners as Bahr al-Arab, including a town known as Majak or Meiram.³ These three claims were made on the basis of historical settlement patterns and colonial-era ethnic and language maps. Although some Sudan People's Liberation Movement (SPLM) supporters in the Nuba Mountains and Blue Nile still nursed the dream of attaching their regions to the south, those areas remained unclaimed.

All the ingredients were brewing for war along the entire border. The African Union High-Level Implementation Panel for Sudan (AUHIP) sought to keep the two sides talking, eking out the basis for an agreement. The starting point for this was the June 29, 2011, agreement on border monitoring, which provided for a Safe Demilitarized Border Zone (SDBZ), which would constitute a ten-kilometer-wide cordon sanitaire on either side of a centerline within which neither side would be permitted to deploy military forces, which would be monitored by a Joint Border Verification and Monitoring Mission (JBVMM), with the United Nations Interim Security Force for Abyei (UNISFA, with "Ethiopian troops" added in parentheses) providing logistical support and protection.⁴

The problem was delineating the centerline of the SDBZ and distinguishing it from other lines, such as those on UN maps. The two sides had appeared to agree that for 80 percent of the border, this line was clear, whereas the other 20 percent was the five disputed areas. The SAF generals took the position that the centerline of the SDBZ should be the "common borderline," by which they meant the administrative boundaries on the UN's CPA maps. This would keep the north in control of Kafia Kingi and allow them to occupy the southern bank of the Bahr al-Arab, requiring the SPLA to withdraw fourteen miles south to the Munro-Wheatley line, while the disputed areas of Migeinis and Joda were so narrow that they would fall entirely within the SDBZ. Although the SAF had threatened to take over Kaka, these maps placed it south of the border. The SPLA generals reverted to their position of accepting the administrative borderline for the agreed 80 percent and demilitarizing all the disputed areas and placing them under the UN. This was the final sticking point for negotiations late at night on June 28, before the southerners had to depart the following morning. As described in [chapter 12](#), Mbeki intervened to rule that the security committee was not in the business of resolving the final location of the

boundary line, and until such time as that was determined, the SDBZ would use the administrative borderline, in accordance with a map to be provided by the Technical Boundary Committee (TBC).

The problem then arose that the TBC could provide no such map. The southern representatives had withdrawn, and the committee was simply a repository of the documents already produced. The north wanted to use the published administrative maps, including those printed by United Nations Mission in Sudan (UNMIS). The south wanted to consult the chiefs on the ground. The CPA ceasefire and security arrangements provisions gave no clear guidance, as neither army had provided maps of their positions at the time of the ceasefire in 2003—and UNMIS, which did not exist in 2003, had no maps of military positions either.

On July 30, at the first meeting of the Joint Political and Security Mechanism (JPSM), the two sides could not agree on a map. They nonetheless signed an agreement that reiterated the same language that they had established a month earlier.⁵ Meanwhile, their stance on border monitoring began to shift. Having failed to crush the SPLA-North (SPLA-N) in South Kordofan, and aware of South Sudanese military support going across the border, the north became more sympathetic to third-party monitoring of the SDBZ. The south, conversely, revised its earlier enthusiasm for “neutral” involvement in border management.⁶ This did not lessen the need for an agreed-on SDBZ centerline nor did it help in identifying where that line might be.

At the JPSM on September 18, the two sides asked the Panel to produce a map of the centerline. The meeting minute specified: “This map has *no status* other than to depict the area of operations of the SDBZ and the area of responsibility for the JBVM.”⁷ In accordance with the Panel’s established modus operandum of seeking agreement from the parties for every step, Mbeki wrote that same day to the chair of the (now defunct) ad hoc TBC to request the maps that had been included in the TBC report to the presidency. Al-Sadiq provided them and they were forwarded to the two ministers of defense on September 28. The key map was entitled “Sketch Showing Applications and Differences in the Five Western Areas,” dated December 2009.⁸ It had three lines: “areas only covered by maps”; “areas where maps and documents both apply”; and “different areas around them;” and a dot for Kaka. It did not include the south’s claim to the Fourteen Miles area south of the Bahr al-Arab/Kiir River, which had been added after the 2009 meeting, as had the north’s claim to the area around Kaka town. The borderline ran to the south of Heglig. In most respects, it was a government of Sudan (GoS) map.

Neither side provided comments on the TBC map. Before the next JPSM meeting, the joint secretariat for the JPSM met in Juba from October 10–20 and

deliberated over the maps and again could not agree. Both sides were shifting their positions: The north wanted to use current administrative maps used for the election, while the south wanted to use colonial-era maps only. The discussion was hampered by disagreements among the southern delegates, who did not have the records of previous meetings and revisited points that had been resolved earlier. The meeting note reports that the Republic of South Sudan (RSS) showed “an inability to separate a final settlement of the border, from a map showing the area of operations for UNISFA deployment [in support of the JBVMM].”⁹

The two sides therefore asked the Panel to provide a map. Mbeki was reluctant to do so but felt he had no option except to agree. On the basis that the British government had been approached by Salva Kiir Mayardit to provide technical support on this issue, and the GoS had concurred, the Panel asked the British. The UK military attaché, Chris Luckham, took the maps provided the TBC and sent them to London for the UK cartographic unit to produce a large-scale map.¹⁰ The first draft showed the SDBZ with its centerline following the standard administrative map along the entirety of the border. Kafia Kingi remained under the administration of the north and Kaka under the south, while the entirety of the disputed areas of Joda and Migeinis fell within the SDBZ.

The critical question was the Fourteen Miles area. How could they draw a security line through a disputed area? The first and the best option would have been to use a ceasefire line from the CPA. The September 2003 Security Arrangements Protocol, which also served as the ceasefire agreement, was not clear on this, specifying only that the SAF in the south should be redeployed north of the 1/1/56 border and the SPLA in the north Nile should be redeployed south of that line.¹¹ The CPA’s implementation modalities annexure specified only that all forces “shall maintain their current positions.”¹² There were no international ceasefire monitors, who might have mapped or patrolled the ceasefire lines, until much later. In this case, it was not necessary. There was no combat between SAF and SPLA at the time, and the Rizeigat-Malwal truce meant that there was no militia activity either. The tribal authorities, which had authority over the militia, used the river as the *de facto* boundary.

Option two was to use existing maps. The south disputed the north’s maps. The UN Cartographic Unit printed maps for UNMIS, but these were based on government maps and included the standard disclaimer: “The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.”¹³ This was precisely to avoid the UN becoming embroiled in this kind of dispute, but it did not stop Khartoum from claiming they were authoritative.

Option three was to follow *de facto* administration on the ground. This was the basis used by the Panel staff. According to an UNMIS official who spoke

with Crisis Group in June 2010, “At present, the [14 Miles] area is administered in effect by county-level officials from Northern Bahr al Ghazal and UN officials report no objections from Southern Darfur.”¹⁴ Throughout the CPA interim period, visitors reported that southern local authorities administered the land up to the river. Staff from UNMIS and United Nations–African Union Hybrid Operation in Darfur (UNAMID) concurred, but they added that the issue had become complicated since October 2010. The GoS did not dispute that the SPLA was present on the river, nor did it demand that it withdraw as part of the security agreement, but referred instead to the article on redeployment in the CPA’s Security Arrangements.¹⁵ This article referred to the 1/1/56 line, which, they insisted, was fourteen miles to the south, making the argument circular.

The immediate problem was that the borderlands between South Sudan and Darfur had become a zone of active conflict, with JEM opening a new front in the Darfur war, so that the bridges over the Bahr al-Arab/Kiir River became the logistical link between the SPLA and the Darfur rebels. In reality, there was no longer a ceasefire. In October 2010, the SPLA reinforced its outpost at Kiir Adem—a strategic bridge over the river which was used by Justice and Equality Movement (JEM) forces to cross into Darfur. The SAF raised an objection to the reinforcement at the ceasefire joint monitoring committee, and the Sudanese air force bombed the area, aiming at JEM.¹⁶ The SPLA deployed tanks, and SAF positioned itself a few miles to the north.

Reflecting on all these factors, the Panel staff decided to adjust the TBC/ British map according to de facto control and to place the centerline along the Bahr al-Arab/Kiir River and not the Munro-Wheatley line. The map, titled “The Centreline of the Temporary Safe Demilitarized Border Zone Between the Republic of Sudan and the Republic of South Sudan Portraying 10 km Buffer Zones,” was completed on November 3 and sent to Juba and Khartoum within the week (figure 7).

The minister of the presidency, Bakri Hassan Saleh, responded two weeks later. He wrote, “We are quite astonished to note that the fifth contested area. . . is shown on the map provided as belonging to the Republic of South Sudan.”¹⁷ This letter was transmitted, however, through the AU Liaison Office in Khartoum and not the Panel secretariat and was not seen by Mbeki before his meeting with al-Bashir on November 21. In that meeting, al-Bashir observed that the Bahr al-Arab was not shown on the map, but otherwise passed quickly over the issue, giving the impression that he had accepted the map.¹⁸ (His main concern was the TFA.) Other National Congress Party (NCP) and SAF members in the meeting did not raise Bakri’s objection. When the map was presented in Juba, the RSS did not respond immediately, presumably because

THE CENTRELINE OF THE TEMPORARY SAFE DEMILITARIZED BORDER ZONE BETWEEN THE REPUBLIC OF SUDAN AND THE REPUBLIC OF SOUTH SUDAN PORTRAYING 10 KM BUFFER ZONES

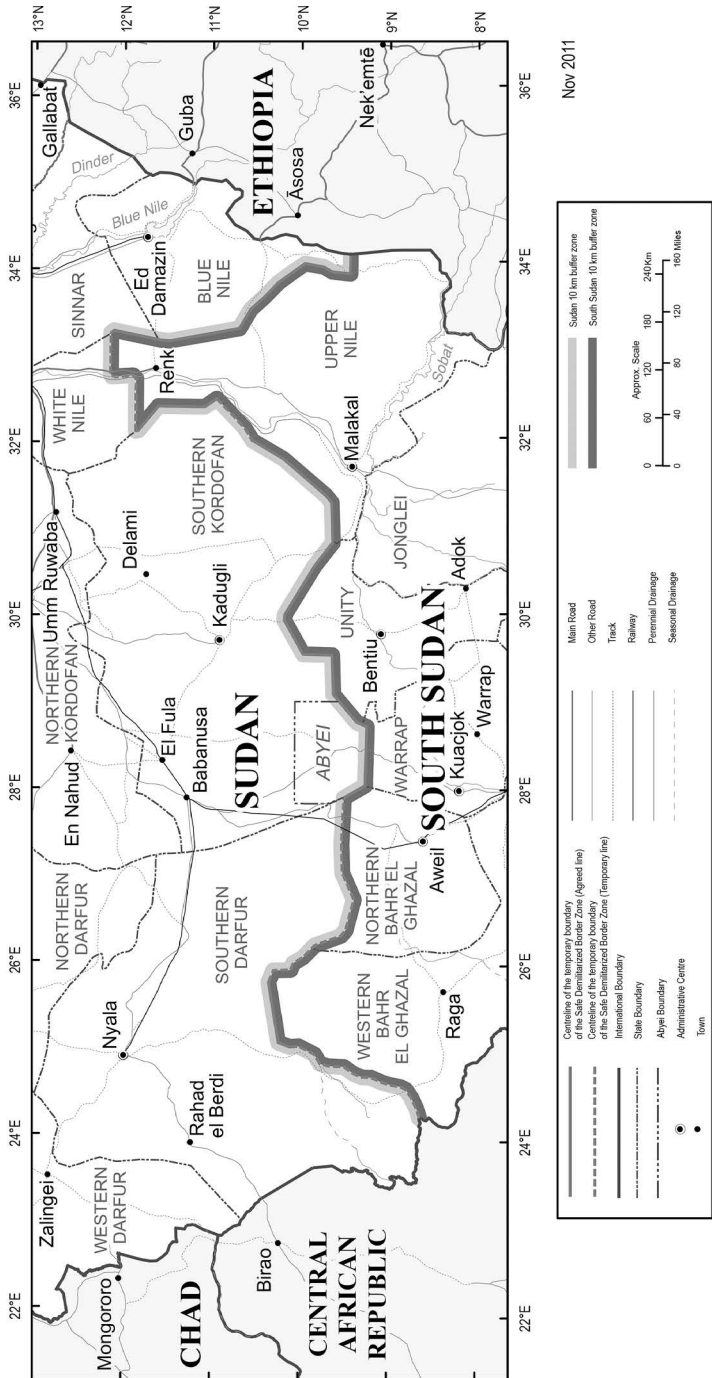


FIGURE 7. The Panel's security line. Tufts/AUHIP archive.

they were still debating the border issues. Mbeki then informed the African Union Peace and Security Council (AUPSC) and the United Nations Security Council (UNSC) that the GoS had accepted, but the RSS had not, a mistake for which he subsequently apologized.¹⁹

The misunderstanding had limited consequence at the time because Juba had not accepted the map. Had it done so, the SPLA would have been required to withdraw from its forward positions north of the river and JEM's cross-border operations would have had to pass across the internationally monitored SDBZ. For six more months, the RSS refused to produce any map of its own. The matter of a narrow stretch of remote savanna had gone from being a technical wrangle of concern to a dozen bureaucrats to a controversy that engaged heads of state. Such is the character of border disputes. What made the Fourteen Miles area so important was the escalating conflict. The area had been quiet during the referendum and afterward, with the annual agreement between the Dinka and the Rizeigat signed in January, followed by a peaceable Rizeigat migration south across the river during the January to April dry season. As the 2012 dry season approached, however, relations between the Rizeigat and Malwal were fast deteriorating.²⁰ As Colonel Michael Bailey, military adviser to the US special envoy, noted, "recent border incidents may also be complicating the map review process."²¹ The main issue was JEM, which was relocating its Libya-based forces to South Sudan, transiting Sudanese territory. On December 25, JEM announced that its leader Khalil Ibrahim had been killed in an airstrike a few days previously in Kordofan. But most of its forces were intact, as were its bases in South Sudan. The SPLA sent forces into Kafria Kingi, where they clashed with SAF, which accused it of using the area as a supply route for JEM.²² The GoS sent a complaint to the UNSC about South Sudan's support for JEM, claiming that a force of 120 JEM vehicles had crossed the border.²³

Fighting and Talking

In the wake of the failed Addis Ababa summit in January, the AUHIP acknowledged internally that "Sudan and South Sudan are in a state of war, although each has reasons to deny or downplay this."²⁴ The SPLA high command in Juba was supporting the recently established Sudan Revolutionary Front (SRF) which brought together the SPLM-N and JEM. SAF was supporting proxies in the south, including the South Sudan Liberation Army, and upped the stakes by bombing the El Nar oilfield in Unity State.²⁵ Al-Bashir said that the two countries were "closer to war than peace." Kiir and his lieutenants made a slew of bellicose statements. Juba was privately pressing the US to take over from the

Panel as mediator. US sympathies lay with South Sudan, and there was chatter within Washington, D.C., unhappy with the Panel.

Yet north and south returned to Addis Ababa to negotiate over the same issues as before under the auspices of the AUHIP. Realistically, they had no other option. This was clearly so for al-Bashir. No official of the UN or a western government could deal directly with al-Bashir nor—after the International Criminal Court (ICC) arrest warrant against him was issued on March 1, 2012—with his close friend, defense minister Abd al-Rahim Hussein. The South Sudanese knew this. Despite US misgivings about the Panel's handling of the oil shutdown, it insisted to Kiir and Pagan Amum that they stick with the AUHIP. This made sense for two additional reasons. The first was that the despite provocative statements against the AUHIP, members of the Panel had not said anything in public that could undermine their reputation for discretion. When Pagan publicly condemned the Panel and encouraged the South's sympathizers to do the same, the Panel did not contradict them in any public statement.²⁶ The second was that both sides needed Ethiopia—as did the Americans—and Meles Zenawi anchored the process.

Panel staff lamented that “the parties turn up to the mediation largely because they cannot afford to withdraw.”²⁷ Each side had, at least, reason to maintain the pretense that they were not at war. The Panel considered that was better than nothing. Pagan and Idris Abd al-Gadir could, for their own tactical purposes, blame the Panel both for the lack of progress and then for any concession they might need to make. Taking the blame, as Mbeki, Pierre Buyoya, and Abdulsalami Abubakar saw it, was one of the Panel's roles.

The Panel had hoped to convene a meeting of the JPSM in January with the agenda of establishing the SDBZ with its map, rolling out the JBVMM, and finalizing a nonaggression treaty. Abd al-Rahim Hussein was ready to come but Nhial Deng was not. The meeting was postponed, but then took place in Addis Ababa on February 10.²⁸ The delegations were led by the two intelligence chiefs, General Mohamed Atta, director general of the National Intelligence and Security Service (NISS) in Khartoum, and General Thomas Duoth Guet, director general of the General Intelligence Bureau in Juba. The meeting was relatively cordial, although there was the usual argument over details. They agreed to set up the JBVMM as soon as possible. The topic of the security map was raised, with a note that Kiir had still not responded. They decided to take the issue to the two presidents.²⁹ Guet said, ominously, that it was “misleading” to say that 80 percent of the border had been resolved. Atta claimed that the RSS was still paying the salaries of the SPLA-N. They argued over Abyei. Panel staff had drafted a Memorandum of Understanding on Nonaggression and Cooperation, adopting standard language on good neighborliness, mutual respect for each other's sovereignty and territorial integrity, noninterference in

one another's internal affairs, rejection of the use of force, equality and mutual benefit, and peaceful coexistence. The last four lines of the eight-page meeting minutes run as follows:

Item 4: Principles of non-aggression.

TM: this MoU is based on the agreed principles of the AU Non-Aggression and Common Defence Pact.

MoU adopted.

Signing, meeting ends³⁰

As the brevity of the minutes suggests, neither side held much store in this piece of paper. A few weeks later, the head of peacekeeping at the UN, Hervé Ladsous, reported to the UNSC: "Since the signature of the [MoU] on February 10 by the intelligence chiefs of both Governments, we have received reports of troop build-ups, bombings and cross border attacks from both sides."³¹

Beginning the next day, Pagan and Idris met on the agenda of oil and finance. Despite promising that they were negotiating in the spirit of "two viable states," and Pagan's insistence that "the shutdown was not meant to be long term," the two men simply rehearsed the same points over three days.³² They left saying they would meet again in four weeks. The Panel, the Americans, and—most important—the negotiators were becoming pessimistic that any agreements would ever be reached and were wondering if they were simply going through the motions of pretending to negotiate.³³

Recurrently, the default setting for north-south relations was to give war a chance. For some on both sides, the escalating confrontations were the opportunity to test one another militarily. Also, as noted in the AUHIP "non-paper" of March 2012, it was an economic war, with the likely consequence "that both countries slide towards ungovernability. The South is at greater risk than the North."³⁴

From Juba, Special Representative of the Secretary-General Hilde Johnson reported on the first SPLM politburo meeting since independence. She remained optimistic that the SPLM/A was "ahead of the curve" in responding to the unfolding economic and security crises and united in rejecting the AUHIP proposal on oil. She worried, however, that Juba could not meet the "rapidly growing expectations" of South Sudanese for the dividends of independence. There was a drought and a looming food crisis.³⁵ Johnson warned:

The magnitude of the current security, humanitarian and economic challenges seems to have served as a "wake-up call" to the country's leaders. The sight of thousands of armed youth that march to a different drum and owe no allegiance to the Government has shaken up government officials. . . . The envisaged austerity measures occasioned

by the oil crisis are daunting and could require a level of resilience and sacrifice uncommon in times of peace. At the very least the compact between the leadership and the people has to be rock solid, hence the drive—in campaign mode—of the Party to seek support and understanding from the population.³⁶

In northern Sudan there was crisis, too. The value of the Sudanese pound was plunging on the black market and foreign currency was becoming scarce, and shortages of imported goods were common.³⁷ Inflation was rising. The GoS had hoped that a donor conference in Istanbul, planned for March 23–24, would provide it with desperately needed loans. But US objections stemming from the war in the Two Areas meant that the conference was postponed indefinitely.

Mbeki feared the worst. On February 10–12, he chaired talks on oil and related issues. The heads of the delegation were Idris and Pagan, but Sayed al-Khatib and John Luk took over after the first session.³⁸ Luk emphasized that the only way forward was “industry practice arrangements,” meaning standard tariffs and fees.³⁹ Al-Khatib focused on the economic viability of both states.⁴⁰ The meeting achieved nothing. Mbeki decided to be more directive, and in advance of the next round of talks, he wrote a “non-paper” and sent it to both. He latched both sides’ statements about “two viable states” and decried how unilateral actions by each had “put at risk” this principle. He wrote: “Both countries face a genuine risk of a hyper-inflationary spiral. The economic viability of the two countries is thus being severely undermined by their failure to agree on the oil related issues. In the absence of prompt action, there could be serious long-term consequences for both.” Mbeki listed a number of specific actions, but he identified an “atmosphere of trust” as the *sine qua non* for progress.⁴¹

Mbeki also wrote to UN Secretary-General Ban ki-Moon, forwarding the AUHIP report submitted to the AUPSC the previous week.⁴² Mbeki, Abubakar, and Buyoya then traveled to New York for an “informal interactive dialogue” at the UNSC, followed by a meeting with Ban Ki-moon.⁴³ Mbeki sounded the alarm on urgent financial assistance to both countries and “the quick deployment of international monitors to the border area in order to stabilize the security situation.”⁴⁴

A “New Approach”

The US was sympathetic to South Sudan, but its frustration with Kiir and Pagan was deepening. Kiir’s meeting with President Obama in New York had

sparked a reassessment of whether South Sudan could be trusted—especially after RSS leaders doubled down on their denial of support to the SPLA-N in subsequent discussions with US officials—and Princeton Lyman advised against a second meeting with the president in Washington, D.C., in December, where Kiir was attending a US-organized International Engagement Conference for South Sudan. “If Kiir were to have another meeting with POTUS and take the line he gave me on this last trip, it would only worsen the relationship.”⁴⁵ In a detailed memorandum written shortly after the February 10 charade in Addis Ababa, Lyman spelled out his concerns.

We will need to have a frank and difficult discussion with the [RSS] leadership on just where it is heading and how far we are prepared to continue to support it. . . . [The RSS is asserting its] right to lie and otherwise not share their objectives or actions with us, and instead to demand only our unconditional support. . . . This shows up in particular in the policy they are following in the Two Areas and Darfur, on which they are totally dishonest with us, but also in economic planning, status of their reserves, and their internal security programs . . . RSS becomes indignant, even confrontational, when their assumptions are questioned. . . . This is not a strategic relationship among mutually trusting allies.⁴⁶

Together with the bitter and vengeful stance of the GoS—which had just spurned the chance of normalizing relations with the US—Lyman was worried about a slide to war. “While neither side really wants to go back to full-scale war, they could well stumble into it or close enough to endanger peace throughout the region. Keeping the two sides from doing so may be the most important thing we can do over the coming year. . . . If we leave the situation to drift then we will end up with everyone spinning their wheels at the AUHIP meetings and watch the tension between the two countries reach dangerous levels.

The gravamen of Lyman’s memo lay in the need for Washington, D.C., to press Pagan to change course. In the section on AUHIP negotiations, he wrote:

Within the RSS there are powerful voices opposed to any agreement with the GOS. They see the Bashir regime as hostile, aggressive, bent on the destruction of the SPLM regime, actively bombing their territory, recruiting militia to fight against them, and stealing their resources one way or the other—most of which is true—yet also a regime possibly on the verge of collapse if pressed hard enough. We have now to conclude that the RSS’s chief negotiator, Pagan Amum, is a leading advocate of this position and is determined to keep any

major post-CPA issue from being resolved through the AUHIP. This means that if he continues as chief negotiator, or if President Kiir does not demand a new policy, there is virtually no chance of success there.

Lyman pressed Pagan to change tack. Kiir, meanwhile, was under pressure from his peers in Intergovernmental Authority on Development (IGAD) to discipline his team. When the two sides reconvened in Addis Ababa on March 9, there was a change. For the first time, the RSS created a structured team, with Pagan as chief negotiator and John Luk, Paul Mayom, and Deng Alor answering to him, who in turn reported to Kiir. Lissane Yohannes reported, “that made a real difference.”⁴⁷ On the first day of the talks, both Pagan and Idris said they would take a “win-win” approach and that Mbeki’s non-paper was an “OK basis for discussions.” However, no progress was made and at the end of that day, they agreed only, “Parties will prepare presentations on all issues.”⁴⁸

A parallel diplomatic track—involving the Panel, Ethiopia, and the US—was engaging China, which was, against all its instincts, being dragged into internal issues in the Sudans. Perhaps even more remarkable was the coordination between Lyman and his Chinese counterpart, Ambassador Zhong Jianhua. Lyman briefed the State Department, that “a US-China partnership [should] be the backbone of our “friends” strategy. While enumerating areas in which the two countries disagreed—arms supplies to the GoS, UN investigations human rights violations in the Two Areas, and the ICC—he wrote that “China and the US do have the same basic objectives in Sudan, i.e. two viable states. Peace and stability in both. This augurs well for our cooperation there.”⁴⁹ Meanwhile, the two envoys compared notes about the mediation, and Zhong agreed that “it is a critical moment that we need to work.”⁵⁰

There was one encouraging exception to the deadlock: progress on the agenda of citizenship, specifically the status of southerners living in the north, which had a fast-approaching deadline. Previous agreements had given these people until April 8, 2012, to resolve their status. With the South Sudanese bureaucracy, particularly at its Khartoum embassy, still in no position to register a great number of new citizens, a social crisis loomed. This obliged both countries to confront questions about their social and economic relationship that the “four freedoms” principle had sought to resolve. Although neither side was willing to extend the grace period, Pagan and Idris were willing to initial a “Framework Agreement on the Status of Nationals of the Other State and Related Matters” on March 13. This granted nationals of each state permission to reside, move, “undertake economic activity,” and “acquire and dispose of property” in the other state.⁵¹

The UN welcomed the Framework Agreement but worried that the unchanged April 8 deadline was too soon, as long-term southern residents in the north were about to lose their Sudanese nationality. It prepared for large-scale returns to South Sudan,⁵² coordinating with Sudanese and South Sudanese agencies on plans to manage “the voluntary return of the citizens of South Sudan.”⁵³ The authorities instructed southerners in Khartoum to rapidly organize their belongings and join a convoy that set out on March 16. Because of a major transport bottleneck at Kosti, national organizations decided that the convoy should take a different route through el Obeid, then through Heglig, to the southern border.⁵⁴

On everything else, the discussion was going around in circles. Mbeki proposed that rather than continuing in the same formula, Pagan, Idris, and al-Khatib meet for an informal brainstorming session to discuss how there could be a “new methodology” and a “new spirit” to the negotiations. The three men agreed on the need for new thinking. Pagan suggested they should “build on small achievements,” giving the agreement on nationality as an example, implying flexibility over the “nothing is agreed until everything is agreed” formula. He also suggested a change to the “way we handle public communication—media—stop the propaganda war.” On the GoS side, al-Khatib was most constructive, and recalled the experience of the CPA and that “[t]actical sparring has created problems. Had thought that after Machakos the rest would be easy but took 2½ years. Tactical thinking delayed agreement.”⁵⁵

The negotiators initialed an agreement on the demarcation of the boundary on March 13. This followed a formula that should have been adopted six years earlier but had been delayed because of the interminable complications of the TBC. It committed them to set up a Joint Boundary Mission and Joint Demarcation Committee plus the necessary technical mechanisms.⁵⁶ No one expected much to happen, but it reflected a curious new spirit of goodwill. Joseph Tucker, representing the US Special Envoy’s office, emailed Princeton to report on progress: “[Pagan] reiterated the need to adopt a ‘problem-solving approach’ to outstanding issues. . . . He calmly remarked that there is fighting in oil fields inside South Sudan. He followed this by noting that before this round he would normally have made a press conference denouncing GoS for this act but instead he merely mentioned it to Idris and asked him to check with his contacts to see what was really going on.”⁵⁷

Tucker added that Idris confirmed that Pagan and he genuinely had “a new approach to negotiations.” Lyman wrote to congratulate Pagan: “Most of all I am appreciative that you took the initiative to arrest the process from becoming bogged down and failing when so much is at stake. You have put your finger on the fundamental problem, i.e. the lack of trust between the two countries.”

Aware that the generals on both sides were itching to fight, Lyman added, “time is of the essence.”⁵⁸

The initialing of the agreements on nationality and the boundary on March 13 revived hopes that the two sides had looked into the abyss and decided to step back. The Panel canvassed a schedule that involved a summit “in the very near future” for the two presidents to sign the agreements⁵⁹ and a meeting including donors to revitalize the oil-and-economics track.⁶⁰ Pagan visited Khartoum to invite al-Bashir to a summit in Juba on April 3, with Abyei also on the agenda. During his stay, Pagan joined a small ceremony to see off the “voluntary return” convoy on its way to South Sudan⁶¹ through Heglig.⁶² Even as Pagan was in Khartoum, however, NISS Director Mohamed Atta accused Juba of backing a rebel assault on Heglig and demanded it stop its support for the SPLM-N and JEM.⁶³

Polarization in Khartoum

The reaction by the Khartoum hard-liners to the March rapprochement was swift and hostile. The Just Peace Forum (JPF) condemned the status of the nationals agreement in mosques and the media.⁶⁴ Idris defended it as necessary to avoid bloodshed and further stressed that the agreement would help Sudan escape US sanctions.⁶⁵ This debate exposed the gap between those in Khartoum who wanted to improve relations with Juba and Washington and the rejectionist Salafi takfirists, NCP hard-liners, and JPF.⁶⁶ The former, known in Arabic as the *Naivashiun*, had staked everything on the CPA and lost; the latter had nothing to offer but vengefulness.

The Islamist infighting reached its peak when the senior media personality Tahir al-Tom convened a special debate on the framework agreement on his television program “To Complete the Picture” (*hata taktamil al-sura*). He pitted al-Tayyib Mustafa against al-Khatib. The exchange was heated and revealing. Mustafa attempted to align his position and the army’s, citing recent statements by the SAF spokesman that the agreement should be considered void given Juba’s support for the SPLA-N. Mustafa was clear that he intended to kill the agreement before it became law.⁶⁷ He insisted: “Secession has not yet happened and southerners are still residing in the occupied land of Sudan.” Al-Khatib responded that secession should not prevent citizens of the seceding state from setting foot in the other state, reminding the JPF leader that “we have [shared] interests with the south which are important and necessary”—for example, that freedom of movement would also safeguard northern pastoralists in southern territories during the dry season. Accusing Mustafa of being like the worst

racists of the US and Europe, al-Khatib explained that “we speak of southerners as humans and brothers to us, and we say that the authority that rules in the south [i.e. the SPLM] is not going to last forever but the two peoples will remain connected forever.”⁶⁸

Both men tried to show that theirs was the real position of the president. Mustafa said that al-Bashir had called for the mobilization of the Popular Defense Forces (PDF) and *mujahidin*, that the program *Fi Sahat al-Fida* had returned, “and it is at this time that these [i.e. al-Khatib and Idris] go to sign that agreement.” Al-Khatib retorted: “What is the shame in that?” Mustafa responded: “The shame is on you, o supine ones [*munbatihun*]!” Khatib asked Mustafa to admit that while his nephew (the president) may have mobilized the army, he had also sent negotiators to Addis Ababa. With Mustafa continuing to frame the ongoing presence of southerners in Khartoum as an “occupation,” Khatib responded by criticizing the JPF’s fixation on the removal of the southern presence as a necessary to establishing an Islamic state, observing Islamic states in history never had a purely Muslim population, and that modern Islamists had to work out how to establish one even where Muslims had only a 51 percent majority. As the discussion neared an end, Mustafa called for al-Khatib and Idris to resign. He described Idris as a “dove facing a hawk [Pagan],” citing his words that the agreement was necessary to avoid US sanctions and stating, “this itself is lying supine [*al-inbitah*].”⁶⁹

This high-profile debate demonstrated that the contest between the *Naivashiuun* and the JPF was now very much in the open, and that al-Bashir sat in an uncomfortable position, with the army pulling him in a hard-line direction. The JPF had succeeded in moving the moderates toward affirming their commitment to an Islamic State in the north. While those associated with Naivasha were committed to some degree of ethnic and religious pluralism within an Islamist framework, the JPF demanded total social and religious homogeneity. Mustafa deployed emotive language and placed a premium on sovereignty and national pride. Al-Khatib was willing to acknowledge his pragmatism in recognizing the need for good relations with the US and South Sudan. The events of the next days, however, would undermine the *Naivashiuun* and empower Mustafa’s faction.

The Undeclared War

Despite the “new spirit,” the undeclared border war had widened and deepened. With SPLA support to SPLA-N and JEM, most of the ground fighting was north of the border, but there were SAF air raids on the south,⁷⁰ as well as

northern support to proxy militia, such as among the marginalized Bul Nuer in Unity State.⁷¹

As the pace of incidents quickened and the size of the forces involved increased, communication between the opposing chiefs of staff, General Ismat al-Zain in Khartoum and General James Hoth Mai in Juba, became politically delicate. A hotline was essential to prevent any accidental escalation that could at any time transform an unacknowledged conflict into a full-scale war. The two men knew each other well and had each other's personal cellphone numbers. For either one to make a call was sensitive, however. It had to be done with the knowledge of their political superiors, and the two ministers of defense were moody and (in the case of Nhial) sometimes simply unavailable. Initiating a call might also be read as signaling weakness. Officially, the two countries were not at war and had both diplomatic channels (ambassadors) and military ones (the JPSM), but these mechanisms needed trust to function. The task of passing messages fell to the officers on the preparatory committee of the JPSM, who could speak to the Panel members and staff without questions being raised. Buyoya and Mbeki, and increasingly Abdul Mohammed and Neha Erasmus found themselves as intermediaries between the two high commands. This was essential but ad hoc. The generals needed a formal hotline that included the force commander of UNISFA and the border monitoring mechanism.⁷²

The GoS intelligence officers had professional relationships with their counterparts in the US and Britain. They all knew the informal rules that governed their ten years of discreet collaboration over counterterrorism and more recently the Libya operations. The Sudanese generals were well aware that their operations were closely monitored by US intelligence. As a consequence, the SAF command shared its intelligence on SPLA and JEM troop movements and impending attacks along with its planned aerial counterattacks. According to the US and British security advisers who provided classified briefings to the Panel, the SAF information was usually accurate. If an SAF air attack breached the border, Khartoum could be sure that the US would be swift to condemn.

The northerners regularly reminded anyone who would care to listen that north and south were not held to the same standards. They said, quite credibly, that if it had been the SAF and not the SPLA that had killed UN peacekeepers in Abyei in May 2011, there would have been a UNSC resolution and an ICC investigation the next day. When al-Bashir met Mbeki on April 6, he fulminated against those in the international community who had overlooked South Sudan's "transgressions" and bitterly recalled his words to the NCP Shura Council before the referendum, bemoaning that he had "sacrificed unity for peace" and "got neither!"⁷³

On the southern side it was different: Kiir, Pagan, and others were still confident that they could push the boundaries. The SPLA claims about northern violations, while more widely reported in public and often repeated verbatim by solidarity groups, tended to be less accurate. Although some individual SPLA intelligence officers had learned how military and security liaison functioned, the SPLA as an institution had not. Despite the various post-CPA initiatives to professionalize the southern army, the SPLA and SPLM had not disentangled themselves from one another, and the lines of military command and political authority had not been separated. Meanwhile, the SPLM enjoyed strong relations with US advocacy groups, members of Congress and their staffs, and individuals from those backgrounds who had moved into the State Department and National Security Council. This was an asset but could become a liability if the southerners overplayed their hand, as they sometimes did. During the CPA negotiations, Garang had expected to override US Special Envoy John Danforth, and Danforth had been obliged to correct that error. During the CPA implementation, Kiir visited Washington, D.C., anticipating that he would get US support for the SPLA to resume hostilities and march on Khartoum, and it required President George W. Bush to correct that misconception in a meeting in the Oval Office.⁷⁴ The Darfurian rebels had made the same error during the peace talks in Abuja.⁷⁵ In early 2012, the southern leaders continued to enjoy the benefit of the doubt from key diplomats in Juba, in western capitals, and at the UN, but even after what was (for them) a disappointing international reaction to the oil shutdown, they did not have a good sense of how far they could go before they hit the limits of international tolerance.

On each side, the military commanders also had to negotiate with internal constituencies. In Khartoum, as discussed earlier, the JPF was vocal. Mustafa had been instrumental in sabotaging the Framework Agreement for the Two Areas and delivering the war that some of the SAF generals had wanted. Their hard line made it difficult for the chief of staff to compromise. But General Ismat faced a problem: SAF was not winning, and he was relying on various paramilitaries, including Darfurian militia (formalized the next year as the Rapid Support Forces) and southern irregulars such as the Nuer-dominated South Sudan Liberation Army under General Bapiny Montuil Wijang.

The key figures in the SPLA were the head of military intelligence, General Mac Paul; the commanders of the third and fourth divisions, General Santino Deng Wol and General Gatduel Gatluak, respectively; the governors of Northern Bahr al-Ghazal and Unity States, Paul Malong and Taban Deng; and the Abyei lobby led by Deng Alor fiercely behind them. Malong was also training a separate militia, the *Mathiang Anyoor*, which grew from a self-defense force to a powerful paramilitary that could rival the SPLA. The chief of staff, General

Hoth was not always able to overrule these commanders. The former ninth division under General Jugod Maker and Abdel Aziz al-Hilu was coordinating closely with them, while JEM was heavily reliant on the SPLA's support but made its own decisions.

As the conflict escalated, Pagan repositioned himself in an intriguing manner. Despite his inflammatory rhetoric, his influence depended on the talks never quite breaking down. He was a civilian and knew that once his country officially went to war, the generals would call the shots. The Panel picked up these signals. In a session to review the predicament, Abdul Mohammed suggested that "Pagan realizes the oil shutdown and military confrontation have limits." Haile Menkerios added, "We used to see Salva K[iir] as moderate and Pagan as radical. Has [Pagan] changed? Or is it tactical? Regime change in the north is now more tangible than ever." Mbeki wondered if Kiir had tried to rein Pagan in, and Pagan had realized his error; however, as Pagan shifted to an accommodating position, Kiir was unable to abandon the hard-line position that Pagan had staked out.⁷⁶

The southern military buildup began in earnest in January, when three of the SPLA's eight southern divisions were mobilized and JEM established a base and training camp north of Raja in Western Bahr al-Ghazal. Combat broke out between SAF and SPLA-JEM combined forces on February 26 at Jau, the former base of the SPLA's ninth division, on the border. Aiming to block the SPLA-N supply route from the south, SAF had moved into this area. It was now attacked in a joint operation by the SPLA from the south and the SPLA-N coming from the north and forced to withdraw. The SPLA and its northern allies now controlled that strategic access road. Another, bigger incident occurred on March 26 at a border crossing, south of Heglig on the road to the SPLA garrison town of Teshwin. For the previous five years, SAF and SPLA units had been stationed at the border, separated by just three hundred meters—close neighbors, sharing the same water point and trading in the same markets. Even while the war raged in South Kordofan, these units remained in place—an oddity that illuminates the uncertain combination of war and non-war that prevailed. Starting on March 20, the SPLA fourth division and JEM forces moved to the border. The north did not reinforce SAF, but the air force had been bombing what it said were JEM and SPLA-N units, and what the south said were markets and refugee camps. On March 25, from the north, there was a cross-border raid by the South Sudan Liberation Army, supported by SAF, which reached the SPLA base at Teshwin. Southern sources say that the SPLA troops "spontaneously" pursued SAF north toward Heglig.⁷⁷ Northern sources claim that the SPLA operation was planned, with JEM circling around to the east, making up a combined force that should have been large enough to have overtaken Heglig without too much

difficulty. The following day, Kiir made an erroneous statement that the SPLA had captured Heglig.⁷⁸ Ismat spoke to Hoth and demanded an immediate withdrawal south, and the SPLA duly withdrew, although the JEM units remained in South Kordofan. The oil installation was undamaged, its employees having briefly evacuated but returned after the SPLA withdrawal.⁷⁹

Although the armies appeared to have pulled back from the brink, these incidents undermined the recently initialed agreements. Al-Bashir suspended his visit to Juba, and the JPF went on a media offensive, insisting that the trip should be canceled outright and attacking the “gullible” (*makdouiin*) for having accepted Pagan in Khartoum “with noisy dancing parties.” Renewing calls for the negotiating team to be sacked, the JPF demanded a “radical change in the method of negotiating,” which would make “the strategic goal the removal of the SPLA from the government of the south.”⁸⁰ *Al-Intibaha* called on al-Khatib to resign and apologize to the Sudanese people, and Idris to leave the political stage forever.⁸¹ The hard-line faction in the NCP was growing stronger.⁸² Meanwhile, factions within SAF considered dissolving the NCP, but retaining al-Bashir as president.⁸³ When he met with Mbeki in April, al-Bashir’s first remarks concerned public opinion, which he said was “critical.”⁸⁴

The March fighting had worse consequences for the “voluntary return” convoy, which was scheduled to travel via Heglig. The convoy had no security protection except for one military intelligence officer and was unlucky enough to enter Heglig the day the fighting broke out.⁸⁵ With no reconnaissance to warn it of the peril ahead, it headed straight into the fighting. The returnees would later tell the *al-Ahdath* journalist Ajok Awadallah Jabo that they had been shot at, and had their vehicles, clothes, and phones stolen by soldiers and other armed men, before being forced to turn back. The convoy trekked all the way back and were told by policeman guarding the entrance to the capital at Jabal Awliya “no southerner will enter Khartoum again.” Jabo, herself a Khartoum journalist of mixed northern and southern heritage, struggled to convince the police to allow her back home after going to Jabal Awliya to report on the “voluntary return” of southerners in the securely guarded internally displaced person camps.⁸⁶ The returnees were in desperate need of food and medical attention, but local relief officials’ requests to assist them were reportedly blocked by the minister of interior. The convoy eventually set out again on a few days later.⁸⁷

As the confrontation with Juba escalated, al-Bashir formed a “higher committee for mobilization and calling to arms,” and Vice President al-Haj Adam Yusuf stated that all the negotiations were to be suspended until the SPLA was forced out of Sudan.⁸⁸ As the dust settled, Idris—now fighting for his political life—and Pagan arranged further talks and a meeting of the JPSM in Juba.⁸⁹ The two men needed each other to remain relevant, although neither could

admit it. The GoS foreign ministry issued a more conciliatory statement saying that it was seeking to avoid war and promising that if the talks succeeded the presidential summit could take place after all.⁹⁰ At the same time, it criticized a recent AU statement calling for both sides to withdraw to their positions ten kilometers on either side of the security centerline on the grounds that this could not happen until the UN monitoring force had been established.⁹¹ Idris told parliament “we will fight with one hand and negotiate with another,” prompting more personal attacks against him by *al-Intibaha*.⁹²

The Addis Ababa talks took the form of a session of the JPSM focused on security. The sessions were attended by several SAF generals, who were quick to observe that more border clashes had occurred since they signed the Memorandum of Non-Aggression on February 10 than beforehand. They said that the problem was not just that the SPLA had launched an assault across the border, but that it had drawn on the support of JEM in doing so. Pagan insisted that JEM had launched a parallel attack from the north of the border, but it was common knowledge that the movement was being harbored by South Sudan. Meanwhile, the SAF generals claimed that Juba had ordered a joint attack on Talodi by al-Hilu’s forces and the SPLA fourth division to divert from the attempt to capture Sudan’s main oil facility.⁹³

The GoS team put forward proposals that would have required both parties to either expel rebel movements they were hosting outright or to withdraw them to a distance of 250 kilometers from the border. The SPLA would be required to formally delink itself from its ninth and tenth divisions through a document to be recognized by AUHIP, and with the Panel’s supervision participate in the disarmament and demobilization of all SPLA soldiers from northern Sudan and the removal those divisions’ heavy equipment to the south.⁹⁴ The southerners said this was tantamount to coopting them into an alliance with Khartoum to end the rebellion in the north. In its view, this required a political solution—namely, peace talks between the GoS and the SPLM-N. The GoS was not willing to open any such peace talks, and still less willing to invite the SPLM-N to the JPSM or any other forum involving South Sudan.

On April 6, Mbeki visited Khartoum to try to persuade al-Bashir to talk to the SPLM-N, but al-Bashir dismissed the “new spirit as camouflage” for escalating RSS attacks and said that he was in possession of all the information regarding the extent of the SRF’s coordination and plans.⁹⁵ He put Kiir and Hoth at the top of al-Hilu’s command and control. Al-Bashir said that any summit needed to be “well prepared”—he wanted the key issues resolved by his negotiators in advance. The following day Yasir Arman issued a media statement denying any interest in talking to Khartoum and reiterating the need for regime change.⁹⁶

As prospects for a breakthrough faded and the hope of a summit receded, the AUHIP began to draft decisions that might help the negotiating teams save face.⁹⁷ The draft Agreement for Reduction of Tension Between the Republic of Sudan and the Republic of South Sudan incorporated a cessation of hostilities and renewed the commitment to the presidential summit, but otherwise, it largely rehashed the content of earlier JPSM decisions. The commitment not to support rebel groups in the other state's territory did not go beyond the language used in the already violated Memorandum on Non-Aggression. The most significant new element was a "commitment to all halting of negative media propaganda, official and private."⁹⁸ Given that the principal culprit in fanning the flames of hostility was Mustafa's *al-Intibaha*, it would have struck a blow against the hard-liners if the GoS had signed it.

Although the RSS was willing to sign the agreement, GoS was not. The SAF delegation, now bolstered by the presence of Abd al-Rahim Hussein, raised objections. First, they insisted that references to the 1/1/56 borderline should specify this meant the current administrative borderline, which would place the key contested areas under northern control. They also demanded that South Sudan formally acknowledge that it had been backing the SPLA-N and JEM, which would have been embarrassing for Juba because it would mean conceding that it had lied to the US. It demanded an explicit commitment from the RSS to disengage from the ninth and tenth divisions. The GoS also objected to words that the parties would "cooperate" in seeking a political solution to the rebellions in each state, on the grounds that Khartoum needed to resolve its problems without involvement from South Sudan. These reservations added up to a de facto rejection, and Abd al-Rahim Hussein immediately informed the AUHIP that his team would return to Khartoum to discuss the document, suggesting another meeting in seven to ten days. This frustrated both the Panel and the South Sudanese, who could not understand why further consultation in Khartoum was needed when all relevant decision-makers were present in Addis Ababa.⁹⁹

One—perhaps deliberate—consequence of the delay was that the summit at which the presidents were scheduled to sign the "Agreement on the Status of Nationals" would not now happen before the deadline for southerners to resolve their nationality status on April 8, which would be followed by what southerners in Khartoum called "Black Monday."¹⁰⁰ As such, the agreement remained a framework, not officially in force.¹⁰¹ Individuals of southern heritage in Sudan were, as Magdi el-Gizouli puts it, "victims of *tajility*."¹⁰² The minister of interior declared that all southerners would have to register as foreign nationals with the immigration authorities, and the NCP dominated parliament, increasingly guided by hard-line views, announced that "the presence of any southerner in

the north following this day is illegal.” The head of a parliamentary committee on legislation and justice explained that if southerners were not able to “regularize their status,” the best procedure would be to deport them, noting “they chose secession.” The government donated vehicles to the Foreigners Affairs Department at the Ministry of Interior, so it could send squadrons through towns and cities to apprehend “foreigners.”¹⁰³ The neighborhood Popular Committees had been instructed by the government to draw up lists of these “foreigners.”¹⁰⁴ *Al-Intibaha* even proposed a “popular fund for the deportation [*tarhil*] of southerners,”¹⁰⁵ Mustafa having gleefully announced that the JPF would donate money towards the effort.¹⁰⁶

Following the announcements by the GoS, RSS officials told the northern press that if Sudan expelled southerners, they would in turn eject northern pastoralists from the south, along with their cattle.¹⁰⁷ Then on April 10, Juba in turn declared that “all nationals of the Republic of Sudan are declared foreigners as of 9 April” and, as such, they would require visas to enter South Sudan. Unlike the GoS, however, the RSS said it was willing to provide them with temporary documents permitting them to stay in the country.¹⁰⁸

The Declared War

On April 10, the third and fourth divisions of the SPLA, along with their JEM and SPLA-N allies, attacked and occupied Heglig, overrunning the local SAF forces and taking over the central oil facility. The attack appeared to be well planned. The troops brought oil technicians with them, who immediately shut down production at Heglig’s oil wells.¹⁰⁹ The demoralized SAF infantry and scattered Misseriyya militia defending the oil hub were brushed aside with surprising ease.¹¹⁰ The SAF high command was humiliated. At an NCP meeting two days later, there was much consternation that soldiers had retreated without being ordered to do so.¹¹¹ One of the unanswered questions was why Heglig was so poorly defended at a time of such high tension. The best explanation was that the coalition of SPLA, SPLA-N, and JEM had struck SAF in so many different places over the previous few months that its units were spread too thin.¹¹²

The RSS stated its territorial claim to Heglig and its sympathizers began marshaling evidence in support of its claim (see below). Taking unilateral military action to enforce a territorial claim, however valid that claim may turn out to be, is an act of aggression, and the RSS leadership knew this. Juba also insisted that its attack was a defensive reaction to aerial bombing in Unity State as well as an SAF assault on Mayom.¹¹³ Although the SAF had been bombing sites in Unity State, neither the UN nor any foreign intelligence agency had

knowledge of the alleged SAF attack on Mayom, seventy kilometers within South Sudan.

The cooling over the previous week had been a tactical pause. Lyman wrote to Hillary Clinton on March 31: "Both countries have massed troops along the border, making for a hair-trigger situation." He had been pressing for a presidential call to Kiir, and it was scheduled for April 2. The following day he updated Clinton, saying that "POTUS call to Kiir . . . will be important in shoring up Kiir's commitment [t]o keeping the current fighting from derailing the 'new approach' and keeping his army under tight control."¹¹⁴ Obama expressed his concern at the escalating tension and called for restraint.¹¹⁵ The Panel, the UN and Meles had been coordinating their calls to try to deescalate the crisis.¹¹⁶ The pressure did not work, but it helped put in place the rapid high-level response that followed the attack.

The Panel was given reports that Hoth received assurances from friendly ambassadors that South Sudan would not face any sanction if it occupied Heglig.¹¹⁷ The mixed messages transmitted to Juba certainly continued, with greater public attention to the northern provocations than to the southern actions. The SPLA's occupation of areas of Darfur north of the Bahr al-Arab received no attention at all.

The Heglig attack was an open declaration of war. Its logic was evident. Shutting the oilfield could have been either a tactical gambit to force a GoS concession (in which case, it had failed) or an element in a strategic plan for regime change in Khartoum. In the latter case, the other (military) elements had to be activated quickly. If there were to be an opportunity to strike a killer blow, this was it, while the south was united, mobilized, still with its resources, and had its alliances with the SPLA-N and JEM intact.¹¹⁸ The SPLM-N launched major offensives in the other combat zones, with al-Hilu's forces assaulting Talodi and Kadugli, and Malik Agar's troops launching attacks in Blue Nile. With the highly mobile JEM forces also active, it seemed likely that the war could be taken close to Khartoum.¹¹⁹

Shutting down the north's major oilfield made it more likely that Sudan's economy would crash. Sudanese oil production was cut from 120,000 to 55,000 barrels per day, now meeting half of the national needs. As queues formed at gas stations, Saudi Arabia volunteered to supply fuel.¹²⁰ In the wake of the assault, Sudan's exchange rate plummeted; one US dollar bought 6.2 Sudanese pounds.¹²¹

Sudan formally declared that it was at war with South Sudan, and the regime tried to put the whole population on a war footing, beginning to mobilize PDF brigades. *Al-Intibaha* declared that Sudan was now fighting a "defensive jihad" (*jihad al-dafa'*), participation in which was obligatory upon "every Muslim

man and woman capable of bearing arms.”¹²² Salafi hard-liners called on the government to formally declare *jihad* and appoint a war cabinet.¹²³ The GoS was pragmatic enough not to formally announce a *jihad*, and Vice President al-Haj Adam Yusuf turned down an approach by NCP hard-liners seeking to appoint him *amir al-mujahidin*, explaining that his diabetes and lack of military experience made him unsuitable for the role.¹²⁴ Nevertheless, its language hardened notably. Al-Haj Adam announced that there was “no ceiling” on the conflict with the SPLA,¹²⁵ Shortly afterward, the parliamentary speaker, Ahmad Ibrahim Tahir, declared that the NCP’s objective was now to force the SPLM out of power in Juba.¹²⁶ Even Idris Abd al-Gadir announced that “the priority now is to repulse the traitors and aggressors, not dialogue.”¹²⁷

Although al-Bashir did not assume the role of *amir al-mujahidin*, much of the language he used in the days following suggested he was won over to the hard-line faction. On April 19, he followed al-Tahir and al-Haj Adam in declaring that Khartoum’s goal was now regime change in Juba, telling a rally in Khartoum: “Either we end up occupying Juba or you end up occupying Khartoum. But the boundaries of the old Sudan can no longer contain us both, only one of us has to remain standing.”¹²⁸ Al-Bashir promised “a lesson in *jihad*.”¹²⁹ In the most controversial words, he described the SPLM as an “insect” that should be crushed to liberate the people of the south and reverse the NCP’s mistake in letting it take power in Juba.¹³⁰ The SPLM spokesman Philip Aguer furiously condemned al-Bashir, pointing out echoes with the genocidal language used in Rwanda.¹³¹ The next day, al-Bashir told a PDF contingent in el Obeid that he would use the famous stick with which he attended all his rallies to “discipline” the leaders of the SPLM.¹³² Yasir Arman observed that he was rehashing racist comments made by the Abbasid-era poet al-Mutannabi, to describe enslaved people of African descent.¹³³ More widely, use of *abid* (slave) as a racial slur to describe southerners increased dramatically within Sudanese social media.¹³⁴

Ten years of progress in north-south relations appeared to be reversed in a few days. Al-Bashir told a crowd, “We talked to them about the importance of unity but they did not understand, we told them about the importance of peace but they did not listen.”¹³⁵ At no point, however, did he explicitly threaten to revoke the independence of South Sudan and reannex it to the north. His threat to occupy Juba and remove the SPLM chimed with the JPF’s call for regime change, not reunification.¹³⁶ This contrasted with the position of the Misseriyya leaders aligned with the Umma Party, who called for the south’s independence to be revoked.¹³⁷

If the SPLMs, south and north, aimed to provoke a political crisis and uprising in Khartoum, that did not happen. The war fired up nationalist

mobilization.¹³⁸ Even the Sudan Communist Party called on Juba to withdraw, warning that that conflict was empowering extremists in both north and south.¹³⁹ Al-Turabi bided his time before the Popular Congress Party made a statement, and even though it condemned the attack on Heglig and declared it part of Sudanese territory, it also condemned the bombing in Unity State in equal measure, and declared that the deterioration in the economic situation should be blamed on the NCP first and foremost.¹⁴⁰ None of the civilian opposition, however, called for a popular uprising during the crisis.

The problem facing the GoS was that, despite its efforts at mass mobilization, it showed no sign of being able to retake Heglig, let alone invade the south. The Misseriyya militia on which it relied for border skirmishes were unimpressed with SAF. On April 16, senior Misseriyya, including former ministers and generals, met in Khartoum to declare their skepticism over participating in another oil war, when their communities had never reaped any rewards from the petroleum industry.¹⁴¹ Meanwhile, in an unpublicized front, the SPLA and JEM advanced across the Bahr al-Arab and in Kafia Kingi into Darfur. Briefing the Panel, Luckham summarized, "Nobody knows in detail where all the SPLA forces or SAF are located—the forces themselves are unlikely to know precisely. . . . The 'frontline' is indefinable and probably does not exist." It was the kind of war for which neither side appeared to have strategic plans or operational familiarity. It could easily run out of control. Luckham added: "The danger is that one side has a break-through (intended or not) and any resulting military advance or exploitation is directed [at] divisional command or below and so is beyond high-level control and will have serious political implications."¹⁴² In war, as in politics, the lieutenants were running the show.

A SECURITY COUNCIL MANDATE

The Heglig war was a rupture in the already frayed relations between Sudan and South Sudan and in how the African Union High-Level Implementation Panel for Sudan (AUHIP) handled its business. It was also an opening for a new, coordinated strategy that showed how Africa's peace and security mechanisms could operate. The African Union took the initiative in reaction to Heglig. The African Union Commission's Peace and Security Department drafted the AU Roadmap to resolve all the outstanding issues between Sudan and South Sudan plus the conflict in the Two Areas, which was adopted by the AU Peace and Security Council (AUPSC). The AUPSC communiqué was then the basis for United Nations Security Council (UNSC) Resolution 2046 of May 2, 2012. It was a remarkable moment for the AU, which provided international leadership, all the more notable because of the concurrent deadlock at the UNSC especially over Syria. The AU Roadmap and Resolution 2046 gave full backing to the AUHIP.

The immediate focus was reversing the occupation of Heglig and establishing border security. Resolution 2046 included the Two Areas in parallel to the north-south road map but excluded Darfur and internal conflicts in South Sudan. It created a sequential and prioritized approach, diluting the principle that "nothing is agreed until everything is agreed."

The path from the AUPSC Communiqué to UNSC resolution was a high point of the AU's influence at the UN. It showed that if the AU Commission and the AUPSC took the lead on an African issue, the UNSC could follow and

the five permanent members of the Council (China, France, Great Britain, Russia and the United States, known as the “P5”) that were otherwise at loggerheads, could overcome their animosities to support the AU—a tangible demonstration of African solutions to African problems. It also posed tough questions for the Panel. The AU Roadmap emerged from the Panel’s work and had input from Panel staff. The US, as penholder at the Security Council, copy and pasted its text for Resolution 2046. The organizing principles were far more directive than the AUHIP’s approach of vesting ownership with the parties themselves and taking on the role of facilitator, not arbiter.

Resolution 2046 gave the Panel an additional mandate and new authority to make recommendations to the UNSC which could enforce them under Chapter VII of the UN Charter. The AUHIP was now required to work closely with the UN, reporting to the UNSC regularly. With Haile Menkerios as the UN special envoy for Sudan and South Sudan, coordination between the Panel and the UN was especially good. Now it had to be seamless, because the UNSC was engaged and could in theory overrule the AU.

Princeton Lyman wrote to Thabo Mbeki proposing to “reinforce” the Panel. Mbeki responded, “In truth we are somewhat puzzled by the repeated suggestions to ‘reinforce’ the AUHIP.” He worried that the “reinforcement” argument was intended to make the Panel into an arbiter and might “absolve the Sudanese Parties from the obligation to conclude their negotiations as speedily as possible, [and] create the space for themselves to attribute failure to the Facilitators.” Mbeki continued: “It is not even a “reinforced” Panel which must enter into an agreement to resolve the outstanding issues, but the Parties themselves. . . . We must avoid the practice, in terms of which the Parties expect that the Panel should submit proposals/documents to address matters which the Panel would have put on the agenda—which, as experience confirms, allows the Parties the space to negotiate with the Panel rather than with themselves.”¹

The concern was both tactical and strategic. The UN decision, backed by the US, killed any South Sudanese notions of plotting to replace the Panel with another mediator. But it also worried Khartoum. Although Resolution 2046 was the first for many years that treated Sudan as a victim and not a perpetrator, the government of Sudan (GoS) was paranoid that it might erode the Panel’s African character. Barney Afako observed that the Panel “may need to emphasise its independence and scrupulous even-handedness . . . [and] may now need to manage its business in such a manner that it dispels any notion that it has become an instrument of the Security Council. . . . The Panel is not the UNSC’s enforcer.”²

First Responses

In the immediate aftermath of the Heglig attack, the international response was remarkably unanimous. Juba's leaders discovered that the price of joining the club of nations was being subject to the rules of the international order and that resolving territorial disputes by force of arms was considered an act of aggression.

The AU was the first to react. The Commission issued a press release on April 11, stating its "alarm" and calling for South Sudan's "immediate and unconditional withdrawal."³ Speaking out first, the AU set the tone for statements by the UN, the Europeans, and—most significant for South Sudan—its hitherto most reliable ally, the US. The AUPSC met in emergency session the following day and issued a second statement.⁴ The US ambassador in Addis Ababa emailed Lyman: "It is commendable that within hours of the renewed hostilities the AU met and issued a communiqué, long before anybody else did so."⁵ Juba was not surprised by the AU stand, but was taken aback by how it was echoed worldwide.⁶ The scales fell from the eyes of some foreigners. One unnamed US diplomat said: "no-one saw it coming"—an astonishing statement in the circumstances.⁷ For the first time, the international community was treating South Sudan and Sudan on an equal level. Crucial was the US reaction, and on this, Lyman played an important role. Mbeki wrote to him thanking him for his personal role in achieving "unprecedented unanimity among the international community."⁸ The State Department "condemn[ed] South Sudan's military involvement in the attack on and seizure of Heglig, an act which goes beyond self-defense and has increased tension between Sudan and South Sudan to dangerous levels."⁹ Susan Rice reportedly refused to take calls from the south's leaders, letting the cold official words speak for themselves.

At first, South Sudan was defiant. On April 12, Salva Kiir Mayardit explained that he was being kept awake by telephone calls, but that he had not paid heed to any of them. After Ban Ki-moon phoned Kiir to ask him to withdraw,¹⁰ Kiir announced that the UN chief "gave me an order that I'm ordering you to immediately withdraw from Heglig," but that his riposte was that "I'm not under your command."¹¹ Although South Sudan insisted that Heglig belonged to it and it would stay there, its rhetoric became less bellicose as the days passed. It could not afford to deny its foreign backers, although it was eager to celebrate its military success and do what Haile Menkerios called a "victory lap."¹²

The immediate fear was that the GoS counterattack by air and land would go south of the border and escalate the crisis out of control. Omar al-Bashir told Mbeki that as Juba was now intent on regime change in Khartoum, Sudan must adopt the same strategy toward the south.¹³ The US and Chinese envoys

coordinated their calls for restraint in Juba and Khartoum.¹⁴ Lyman reported on a call with Egyptian foreign minister Mohamed Kamel Amr: “Amr said that they were concerned about Sudan running to the Arab countries when there was a fight with the South and the League would not want to cause further tension in the region.”¹⁵ Ethiopia was Africa’s anchor, affirming the message of restraint to al-Bashir and Kiir. Following a day of phone calls, Lyman wrote to Washington, “perhaps Meles is the only person who can get them to stop.”¹⁶

What stopped them was the facts on the ground. The Sudan People’s Liberation Army’s (SPLA’s) military situation north of the border became untenable. On April 20, Kiir announced the order to withdraw.¹⁷ Juba’s story was that the SPLA pulled out to “avert mounting international pressure and possible condemnation.”¹⁸ In reality, the SPLA was defeated by a coalition of the South Sudan Liberation Army (SSLA) and Sudan Armed Forces (SAF) that retook Heglig in a bloody battle.¹⁹ Lyman reported Menkerios’s assessment: “We have been lucky and surprisingly ended up with the best of all situations—South Sudan can say they withdrew because of international pressure and Sudan can say they pushed them out and liberated the land. We’ll never know the truth.”²⁰

The US and Britain then feared that the SAF and the heavily rearmed SSLA would cross the border and attack Unity State, but under pressure, they halted north of the border.²¹ The mutual stand down was helped by the fact that although Abdel Aziz al-Hilu and the Justice and Equality Movement (JEM) were calling for overthrowing the regime in Khartoum, Kiir had not done so. His office issued a statement looking forward to the UN border monitoring force, adding that solutions were needed to the crises in Abyei, the Two Areas, and the disputed border regions. Despite Pagan Amum’s expressions of anger at the Panel for its role in the AU position, the Republic of South Sudan (RSS) formally reiterated its commitment to the AUHIP-led dialogue.²²

The GoS’s relative restraint was politically smoothed by the fact that the AU led the way in formulating the response. But international condemnation of Juba was a diplomatic opening that Khartoum did not take. The GoS considered itself a victim of aggression and felt the world should have wholeheartedly condemned South Sudan. Their narrative set by Islamist hard-liners, al-Bashir, and the foreign ministry nitpicked western statements for signs of continuing conspiracy against Khartoum rather than sensing the sea change in attitudes toward Juba.

For the Panel and its closest international partners, including Lyman, the crisis was an opportunity to channel their frustrations over the excruciatingly unproductive negotiations into a focused effort to resolve all the issues that had been on the table for the past year and a half. After issuing its press release, the AU set in motion the process of convening the AUPSC at the ministerial level. Bringing foreign ministers to Addis Ababa would convey the seriousness of the

issue. This entailed a delay of a week or so, during which time they would craft a comprehensive road map and canvas political support for it. Unlike the UNSC, where a member state drafts on each issue, the AU Commission is the penholder for the AUPSC.

The director of the Peace and Security Department, Elghassim Wane and Abdul Mohammed, the Panel's chief of staff consulted with Commissioner Ramtane Lamamra and asked Panel staff to work on a road map. Lyman, Mbeki, and Menkerios were in constant touch to ensure that Juba and Khartoum understood that there was no daylight between the positions taken by the AU and Washington.²³ Lyman shared his thoughts with Mbeki: "A unified regional consensus around these items could serve as a road map that would guide the parties out of this complex crisis."²⁴ The idea of the road map was raised independently by both, reflecting how shared thinking had developed.

From Roadmap to Resolution

Otto von Bismarck is credited with saying that whoever wishes to keep his respect for sausages and laws should not see how either is made. Similar sentiments apply to UNSC resolutions. Panel staff produced the first draft of the AU Roadmap, in the form of draft text for the AUPSC, on April 22.²⁵ This first draft contained almost all the elements of the final AU Roadmap, but Wane and Abdul made some important changes.

The first change referred to territory.²⁶ Until this point, all draft texts on the border proposed by the AUHIP had limited themselves to the five disputed areas. The revised draft added "and claimed border areas." South Sudan was occupying a "claimed area" that was the *casus belli*. The GoS was furious, but this inclusion was inescapable.

The second and third additions introduced a deadline of three months for resolving all the issues.²⁷ Deadline diplomacy has a mixed record. It is a common practice for negotiators to set themselves a deadline to prevent indefinite talks and to focus their minds, and there is a conventional practice of "stopping the clock" at the appointed hour (usually midnight) if the negotiators are close to agreement and another few hours or even days are needed. In November 2004, the UNSC gave the GoS and the Sudan People's Liberation Movement (SPLM) a deadline of December 31 to conclude the Comprehensive Peace Agreement (CPA), which overran by a week.²⁸ The Darfur mediation did the same in May 2006, giving the practice a bad name.²⁹ Mbeki expressed his discomfort with the deadlines. "I know very well," he wrote to Lyman, "that nobody has the authority to instruct any of the parties to convene or reach agreements within timeframes determined a priori, and by detached observers." The risk of forcing

parties to reach agreements, Mbeki noted, was that those agreements would be valid only insofar as they were legitimate in the eyes of those parties' domestic constituencies.³⁰

One line was unusually bold. In the case of the parties failing to reach agreement, "Council requests the AUPSC to submit to it a comprehensive report on the status of the negotiations, including detailed proposals on all outstanding issues, to be endorsed as final and binding solutions to the post-secession relations." Controversy lay in the words "final and binding." The authority of the AUPSC—or indeed the UNSC—to impose its decisions on sovereign governments was questionable, and especially so when territorial matters might fall within the "detailed proposals." The text also referred to the AUPSC taking "appropriate measures." This implied sanctions and other enforcement measures. Unlike UNSC resolutions, the communiqués of the AUPSC do not possess legal force, and the AU has limited options beyond exhortation.³¹ The Constitutive Act permits the AUPSC to suspend member states following an unconstitutional change of government, but not for waging war or defying a AUPSC communiqué. For stronger measures, the AU relies on UNSC authorization or a decision by the Assembly of Heads of State and Government.

The final addition concerned the Two Areas.³² In addition to including demands for humanitarian access and restarting political talks, the communiqué referred to the June 2011 Framework Agreement. Panel staff had hesitated to reintroduce this agreement given al-Bashir's rejection, but Wane and Abdul argued that it should be affirmed as the basis for negotiation rather than the final outcome.

The AU Roadmap demanded a ceasefire and withdrawal of forces to each side the border, activation of the Joint Border Verification and Monitoring Mechanism (JBVMM) and Safe Demilitarized Border Zone (SDBZ, with language making clear that the security map was not the final boundary), an end to harboring or supporting rebel groups, activating the relevant Joint Political and Security Mechanism (JPSM) mechanisms, ceasing hostile propaganda and inflammatory statements, full implementation of the temporary Abyei agreement, and a resumption of negotiations on oil and associated payments, borders, Abyei, and the status of each other's nationals.

On April 24, the African foreign ministers met and adopted the communiqué without any substantive changes. They expressed "Africa's dismay and deep disappointment at the failure of leadership in both countries" and referred the matter to the UNSC, which unanimously adopted Resolution 2046 on May 2, under Chapter VII of the Charter. Operative articles 1 and 2 reproduced the AU Roadmap almost word for word.³³

At that time, the United Nations Security Council was deadlocked on many issues. Following the Libya intervention and the escalation of the war in Syria,

the US and Russian representatives—Susan Rice and Vitaly Churkin—consistently blocked one another’s proposals. There was visible personal animosity between the two. Given Rice’s antipathy towards the GoS, this could have been Churkin’s chance to score points. It did not happen. Although Rice indicated that she considered the south’s military operation to be a retaliation for the north’s aerial bombardment, she made it clear that “the occupation of Heglig was illegal and unacceptable and must not be repeated.”³⁴ She gave her support to the AU Roadmap and the Panel. Churkin also supported the AU Roadmap and the Panel, but with reservations.³⁵

Russia had three concerns. First, South Sudan should compensate Sudan for the damage done to the oil installations at Heglig. Second, it was intolerable that the “so called Sudan Revolutionary Front” was marauding inside Sudanese territory with the aim of overthrowing the government, and the GoS should not be pressured to negotiate with such rebels. Third, Russia “consider[s] the sanctions route to be an extreme step.” What made Churkin cast his vote in favor was that the AU proposed the measures. China’s representative, Li Baodong, said something similar: “Taking the AU position and requests concerning the situation between the Sudan and South Sudan into account, China voted in favour of resolution 2046 (2012) a few moments ago.”³⁶ Although the AUPSC’s standing as speaking for Africa was crucial, diplomatic work was also needed. Mbeki and Lyman each spoke with the Russian and Chinese ambassadors, stressing that a unified international position was essential to prevent forum-shopping or backsliding.³⁷

The UNSC resolution used imperative language. Afako advised the Panel: “The UNSC version is leaner and makes the imperative sharper. There is no reference to the Roadmap, which is not necessary because in general everything has become a ‘decision.’”³⁸ For example, while the PSC “*Urges* the Parties unconditionally to resume negotiations,” the UNSC “*Decides* that Sudan and South Sudan shall unconditionally resume negotiations.” In one respect it was crucially different. The resolution did not include any “provision regarding adoption of the proposals as binding upon the parties”—binding arbitration was a line that the UN was not prepared to cross. The UNSC resolution was adopted unanimously on May 2, and the deadline was therefore set for August 2.

Sudanese and South Sudanese Reactions

South Sudan accepted the AU Roadmap within a week, without fuss.³⁹ Advised by the Americans, among others, that it would be wise to express a level of seriousness commensurate with that of the African foreign ministers who had

convened in Addis Ababa on April 24, the Minister of Cabinet Affairs Deng Alor attended the UN Security Council session in person where he unreservedly backed the resolution. Mbeki noted that Juba promised to confirm its disengagement from the SPLM-North (SPLM-N), which he saw as a sign that the future of the Two Areas would be resolved within northern Sudan alone.⁴⁰

Khartoum reacted tactically. The foreign ministry treated the UN Security Council as just another arena for nitpicking. Instead of sending foreign minister Ali Karti to New York, the task of representing the GoS position was delegated to Daffa-Alla Osman, Sudan's ambassador to the UN. Osman's speech was longwinded and petty minded. He complained that the resolution was unfair. He denied that the air force had bombed south of the border and said that repeated attacks from the south had gone unpunished. He tried to pick apart the AUPSC communiqué and Resolution 2046, arguing with respect to the conflict in the Two Areas that the AU had not referred to either UN Chapter VII or article 41.⁴¹ This was a quibble because the AUPSC had no authority to presuppose what the UNSC might decide.

Sudan's parliament grudgingly accepted the AU Roadmap but made its reservations prominent, rejecting the call for dialogue with the SPLM-N.⁴² Khartoum's thinking was more cogently articulated by Ghazi Salah al-Din, who in advance of the UN Security Council debate, took to the pages of *al-Intibaha* to launch a blistering attack on both the communiqué and the AU. He defined the core problem as "an issue of national rights." He espied, "the imprint of Western countries" in the AU position, writing:

When the decision adopted by the AUPSC is analyzed, the first thing that strikes the analyst is the obvious and absolute identicalness of the language and ideas used in the roadmap and what the US Government and institutions have been expressing, be it the White House, the Department of State or the US Ambassador to UN. It was cleverness on the part of the drafters of the decision to hide traces of copying using linguistic arts, a sort of favorable hypocrisy in the rules of the international game.⁴³

For Ghazi, the communiqué had softened the necessary criticism of the south and introduced unwarranted criticism of the north, thereby equalizing the aggressor and the victim. In urging negotiations between the GoS and SPLM-N on the basis of the June Framework Agreement, which had been repudiated by the president, the AU was "legalizing" armed struggle and paving the way for a "new Naivasha." Most seriously, "[b]y this resolution, the AU has readily given up its role to the Security Council and agrees to its role being limited to provision of cover and justification for international intervention." He singled out

the communiqué's words "final and binding," writing "the mediator will cease being a neutral body and turn into an adjudicator and scourge."

Ghazi's longtime friend, Abdelwahab El-Affendi, called him.⁴⁴ As El-Affendi then explained to Abdul Mohammed, he told Ghazi that the UNSC would have taken up the issue in any case, so it was better to have the AU moving first with the Panel in the lead. Ghazi made two points. First, he "insisted on the government's position that the security concerns, and specifically cutting all Southern support to SPLM-N, must be dealt with before any progress on other issues could be contemplated." Second, his charges were leveled at the AU Commission, not the AUHIP: "At the end, Ghazi reiterated the government's confidence in Mbeki and the Panel, and said they are relying on its efforts to move things." It was a worrying opening salvo, nonetheless. South Sudan had been accusing the Panel of bias, now it was the GoS's turn. That equivalency was not reassuring. As Afako pointed out in a reflection on Ghazi's article, "any allegation of bias is a loss of trust."⁴⁵ The Panel needed to be especially careful to indicate that it was even-handed.

The counterpart analysis from South Sudan was articulated by Majak D'Agoût, verbally at the time and in writing some months later. He expressed ambivalence toward the AU Roadmap and Resolution 2046. Describing the long civil war as "a forgotten war of decolonization," he saw the postsecession agreements as "a host of schemes that perpetuate an extractive colonial relationship between the newly independent state and its former colonial power. In effect, these are simply traps of vulnerability that South Sudan, in its interest, must avoid so it can manage its colonial legacy, focus on its internal challenges and create sufficient conditions for full independence."⁴⁶

Majak was disdainful of the transitional financial arrangement (TFA) proposals and other northern demands on the south's resources, including unimpeded cross-border access by transhumant pastoralists. He justified the attack on Heglig/Panthou as the south's overdue assertion of military parity with the north, while conceding that "the AU and UN intervention has clearly saved the two countries from a full-blown war." What Majak welcomed was the emergence of "the AU/UN as a third player—and threatening to respond to a deviation from the roadmap with a strongest punishment . . . should the parties fail to live up to their obligations under the agreement—something that was missing under the CPA and which seems to drip annoyingly slowly in this new mediation efforts."⁴⁷

Juba's position was echoed by its western advocacy groups, such as the Enough! Project, which repeatedly called for strong international enforcement actions, but only against Khartoum.⁴⁸ The SPLM leaders had long been confident that they could bypass US envoys by using their US cheerleaders to gain

direct access to the top. Despite Kiir's calamitous meeting with President Obama, other SPLM leaders were still confident that they were exempt from the rules.

Both sides appreciated that something significant had changed. This did not, however, translate into a new strategic approach—still less strategic cooperation—or into a sense of urgency. It took the two governments a full month to agree to the date and agenda for a meeting of the JPSM, which took place in Addis Ababa on June 4, followed by a meeting of the Lead Negotiating Panel. A few days before that, the GoS sent a longwinded, nitpicking written response to the communiqué and Resolution 2046.⁴⁹ Khartoum wrote that it accepted the resolution “in conformity with the efforts and commitment, previously taken” and referenced a series of agreements and demands. South Sudan published its new map that same week, pushing the boundary northward in three new areas, including Heglig and north of the Bahr al-Arab in Darfur. On each side, the soldiers were running the show. The SPLA was fully mobilized to confront the north, support the SPLA-N, and assist JEM in Darfur. SAF was using its air force along and across the border and was arming proxies to take the war to the south. The logic of the oil shutdown was, as Meles had remarked, to see who would die first, and the hard-liners in Khartoum and Juba were convinced that it was the other who would perish to first—while they themselves would feel the pain but survive. The negotiations had become a negative-sum game. As Mbeki had written in frustration in the margins of a meeting note a few weeks earlier, “*Must help each other.*”⁵⁰

Multilateralism and “African Solutions”

Resolution 2046 marked the high-water mark of cooperation and complementarity between the AU and the UN. It was a tangible manifestation of Article 17 of the Protocol establishing the AUPSC, which required it to “cooperate and work closely with the United Nations Security Council, which has the primary responsibility for the maintenance of international peace and security.”⁵¹ The fact that the two major relevant multilateral organizations were in full alignment not only meant that the peace and security architecture was working according to design but also prevented forum-shopping by the belligerents. In this respect the AUPSC-UNSC harmony was in contrast to the Panel's experience in Darfur, where the Sudan Consultative Forum had failed to bring the UN and AU into alignment—and Darfur was still excluded from the AU Roadmap and Resolution 2046.

Although the multilateral system presupposes cooperation, it has never precluded rivalries. At every stage, the Panel had detractors and critics within

the international system. This was out in the open over Darfur. During north-south negotiations, some international entities disagreed with the Panel's stance and strategy. The US was the most significant, feeling that the Panel moved too slowly and did not ask for more US expertise. These were, however, criticisms at the margin. There was remarkably little divergence in the ultimate goal: Both the Panel and the US had identified the objective as "two viable states."

The Panel did not articulate a doctrine of "African solutions" as such. But all three Panel members repeatedly referred to the principles enshrined in the Constitutive Act of the AU; the Protocol establishing the AUPSC; the African Charter on Democracy, Governance, and Elections; and other treaties. Adherence to these was implicitly adherence to African solutions. Article 10 of the AUPSC protocol states that it is the primary organ responsible for peace and security, and that the Commission, including its chair, acts under its authority. The African Union High-Level Panel on Darfur (AUPD) was mandated by the AUPSC meeting at ministerial level,⁵² and endorsed at summit level.⁵³ It presented its report to the AUPSC at Heads of State and Government level.⁵⁴ The AUPD and AUHIP were studiously respectful of AUPSC authority, keeping the Commission informed while reporting to the AUPSC. This was more than a formality. The reports were detailed and provoked substantive discussion, which served to educate the members of the AUPSC on the Sudans and also on the responsibilities of the AUPSC.

The two most notable threads in the Panel's reporting were transparency and multilateral coordination. In the six-monthly report for July 2010, the Panel stressed that "ensuring regional and international coordination of engagement in Sudan has been a major focus of the Panel's activities." The report mentioned high-level consultations with Ethiopia, Uganda, Kenya, Chad, Egypt, and Libya, as well as talks with senior officials of Eritrea; participation in the Inter-governmental Authority on Development (IGAD) Extraordinary Summit on March 9; meetings with the secretary-general of the League of Arab States, Amr Moussa, in March and April; briefings to the UNSC on December 21, 2009 and June 14, 2010; and the high-level strategic review of AU and UN strategies for Sudan and the establishment of the Sudan Consultative Forum, on May 7 and 8.⁵⁵ The Panel's mandate was renewed by the AUPSC a year after its establishment, and on November 30, 2010, it reported to a PSC meeting at the Heads of State and Government level, held in Tripoli.⁵⁶ This meeting was memorable because the host, the "Brother Leader" Muammar al-Gaddafi, was angry because of a widespread European boycott of the parallel Europe-Africa summit and ordered the AUPSC meeting suspended. The other heads of state, led by the AUPSC chair, South African president Jacob Zuma, ruled that the

Libyan leader had no authority to do this. This debate took some time. The AUPSC meeting proceeded, but discussions were truncated and little chance remained for substantive discussion of the AUHIP report. That report contained details on the Panel's international engagement, including (1) a visit to Washington, D.C., on June 15–18 when Panel members met with President Obama and Secretary Hillary Clinton; (2) two meetings of the Sudan Consultative Forum (in Khartoum and Addis Ababa, respectively), cochaired by Commissioner Lamamra and Under-Secretary General Le Roy; (3) the High-Level Meeting of AU and UN, convened by the UN secretary-general on September 24 on the sidelines of the General Assembly; and (4) a meeting of the UNSC at the ministerial level on Sudan on November 16, at which the AUHIP chair presented a briefing.⁵⁷ In 2011, the Panel had also briefed the AUPSC twice on unfolding developments—first midway through the referendum-to-independence period,⁵⁸ and second on the crisis in Abyei.⁵⁹ The AUPSC met on November 30 to extend the mandate for another year and to receive its third full report on the Panel's activities (for details on the Panel's engagement with IGAD and the AU in January 2012, see [chapter 14](#)).⁶⁰ The Panel also reported to the PSC (at ambassadors' level) on February 14, 2012.⁶¹ Hence, when the Heglig crisis erupted, all the required lines of communication and coordination were functional. The crisis necessitated an international response infused with new urgency, which changed the position of the Panel vis-à-vis the UNSC, but the shift in gear could be accomplished remarkably smoothly. Although the UNSC could override the AUPSC, the fact that Resolution 2046 was substantially crafted by the AUPSC communiqué of April 24 was a testament to their complementarity rather than to a hierarchy.

FOLLOWING THE AU-UN ROADMAP

A well-known principle of conflict resolution is “ripeness.” Conditions should have evolved to make peace more attractive than war. One formulation is that the warring parties should be in a “mutually hurting stalemate.”¹ When Elghasim Wane and Abdul Mohammed chose the ninety-day deadline, they did so with a political intuition, honed by years of working on peace processes, that it was long enough to allow tempers to cool, but short enough to focus minds, retain the attention of the international community, and prevent state collapse.

So it proved—more or less. For the first month, each side fulminated against the other and justified their positions. They did not make any progress, and the US worried that the pace was too slow and the Panel insufficiently alarmed.² Then, they began to talk, first with the Panel and after a while longer, with each other. Meanwhile the men in power in Khartoum and Juba were feeling the economic pain. South Sudan produced a budget that proposed spending one hundred times more than its tax revenue. Sudan’s technocrats drew up projections that excluded any prospect of debt relief or of sanctions lifting, meaning that financial transfers from South Sudan were their only possible short-term cushion. Those turning up the domestic political heat, north and south, were hard-liners demanding no compromise.

The south’s longstanding strategy had to offer Khartoum a financial package in return for Abyei—a ransom for a hostage. The oil shutdown had backfired, and they were now in worse economic straits than the north. Khartoum knew this and turned the table. Its trade-off was “oil will flow if you give us the map and stop supporting the rebels.”³ It did not mention Abyei. Four issues were on

the table, each of them tricky. Abyei was no closer to a resolution. The south continued to deny supporting the Sudan People's Liberation Movement-North (SPLM-N). The "map" referred to both the security line and the final boundary, and Omar al-Bashir had trapped his negotiators with his self-contradictory official statement recognizing South Sudan on the basis of the 1/1/56 boundaries "when the CPA [Comprehensive Peace Agreement] was signed."⁴ He had also trapped himself with his illusory promise of military victory over the SPLM-N. The bottom line was that until there was a security agreement acceptable to both, nothing else could be negotiated. The financial deal was the central issue on which the viability of each country rested. Each side had calculated a final number to which it would agree, which it believed to be acceptable to the other side. Neither would admit it. The challenge was to get them to that number without the negotiators losing face—with one another and the militants at their backs. Much of what happened in the two weeks before the deadline was theater, played for audiences at home and abroad. The Panel knew this. Nonetheless, a steady hand was needed to keep the talks from capsizing.

As the deadline of August 2 approached, the first signs appeared of a major breach in the "nothing is agreed until everything is agreed" principle, which in turn allowed for bargaining on the financial issue on its own terms. Rather than swallowing the onion whole, it could be peeled layer by layer. The end point of the AU Roadmap was not a global political agreement, but a waystation en route to that end. The Panel's task was facilitating a series of incomplete stand-alone agreements in the hope that the overall package would stop the two countries' slide toward turmoil.

Khartoum's frontman was Idris Abd al-Gadir, but he was shadowed by General Imad Adawi and overshadowed by the minister of defense, General Abd al-Rahim Hussein—the latter being al-Bashir's man. Although Idris was the foremost government of Sudan (GoS) civilian at the talks and had a formidable National Congress Party (NCP) apparatus to work for him as well as heavyweight allies such as Sayed al-Khatib, he also had to contend with Dr. Sabir Mohamed from the Central Bank, who jealously guarded his technocratic bailiwick and could be obstinately inflexible. Rumors circulated about coup plots, orchestrated by senior army officers, that might also have brought Salah Gosh back from the political wilderness.⁵ Speculation was at its height when al-Bashir left for the summit meeting in Addis Ababa in September. According to Princeton Lyman, "Bashir intimated to several people here that he faces serious opposition at home and fears he could be replaced. Perhaps that is why he had nearly his entire senior military staff and other principals accompany him here."⁶

Salva Kiir Mayardit had been politically wounded in January, but not mortally so. Although Pagan Amum had been the one to wield the dagger in public, many other contenders in Juba were eyeing the president's position and taking advantage of his weakness to launch military-political initiatives on their own. Pagan's performances on the negotiating stage were for this audience, as much as for Khartoum's delegates—who understood his predicament quite well enough. Over the coming months, as Kiir's political budget came under strain, speculation mounted about whether he would survive. He rounded on some of his subordinates, accusing them of corruption—but the generals pressed him to keep military names off the list of culprits. The US State Department explored scenarios for how the intersection of the resource crisis and Kiir's weakness vis-à-vis internal rivals might play out.⁷ Scenarios for crisis at the center included a power struggle within the SPLM elite, urban unrest and a Sudan People's Liberation Army (SPLA) coup; scenarios for chaos in the periphery included militia attacks and interethnic violence. The fact that South Sudan's biggest ally and guarantor was taking these scenarios seriously showed how deep the damage was to the reputation of Juba's leaders.

As expected, for the first month, nothing happened, while the two sides tried to work out whether the international community was serious and the South tried to find a different mediator—the Americans, the United Nation (UN), or Intergovernmental Authority on Development (IGAD) to replace the African Union High-Level Implementation Panel for Sudan (AUHIP).⁸ In the second month, the Panel put the agenda in the hands of the two parties, and they tested one another out, each taking a hard line. The only progress was that fighting had ceased. At the halfway point, each side seemed to want to outlast the other, and the US was worried that the lack of progress foretold of an economic collapse in South Sudan.⁹ In the third month, Thabo Mbeki, Abdulsalami Abubakar, and Pierre Buyoya took up residence in Ethiopia for meetings in Bahir Dar and then Addis Ababa. Toward the end, Mbeki observed: "I have been in this Sudan business as long as my second term [as president of South Africa]."¹⁰

During these weeks several layers of the onion were peeled, and if not resolved, then put on separate tracks toward being managed or resolved. The Panel facilitated sufficient agreement on all the north-south issues except the perennial wicked problem of Abyei and the final formula for the deal on oil and the transitional financial arrangements (TFA). The plan was for a summit just before the deadline to secure these agreements. That was called off at the last minute. Al-Bashir was sick with a throat condition, although the timing of his trip to Qatar for surgery in the days immediately before the deadline was also politically convenient. The onus for the oil and TFA deal fell on Idris and

Pagan, who did just enough to thread the needle of a verbal agreement for the Panel to announce success at the eleventh hour and schedule a follow-up summit in September.

South Sudan's New Map

Fighting on the border continued into May on all fronts. The Sudan Armed Forces (SAF) and its militia attacked southward, especially into Upper Nile. The SPLA held its positions in Darfur and tried to advance there and in Kordofan and Blue Nile. Chris Luckham assessed that the "SPLA are trying to take disputed/claimed areas before negotiations start and before the rainy season which will prevent SAF counter attacks. SPLA are trying to create a buffer using the Darfur Rebels and SPLM(N) so they can establish the border where they want."¹¹ However, the main contest was diplomatic, over the map (see [figure 8](#)). The AU and UN demanded the creation of "the necessary border security mechanisms . . . in accordance with the administrative and security map presented to the Parties by the AUHIP in November 2011, it being understood that this map in no way prejudices ongoing negotiations on the disputed areas and demarcation of the border."¹²

Both sides objected to this, for different reasons. South Sudan had still not accepted the Panel's map and only now did the reason for its prolonged silence become clear: It had been preparing a new national map,¹³ which was unveiled at the preparatory committee for the Joint Political and Security Mechanism (JPSM) in June.¹⁴ South Sudan claimed Heglig and also a strip of land *north* of the Bahr al-Arab, in South Darfur extending into a corner of South Kordofan to include the town of Meiram, known to southerners as Majak. These two pieces of claimed land were adjacent to Abyei, directly to the east and west, and their northern boundaries were on a straight line with its own borders. South Sudan also claimed a small strip of land on the Blue Nile border, Bowth/Babanis.

South Sudan's map included the legend, "Source: Based on 1/1/1956 Line and Other records," and described its new proposed boundary (marked in red) as "1/1/56 Line (RSS [Republic of South Sudan] version)." In his covering letter to Mbeki, Kiir included a sentence: "I request that you issue a clear statement that "the administrative and security map presented to the parties by the AUHIP in November 2011 . . . *is not a map generated by the AUHIP, but merely a map produced by the Government of Sudan and transmitted to the RSS by the AUHIP.*"¹⁵ Coming a month after South Sudan had accepted Resolution 2046, including its endorsement of the AUHIP November map, there was a problem.

Dinka constituency and militia, mobilized by Paul Malong. Having begun as local “border guards,” they became known by their Dinka name *Mathiang Anyoor* and were as capable as any SPLA division.¹⁹ In 2013, they were responsible for massacres in Juba. Like the Ngok Dinka of Abyei and the Rueng of Panthou, they demanded all their customary lands, which according to them included the Fourteen Miles area and territory farther north. One map appeared to endorse these claims. Dated 1958 and based on the 1955 census, it was an ethno-linguistic map.²⁰ Riek Machar explained the rationale to the AU Team of Experts (AUTE) on the boundary. They reported: “In his opinion, the self-determination of the people of South Sudan entailed the territories that they inhabited. He observed that some of the borders drawn while Sudan was one country arbitrarily cut across communities and inquired how such a situation would be rectified. He expressed his hope that the [Team of Experts] would visit the border areas and consult with the communities.”²¹

South Sudan’s new map threatened to derail the negotiations entirely. This did not happen. Its foreign friends were dismayed by its disregard for international conventions and Juba reverted to speaking about “claimed areas.” Kiir also backed down on the AUHIP security map, accepting the Panel’s assurances. But Kiir had not even begun to convince Malong and his commanders.

The North’s Old Map

Meanwhile, the GoS kept on repeating its line that the AUHIP November map awarded the Fourteen Miles area to South Sudan (figure 9).²² Al-Bashir had already trapped himself by recognizing South Sudan’s independence within borders that could not be defined. He compounded this by agreeing to the security map presented by Mbeki, Abubakar, and Buyoya in November, and then insisting that he had been misled or misrepresented. Like Kiir, he did not want to overrule his subordinates, nor upset a potentially powerful constituency—in this case, the Arab Rizeigat who claimed the Fourteen Miles area. Despite the fact that UN maps all carry the disclaimer that cannot be used to indicate official boundaries, and even after Hervé Ladsous, UN under-secretary-general for peacekeeping operations, supplied a letter confirming once again that the maps used by UN missions were “purely for operational purposes” and could not “be used as the legal basis for any territorial dispute or the geographical definition of the Safe Demilitarized Border Zone [SDBZ],”²³ Khartoum’s delegates repeated their same old talking points, that UN maps “affirmed very clearly the ownership of Sudan for this area.”²⁴ Idris wrote to Mbeki blaming Luckham and de Waal for the map and saying it was turning military occupation into a

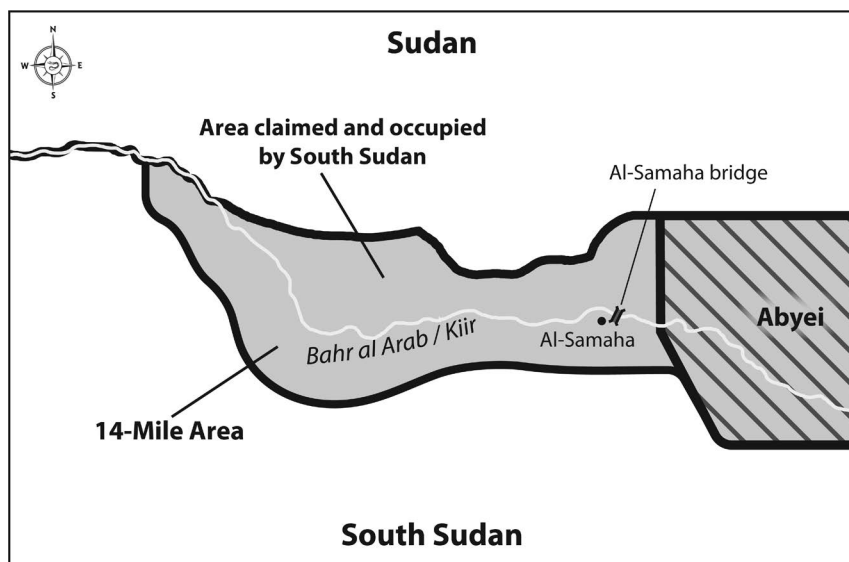


FIGURE 9. The Fourteen Miles area. Created by John Wyatt Greenlee/
Surprised Eel Mapping.

legal reality.²⁵ Al-Bashir tried to explain away his position by implying he was driven by “public opinion.”²⁶ Certainly, *al-Intibaha* was using the Fourteen Miles controversy to claim the talks were futile,²⁷ but the GoS delegation in Addis Ababa fueled that hostility by gathering journalists and showing them various maps on a projector.²⁸ This revealed the fact that Idris and his team at the talks didn’t have the authority to negotiate, as senior NCP figures continued bellicose media rhetoric in the wake of the GoS’s claimed victory in Heglig.²⁹ All they could do was find reasons to stall. Although the Americans had twisted Kiir’s arm to get him to set aside his new map, Mbeki refused to call out al-Bashir in public.

A final twist to the Fourteen Miles controversy was a conspiracy of silence between Juba and Khartoum. Kiir didn’t want to admit that the SPLA had invaded Darfur, and al-Bashir and his generals didn’t want to admit they had been defeated there, only months later making watered-down complaints about SPLA reinforcements on the northern bank of the river.³⁰ Implementing the security map and the border monitoring regime would have forced the SPLA to withdraw and exposed Justice and Equality Movement (JEM) incursions to international scrutiny, but the generals didn’t trust UN guarantees, and wanted to fight, and to send their proxies south.³¹ A year earlier, Meles Zenawi had

stepped in with Ethiopian troops for Abyei. Although he had pressed al-Bashir to show restraint and respect the Panel at the time of the Heglig attack, Meles was not active in the talks over the following weeks.

Negotiations at an Impasse

Almost a month after Resolution 2417, fighting on the border had lessened to the point at which both north and south could be said to have ceased direct hostilities against one another. There was modest progress in Abyei (see below). The two sides had agreed the site for the temporary headquarters of the Joint Border Verification and Monitoring Mechanism (JBVMM), in the Ethiopian border town of Asosa. Nothing else had been done to implement the AU Roadmap. Fierce combat raged in the Nuba Mountains.

The lead negotiating panel resumed face-to-face talks in Addis Ababa on May 29. For the first time, all the special envoys were invited to attend, including China and Russia as well as the UN, US, and European Union.³² The agenda was how to implement the AU Roadmap. The opening day was no more than a relentless reiteration of entrenched positions, with Deng Alor observing toward the end: “[We] have strayed far away from our agenda re: compliance.”³³ The next day, each side elaborated its position in detail, and Panel staff compiled a thirteen-page matrix comparing the two.³⁴ They were far apart. They disagreed on which forces should withdraw: The north demanded that all SPLA forces, including the ninth and tenth divisions, should go south. The south insisted (falsely) it had disengaged from those divisions. On the definition of the SDBZ, the north presented its position on the 1/1/56 line and restricted the zone to ten kilometers on each side, while the south wanted to demilitarize all disputed and claimed areas. Crucially, Khartoum insisted that security was a prerequisite negotiating anything else, whereas Juba wanted the issues discussed in parallel. On June 1, they agreed only to the outlines of a process, beginning with convening the JPSM.³⁵ Lyman wrote to Secretary Hillary Clinton, “The talks have not proceeded well from my point of view.” He urged Mbeki to take a tougher line, telling Clinton, “We have also pressed the AUHIP to be very firm that if nothing of substance is accomplished in this round, not to paper it over with some nice sounding phrases about meetings held, and more scheduled, but to be blunt about the obstinacy of the parties.”³⁶

Abubakar chaired the JPSM meeting. Without authority to compromise on al-Bashir’s untenable stance on the security line, the Khartoum delegation used every trick they could to obstruct the talks, undermine the Panel, and drive wedges between the Panel and the US and UN.³⁷ Idris understood the facts and

law perfectly well—he just didn’t want to negotiate. Mbeki was compelled to clarify in writing once again,³⁸ while Abubakar insisted that it wasn’t necessary to wait for the UN Security Council (UNSC) to meet again to clarify the map.³⁹ The Sudanese delegates then switched to time-consuming minutiae over the claim that al-Bashir had been misled in November when he saw the map, frustrating any substantive discussion.⁴⁰ Abubakar ended the meeting expressing hope for agreement in the next round.⁴¹

Mbeki remained silent in public but wrote a strong letter to the Sudanese president, expressing frustration that not only had the GoS once more disregarded his plea to refrain from negotiating through the media, but that, “for the first time, we have seen the GoS engage in what appears to be an international campaign to undermine the credibility of our Panel.”⁴² Al-Bashir was chastened, and wrote to Mbeki to reassert his confidence in the Panel, but did not withdraw his claim to the Fourteen Miles.⁴³ When the JPSM met again in late June, the two sides continued to pursue the red herring of the merits of using UN maps.⁴⁴ On July 2, Mbeki wrote a stern letter to Abd al-Rahim Hussein. Having reiterated that the security line map was not the legal boundary map, he continued: “In other words, again to speak frankly, if the GoS continues to block progress towards the establishment of the SDBZ etc, by persisting in making the entirely unfounded assertion that the AUHIP Map allocates territory to the Republic of South Sudan, it is inevitable that the determination will be made by all and sundry that the GoS has plans up its sleeve to attack the Republic of South Sudan.”⁴⁵

To the frustration of western diplomats, Mbeki did not publicly denounce Khartoum. He did not follow a proposal from the troika of the US, Britain, and Norway to declare the map as mandated by the AU and UN, and therefore beyond negotiation.⁴⁶ He saw no way except persuading al-Bashir to relent, which demanded patience, not ultimatums. If al-Bashir and Kiir were not prepared to take command and deal directly with one another, every issue would need to be tackled separately and in excruciating detail, gradually peeling the onion until it could be swallowed. It was an exercise in mediation through exhaustion.

Peeling the Onion

An internal AUHIP document listed each of the issues and where they stood after the negotiations in June and early July. The two sides had agreed on principles to govern relations between Sudan and South Sudan; a strategic partnership, positive attitude, respect for sovereignty, committing themselves to mutual

assistance, and no use of force; a strategic framework for negotiations, in which they would negotiate as partners and not adversaries to finalize a comprehensive agreement within the timelines of the AU Roadmap and Resolution 2046; and the roles of the principals and negotiations under the lead negotiating panel, with all clusters meeting in parallel. “Unless otherwise decided by the LNP [Lead Negotiating Panel], the Parties will meet on their own,” with the AUHIP on standby.⁴⁷ The agenda included security arrangements, economic arrangements, border issues, the status and treatment of nationals from the other country, temp arrangements for Abyei, and the final status of Abyei, all leading to summit meeting by August 2. In parallel, the GoS and SPLM-N would meet on the Two Areas.

On economic arrangements, the two sides were in the same place as they had been nine months earlier, namely that Sudan’s financial gap would be filled three ways (austerity measures, the TFA, and donor assistance), with the two governments jointly appealing for debt relief and aid.⁴⁸ They would reopen the border. They agreed on terms of reference for the Ad Hoc Committee for the border and named their representatives. The JBVM members assembled in Ethiopia but could not yet deploy on the ground because the map was yet to be agreed. Neither side withdrew forces from any disputed territories. What was new was that they were ready to agree on the issues one by one, not in a package.

Creativity was still needed on the Fourteen Miles. One idea was to finesse the question of the line by demilitarizing the entire SDBZ, finding a way to administer the area that would be acceptable to both.⁴⁹ Informal meetings with each side showed room for compromise. Lyman wrote to Clinton, that the Panel’s patience had given a chance for face-saving by Khartoum while Juba, he wrote, is ready to accept. “It justifies for the moment Mbeki’s holding out for the two sides to take responsibility rather than trying to force one side or the other to accept an AUHIP demand.”⁵⁰

Lyman was also hopeful because the two sides wanted Ethiopian help. He wrote to Clinton, “Meles had withdrawn from Sudan mediation in frustration a few months ago, but told me that now that the parties had asked him, he would reengage.”⁵¹ When Abd al-Rahim arrived in Ethiopia, Meles wanted to know whether he had come to cut a deal or to obstruct one. Meles briefly met with Abd al-Rahim and then asked him to meet the following morning, July 12, with the other senior members of the delegation, including Idris Abd al-Gadir, Mohamed Atta (head of National Intelligence and Security Service (NISS)), and Imad Adawi. Twelve Sudanese came to meet Meles in his office.⁵² What emerged was that the negotiating team (Idris), the army (Imad), and NISS (Atta) each had separate instructions. Internal divisions, evident since April, had sharpened.⁵³ Imad and Atta were to monitor the negotiators and to ensure

that no concessions were made. Abd al-Rahim was there to monitor all three of them and to report to al-Bashir. Idris and Abd al-Rahim discussed the border and oil issues with Meles and seemed to be moving toward a common position that showed a possible compromise. At that point, Atta raised his hand, to say that this was fine, but the proposal would need to be scrutinized in Khartoum first, after which they would revert to Meles. After the Sudanese left, Meles shook his head and said, “These guys are divided.” He sorted out his papers and left for the airport to fly to Brussels for medical treatment. He never came back.

That same day, Idris conceded. He said that it was “correct that the map is temporary” and had no implication for sovereignty.⁵⁴ The next day, he presented a proposal for demilitarizing it.⁵⁵ Behind the scenes, Abd al-Rahim had been speaking with Pagan, formulating the strategic trade-off. The north was now dictating the terms: oil and trade versus security and the map. The key demand was “blunt: oil will flow if you give us the map and stop supporting [the rebels].” He also produced a matrix to sequence the steps.⁵⁶ The layers that needed to be peeled away were as follows: first, the legal boundary; next, the cross-border support; and, then crucially, the oil and TFA. A signal of the south’s weakness, Abyei had also to be bracketed.

Abyei Bracketed

On Abyei, the tables had turned. The south’s strategy of holding out to pay a ransom for Abyei had not succeeded. Now the north had the financial leverage. The June 20, 2011, agreement had shifted the focus of negotiations to standing up the various components of the interim agreement, including the full deployment of United Nations Interim Security Force for Abyei (UNISFA), the establishment of the Abyei Joint Oversight Committee (AJOC), the withdrawal of SAF and northern police, and the creation of the administration. Mbeki’s appeals to compromise to speed up the withdrawal of SAF had been met with rejection by Kiir⁵⁷ and accusations of pro-NCP bias by Ngok leaders.⁵⁸ In May, both sides complied with Resolution 2046 by withdrawing SAF and the South Sudan Police Service from the area. This ended the year-long occupation, but the two sides continued to stall on establishing the Abyei Area administration and Abyei Area Council, as each side refused the other’s nominees, leaving the territory without an administration. They still could not agree on eligibility for voting in the referendum.⁵⁹ The Misseriyya and Ngok constituencies continued to push irreconcilable positions.⁶⁰

The status quo in Abyei had the virtue that, with UNISFA and AJOC beginning to function, Abyei was removed as a flashpoint, meaning a decision on its

final status could be postponed yet again.⁶¹ Ngok refugees were able to return under UNISFA's protection and some normal life could resume. But the status quo also suited Khartoum more than the Ngok, because Sudan still had sovereignty and the Misseriyya had access.⁶² Al-Bashir directly blocked a southern proposal to bring Abyei to the lead negotiating panel⁶³ as well as a proposal by Haile Menkerios to have an independent international chair for the referendum commission.⁶⁴ Meanwhile, Lyman argued that with AJOC beginning to function, UNISFA deployed, and local peace processes in train, Abyei was being "remove[d] as a flashpoint," meaning a decision on its final status could be postponed—again.⁶⁵

Finding a Mechanism to Address the Legal Boundary

Years of frustrations over the Technical Boundary Committee had shown that there was no straightforward way to resolve the disputed areas. Pagan and Idris had learned that processes were all far more complicated than they had assumed, although Abd al-Rahim, who was new to the file, still assumed that the boundary could be settled in a few days. Two options for shortcutting the process offered themselves. One was international arbitration, preferred by the south. Having had their fingers burned over Abyei and fearing that any international process would be biased against them, the north opposed this. It also had the problem that the strength of each side's legal arguments did not correlate with how much the area mattered to them. Thus, a technical determination would award the Fourteen Miles area to Sudan, even though the Dinka Malwal communities living there were passionately South Sudanese, while Sudan had a strong technical claim to Kaka town but had no political interest in actually owning it.⁶⁶ The other option was a political deal, in which the two sides cut the Gordian knot and simply decided who would get what. This idea intrigued Pagan and Idris, who played around with options for a territory "swap." At one point, Idris suggested an integrated solution to Abyei and the disputed areas, proposing a "5+1" deal that would require the south to accept the north's proposed partition of Abyei.⁶⁷ The south, however, adamantly rejected any deal that divided Abyei area.

Instead, the Panel reverted to a process proposal: the AU Border Program would provide nonbinding expert advice.⁶⁸ Each side anticipated how this might play out and dug in.⁶⁹ The south proposed adding its new territorial claims and wanted arbitration if there was no agreement by August 2. The north objected to including the claimed areas and expunged references to the

AU Roadmap and Resolution 2046. When Pagan raised the south's additional claims, Idris reacted furiously.⁷⁰ But the AU communiqué and Resolution 2046 had made reference to "claimed" as well as "disputed" areas. Before the meeting, Barney Afako provided his advice in writing: "The GoS needs to be persuaded to accept that 'claims' cannot be ignored, and should instead focus on the process for addressing them." Mbeki overruled Idris's objection and allowed Pagan to continue. Pagan then brought about laughter when he referred to *Emma's War*, a book written by the US journalist Deborah Scroggins to chart the life of the British aid worker Emma McCune, to support Juba's argument that Heglig had been transferred from south to north by President Jaafar Nimeiri. Idris and his team walked out.⁷¹

Mbeki explained a third way. The African continent was riddled with boundary disputes and vast accumulated experience was available on the topic, notably within the AU Border Program, whose experts could examine the areas and provide a nonbinding technical opinion to support the political negotiations. The hope was that this could be done quickly.⁷² Abd al-Rahim thought it could be done in a single day. Others hoped for a week. Wafula Okumu of the AU Border Program produced an "expedited" time frame with a final report by October.⁷³ This was overly optimistic. In the event, the AUTE was set up, its terms of reference subjected to hair-splitting objections by both sides, which took years to complete.⁷⁴ In July 2012, however, the agreement on the process achieved its immediate goal: The border was no longer a block to resolving other issues.

Sealing the Border

The practical reality of the north-south borderlands is that they cannot be sealed. The proposed SDBZ could never be enforced by the UN or AU while the two countries remained hostile to one another. The UNISFA presence in Abyei was the exception that proved the rule: More than three thousand troops could secure only a small area. Kafia Kingi alone is larger than Abyei and is thickly forested. An international border-monitoring regime could support political agreements, not substitute for them.

Each side made claims against the other. Nafie Ali Nafie insisted that the SPLA's ninth and tenth divisions (which he refused to call SPLA-N) were still integrated into the South's army and commanded by Kiir and promised to provide evidence.⁷⁵ The south continued to deny even the lesser charge that it was assisting the SPLA-N with supplies and said the north was arming proxies in the south. Under these conditions, Mbeki observed, "It will be impossible for

the Parties to enter into concrete agreements relating to mutual arrangements to stop supporting each other's rebel formations."⁷⁶ What was needed was for each government to make peace with its internal rebels. Neither wanted to do so ([chapter 18](#) examines this path not taken). In this context, all the Panel could do on border security was damage limitation—preventing any border incident from derailing the talks as a whole.

A month before the deadline, the Panel convened the parties in a lakeside resort in Bahir Dar, an hour's flight from Addis Ababa. The hope was that a more relaxed setting without the distractions of the metropolis might help focus the minds of the delegates, especially (for the northerners) with the start of Ramadan. Pagan and Abd al-Rahim headed the delegations. Pagan was keener to make a deal than Abd al-Rahim.⁷⁷ The advantage of Abd al-Rahim's presence was that he was a direct conduit to the president, but he focused on security issues as a precondition for addressing others.⁷⁸ Imad and Atta threatened to veto anything he agreed.

Every day, US and British military advisers checked the intelligence about armed action, including aerial sorties. The SAF generals knew that they could not get away with denials and shared some of their information about rebel movements as well as gave advance warning of planned operations, with just enough correct details to be credible. On July 20, this system broke down and nearly derailed the talks. That morning, SAF planes bombed in the Fourteen Miles area. Abd al-Rahim briefed Panel staff.⁷⁹ He said that they had been monitoring a column of 105 JEM vehicles moving from the south and that the air force had refrained from attacking them while they were inside South Sudan. The day before, JEM used the SPLA-controlled bridge at Samaha to cross the Bahr al-Arab, despite GoS appeals to the SPLA not to allow them to do so. Only then did the planes attack. But Pagan publicly announced that the SAF had bombed the south and suspended the talks.

The Panel met with the two delegations on the following day (July 21).⁸⁰ The GoS made its case, stressing that its primary problem was with JEM "rampaging," not the SPLA as such. Pagan said that a village in South Sudan had been bombed the previous night and that morning, and that the SAF was preparing other attacks and was occupying Kafia Kingi. He said of Abd al-Rahim: "While we talk, he bombs. He is not serious." The meeting ended in acrimony. After a recess, the Panel reconvened the two sides and presented a five-point proposal. One, the incidents should be investigated by United Nations Mission in South Sudan (UNMISS), the US, and UK. Two, in the meantime, the parties should resume direct talks, and if need be, the Panel should join. Three, the chiefs of military intelligence should meet (as had been scheduled the previous day). Four, both should abide by the cessation of hostilities. And last—a point aimed

at Pagan who had gone public saying that the talks were suspended—a plea was made not to negotiate by press release. The GoS accepted, but Pagan simply said, “no comment.”

The next day (July 22), Pagan met privately with the Panel and agreed to talk with Abd al-Rahim, but only in the presence of the Panel.⁸¹ He then confessed something curious, which was that he might no longer have the support of his team after the bombing incident. It was surprising to hear Pagan say that he might not be able to prevail over his team’s objections. Possibly, the bombing was a pretext. Pagan had come ready to discuss a package but Abd al-Rahim only wanted to talk about security issues, including the south’s support for SPLA-N and JEM, and its continued occupation of four northern areas of which only one—the Fourteen Miles—had been acknowledged.⁸² Pagan was ready to admit these realities to the Panel, but not to speak about them publicly.

The day after the bombing, UNMISS dispatched a patrol.⁸³ It reported finding six small craters one kilometer into what was indisputably South Sudan (i.e., almost fifteen miles south of the river). The bombs had fallen in a straight line, consistent with an aerial attack. There was no sign of any military target on the ground, but intelligence sources confirmed that the JEM column had indeed passed through the area and had gone on to battle the SAF inside Darfur.⁸⁴ The patrol didn’t make any investigation north of the boundary, but it surmised it was likely that the raid had begun farther north. So, it seemed that both sides’ complaints had some truth.

This incident, on the very eve of the deadline, showed that there was no prospect of Sudan and South Sudan resolving the armed conflicts in the border zone. The most that the Panel could hope to achieve was managing the crises so that the two sides could make progress on the other issue fundamental to the two states’ survival, namely finance.

Oil and Money

Something had to be agreed before everything else was agreed, and that thing was oil and the TFA. Abyei, the disputed boundary, and border security were being peeled off. Each side still hoped for a package. Abd al-Rahim’s security-first approach hadn’t worked. Late in the evening of July 22, Pagan presented a comprehensive draft “Agreement on Friendly Relations and Cooperation.” It contained a proposal for each topic, with particular attention to oil. Panel staff quickly scanned the document. Laura James assessed it as “well prepared but anything but constructive.”⁸⁵ On the positive side, it contained a step forward in terms of the financial offer: a headline figure of \$8 billion. As Paatii

Ofori-Amaah noted, however, “When Sabir sees \$8 billion he will be curious, and then when he sees [that this contains huge undocumented] arrears figures, he will go ballistic, challenge it, and say if the principle is [that] they submit numbers without documentation and review, he will submit \$12 billion plus in arrears and claims [against the south].”⁸⁶ The document was also helpful because it mapped out a full package, but by diving deep into detail rather than focusing on the main concepts, it challenged the north to develop a point-by-point critique.

Pagan held a press conference in the morning, after which Abubakar observed, “The south is negotiating with the international community not the other side and this will not take us forward.”⁸⁷ But Pagan was also covering his back: By this time, he knew he would have to make a deal on oil and finance, and he needed first to let his constituents know that this was not what he wanted. Afako observed that “each side is preparing its defence in advance of [the deadline of] 2 August.”

Reconciling the numbers remained an issue. Each side had sent its delegates knowing the number for which it could settle and had a good idea of the other’s number. But each side was deeply suspicious that the other would change the rules of the negotiating game and no individual on either side wanted to offer the first concession. The challenge was one of the facilitator’s skill.

This time it was a strictly a bilateral negotiation. A year earlier, the Americans were offering to lift sanctions but other than some modest exemptions for imports of agricultural items, Washington had nothing on offer. In fact, the southerners were now knocking on America’s door asking for help, and the US had to disabuse them of the assumption that they had an unlimited entitlement. Lyman briefed the Panel that Washington had told Juba: “Get real! We don’t want you to collapse, or for al-Bashir to think you will, but for you to get through this crisis, get a real austerity budget.” A South Sudanese delegation was due in Washington shortly to talk about emergency budget support and were going to hear the message: “There are some things we can do, such as bonuses for teachers etc. But we cannot pay for the army. They are still buying cars and paying ghost soldiers.” The US feared the south would soon run out of money. Meanwhile, the north was still confident that time was on its side and Imad was ready to stall on any agreement. The northern economy was suffering but surviving. Al-Khatib said, “There will come a time when we don’t care about oil because we will have weathered the storm.”⁸⁸

The Panel had invited to al-Bashir and Kiir for a summit scheduled for July 31. There was a faint hope that they might agree to a full package, and a more realistic one that they would agree on oil and the TFA. Kiir indicated that he was ready to come but he needed an agenda and an indication that the

preparatory negotiations had produced something to serve as the basis for an agreement.⁸⁹ Al-Bashir was not ready to talk—according to Ali Osman, he was not able to speak at all. He had a long-standing problem with his throat and was reportedly not even attending internal meetings and planned to get an expert medical opinion in Doha on July 31. He did indeed have a minor operation and spent some weeks recuperating.⁹⁰ He also spoke with Mbeki on August 1, and said he didn't want to be called to a summit unless sufficient preparation had been made: "Don't call a summit that is going to fail."⁹¹ Al-Bashir also proposed reconvening after the Eid, expected to fall on August 19.

The two sides traded written proposals on oil and TFA over the last days of July. They differed both on the numbers and on the method for reaching them, such as the validity of the International Monetary Fund's estimate of the financial gap a year earlier. The south said the north's proposals were "a step backwards."⁹² But the differences were narrowing: A summary note from the Norwegian oil adviser Christian Michelet included a line that both agreed on the \$3.028 billion TFA over three and a half years.⁹³ In the margins of a July 30 proposal, Paatii made a handwritten note: "It would seem that the gap is no longer directly relevant in light of developments since July 9, 2011. In that respect you might consider taking the \$9 billion as a given and an amount which reflects what GoS requires to deal with its economic issues. The contribution of GoRSS would then reflect what it can do within its means and the contribution by the international community."⁹⁴

Paatii wanted to focus on what mattered: the bottom line. In the late afternoon of July 31, the Panel convened the oil negotiating teams, and they started talking numbers seriously. The northern delegation was headed by Idris and Sabir, the south by Deng Alor, Gabriel Changson, and Stephen Dhieu. Pagan was not there. For the first hour and a half—until the time for *iftar*—the argument flitted back and forth between the models for generating the numbers and the numbers themselves. The meeting resumed at 9:30 p.m. and went on until a few minutes before midnight. The meeting notes portray a slightly giddy atmosphere, which each side affirming that their interests were to come to a deal. Idris said: "We are both facing difficult times. What we are losing—both of us—is of more magnitude than we will lose in this compromise." Deng Alor said, "Our relationship is more important than these small figures we have discussed." Was it politics or mathematics? At different times each side it was one, then the other. The delegation members all said they that if they reached a deal, they would need to defend it—and claim that they had not conceded anything. Sabir did not like the arithmetic approach at all. He said: "If we start computing figures like in a market, we are bargaining in a bazaar. So, one possibility: we add up and calculate the mathematical mean, for example would lead to \$15."

Then, he hastened to add, “I am invoking ideas not giving suggestions.” The meeting paused repeatedly while the delegations (and the facilitators) conferred over their paper and calculators. The fact was that the different approaches, or models, all converged on the same result. Deng made this point: “I’m not a mathematician but as a lay person it comes to the same thing.” Then both sides began to back away, as if afraid to agree. Sabir said, “My friend gave me this paper which says a dollar for a dollar.” He was worried where that would lead. Deng reassured him, “We are looking at approaches not accepting figures.” The three arithmetic approaches were to add the figures and divide by two; find the differences between them and split them; and take the different components in each calculation and halve the difference. As Changson noted, “When we lump them together we lose track of the real difference.” But when Changson saw the direction the numbers were heading, he then said: “We have 2 figures, if we add them it gives them the result they want, I don’t want to do that as they are the ones offering.” Each side’s problem was that they could not be seen to be accepting the proposal of the other. Mbeki interjected, “no,” and waved for him to proceed. Changson objected, “Then I drop out, I cannot trap myself.” Mbeki said, “Minister, try.”⁹⁵

It was, at root, bargaining. Picking up on Sabir’s phrase, Mbeki called it “bazaar politics, this is dollar for dollar.” They didn’t close the gap, but there was a clear sense that they might do so the following day. Just before the meeting closed at midnight, Sabir mournfully reflected, “If we calculate how much we have lost in years in negotiation, we have lost \$7 billion between us.”

The next morning the atmosphere was colder. The two sides discussed for an hour in the late morning and made no progress.⁹⁶ Sabir complained: “I don’t think we will make much progress with this Indian bazaar attitude. Any kind of compromise requires steps from two sides to compromise.” Deng said: “We will not go one dollar beyond what we offered last night. It would be setting a dangerous precedent. It is not a commercial deal it is a political deal.” Paatii assessed that whereas the south had made a move a few days earlier, it then failed to respond to the north’s offer. The Panel met separately with the two delegations in the afternoon: Each was digging in. Pagan was back in the talks, and he reverted to previous, lower figures as the starting point, saying that “the only way for them to come down is for us to come down.” By that time, the GoS delegation was packing to go to the airport—they had already stayed one day longer than planned, and their family and religious obligations for the second half of Ramadhan were beckoning.

That evening, the Mbeki and Panel staff met with Ramtane Lamamra, Menkerios, and Lissane Yohannes and debated how to manage the UNSC deadline, which expired the following day. “The parties will not have concluded by

tomorrow,” said Mbeki. “Given there was a deadline, it has to be extended. In reality our assessment is that the differences can be bridged. There is a permanent problem of mistrust but in substance there isn’t much that separates them.” Mbeki had never liked dictating deadlines or substance to the Sudanese and South Sudanese. Menkerios had a different view: “Personally I feel there has been long enough for discussion. Whatever has been discussed should be presented to the two heads of state.” He didn’t think more time would help. He and Lamamra wanted to take a tough line, confident that the Panel had the backing of the African Union Peace and Security Council (AUPSC) and UNSC. Abdul Mohammed also argued that any extension should come at a cost to the parties, saying that “with this current attitude, another month can pass, and there is no reason to believe that they will be in a better situation. By tomorrow they must give the process, and the people of Sudan and South Sudan something.”⁹⁷

The AUPSC and UNSC had tasked the Panel with preparing a report, which could also make decisive recommendations. A draft was already in preparation. The month needed to finalize the report was also an opportunity for stealthily extending the deadline. Afako was worried: “We should not communicate the message that we are no longer here to facilitate. If we give the message that we are preparing our report it would call into question the value of attendance at any summit. . . . The summit should be genuine effort to succeed or fail, not going through the motions.” Paatii concurred: “We cannot write an agreement for the two parties. We have to continue to engage them, bring them ideas . . . But also let us not forget this point: the two states are going towards collapse, we don’t want to push one or the other to the brink.” Mbeki concluded, “We will draft the report and see.” He also wondered, “What else can be done by whoever else?”

Mbeki postponed the AUPSC for a day, and two things were done by others. The US had leverage with South Sudan and used it. Pagan was holding out against what he presented as immoral concessions to Sudan. Whether from brinkmanship or genuine conviction—or whether the two were fused—Pagan was resisting. Lyman phoned him and pressed him hard. Pagan reportedly screamed down the phone at Lyman, protesting that the south had been starved of cash for three months and schools were suffering, and that it would be better for the Americans to pay Khartoum the required cash.⁹⁸ Lyman acknowledged the injustice of the situation, but stressed that reaching a deal was the only pragmatic thing to do.⁹⁹

Lyman emailed Clinton, letting her know that the south—which had been conciliatory over the previous weeks—now “took umbrage for not receiving everything it wanted and threatened to walk out” after seeing the Panel’s proposals. Clinton was traveling to East Africa and would spend a day in Juba, and Lyman advised her that she might need to intervene with Kiir. In the next of a

flurry of emails to Clinton, Lyman explained: "Pagan lacks the authority to make any adjustments and is in fact incensed that the RSS is asked to give the GOS any more. He also argues Kiir would pay a big price at home if he agreed to do so. So the only possibility is for you to persuade Kiir to make such a decision."¹⁰⁰

Lyman wrote talking points for Clinton's meeting with Kiir. The oil companies themselves considered Juba's offer to be too low, and suggested \$11 per barrel as a compromise between the respective GoS and RSS negotiating positions of \$7.61 and \$15. This, he added, would "provide little extra income to the GOS while enabling South Sudan to earn very substantial amounts given the current price of oil." The key points were how this hard choice should be packaged. Lyman wrote, "To put it bluntly we are prepared to take some of the blame. Kiir can say, 'I am responding to Clinton's demands.'" The last talking point was this: "If you make this decision, I assure you the US and all our allies will praise your courage and statesmanship and put maximum pressure on the GOS to move its position to close this deal."

The secretary of state arrived in Juba well-armed with the facts and arguments. Lyman did not want to see the new country it had put so much effort into collapsing, and for Clinton, getting South Sudanese oil flowing again was also part of "intense efforts . . . to reduce consumption of Iranian oil and shift to new suppliers."¹⁰¹ Clinton was in Juba for just a few hours, and Kiir made the familiar arguments. She insisted that "a percentage of something is better than a percentage of nothing" and said he should give his negotiators the authority to improvise.¹⁰²

In Khartoum, Idris was working hard to secure enough support for the compromise before returning to Addis Ababa. Mbeki was impressed: "Idris came back from Khartoum with authority."¹⁰³ The AUPSC meeting was scheduled for 2 p.m. At that time, Pagan and Idris were still locked in disagreement with Pagan rejecting the Panel's median position and not wanting to talk. Mbeki said the AUPSC should wait; he wanted the deal to be sealed first. He called Idris and Pagan to his hotel suite. Lissane, who went to fetch Pagan, found him "very angry." Meanwhile, Wane at the AU Commission was getting agitated, as the ambassadors to the AUPSC were waiting and the afternoon was passing. Mbeki asked for the meeting to be postponed to 9 p.m. In the meantime, he sat with Idris and Pagan at the table in his room, poring over figures. At 5:45 p.m., Idris and Pagan left to talk to their delegations. Three hours and forty-five minutes of meeting are summarized in a single line in Mbeki's notebook: "*The Parties agreed the financial arrangements re: oil."¹⁰⁴

Pagan left saying that he "would accept if he could say it was forced on him by the Panel." Mbeki said that was fine, he could blame the Panel. Pagan was

impassive and scowling as he took the elevator to the ninth floor of the hotel to meet with Deng Alor. Lissane commented, “Pagan is putting on a show for his people. What you saw upstairs was a movie.” Pagan did not actually sign any document: The agreement was verbal. Mbeki called Kiir to confirm. The authority of the deal rested on his word.

Idris was confident he could convince his team, and he did. Taking his post-*iftar* walk up and down the hotel corridors he said, “we have agreed . . . we will not be backtracking.” Abd al-Rahim was also back in Addis Ababa and, with his assent, al-Bashir’s agreement was confirmed. Mbeki assured Abd al-Rahim that the security issues would be raised at the summit meeting, after the Eid. The GoS would go on to insist that no formal oil deal could be signed before security was resolved, and the northern media remained confused as to what kind of agreement had been made, and what the precise numbers were.¹⁰⁵ Nonetheless, the arrangement would ultimately stick, in spite of its failure to accommodate much of the Norwegian team’s input, and the underlying flaws, such as the failure to tie the transfers to the potential fluctuations in the oil price—which would rebound on South Sudan in the years to come.¹⁰⁶

The AUPSC meeting finally opened at 9:35 p.m. that evening. Commissioner Lamamra apologized for the delay, explaining “it has been somewhat difficult to move forward.” Foreign Minister Karti represented Sudan. He made a lengthy speech emphasizing how Sudan had been the victim of aggression and repeated the usual complaint about the AUHIP map and the south’s additional territorial claims.¹⁰⁷ But he agreed. Pagan represented South Sudan. He protested that they had been generous and cooperative, and proposed his comprehensive proposal of July 22 as the formula for peace and security. He declared that the financial assistance South Sudan was offering Sudan was “unheard of in the history of humanity.”¹⁰⁸ At the same time, he noted that Sudan was imposing “exorbitant transit fees and surcharges on South Sudan,” and pleaded with the council to “call on Sudan to offer fair transit fees.”¹⁰⁹ Mbeki observed: “Repeats his misleading story about \$8.2 billion “wealth transfer” to Sudan.”¹¹⁰ Pagan declared the next day in a press statement: “This is a good deal for South Sudan.”¹¹¹ The final figures were as such: In addition to the \$3.028 billion TFA, the South would pay transit fees of \$1 per barrel for the oil passing through Sudanese territory, processing fees of \$1.60 per barrel for usage of Petrodar and Greater Nile Petroleum Operating Company (GNPOC) facilities, as well as \$9 per barrel and \$6.70 per barrel for the use of “transportation services” at GNPOC and Petrodar respectively. Meanwhile, the GoS would apply an extra \$4 per barrel fee to the oil companies’ own 30 percent share of the southern oil profits; the southerners would reimburse this through a separate agreement.¹¹² In practice, this meant the south was obtaining \$10.60 for each barrel of crude

oil pumped, just under the figure that the companies had suggested to Lyman would be reasonable.

Lyman emailed Washington, D.C., “Break out the champagne and toast the Secretary,” although he insisted that, in spite of her role, the US must not make any formal declaration until the AUPSC issued its decisions.¹¹³ Meanwhile, Mbeki reported in detail on the resolution of the oil and TFA issue. But, he concluded, “We reached the deadline of 2 August we have not completed our work. Our view, [our] request is that it will be necessary to extend.”¹¹⁴ The communiqué needed careful drafting to balance the positive and the negative, and to allay concerns of the AUPSC members.¹¹⁵ The numerical details of the oil and TFA agreement, included in the first draft, were replaced with Mbeki’s simpler formulation, welcoming “the conclusion by the Parties of the agreement regarding oil and related matters.”¹¹⁶ With the verbal agreement between Sudan and South Sudan and the wording of the PSC communiqué, Mbeki had managed to protect his principles of peacemaking while meeting the demands of the AUPSC and UNSC. The meeting closed at 2:40 a.m.

INTERNAL CONFLICTS, NORTH AND SOUTH

Just six weeks before the fighting in Heglig, Haile Menkerios, formerly special representative of the secretary-general (SRSG) to Sudan and at that time United Nations (UN) special envoy for the Sudan and South Sudan, reported to Secretary-General Ban ki-Moon that he could not see how the interstate conflict could be resolved without political reform in northern Sudan: “A lasting political settlement with South Sudan requires reform within Sudan involving a holistic and inclusive political process leading to the decentralization of the Sudanese Government, the diversification of the economy, the recognition that Sudan is a multi-cultural, multi-ethnic, and multi-confessional state, and reaching out to the armed opposition, the political opposition, and reformists within Sudan’s ruling party.”¹

Even while the fight for Heglig was raging, Yasir Arman gave an eloquent exposition of the guiding philosophy of the Sudan Revolutionary Front (SRF), of which he was secretary general: “A new political and geographical South has emerged in the North: it is obvious that Sudan will not remain without a new geographical South after the old traditional South has gone. It is equally obvious that the old South was not a geography—it has a human dimension in the first place, it was the long struggle for recognition of diversity, democracy and social justice, that continues in the new South of the Northern Sudan.”²

Yasir spoke about the “new South” at Harvard University, but his words resonated beyond the halls of academia. It was a clarion call for regime transformation. Khartoum understood it as such. Ghazi Salah al-Din espied a conspiracy between longtime adversaries of the National Congress Party (NCP) in

Washington, D.C., and the Sudan People's Liberation Movement (SPLM) to "pave the way for the recognition of a new south Sudan under the leadership of the SPLM-Northern Sector which will be tasked to negotiate with the Government to conclude an agreement similar to Naivasha."³

As discussed in [chapter 16](#), Ghazi condemned the African Union (AU) for "legalizing armed struggle against the Government in the North," in its April 24 communiqué. He overlooked the sentence in the communiqué, which "reiterates AU's conviction that there can be no military solution to the conflict in Southern Kordofan and Blue Nile, and stresses therefore the urgent need for a political and negotiated solution, based on respect for diversity in unity."⁴ Resolution 2046 did not include that preambular sentence. To have done so would have required the UN to align its Darfur strategy with its other Sudan strategies.

Darfur was conspicuously missing from the AU Roadmap. As with the UN, there was too much internal dissension for the Sudanese crisis in Darfur to be mentioned, let alone for it to be integrated into a holistic approach. It was a fatal omission. The twin pillars of the SRF were the Justice and Equality Movement (JEM) and the SPLM-N. Despite every appearance of a stalemate in Darfur, the JEM felt that if they could hold on undefeated, they had a fair chance of another roll of the dice. Like Khartoum, they wanted victory not peace. Political dealings had driven the JEM out of Chad and made Libya inhospitable. Khartoum was working on doing the same for Central African Republic and South Sudan. For their part, the leaders of JEM—Khalil Ibrahim and after his death, his brother Jibreel—needed a rear base, guns, and vehicles from which they could launch a lightning strike on the capital. They had tried this when they attacked Omdurman in 2008. There was no stalemate in this kind of war. The formation of the SRF and the mounting popular discontent in Sudan meant that the Ibrahim brothers felt that time was on their side.

The African Union High-Level Panel on Darfur (AUPD) foresaw how the Sudanese crisis in Darfur could negatively interact with other urgent challenges: "In the worst-case scenario, in which the conflict in Darfur continues while Sudan attempts to democratise and the nation discusses matters arising from the southern Sudan vote in the referendum on self-determination, the war in Darfur will undermine the legitimacy of these national processes, and in turn that will contribute to a continuation or aggravation of the problem in Darfur."⁵

This fear came to pass. As discussed in [chapter 5](#), the Doha process was not designed with this in mind. To complicate matters further, shortly after the referendum, Libya was convulsed by uprising and civil war. For Khartoum, this was a chance to strike a death blow against Gaddafi, gain political credit with Qatar and the United Arab Emirates, and undermine JEM and Minawi. Speaking to the AUPSC on the eve of the North Atlantic Treaty Organization (NATO)

intervention, Déby warned against opening the Libyan Pandora's box.⁶ Few people understood the Libyan "brother leader" better than the Chadian warrior-president. The AU heeded his warning; NATO and Sudan did not.⁷ Déby lamented at the year's end, "My fears, alas, were not unfounded."⁸ As the Gaddafi regime collapsed, rebels and militants across the Sahara pillaged Libya's huge arsenals. Tuareg fighters trekked home and declared an independent Azawad in the north of Mali. JEM returned to Sudan in force. Its leaders had meanwhile done deals with Uganda and South Sudan and could make use of the ungoverned marchlands of the Central African Republic.

For Omar al-Bashir, the priority was cutting off JEM from South Sudan. This made the Fourteen Miles area and Kafia Kingi crucial. In the field, the government of Sudan (GoS) response was a new page from its old militia war playbook. In South Kordofan and South Darfur, the regime's efforts to remobilize the major Baggara Arab tribes faltered when their chiefs rebuffed its call.⁹ The GoS turned instead to militia from smaller Arab tribes under the leadership of a capable and energetic young commander, Mohamed "Hemedti" Hamdan Dagolo. In 2013 al-Bashir was to formalize his troops as the Rapid Support Force, overruling the reservations of Imad Adawi, at that time promoted to chief of staff.

The GoS repeatedly made the case that ten years earlier it had talked peace with the SPLM/A while the latter fueled a regime change war in Darfur. The prospect of the SRF being backed by South Sudan raised this specter again. Khartoum also espied western countries camouflaging a regime change agenda under humanitarian and human rights slogans. Rather than handling the challenges comprehensively, the GoS reverted to its time-honored approach of dealing with them one by one. Rather than recognizing Yasir's "new South" or Abdel Aziz al-Hilu's aspirations for transformation at the center, the GoS wanted to reach separate agreements with the most parochial of the rebels. This "peace-by-piece" approach could have made sense if an overarching framework existed, but in its absence, it was a recipe for continuing turmoil.¹⁰ Among those providing advice to the Panel was Gerry McHugh of Conflict Dynamics International, who wrote a concept paper that explored possible interlinkages among three parallel sets of negotiations: Sudan and South Sudan, the GoS and SPLM-N, and the GoS and SRF.¹¹ In principle, this complex geometry could have worked, but it required an elaborate mediation infrastructure and, most important, it needed the GoS to be ready to recognize both the SPLM-N and SRF. It was not.

The AU Roadmap fell short, too. Operative paragraph 3 of Resolution 2046 decided that the GoS and SPLM-North cooperate with the Panel and the chair of Intergovernmental Authority on Development (IGAD), "to reach a negotiated

settlement on the basis of the June 28, 2011 Framework Agreement.”¹² This excluded Darfur. The spirit of the June 28 agreement had been that the two parties should establish a partnership to resolve other political issues, which was an opening to the Darfurian movements. The GoS didn’t see it that way. Rather they saw it as a snub to al-Bashir who had personally repudiated that agreement. The GoS was in the mindset of haggling over every issue rather than seeking a common approach to the nation’s crisis.

Al-Bashir’s repudiation of the framework agreement had also canceled any recognition of SPLM-N as a party. The GoS delegation headed by Kamal Obeid raised this objection when it belatedly agreed to come to Addis Ababa in July to talk to the Panel about the issue. Thabo Mbeki agreed with Obeid that “literal reference [to the Framework Agreement] will lead us into problems.” He clarified the Panel’s understanding: “We are not asking for an adoption of that Framework Agreement but instead to draw upon the ideas that were included in the agreement.”¹³

As Yasir observed, however, Obeid did not have the authority to make the concessions needed. “Logically it should be Omar al-Bashir as he is the only one who cannot disown his agreement,” Yasir explained.¹⁴ In the event, no negotiations were held, because the GoS refused to recognize the SPLM-N as a legitimate interlocutor. A few months earlier, Princeton Lyman had informed Hillary Clinton that “Bashir must understand that the path to peace in the Two Areas doesn’t run through Juba but through talks with the SPLM-N.”¹⁵ Unfortunately, al-Bashir remained committed to isolating the SPLM-N by coming to terms with Salva Kiir Mayardit, rather than addressing the challenges of South Kordofan.

As a negotiator, Obeid was less influential but also more hard line than Nafie.¹⁶ Whereas Nafie was an Islamist of the 1990s era, Obeid was a champion of the brand of post-2011 Islamism driven by the hard-line agenda of al-Tayyib Mustafa and the Just Peace Forum. He applied the same binary logic that had shaped his rhetoric on nationality and citizenship to the Two Areas, arguing that unless the SPLM-N formally disengaged from the south “then these people cannot be considered Sudanese citizens.”¹⁷ Obeid was a newcomer to the GoS negotiating team, and he was almost as vexatious to his colleagues as he was disliked by his adversaries. He quickly gained a reputation for obstructionism.

The SPLM-N leaders were determined to remain united. They expected al-Bashir to face a terminal crisis soon. But they also had their unresolved internal issues. The main pillars of the SRF were the SPLM-N and JEM, which cooperated militarily against the GoS but diverged on ideology and policy, and could not formulate an agreed negotiating platform.¹⁸ The SRF could not stop Malik Agar and Yasir going to Addis Ababa, but it could press them not to agree a separate deal. Many of the rank and file from the Nuba Mountains and

Blue Nile, by contrast, wanted a deal for their specific demands, and they were dismayed by the prospect of another long war in which their agenda would end up as a footnote to the final deal, as had happened in the Comprehensive Peace Agreement (CPA). Yasir was criticized by some Nuba activists who complained he marginalized the Nuba to focus on agendas for Khartoum, which, they said, were of interest to the communists.¹⁹ Yasir countered that because there were Nuba communities in all fifteen states of Sudan, and they constituted 10 percent of the population of Khartoum, “if you want to address their question you cannot address it to the Nuba Mountains.”²⁰ The GoS knew these divisions and played on them. Their starting point was a version of their 1990s “peace from within” strategy—namely, they were ready to do deals with Nuba communities and would do so village by village if need be.

When the African Union High-Level Implementation Panel for Sudan (AUHIP) invited the SPLM-N to Addis Ababa, it expected that the broader national issue would arise, and indeed it was one of the two major items of discussion when Malik, Yasir, and their delegation met with all three members of the Panel.²¹ The meeting notes are a poignant reminder of truths known for many years before and after 2012, and not acted upon. Malik pointed out something that the Panel well knew:

The Sudan question is not only contested by the SPLM-N. There are so many fighting movements. Piecemeal agreements have been tried, perhaps 42 of them, and none have been implemented in good faith. The CPA was maybe implemented to a higher degree, but now [we] have Darfur, the Red Sea, the far north as well, all of them are elements of the situation, the overall problem of Sudan. This problem has to be resolved holistically . . . For us we think the opposition can be united, and to an extent it has become united, and we now have all the armed opposition under one leadership.²²

The SRF’s problem within the AU Roadmap and Resolution 2046 was that the SRF was nowhere mentioned, and its major Darfurian member parties had refused to sign the Doha Document. Buyoya responded: “As a Panel we can have our own ideas, but we are working inside a mandate. I am sure that a holistic approach would be better. But what we have as a mandate now is to mediate between Sudan and South Sudan and the GoS and SPLM-N. This is very clear.”

Mbeki elaborated on the holistic approach: “It remains on our agenda. Now on the back burner, but still on the agenda. We are trying to push for a holistic approach. It is not even a matter of only political parties, we need to find an inclusive process that draws in Sudanese society as a whole.”

Malik and Yasir knew well that the Doha process was not the Panel’s preferred approach, but Mbeki pointed out that the Doha Document for Peace in

Darfur (DDPD) had been backed by the AU and UN, saying that the SRF is “acting to a subvert an internationally-endorsed agreement.” Malik replied by reiterating his analysis: “We see the problem of your mandate, but there is a logical solution. If we don’t follow it, and if the SPLM-N will sign [an agreement], the next day there will still be war in Darfur and in Eastern Sudan. If you don’t solve the problem of Sudan holistically you will never solve the problem of the Two Areas. We are fighting because of the problem of the Sudan not the Two Areas.”

Malik’s recommendation was that the GoS should negotiate with the SRF, and that if he, as head of the SRF, were to sign an agreement, all the member parties would follow, including the SPLM-N. Yasir took the same line. Yasir pointedly asked Mbeki: “If the apartheid [regime] had said, we dismantle apartheid in KwaZulu Natal but leave it elsewhere would it serve any purpose?”²³ It was only in April 2014 that the UN Security Council finally adopted a resolution that encouraged the joint special representative of the United Nations and African Union (JSR) for Darfur, the AUHIP, and the UN special envoy for Sudan and South Sudan “to synchronize their mediation efforts while taking into account ongoing transformation at the national level.”²⁴ The JSR at that time, Mohamed ibn Chambas, aware of the futility of the DDPD, recognized that a national-level solution was essential. It was too late.

Refusing to Talk to Each Other

The AUPSC communiqué dealt with the Two Areas in a paragraph that began with the observation that there could be no military solution to the conflict and that there was a need for a negotiated solution based on unity in diversity. Resolution 2046 came straight to the point, simply deciding that the GoS and SPLM-N should cooperate with the Panel and IGAD chair. Where the AUPSC had “urged,” the UN “decided.”²⁵

For three months, the GoS and the SPLM-N found ways to avoid meeting one another. The main blockage was the GoS refusal to recognize the SPLM-N. Each side began with a maximalist position that indicated a lack of seriousness. The SPLM-N demanded full recognition as a legal, registered political party and the reinstatement of Malik Agar as Governor of Blue Nile as a precursor to formal talks.²⁶ One reason for demanding legal recognition was that it had members in detention, charged with belonging to an illegal organization. The GoS said that, in principle, there was no obstacle to the SPLM-N applying to register itself as a party, but that as things stood, its application would be blocked because it was illegal for a political party to maintain an armed wing.²⁷ The SPLM-N refused to surrender its military without first reaching a negotiated

solution. Whenever Yasir pointed to the CPA as a precedent for the GoS recognizing an armed adversary as a partner in peace, Khartoum observed that this was precisely the point—it didn't want another CPA.

As the August deadline neared, Mbeki invited separate SPLM-N and GoS delegations to Addis Ababa so that the Panel could conduct what it had always been reluctant to do, namely proximity talks. It couldn't wait for the parties to sit together at a table. The SPLM-N delegation was headed by Yasir and Khartoum sent Obeid—making compromise much harder. Obeid told the Panel that, "Sudan, in order to achieve peace, accepted to give up a very precious piece of its land. The party that benefited from that did not even bother to change the name from the SPLM."²⁸ Quite often, GoS figures mentioned the anomaly that the ruling party of South Sudan was, by its name, still dedicated to the "liberation" of Sudan. Obeid did not think that the SPLM-N was ready for peace or that it could break its ties with Juba, believing that it was counting on international pressure to achieve its agenda.

The two sides could not even agree on the limited issue of humanitarian access to Nuba civilians in desperate need. In the aftermath of the parallel sessions, the Khartoum media circulated Obeid's "four no's": no negotiation with the SPLM-N; no absorption, no employment, and no amnestying of the rebels; no peace talks with Yasir representing the Nuba Mountains; and no humanitarian role for the SPLM-N, nor any surrender of the government's "prerogatives" of controlling relief aid.²⁹

Both sides took to the media to make clear they had not participated in formal negotiations. An NCP spokesperson explained that Yasir's presence in Addis Ababa was "a matter that concerns him" and that they would negotiate only with the "citizens and rebels of the two regions."³⁰ Yasir, meanwhile, insisted that it was he who had refused to meet Obeid, condemning his proximity to the "racist stupidity forum" (i.e., the Just Peace Forum). He also added, "you can't have permanent peace without permanent democracy" and promised that the SRF would transform itself into a national electoral force like the African National Congress in South Africa.³¹

Trying to Depoliticize the Humanitarian Crisis

While the GoS and the SPLM-N failed to talk, the people suffered. The humanitarian issues were slightly different in each of the Two Areas. The Nuba Mountains contained a large civilian population in the "liberated areas" under the SPLM-N as well as a war-displaced and refugee population. In Blue Nile, the SPLM-N controlled no territory and the challenge was accessing refugees and

internally displaced people (IDPs). The controversial question was how humanitarian aid could reach the Nuba civilians in SPLM-N areas. The most efficient way to do this would be to run operations from Khartoum across the frontlines. The alternative was access to the area from South Sudan, which had the obvious complication that the access routes could also be utilized by the rebel forces for their supplies, or they might indeed divert aid for their use.

By May 2012, more than one hundred thousand refugees were in South Sudan and thirty-two thousand in Ethiopia.³² Humanitarian agencies were able to provide aid to refugee camps, although logistics were difficult. About three hundred thousand were “internally displaced or severely affected” in South Kordofan and one hundred thousand in Blue Nile, most of whom could not be reached by any aid efforts because of fighting and GoS obstruction.³³ The humanitarians were the first to recognize that their programs were only a stopgap: A political resolution was needed.³⁴

From 1989 to 2005, the UN had run Operation Lifeline Sudan (OLS). This began as a pioneering cross-line humanitarian effort to southern Sudan in the context of a peace initiative. The lead agencies were the United Nations Children’s Fund and the World Food Program, which worked with both the GoS and the SPLM. Over the years, OLS had evolved into a protracted and controversial program that sought to aid afflicted populations amid ongoing conflict.³⁵ Both GoS and SPLM accused the program of favoring the other side. The GoS regretted the recognition that OLS extended to the SPLM and the ways in which it provided an international profile to the rebels. It saw the UN humanitarian agencies as the nose of the camel, which was followed by the body of the beast, amid international clamor for southern independence. It did not want to repeat that experience. Still less did it want to see clandestine assistance to the SPLM-N areas. A consortium of nongovernmental organizations (NGOs) had set up a humanitarian airbridge to the Nuba Mountains in 1995, even while the GoS refused any UN access to the SPLM-administered areas.³⁶ The following year, a discreet NGO cross-border operation was undertaken from Ethiopia to the SPLM areas of Blue Nile, with the direct authority of Ethiopian Prime Minister Meles Zenawi. Meles’s concern for humanitarian assistance was both from a matter of principle and because he knew that a humanitarian emergency was politically destabilizing. Fifteen years on, when Meles took the personal initiative to fly to Khartoum to try to avert war in Blue Nile, one reason was to avert humanitarian calamity. By this time, he had added another item to his list of worries—that humanitarian disaster would be an entry point for what he saw as reckless posturing by US “designer activists.”³⁷

For all these reasons, the Panel was keen to depoliticize the humanitarian agenda. The question was how. The GoS was fearful that hunger would translate into a new version of Save Darfur or another OLS. The US had introduced

a new conditionality on normalizing relations with Khartoum, which was permitting aid access to the Nuba Mountains, and it was deeply frustrated by Khartoum's total obstructionism.³⁸ Foreign advocates were turning up the volume of their campaigning.³⁹ Any appeal to the GoS solely on humanitarian principle was never going to persuade Khartoum. Mbeki made the political case for a relief operation to the GoS delegation. Conceding that there was a risk that some aid to the SPLM-N areas would end up in the hands of the SPLM-N, he added: "Our own fear has been that there is another process of politicization that others will exploit, saying the Government of Sudan doesn't care for the lives of its people, so if we can do this we take away one weapon used against the Government of Sudan."⁴⁰

Meanwhile, the GoS strategy of using hunger to heighten the pressure on the SPLM-N had political impacts on the Nuba community, too. Those Nuba who wanted their immediate issues addressed without waiting for a national-level deal criticized the SPLM-N leaders for unifying with other opposition groups that did not care about the plight of the people. In June, one such figure, Daniel Kodi, convened the first meeting of a new political party, SPLM-Peace, in the presence of Nafie Ali Nafie. Kodi announced his party refused join the rebellion because the SPLM-N's "objectives are unrelated to the region."⁴¹ Meanwhile, radicals argued that the war of starvation vindicated their case for self-determination.

The first proposal for humanitarian access was formulated by the tripartite of the AU, League of Arab States (LAS), and UN and was sent to both parties on February 9.⁴² It required the GoS and SPLM-N to contribute civilian representatives to a joint committee to oversee the operation, which would begin with a joint AU-LAS-UN humanitarian assessment mission and continue with complementing existing aid efforts. It was a modest proposal that preserved the GoS right to approve movements of aid staff and supplies. The SPLM-N accepted the plan almost at once—the one issue on which it was ready to make a stand-alone agreement.⁴³ The tripartite proposal was formulated while a needs assessment mission led by the GoS Humanitarian Aid Commission (HAC) was in the field, but which did not travel to the SPLM-N controlled areas. For the GoS, this was good enough. Although individuals in HAC, the relevant ministries, and the South Kordofan State government were keen to find ways to provide assistance to civilians on the other side of the frontline, the overall GoS attitude was (in the words of Abd al-Rahim) "let the children come [to the GoS centers] and take food."⁴⁴ The GoS stalled on responding to the tripartite proposal until June. It refused to negotiate, let alone sign, anything with the SPLM-N, and saw the humanitarian agenda as a back door to recognition of the SPLM-N.

On June 27, the GoS released a statement claiming that it had accepted the tripartite plan. But what it granted with one hand it took away with the other,

insisting that all humanitarian aid be channeled through the Sudanese Red Crescent or other GoS-approved groups. The UN considered this a *de facto* rejection.⁴⁵ Although some Sudanese officials were keen for the aid to flow, they were repeatedly blocked by their seniors who strung out the process, promising just enough movement to keep the UN agencies hopeful that a breakthrough was around the corner.

While the tripartite plan was stalled, its members worked on a “plan B,” which was a bolder proposal. This offered the GoS two choices: either the government should work with both the tripartite and the humanitarian wing of the SPLM-N to deliver humanitarian relief in the SPLM-N-held areas, or it should grant the tripartite access so that they could administer relief directly.⁴⁶ Lurking behind this was the possibility of invoking article 4(h) of the Constitutive Act of the AU, under which the AU had the right to “intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”⁴⁷ Forced starvation qualified as a war crime, although none of the members of the tripartite wanted to make this point publicly. An earlier internal Panel document had mooted that the AU, LAS, and UN should undertake relief in the SPLM-N areas “on their own initiative and their own behalf.”⁴⁸ The aid would have been delivered cross-border from Ethiopia and South Sudan, invoking article 4(h) to justify the violation of Sudanese sovereignty.⁴⁹ Any such effort would need careful finessing because of the danger that the aid would be misappropriated by the rebels.⁵⁰ For the Panel, Abubakar was increasingly disturbed by the GoS intransigence. “The North is burying its head in the sand not recognizing that SPLM-N exists and they must work with them,” he said.⁵¹

The Arab League representative, Salah Halima, was outspoken in pushing options that would be certain to offend GoS sensibilities. In an internal meeting, Halima underlined that “access to SPLM-N areas has nothing to do with abrogating Sudanese sovereignty. We should await an argument from their side and if there is none they have to accept . . . [we should] go ahead with our assessment until we get to a political decision.”⁵² The Arab League position was a crucial factor in denying Khartoum the opportunity to condemn the initiative as another UN conspiracy. When the AU and UN wrote to al-Bashir demanding aid access, however, the secretary-general of the Arab League, Nabil al-Arabi, refused to cosign, saying he could not take a position against a leader of a member state. “Poor Halima,” said Haile⁵³

This was a rare occasion on which the Panel agreed to set the agenda and not wait for the parties to agree. The UN’s Haile Menkerios was also deeply frustrated. He said, “I have read their papers, it makes you feel that these people don’t want anything, but the PSC and UN Security Council resolutions don’t

say that the Panel must cooperate with their positions, we can throw these to the gutter and instead propose an agenda. We can't get any agenda out of their papers. The resolution says they must cooperate with the Panel and not the other way around."

The sad reality was that the tripartite could propose what it liked but leverage to impose a mechanism simply was not there. The possibility of the GoS and SPLM-N sitting and agreeing on even the most basic humanitarian package became harder to achieve, as the parallel north-south negotiations over oil and security reached their climax point. In the first of a series of fruitless talks first with one side and then the other, Mbeki repeated variations on the theme, "The question is, who will depoliticize the humanitarian issue? That is where we are stuck."⁵⁴ On July 27, Yasir repeated the point that it would be a "grave mistake to mix politics and the humanitarian situation . . . the political situation can go on for years." Mbeki agreed. Nonetheless, Yasir then blamed the Panel for failing to achieve the breakthrough, invoking the ire of Lyman. The GoS delegation led by Obeid came to talk later that morning, with Abd al-Rahim present. Obeid gave no hint of any concession on the basic point of acknowledging the SPLM-N, tying the meeting down in points of procedure. The only time any member of the GoS delegation mentioned hunger was when Mbeki suggested a break for a late lunch, and Abd al-Rahim said: "We are so hungry, the stomach needs . . ."⁵⁵ On July 31, challenged by Mbeki, Obeid responded, "the issue is resolvable. If we develop the proposals presented by the Government of Sudan."⁵⁶ Later on, the GoS agreed to sign a memorandum of understanding (MOU) with the tripartite, but it made no mention of the SPLM-N and referred only to "implementing partners acceptable to the GoS and members of the local community in south Kordofan and Blue Nile states."⁵⁷ On the evening of August 3, as the PSC members were assembling for their session, Meles called Ramtane Lamamra from his hospital in Belgium. Lamamra passed a succinct message on through Abdul Mohammed: "humanitarian access issue is not negotiable."⁵⁸ Lyman saw a glimmer of hope. He wrote to Clinton: "Please keep very, very close hold but we may be close to an agreement on humanitarian access. We have worked with Haile Menkerios and the AUHIP to assure that the agreement includes a meaningful cessation of hostilities. Haile is going to Khartoum to finalize the MOU with the hope of signing it Sunday . . . Haile asks for complete confidentiality for now."⁵⁹

It didn't happen. Meles's call was also his last communication on Sudan. The Nuba people were casualties of the impasse. The August 3 AUPSC communiqué referred to the glimmer in the best possible light, hoping that it would turn into something substantial.⁶⁰ It did not. The GoS dug in. When the new delegation from Khartoum arrived for the talks in September, Lyman wrote to

Clinton, "In truth I now believe the GOS will not ever agree to implement the Tripartite proposal for humanitarian access and we must develop a strategy with our allies for alternative means for reaching those in need."⁶¹ The MoU was supposed to last ninety days, but, unsurprisingly, no aid was delivered in that period. The US gave up on getting GoS cooperation and instead delivered aid cross-border from South Sudan.

Meles died on August 12. His role in the Sudanese and South Sudanese processes could not be replaced. Lissane Yohannes commented:

There were two things Meles would never negotiate over. One was the right of self-determination for South Sudan. Two was anything, anywhere that has to do with humanitarian support. This came from his personal life experience, from his experience of the famine of 1985. It was a matter of unwavering principle: how would you allow people to starve, hold peoples' lives hostage, just because you have a political interest? Had he lived he would have been able to persuade al-Bashir [to permit humanitarian aid].⁶²

Not Talking in South Sudan

Also missing from the AU Roadmap and Resolution 2046 was any agenda for internal political dialogue within South Sudan. There was widespread discontent across the south. Some individuals were aggrieved, believing that they had been unfairly robbed of their chances of winning governorships in the 2010 elections. Some saw the government deploying the Sudan People's Liberation Army (SPLA) in a partisan way in local disputes. The dominant international narrative at the time was that opposition to the SPLM was mostly opportunists backed by Khartoum. This failed to capture the reality of grievances. Rivalries within the SPLM leadership over who should lead the party in the scheduled 2015 elections were also beginning to bubble. The Panel had addressed the question of reconciliation within South Sudan, but only in passing: It remained a neglected agenda. Ghazi was quick to point out the double standard in the PSC communiqué: "Of course, the decision contains no similar article calling on the Government of the SPLM to negotiate with the southern political groups which are reeling under the daily suppression of the SPLA military intelligence."⁶³

The SPLA had been successful in neutralizing some rebel leaders, either by assassinating them (as with George Athor and Gatluak Gai) or by bribing them (as with Peter Gadet).⁶⁴ The problem was that these same resistance movements simply reemerged under different leaders, and the oil shutdown crisis limited Juba's ability to manage the new rent-seekers. Gadet's South Sudan Liberation

Army reemerged in Unity State under James Gai Yoch and Babiny Monytil, while the South Sudan Democratic Army, in spite of Athor's immediate successor accepting an amnesty deal, kept on fighting under Ayouk Ogat and Johnson Olouny.⁶⁵ The disarmament campaigns launched by the SPLA in the aftermath of independence had caused discontent, accompanied as they were by violence against local communities.⁶⁶ The southern rebels were also unable to unite under a single banner in contrast to the SRF in the north.⁶⁷

The SPLA perpetrated atrocities against civilians in Pibor county in mid-2012. Murle civilians were subjected to some of the worst violence with particularly harrowing reports of atrocities committed against Murle children.⁶⁸ This prompted a former local militia leader, David Yau Yau, to abandon the reintegration process and launch another rebellion. Yau Yau was particularly aggrieved that he would not be granted a sufficiently high rank upon reintegration. He remobilized a number of the fighting men who had earlier participated in Sudan Armed Forces (SAF)-sponsored militias, such as the Pibor Defense Forces, during the civil war.⁶⁹

Meanwhile, Khartoum mobilized militias in the borderlands, to aid in its campaigns against the SPLA-N and JEM. The SPLA-N accused Khartoum of mobilizing South Sudan Defense Forces troops to attack it in Upper Nile.⁷⁰ Armed support for the southern rebels intensified in the wake of the Heglig conflict, as SAF- and National Intelligence and Security Service-backed groups proved essential to Khartoum's campaign to recapture the territory.⁷¹

Elsewhere, discontent short of rebellion simmered. Elites in Equatoria, who had supported the redivision of the south by Nimeiri in 1983 that had prompted the original SPLA insurgency, remained committed to decentralization and were discontented at what they called "Dinka domination" of the state and its resources.⁷² In the Dinka heartlands of Northern Bahr al-Ghazal, there was unhappiness too, at the concentration of power among groups closely aligned with the president. Dissension within the SPLM leadership was becoming more evident. Kiir had already been building his own power center, independent of the party structures, drawing particularly from within his community in Gogrial. His decision to openly name seventy-five government officials who he suspected of involvement in corruption was widely seen as a move against potential adversaries.⁷³ Kiir had initially planned to name scores of generals suspected of corruption, but after a representation from the SPLA headquarters, with an implied threat, he desisted. These divisions led to outright civil war in December 2013. In the meantime, the Panel was aware that Pagan Amum had begun to move out of Kiir's orbit and was seeking other allies.⁷⁴

THE SEPTEMBER NEGOTIATIONS AND SUMMIT

Following the August agreement on oil and finance, the Panel's plan was to resolve the remaining issues in the AU Roadmap leaving only Abyei to be decided between the two presidents. Thabo Mbeki would make one final request to Omar al-Bashir and Salva Kiir Mayardit to resolve the issue between them, guiding them toward an option based on a referendum with measures to compensate the losing side. A single-day summit was planned for early September. Ethiopia's prime minister, Meles Zenawi, died on August 12 in a hospital in Belgium. His state funeral was held on September 2. His successor, Hailemariam Dessalegn, was sworn into office on September 21. Delegations were booked to fly to the United Nations (UN) General Assembly three days later, giving a tight window of September 22–23 for the rescheduled summit. It did not run as planned.

The two presidents and their chief negotiators needed to reach an agreement. Both leaders were under threat at home, and each would be strengthened by an internationally endorsed agreement. By the same token, each side had hard-line factions that pressed for more concessions on their own favored issues, happy to see the summit fail and either a new war or a further weakening of their leader. As the planned single day stretched into two, then four, and then five days of talks, diplomats and journalists in the lobby of the Sheraton Hotel sifted rumors and interpreted the body language of the delegations, hour by hour. One Sudanese editor wrote: "Everyone you sit next to has a perspective and expectations that contradict those of the person you were sitting next to before!"¹ The next day the same theme continued: "The situation fluctuates between celebrations of an upcoming agreement to despairing that the most

likely probability is failure.”² For those directly engaged in the negotiations, the mood was similar. Late-night emails from Princeton Lyman to Hillary Clinton, sometimes with midday updates, swung from optimism to despair and back again.

The African Union Peace and Security Council (PSC) communiqué of August 3 “support[ed]” another round of talks on the “outstanding issues,” as well as the African Union High-Level Implementation Panel for Sudan (AUHIP) convening a summit of the two presidents to sign a “Final and Comprehensive Agreement.” Such optimism was possible because of the agreement on oil and transitional financial arrangements (TFAs). But the words that followed were overstated: “The Parties have discussed all issues extensively and brought them close to a conclusion,” meaning that all that was now required was for al-Bashir and Kiir to “make the necessary political decisions.” In line with the AU Roadmap, the AUPSC granted the AUHIP both authority and a deadline for it to submit “a comprehensive report on the status of negotiations, including detailed proposals on all outstanding issues, to be endorsed as a final and binding solution to the post-secession relations.”³

Neither Sudan nor South Sudan was happy with the communiqué. From the South Sudanese perspective, the language was less forceful than in April. Anticipating Khartoum’s noncompliance and fearing a soft approach by the AU, Luka Biong had urged the AUPSC to suspend Sudan, support International Criminal Court (ICC) arrest warrants, finance an alternative pipeline through East Africa, and back a popular uprising in Khartoum.⁴ As he feared, the scenario of a financial deal that left Abyei hanging was becoming a reality.

In the north, there was ongoing resentment against the AUPSC and the Panel. Although the government of Sudan (GoS) denied the Americans had played a role, the Islamist media highlighted Clinton’s visit to Juba as well as Lyman’s presence to attack the AU’s credentials.⁵ Al-Bashir affirmed that security came before oil, his vice president declaring “the government will not allow the passage of one gallon of southern oil” before the security issue was resolved.⁶ Picking up on this, *Al-Intibaha* claimed Mbeki’s effort to push the opposite approach showed that he was acting as a front for American and South Sudanese designs.⁷

The Panel reconvened in Addis Ababa on September 4, for what became three weeks of nonstop negotiations. The momentum of a month earlier had dissipated. The city was filled with reminders of the state funeral and posters of the late prime minister—Meles’s face was more visible in Ethiopia after his death than during his life. The severe implications of the loss of Meles for Sudan and South Sudan had not yet become clear to the delegates. All spoke of their appreciation for Meles’s role and said that any agreement reached would honor

him. Meles's most immediate unfinished business was the Two Areas, where his absence was most keenly felt. On the north-south issues, the delegations met and talked. Not so over the war and starvation in Nuba Mountains and Blue Nile, a bitter issue that poisoned everything else.

A shadow hanging over Khartoum was a rumored conspiracy against the president. A group of military officers was plotting to overthrow al-Bashir and had approached Salah Gosh to join them as their public face. This plot appeared to have wide support. A message was sent to Lyman, who flew to Cairo to meet with Gosh—who failed to show up for the rendezvous.⁸ The plotters subsequently lost their cohesion or their nerve, or both, and Gosh was arrested.⁹ Ethiopian intelligence had been tracking the conspiracy earlier, and Meles told Lissane Yohannes that their interest was in protecting al-Bashir, on the grounds that he was responsive to advice and pressure.¹⁰ The plot was indicative of wider discontent among the army officers and National Congress Party (NCP). When al-Bashir traveled to Addis Ababa, regarding the coup rumors, Lyman observed: "Perhaps that is why nearly his entire senior military staff and other principals accompany him here."¹¹

Kiir was also feeling the heat from his South Sudanese critics. The rivalries and disagreements within the Sudan People's Liberation Movement/Army (SPLM/A) had been set aside during the Comprehensive Peace Agreement (CPA) Interim Period, managed through procrastination, and were now reemerging in force. In a little more than a year, these would erupt into civil war. Both al-Bashir and Kiir were more immediately worried about the threats from their lieutenants than they were about one another.

The mediation strategy, led by Mbeki and agreed to with the Ethiopians, the US, and UN, was to resolve all issues before the summit except Abyei, that would be left for the two presidents to resolve. But as the date neared, both sides were raising a host of quibbles on minor issues, trying to make small gains, "but also no clear sign from the leadership that it is time to wrap up these matters."¹²

The Abyei Issue

In their different styles, the US and the Panel had each tried to find solutions for Abyei. None had worked: There was no magic technical formula, and the two presidents repeatedly refused to grasp the nettle. Lyman later commented,

Thabo Mbeki kept saying, this is an issue the presidents need to resolve. President Bashir and President Kiir, they have to sit down and do this. At one point he actually sat down and wrote letters to the two

of them, about what the roles of a president should be. It was like a tutorial. If you are a president, this is what you do, this is the responsibilities you carry out. And when they didn't do it—and they didn't, it kept going up to them and they kept kicking it back down—he was forced in the end to come up with his own solution, but very reluctantly and very wisely, because once he came up with it, and Sudan didn't accept it, even though the AU endorsed it, the UN Security [Council] endorsed it, there was no capacity to force its implementation. And he understood that. He understood that you were not going to be able to force these leaders. And yet it was their responsibility.¹³

The letter to which Lyman referred was written on September 9 and hand delivered in Khartoum and Juba the following day.¹⁴ It was seven pages long. In the letter, Mbeki did not make a proposal. He was careful instead to indicate the logic of the position in which the two presidents found themselves and suggested possible steps to make this workable.

Mbeki observed that Abyei was envisaged as a bridge between north and south, a concept that remained relevant but needed to be redefined in the context of secession. He reminded the presidents that the Panel had requested them to come forward with a solution and that they had both come back to a referendum. Mbeki emphasized that any referendum should not be a win-lose exercise. He recalled that its outcome would hinge on who was eligible to vote and—citing Scott Gration's efforts in 2010—that no formula acceptable to both sides had been found for this. Extra measures were needed to make the outcome palatable for the “loser.” Given the demography of Abyei Area, he wrote that it would be reasonable to expect that the majority of Ngok would vote to join the south, and “it could then be said that the Abyei Referendum would result in the Misseriya and the Government of Sudan emerging as the “losers.””¹⁵ Mbeki outlined five measures that could mitigate this: granting Abyei special administrative status; granting the Misseriyya permanent rights of migration; the Abyei administration extending services to the Misseriyya; the Republic of South Sudan (RSS) providing resources to help develop Misseriyya areas north of Abyei; and traditional leaders of the Misseriyya and Ngok Dinka being allowed to meet regularly as in the past. If these steps were undertaken, he wrote, then it should be possible to reach agreement on the Abyei Referendum Commission. Mbeki requested a written response prior to the summit.

The letter to al-Bashir was hand delivered by Lissane Yohannes. He later said: “I know Omar al-Bashir well enough to assess him, to know when something is wrong. He was not able to maintain his usual countenance when he met me. You could see his facial expression. He did not want to disappoint me

but he knew the message that was being sent. . . . the letter was absolutely, perhaps deliberately, misunderstood by al-Bashir, it was ‘in the event that Abyei goes to the south’ *not* ‘let’s give Abyei to South Sudan.’”¹⁶

The counterpart letter was delivered to Kiir by Mukoni Rabwoni. Kiir asked Deng Alor for his view, who immediately accepted. Alor then informally contacted Lyman, Abdul Mohammed, and Barney Afako to tamper with the details.¹⁷ Each of them told him that the matter was between the two presidents and that the Panel would not get involved. Lyman’s reading was that Mbeki had signaled to al-Bashir that Abyei was likely to go south, and “Kiir will have to be extraordinarily skillful to get Bashir to agree.”¹⁸

Consistent with his long-standing position, Mbeki had entrusted the Abyei file to the presidents alone. He expected that their lieutenants would remain at best stuck, at worst obstructive. So it transpired. When Lissane returned to Addis Ababa, he was confronted by Idris Abd al-Gadir, who had by this time seen a copy of the letter sent on by Khartoum. He was angry, “Ya Lissane, I thought you were my brother! How could you not tell me you were going to Khartoum? How come you didn’t consult me on the contents of the letter?” Idris insisted that the approach and content should have been different. Abdul Mohammed described Idris as in “total panic.”¹⁹ He wanted to know why Abyei was being lifted to a level that would threaten all the other issues. He froze all his negotiations with the RSS.

Al-Bashir had no intention of making any concession on Abyei. In fact, the president was reverting to positions he had adopted before the June 2011 emergency summit. The government of Sudan (GoS) had recently begun operationalizing a presidential decree issued after the Sudan Armed Forces (SAF) occupation of Abyei in May and, before that summit, creating an executive committee for Abyei.²⁰ The GoS negotiators began preparing their usual response to Mbeki’s letter, finding ways to block any progress.

Meanwhile, the Panel prepared a draft proposal for Abyei, drawing on the letters to al-Bashir and Kiir,²¹ including inputs from Lyman.²² It proposed a five-person Abyei Referendum Commission with an independent chair nominated by the AU to prepare a referendum in October 2013. This was sent to the presidents on September 21. That same day, a lengthy response was received from al-Bashir to the previous proposal that rehashed the byzantine legal arguments put forward by Dirdeiry Mohamad Ahmed over the previous years.²³ Al-Bashir argued that whatever the residency formula, holding a referendum was inadvisable as it would inevitably result in a “win-lose” scenario. Invoking article 40 of the June 2011 agreement, which specified that the Panel would be “advised” by the two presidents on the “timeframe within which to present its proposals,” al-Bashir concluded, “I hereby express my intention to drop the first agenda item of the summit entitled ‘determination of the Final Status of Abyei.’”²⁴

The SPLM's "Abyei boys" felt empowered, hopeful that international pressure would force the GoS to cave. Both delegations knew that Abyei was going to be a huge problem and that al-Bashir was under pressure. The principle "nothing is agreed until everything is agreed" had not been formally abandoned. All delegates were using it to demand more on their favored issues, such as the disputed areas, the details of the Fourteen Miles areas, and even reopening financial issues.

Mbeki continued to keep the Abyei issue at the highest level only. He expected that if al-Bashir were to move on Abyei, it would be because the other critical issues for the GoS had been resolved, enabling al-Bashir to take his own decision. This strategy required the US to pressure the south and reassure the north. He discussed and agreed to the steps with Lyman, who wrote to Clinton, with a plan for her to call Kiir and raise three points.²⁵ First, all Sudan People's Liberation Army (SPLA) units should be withdrawn from north of the border, especially in the Fourteen Miles area. Second, Juba should agree to send the Sudapet dispute—the remaining oil-related dispute—to arbitration. Third, there should a "clear and unequivocal" statement that South Sudan was disengaged from the SPLM/A-N. Clinton called and Kiir agreed.

The Two Areas

Progress on the north-south issues required progress on the Two Areas. Mbeki asked the GoS and SPLM-N to send delegations to Addis Ababa. Much the same thing happened as had happened with the proximity talks in August, detailed in [chapter 18](#). Yasir Arman stuck to his guns. He said that the June 2011 Framework Agreement was the basis for talks and that he would only meet directly with the GoS when it met its humanitarian commitments.²⁶ Kamal Obeid refused both and also added a new objection, which was the name SPLM-N, that linked it to the ruling party in South Sudan.²⁷

On September 17, the Panel put forward a draft agreement. This required the GoS and SPLM-N to commit to negotiating on the basis of the AU Roadmap, and thus the June Framework. It would have committed the GoS to accepting the SPLM-N's right to register itself as a political party, while also requiring the SPLM-N to guarantee that it would "be verifiably disengaged politically and militarily from the Republic of South Sudan." The agreement also stipulated a Cessation of Hostilities to take place within forty-eight hours in accordance with the tripartite proposal. The political track of negotiations would "address all relevant issues related to the conflict in Blue Nile and South Kordofan," but also negotiate "in the context of broader dialogue and political

processes at national level.” Meanwhile, the security track would follow the principle that “the future of the SPLA-North forces . . . shall include integration, over a time period to be agreed, into the Sudan Armed Forces, other security institutions, and the civil service, or DDR.”²⁸

The GoS response was its tried and tested tactic of “agreeing” with modifications that made the agreement unworkable in practice. Obeid’s delegation returned a redrafted version of the document that removed all references to the SPLM-N and SPLA-N, with the exception of a passage defining the parties to the agreement as the GoS and “the Sudanese Nationals from South Kordofan and Blue Nile states, who are members of the Sudan People’s Liberation Army of the Republic of South Sudan.” Even the title was somewhat ominously reworded as “Final Settlement for the Conflict in Southern Kordofan and Blue Nile States.”²⁹ The GoS version kept the AUHIP draft’s references to Resolution 2046 and the AU Roadmap but deleted the references to the June 28 Framework Agreement. It strengthened the security track and weakened the political track.

The SPLM-N response was the opposite. Yasir refused to discuss the document unless the AUHIP prefixed the content with a “simple statement” to the effect that the parties were negotiating on the basis of the June Framework Agreement. This would require recognizing the SPLM-N as a political party directly, rather than simply affirming its right to register.³⁰ Yasir objected that inserting a cessation of hostilities to enable humanitarian action was muddying the waters, insisting that a humanitarian aid was unconditional. Obeid and Yasir failed to meet, a failure that cast a cloud over the north-south talks.

The Fourteen Miles

Technical solutions to the Safe Demilitarized Border Zone (SDBZ) in the Fourteen Miles area were not difficult to design. There were three problems. First and most intractable was the fear among the two communities—the Rizeigat and the Malwal Dinka—that they would be sold out, and the counterpart fears by the two ruling parties that they would lose an important constituency. A twist on this was that the Rizeigat, although they were Baggara Arabs like their Misseriyya neighbors, were markedly independent of the GoS. They had not only resisted government efforts to embroil them in the Darfur war, but also had some 2,500 fighters enlisted in the SPLA—a security threat to the north that also contravened the ban on citizens of one country serving in the armed forces of the other.³¹ Second were tactical military considerations. The SPLA held the bridgeheads and wanted to preserve its advantage, including control

over access routes into Darfur. Unable to dislodge the SPLA by force, SAF wanted to win territory by shifting the SDBZ and its twenty-kilometer-wide zone fourteen miles (twenty-two kilometers) south of the river. Third was the zero-sum calculus and each side's need to be seen to win.

In the week before the talks, the GoS delegation made a surprise move: They put forward a new proposal in which they abandoned their objection to the AUHIP map for the centerline of the SDBZ, with the caveat that the whole of the Fourteen Miles area should be demilitarized and put under the local Native Administration, supervised by the Ethiopian-led Joint Border Verification and Monitoring Mechanism (JBVMM).³² This happened because Rizeigat tribal leaders took a constructive position. One of Abd al-Rahim's concerns had been Rizeigat resistance to concessions over the Fourteen Miles area.³³ In August, protests had broken out in al-Daein accusing the NCP of trading away SPLA-occupied Samaha.³⁴ To allay this concern, the Panel met with Rizeigat leaders and acknowledged that the SPLA had occupied Samaha, explaining that the Panel's proposals had no bearing on the final boundary line.³⁵ Rizeigat leaders then stated their confidence in the Panel's understanding of its concerns, which eased the pressure on the NCP.³⁶ As a result, the GoS was ready to accept putting the Fourteen Miles area under tribal administration, and indeed, to present the plan as its own.

The key to the compromise was that the SPLA would withdraw south of the river, abandoning those crucial bridgeheads. It might have worked, had South Sudan quietly agreed, so that each side could have presented it as a success. That was not what happened. Clinton had raised the issue in her call to Kiir, who said he accepted the proposal.³⁷ But the South Sudan's delegates in Addis Ababa automatically distrusted Khartoum and were internally divided. Lyman wrote to Clinton: "The divisions were so great as to challenge the bona fides of the leadership of the RSS negotiations, mainly Pagan. It took then 12 hours to come up what was hardly a helpful (2 page) paper."³⁸ When the Panel met the ministers of defense and senior generals, Salva Mathok was bellicose: "The population of the Malwal is one million and we can make hell. If we accept the map all the forces along the line will be affected by the map. If God wills, let them capture these areas."³⁹ The SPLA generals also did not want to see SAF advancing. They questioned whether the GoS position amounted to genuine acceptance of the AUHIP centerline map. Part of the problem was GoS wording that described the demilitarized Fourteen Miles "as part of the SDBZ."⁴⁰ Abd al-Rahim explained it thus: "Instead of being one line it should be an area controlled by us both."⁴¹ John Kong objected: "If they accept the map they should accept the map without[t] precondition, they want the map to be adjusted, they do not accept it."⁴² Because the original SDBZ centerline was on the northern

edge of the Fourteen Miles, the new proposal could be seen as a maneuver to shift it southward.

The Khartoum delegation had come to an agreed position that could not be unpicked. The various military, intelligence, and civilian members had reached a common party line, which was fragile, and they would not deviate from it. On the southern side, each delegate was entitled to express his own views in every forum, regardless of what had been agreed on earlier. This was a recipe for chaos.

Matters were complicated by each side speaking to—and responding to—the media. First, the south's Atif Kiir announced that the ministers of defense had agreed and the GoS had accepted the AUHIP map “without conditions.”⁴³ Meanwhile, Abd al-Rahim told the press, “We accepted President Mbeki’s map from the first day, and all we said was that we want special arrangements for the 14 Mile area because it has a special situation.”⁴⁴ He later clarified that agreement on special arrangements had led to the breakthrough, saying also that the GoS had at last accepted the AUHIP position that the security centerline had no bearing on the final decision on the disputed areas.⁴⁵ Sudanese television initially focused on Atif Kiir’s statement, only briefly noting that Abd al-Rahim had confirmed his agreement.⁴⁶ This stirred up hard-liners’ pressure on Abd al-Rahim, claiming that he was surrendering Sudanese territory.⁴⁷ Even after Abd al-Rahim’s clarifications, the Sudanese press was baffled, wondering why their government had backed down after sticking to its guns for so long, and implying that this augured an unfavorable outcome for the summit on all issues.⁴⁸ This set the stage for a dramatic and frustrating back and forth over the Fourteen Miles over the following days, in which the optics of who was winning and losing counted for more than the substance of what was agreed.

Other Issues: Sudapet, Citizenship, Borders

Three other issues remained unresolved in September 2012: Sudapet’s assets in South Sudan, citizenship, and the process for resolving disputed and claimed border areas. The first two went smoothly.

Before 2011, Sudan had two national oil corporations. The larger one, Sudapet, owned infrastructure in the north and had some assets in the south; the smaller Nilepet had only assets in the south. The question of how to divide Sudapet’s southern assets had been discussed without agreement (see [chapter 13](#)) and at independence, South Sudan took over Sudapet’s southern assets without offering compensation. The GoS said this was illegal and demanded arbitration. Pagan Amum and Idris failed to agree, but Kiir conceded to arbitration.

Citizenship had been the potentially calamitous issue that never in fact exploded. At a meeting of the citizenship cluster on September 7, agreement was quickly reached: “The Framework Agreement on the Status of Nationals (March 2012) is to be signed at the Summit of the Heads of the two States, expected to take place later in September (2012).”⁴⁹

The boundary issues remained stuck, and the two sides were able to agree only on the process, not the substance. The GoS continued to object to the RSS insistence on treating “claimed areas” on a par with the disputed areas. The GoS argued that the claimed areas fell outside the CPA and could be raised only after the disputed areas had been settled.⁵⁰ To provoke trouble and have a card to play, the GoS tenaciously clung to its claim that the disputed location of Kaka, on the White Nile, included not just the town but a larger surrounding area.⁵¹ Neither side had cooperated with the AU Team of Experts (AUTE), established in August. The AUTE reported on its frustrations and delays: The parties were disputing the Team’s terms of reference and failing to provide documentary evidence and maps, while the rainy season meant that it was not possible to access the border for local site inspection.⁵² In Juba, Riek Machar had also challenged the team, asking how would the “non-binding” opinion of AUTE be respected when the binding decision of the Permanent Court of Arbitration (PCA) on Abyei was not?⁵³ Afako drafted a proposal for a process to address the claimed areas, and on September 25, a slightly adapted version was agreed (see below, section on September 25).⁵⁴

The two sides’ lawyers met on September 17 to review the agreements already reached and to adopt implementation modalities. They also began drafting an overall framework agreement that outlined principles guiding relations between the states as well as a process explaining how to implement the agreements. Those were necessary formalities. The political work was yet to begin in earnest.

Saturday, September 22

The summit was scheduled for Sunday September 23. It was Prime Minister Hailemariam Dessalegn’s first high-level engagement after he was sworn in on Friday.

Dessalegn came to the Sheraton on the morning of September 22. He was especially invested in Abyei and border security because Ethiopian troops were on the ground. Mbeki updated him on the Abyei proposal. Then, over breakfast, Chris Luckham provided a one-on-one military briefing drawing on the intelligence sources available to the British and the Americans, showing the maps and satellite data. Anticipating that the Fourteen Miles controversy was

going to be particularly problematic, Luckham laid out the plans for security there, including the role of Ethiopians supervising the tribal administration.⁵⁵ He showed the current positions of the armies: the SPLA on the river and SAF forty kilometers to the north. Hailemariam agreed to champion the proposal that SAF and SPLA positions should be equidistant from the line of the river, accepting the GoS proposal and adding that the SAF should not advance into positions vacated by the SPLA.

Hailemariam spent the entire day in meetings with the Sudanese and South Sudanese. He met Idris and Pagan. He met Kiir, who had just flown in, and agreed with his proposal to separate the armies equidistant from the river line. He met Abd al-Rahim. He met Lyman.

Kiir also took a phone call from Clinton, which Lyman described as “timely and effective,” and agreed that the summit should not be dragged down by issues other than Abyei.⁵⁶ Kiir confirmed that he had accepted Hailemariam’s proposal for the Fourteen Miles and would go for international arbitration over Sudapet assets. Lyman and the Panel were worried that without agreement on Abyei, Kiir might not be able to sell the rest of the package to the southerners, including the \$3 billion TFA that appeared to have been settled in August.

Al-Bashir was due to arrive the following morning and meet Hailemariam before the summit opened at 1 p.m. Al-Bashir, Kiir and Hailemariam all planned to leave that same evening. Panel staff drafted public statements to be issued by the two presidents in case of success,⁵⁷ and by the Panel in case of failure.⁵⁸

Sunday, September 23

Al-Bashir arrived at Bole Airport shortly before midday. Already there was disarray. Abd al-Rahim was furious that his acceptance of a formula for the Fourteen Miles had been announced by the RSS without mentioning his other conditions. A Sudanese journalist who arrived with the president reported al-Bashir’s stern countenance on receiving Abd al-Rahim’s paper, and added, “Within an hour of our arrival there came news of a relapse in the negotiations!”⁵⁹ The summit, scheduled for 1 p.m., was on hold, with formal briefings with the two presidents scheduled for 7:30 p.m.

The Fourteen Miles area is a tiny part of the Sudans, and the details over the security plans were tinier still. Those minutiae dragged out the talks. It was unclear how far the GoS wanted the concept of “special arrangements” to stretch. Abd al-Rahim was now demanding that the SAF and SPLA should agree to an equidistant withdrawal from the outer edges of the Fourteen Miles area, which meant that the GoS was in effect demanding that the SPLA

withdraw forty-four kilometers south of the original proposed centerline along Kiir/Bahr al-Arab, and the SAF only twenty-two kilometers north.⁶⁰

The Panel met with key partners. Abdul Mohammed proposed that unlocking the Fourteen Miles issue needed additional leverage. He worried that the Khartoum hard-liners would assuredly rake up the old GoS allegations of bias or error against the Panel, so the next step should come from the US. Buyoya agreed: "This will take it off our back."⁶¹ Mbeki instructed Luckham to approach Abd al-Rahim. Lyman sent a message to his staff that he was unwell, would be in his room, and should not be contacted. He joined Luckham in the GoS suite.⁶² US policy stipulated that he should not meet with an individual wanted by the ICC, but the situation demanded that GoS be reassured at the most senior level. President al-Bashir joined the meeting, the one and only time when a serving US diplomat met with him during this entire process. Lyman assured the Sudanese president that the US would act as guarantor of an agreement if he showed good faith.

Lyman left no record of that meeting. In an uncharacteristically succinct email to State Department staff, sent at 4:42 pm, he gave the most elliptic of allusions to what he had done, writing: "Bashir reacted very negatively to the proposal for the 14 Mile area but work is going on to cool him down. I have been working with the SAF and the AUHIP to find ways to resolve this one."⁶³

Al-Bashir also discussed Abyei with his delegation. Dirdeiry was missing and Sayed al-Khatib asked Lissane to look for him.⁶⁴ After rushing around the hotel, Lissane found Dirdeiry and brought him to the meeting. Lissane said, "The moment he entered the room the atmosphere changed and the group decided not to discuss Abyei at all at that time." Within a few hours, the talk in the Sheraton lobby was that Dirdeiry had insulted the Panel, condemning its proposal with words akin to, "you Africans are untrustworthy, racist against Arabs, and are doing what the Americans tell you to do."⁶⁵ His colleagues panicked that this would undermine them. But Dirdeiry's plan backfired when they briefed al-Bashir. Al-Khatib offered his apologies to the Panel and, more important, al-Bashir's demeanor softened.

The backstory is that when Mbeki was president of South Africa, al-Bashir invited him on a state visit. Mbeki flew to Khartoum for New Year 2005, just before the CPA was signed. For al-Bashir, Mbeki's visit was a breakthrough in ending his isolation in sub-Saharan Africa, and he resented his lieutenant's cheap accusation. Having arrived refusing to discuss Abyei at all, al-Bashir was now ready to include it on the agenda.

Meanwhile, the presence of Yasir at the head of an SPLA-N delegation added to the drama. With no role in the north-south meetings, Yasir worked the hotel lobby effectively, and Obeid's unease about this prompted humor in the press.⁶⁶

Pagan was also discomforted by his attendance, as on this day, the SPLM chief negotiator delivered a formal statement announcing that the SPLA was severing its links with its former comrades. Pagan's letter "once again confirms that prior to July 9, 2011, [the RSS] had completed a process of disengagement" with the SPLM-N and "these facts have been widely reported in the domestic and international media."⁶⁷ Referring to two of his staff members, Lyman commented, "Much thanks to Colin [Thomas-Jensen] and Allison [Lombardo] for getting Pagan to delete objectionable language he had put in an earlier draft."⁶⁸ Khartoum's delegation, nonetheless, rejected Pagan's statement.⁶⁹ The generals sardonically told the press, it "was not a legal divorce," because witnesses were not present and names and numbers were not provided.⁷⁰ Pagan's letter both reflected and reinforced the impasse on the Two Areas. The Panel, with the US and UN, made a huge effort on this issue, but no progress.

Monday, September 24

The summit finally began, a day late, on September 24 at the Jubilee Palace, the same venue as the June 2011 summit. Dia al-Din Bilal of *al-Sudani* newspaper wrote:

The meeting began at ten in the morning [with] the two Presidents and the mediators and 5 members of each delegation and the heads of delegation. And after 36 minutes the two delegations flowed out of the hall and Pagan and Idris went into a separate chamber. And then the two Presidents emerged and their features showed a—not firmly rooted—satisfaction. Al-Bashir in his usual way of joking and trying to break the tension, said to Khair al-Fahim the head of the Abyei Joint Oversight Committee on the government side "Khalas, ya Khair, we have solved the Abyei crisis" . . . and the laughter of the President removed the memory of his sternness the day before yesterday, and after a while it became clear that the discussion remained restricted to the 14 Mile area and no other file had overtaken it yet!⁷¹

Al-Bashir's humorous demeanor disguised what had actually happened. In that first face-to-face meeting, Kiir accepted the Abyei proposal.⁷² Al-Bashir said, however, that the temporary arrangements should be in place before acting on final status, and he rejected the proposal on the basis of the "permanent abode" reference, saying this altered the Abyei Protocol.⁷³ He promised a written response. At the behest of Hailemariam and Mbeki, the two presidents instructed their negotiators to work on the Fourteen Miles as well as processes

for the claimed areas, Sudapet, and the two ships of South Sudanese oil sold by Sudan. Al-Bashir said he would not discuss Abyei until these issues were settled. By lunchtime, the negotiating teams had resolved only the issue of the ships.

For the whole day, the meetings shifted from the presidents, convened by Hailemariam and the Panel, to the lead negotiators. Kiir was reportedly “upbraided” by his generals and was pushed to take a tough line on the Fourteen Miles.⁷⁴ A second meeting of the presidents took place, with no progress. Al-Bashir handed over his promised response to the September 21 Abyei proposal, which insisted that the AUHIP was “adopt[ing] the very position of the SPLM,” namely maintaining that the “lifestyle” of the Misseriyya was “inimical to the very concept of ‘permanent abode.’”⁷⁵ Al-Bashir also rejected the SDBZ map, walking back the GoS concession, and rejected Hailemariam’s proposal for equidistant withdrawal from the Bahr al-Arab/Kiir river. Kiir came back saying that he would not look at the Fourteen Miles until he was satisfied on Abyei and the claimed areas. Members of the GoS delegation complained that South Sudan could not stick to a cogent position and was pushing every minor issue to the brink, but they of course were doing the same. Three more times the two presidents met. No progress was made. Pagan walked out of the final session so angry that he went to his room and went to sleep refusing calls.⁷⁶

Late at night, Lyman wrote a despondent email. “A long day of meetings produced more tension and conflict than agreement. Much of this is coming from abrasive, belligerent and stubborn positions taken by Bashir . . . Anger and frustration abound.”⁷⁷ Some of the frustration was among the civilian GoS delegates, who wondered whether their president was listening to their briefings.

The two sides agreed to continue the following day. Hailemariam left to fly to the UN General Assembly, giving Mbeki the chair and leaving Lissane frustrated. No agenda was more important than the summit, he said, and the prime minister’s schedule for his first days in New York could readily have been rearranged.⁷⁸ Northerners and southerners alike had said that they were going the extra mile for peace out of respect for his predecessor. The mediation plan had been to keep al-Bashir and Kiir in Addis Ababa until they could sign, avoiding the problems that arose in June 2011 when they departed and left negotiations to their teams. When Hailemariam left, disappointment was visible on the faces of both delegations.⁷⁹

Tuesday, September 25

The negotiations shifted back to the Sheraton Hotel, with a fifth meeting between the presidents scheduled for 10 a.m. The Sudanese press picked up

rumors of progress: “Likely expectations are that today there will be signature on an agreement that puts down a roadmap to overcome all the obstacles, so long as the interminable rains of Addis do not snuff out the candle of hope!”⁸⁰ That meeting was postponed until 4 p.m. and then 6 p.m., and lasted for two hours without any public statement. Mbeki allocated different tasks to his team. Abdul reassured Idris and al-Khatib. Lissane took Pagan to his home to eat and drink and reflect on how revolutionaries had to rise above resentment of the oppressor and do the political work necessary for their people. Lissane later recounted how their discussion ranged widely, and how Pagan promised to do all he could to reach agreement.⁸¹ Later, Pagan would tell Lyman too many senior people on both sides were fixated on holding territory and not enough focused on the economic viability of the two states.⁸²

Three crucial breakthroughs occurred on that Tuesday. The first was on the Fourteen Miles. The issues were real but had become intractable because the two leaders had chosen to make them so. Both needed to accept that the proposal on the table was interim only and did not address the permanent border. In a series of drafts worked on throughout the two days, shuttled back and forth between the two sides, panel staff narrowed the gap and fastened on a formula that seemed acceptable. The crucial words read: “All military forces shall redeploy an equivalent distance of 22km North or 22km South of the strategic line of the Bahr Al Arab/Kiir River. These additional measures are temporary whilst the parties resolve the final status of the boundary giving priority to the area of the ‘14 miles.’”⁸³

The south was concerned that this would allow SAF to advance. Each word was haggled over. The next-to-final text added, “[SAF] to remain in current base locations to the North of the 10km SDBZ.”⁸⁴ The final text was as follows: “The two armed forces north and south of the demilitarized area are to remain in their current base locations.”⁸⁵ Footnotes detailed how the tribal courts were to function and how an ad hoc committee of the two communities, the SAF and SPLA, and the JBVM/UNISFA would report to the Joint Political and Security Mechanism (JPSM).

Later, Abd al-Rahim and Imad accosted Afako wanting to make changes to the text that had been agreed. Afako recalls that this would have constituted a significant change.⁸⁶ He listened politely, made no comment, and reported the conversation to Mbeki. In due course, Abd al-Rahim and Imad backed down. The momentum was with the *Naivashiiun*—Idris, Mutrif Siddiq, and al-Khatib—who all worked hard to persuade al-Bashir to accept the compromises.⁸⁷

Meanwhile, Afako worked with al-Khatib to finalize a formula for the process for the claimed areas. Paragraph 4 was a classic example of a finely-crafted process that promised just enough for each side: “After the [Lead Negotiating

Panel] has completed its evaluation of the written opinion of the Team of Experts and has taken the relevant decisions for settling the Disputed Areas, the AUHIP shall notify the other State of all the territorial claims it has received, whereupon the LNP shall convene to take appropriate decisions about the process for the settlement of the claims.”⁸⁸

The second breakthrough was finally to jettison the principle that “nothing is agreed until everything is agreed.” This made it possible to bracket Abyei and sever its link to the TFA. It was a decision accepted reluctantly by Pagan, candidly assessing the south’s options. Allison Lombardo, on Lyman’s team, reported a profound shift in his thinking: “According to Pagan, the RSS has assessed that given Bashir’s current positioning, he cannot make an agreement on Abyei. Hence, Pagan said the RSS cannot afford to make all of the other agreements dependent on Abyei. Pagan claims to have persuaded Kiir of this. He confessed that Deng Alor would be deeply upset.”⁸⁹

Pagan and Idris sat together in the corporate meeting room at the Sheraton and went through all the documents. It was a long session, but the rapport between the two men was good. Lissane commented, “When the two of them met, everything changed. They were not confrontational, they did not use adjectives, they were amicable.”⁹⁰ Lissane, Abdul, and Afako sat in the room to observe, in rotation, but in silence—their input was not called for. The two chief delegates had concluded that their presidents needed to go home with a deal. Security arrangements had to be finalized. The claimed areas could be finessed.

Pagan and Idris did not need to agree on Abyei, because Mbeki’s strategy throughout had been to keep Abyei at the level of the presidents. Both chief delegates could honestly avow that the Panel’s proposal had gone directly to their principals without them having the chance to give any input. Pagan’s position was that the September 21 Abyei proposal should be considered the “final and binding” decision as per the AU Roadmap, so the Panel should report as such to the AU and UN and only convene the presidents to negotiate over its implementation.⁹¹ But al-Bashir continued to reject the proposal, much to Mbeki’s frustration. The Sudanese press quoted an unnamed participant who said, “for the first time Mbeki got really angry and thumped the table violently, while discussing the government’s comments on his paper.”⁹²

Nevertheless, that evening, Mbeki, Buyoya, and Abubakar met with the two presidents, who were accompanied by Dirdeiry and Deng Alor to discuss the Fourteen Miles and the September 21 Abyei proposal.⁹³ Al-Bashir doubled down on his refusal, pushing hard for a decision on the “final status” of Abyei to be deferred, and for the summit to focus only on resolving Abyei’s interim administration.⁹⁴ Kiir apparently conceded to this. Lyman noted: “The presidents agreed to sidestep the AUHIP report and agree to establish three committees,

two related to the current administration of Abyei and a referendum commission which is to make arrangements for a referendum and resolve the contentious issue of voter eligibility.” Lyman considered this a breakthrough insofar as it delinked Abyei from the TFAs, but he added warily that in spite of Kiir’s assent, “I suspect there was not sufficient consultation with the RSS team.”⁹⁵

Mbeki did not reformulate the proposal, saying that if the two sides did not support it, they needed to get together and talk. Instead, he instructed staff to work on ideas for how immediate steps for Abyei could be made more palatable for the GoS. He transmitted the proposals to the two presidents in writing.⁹⁶ The RSS would have to swallow its reservations and accept one of al-Bashir’s nominations to chair the Abyei Area Council, while the GoS would need to redeploy its oil police from Diffra, to be replaced with a specialist oil police unit formed by the Abyei Joint Oversight Committee. The referendum was scheduled for October 2013. The residency question was not resolved. The letters to the presidents were in essence the new text for Abyei: just eight paragraphs and three pages, that covered these steps only.⁹⁷ Crucially, the text reaffirmed the Abyei Protocol in the CPA, the ruling of the Permanent Court of Arbitration, and the Abyei Area Referendum Act of 2010.

Lyman’s email to Clinton, sent at 1 a.m., was headed “from the jaws of defeat.”⁹⁸ They were, he said, “on the brink of what could be a historic agreement.” Al-Bashir, who had already turned a day trip into a four night-stay, had been considering flying back to Khartoum that evening and leaving his delegation to finalize the deals. He decided to stay.

Meanwhile, in line with the abandonment of the “nothing is agreed till everything is agreed principle” and in despite the impasse on Abyei, both Kiir and al-Bashir gave their assent to the compromise formula on the Fourteen Miles area, after which Idris and Pagan stayed up throughout the night finalizing every detail.⁹⁹ The signing was scheduled for 2 p.m. the next day.

Wednesday, September 26

There was a hitch. South Sudanese ministers and generals arriving from Juba were suspicious, wanting to know what had been decided in their absence. Some of them did not want to go ahead with an agreement at all. They demanded an explanation from Michael Makwei. But Pagan had not been keeping his colleagues informed about what he had been negotiating with Idris, putting Makwei in an impossible situation. The Juba delegation gathered to challenge Pagan, insisting that they could not sign agreements they had not seen. They said they needed to scrutinize every line on every page: “This is our

right. It is our democracy.”¹⁰⁰ The message was passed to Mbeki, who decided that if the southern delegates needed to go through the text, they should do so. He assigned Afako to the task.

The South Sudanese had gone from agitation to outright anger. When Afako arrived, the room was in an uproar.¹⁰¹ Afako told them that he could not have a session involving them all, and that they should choose two representatives to sit down with him and Pagan and go over every line from first to last. They chose Makwei and the lawyer Aleu Garang. Afako asked Haile Menkerios to provide assistance with the documents, and he seconded his special assistant Ljiljana Švetka. She loaded the text onto her laptop. Afako needed somewhere private and protected and chose the hotel business center copy room. Mbeki’s security detail guarded the door. Švetka printed out four copies of each agreement and Afako went over each agreement, paragraph by paragraph. Every line, every comma, was scrutinized. At first, Makwei and Garang were combative, but their anger faded as Pagan explained. At times, Afako had to protect Pagan and protect the text, explaining how the wordings had been arrived at and how they were reasonable. He was afraid that if Makwei and Garang demanded substantive changes, the GoS would then cause a host of new problems.

No word reached the public as the hours ticked by. Rumors reached the press that the final set of agreements might be downgraded to a “framework agreement” or something similar.¹⁰² Atif Kiir told journalists it might be a “co-operation protocol” to appease Abyei’s representatives.¹⁰³ But the photocopy-room was leakproof. A Sudanese journalist wrote: “the journalists and envoys who were waiting in the cafeteria and the hotel reception, crowded together with the delegations of the government and SPLA-N, found their wait extended and there was nothing to do to prevent boredom excepting drinking tea and coffee and smoking cigars.”¹⁰⁴ Lyman knew what Afako was doing. Half an hour before the 2 p.m. deadline he reassured his team: “We may be only a couple of hours away from the ceremony. . . . Keep your fingers crossed but it is looking good. Will advise when the flash cameras go off.”¹⁰⁵ Privately he was agitated, telling Lissane, “We can’t afford to lose the whole agreement!” Lissane said, “Each one of us had to be patient.”

For three hours, Afako methodically continued. The southern delegation was satisfied. “They didn’t change anything of significance,” said Afako. “In the end, Makwei saw sense.” To be precise, this process resulted in four amendments to the texts.¹⁰⁶ One was a minor deletion in the Agreement on a Framework for Cooperation on Central Banking Issues; the second was to change the numbering of paragraphs in the Agreement on Trade and Trade Related Issues; the third was capitalizing “Organized Forces” and “National Security” in the Framework Agreement to Facilitate Payment of Post Service Benefits;

and the fourth, and final one, was changing “nationals” to “citizens” in page 7, paragraph 6.1.a. of that agreement. Afako took the suggested changes to Idris. They discussed them briefly and Idris agreed, without even bothering to consult his team.

Mbeki convened al-Bashir and Kiir at 4 p.m. The purpose was for the presidents to bless the agreements, but Abyei was still unresolved. Both Dirdeiry and Deng Alor attended, and Alor insisted that its final status should be discussed.¹⁰⁷ The meeting immediately became fractious. When Alor brought up the proposal for an independent referendum commission chair, al-Bashir exploded, once more rejecting the proposition outright and insisting on his right to stick to the text of the Abyei Protocol.¹⁰⁸ Al-Bashir also rebuffed Alor’s demand that both parliaments needed to agree on the referendum law, maintaining he had the right to form the referendum commission.¹⁰⁹ They argued over when the referendum should happen, with Mbeki and Kiir pushing an October date and al-Bashir saying that the poll should run in the November to January period—when the seasonal Misseriyya presence would be at its largest.¹¹⁰ Having agreed to sign all the other documents, Kiir now became angry at al-Bashir’s descent into details. They were back to rehashing old arguments. Lyman wrote that “Kiir [was] visibly angry (so angry I was told he could hardly speak) ended the meeting and subsequently threatened that the other agreements could not be signed if there was no satisfactory steps on Abyei.”¹¹¹

The meeting ended in deadlock at 70 p.m.¹¹² While it was still ongoing Lyman emailed his anxious colleagues in Washington, “We have to ask everyone to be patient.”¹¹³ He later added, “Hours of effort overcame this obstacle.”¹¹⁴ Mbeki met al-Bashir and Kiir separately and explained his philosophy. He was challenging them to fulfil their responsibilities as leaders of their countries—responsible both to their citizens and also to the continent as a whole. If there were to be African solutions, African leaders had to take seriously the commitments to which they, and their states and their continental organization, had signed up. The compromise to which they agreed was Mbeki’s proposal to revisit the Abyei issue at another presidential summit, by which time, he hoped matters would have improved with the implementation of the other agreements.

Thursday, September 27

Thursday was the Meskel national holiday in Ethiopia, marking the Orthodox Christian celebration of the finding of the true cross, and the city was in festive mood. In the morning, the atmosphere at the Sheraton was still nervous. Until late that morning, the Panel and its partners feared another ambush. Finally, at

midday, the presidents assembled in the hotel ballroom in the presence of the Panel, the special envoys, the diplomats, and the press. Ethiopia and the Inter-governmental Authority on Development were represented by Bereket Simon, minister of information.

Afako opened the proceedings by introducing the eight protocols to be signed. Speeches were made by Mbeki, Bereket, al-Bashir, and Kiir. All paid tribute to Meles. Mbeki candidly mentioned the challenges faced by the mediation, and the challenges that would arise in the implementation. Kiir could not resist a final swipe at al-Bashir, noting that the decision to refer Abyei to the AUPSC was due to the Sudanese decision to reject a plan that South Sudan had accepted in its entirety. Al-Bashir looked momentarily disgruntled but delivered a diplomatic speech.¹¹⁵ At 4 p.m. they signed the eight documents.

For the first time, agreements signed at presidential level fully endorsed the “four freedoms.” An overarching “co-operation agreement” was framed by the principle of “two viable states,” which formally endorsed a wide range of previously signed agreements and framework agreements.¹¹⁶ (The word “comprehensive” was omitted after objections from Abyei’s representatives.¹¹⁷) An agreement on “Oil and Related Economic Matters” confirmed the TFA figure of \$3.028 billion and deferred agreement on the status of Sudapet’s assets for two months.¹¹⁸ The “Agreement on Certain Economic Matters” committed the two countries to work together internationally to seek debt relief for Sudan on the basis of the zero-option approach and integrated the existing drafts on communications, water, and transport.¹¹⁹ The Agreement on Border Issues obliged them to establish a Joint Demarcation Committee.¹²⁰

Some of the dignitaries who normally would have been in attendance were in New York for the General Assembly, where the Sudan/South Sudan Consultative forum met that day and commended the two parties.¹²¹ “Break out the champagne,” Lyman emailed Clinton.¹²² On paper, almost all the outstanding matters of the CPA and the secession of South Sudan had at last been settled.

RACE BETWEEN AGREEMENT AND COLLAPSE

In 2005, the Comprehensive Peace Agreement (CPA) was sewn between red leather covers and treated as a revered text. Its signing was a cause for nation-wide celebration. Al-Bashir waved a copy, saying to the crowds, “*la illahi ila Allah . . . Halelujah!*” But in important respects, it was not comprehensive, nor peaceful, nor even an agreement. It was, rather, the creative application of public law to establish a government that postponed rather than resolved Sudan’s most important questions.¹ It was a truce and it expired. After the African Union (AU) Roadmap and United Nations (UN) Resolution 2046, many of the international entities were seeking another CPA.²

The September agreements were an achievement but there was no comparable celebration. The biggest difference seven and a half years on was that the CPA was a charter of optimism, while the September summit was held under the shadow of collapse. Much as the Panel disliked artificial deadlines, the iron logic of economic calamity faced both countries. Each ruling system had men who could skillfully contrive conflict in the other, and they were doing their best to expedite that, less heedful of the consequences for themselves. At the beginning of the year, Meles Zenawi had dubbed it a race between sanity and insanity.

The September agreements averted the worst but did not achieve the best. Both leaders had prevailed over domestic lobbies to make the concessions, but neither was strong enough to enforce their decisions by writ. Faithful implementation needed international political accompaniment. And Abyei was still unresolved. All the negotiations, the tactical maneuvers and procrastinations, the reciprocal accusations, and the undermining of leaders recounted in this

chapter took place against a background of worsening conflict and deepening economic hardship.

The international actors, including the US, UN, AU, and European Union (EU), welcomed the agreements.³ Ethiopia's Hailemariam Dessalegn congratulated the Sudanese, South Sudanese, and the Panel at the UN General Assembly.⁴ By mid-October, both the Sudanese and South Sudanese parliaments had ratified them.⁵ The major Islamist media outlets, having been efficiently courted by Omar al-Bashir in Addis Ababa, churned out editorials voicing their support, drowning out opposing narratives by Hasan al-Turabi and al-Tayyib Mustafa.⁶ In South Sudan, Northern Bahr al-Ghazal remained a center of dissent, as Governor Paul Malong protested that the deal on the Fourteen Miles area had sold them out.⁷ Abandoning the linkage between Abyei, the borders, and the transitional financial arrangement (TFA) caused dissent in South Sudan. Deputy Defense Minister Majak D'Agoôt lamented that Juba had abandoned its leverage.⁸ Pagan Amum assessed the likely outcome as "no war but no cooperation."⁹ In Khartoum, most of the generals wanted to keep security preconditions for reopening oil and border trade. They made only a slight shift in language, using "coordination" rather than "conditionality," implying that all eight sets of issues could be implemented in parallel, with options for pausing all if one were to lag behind.¹⁰ It was moot whether the generals really wanted a sequenced process, or whether they were simply obstructing progress to continue squeezing South Sudan. Most in the civilian leadership, among them Idris Abd al-Gadir, tried to expedite progress, while al-Bashir and Abd al-Rahim were trying to accommodate both camps.

The Panel referred Abyei to the African Union Peace and Security Council (AUPSC) which met on October 24. In the intervening weeks, no progress was made on either implementing the slimmed-down agreement on Abyei or discussing a full solution. At the AUPSC, South Sudan's foreign minister accepted the September 21 proposal, while Sudan's foreign minister tried to revive the options presented by the Panel two years earlier, to no effect. The AUPSC accepted the Panel's September 21 proposal as "fair, equitable and workable" but did not impose it. In line with Thabo Mbeki's recommendation, it requested "the Parties to engage each other on the basis of the AUHIP's [African Union High-Level Implementation Panel for Sudan] proposal" with a six-week deadline, adding that if this deadline were not met, "Council will endorse the 21 September 2012 proposal as final and binding and would seek endorsement by the UN Security Council [UNSC] of the same."¹¹

The AUPSC also gave a two-week deadline for the two governments to agree on a process for resolving the five disputed areas, also threatening to make a "final and binding determination" and seek to UNSC endorsement if they

could not agree.¹² In this case, the AUPSC was not asserting a right to determine territorial status, only the process for reaching such a determination.

The UNSC would not have followed the AUPSC's purported decision. Neither body had the authority to arbitrate on a territorial dispute. Sudan knew this. Princeton Lyman, however, was frustrated that Mbeki and the AUPSC had not intervened more forcefully, noting "[We] understand the reluctance to impose a deal. But leaving it murky has other risks."¹³

Over the next six weeks, the Panel repeatedly contacted both sides to urge them to meet, but this was in vain. They could not even manage to convene the Abyei Joint Oversight Committee (AJOC).¹⁴ Meanwhile, the government of Sudan (GoS) lobbied friendly governments on the AUPSC and UNSC saying that the AUPSC had overreached its mandate.¹⁵ When the AUPSC met again on December 14, Sudanese foreign minister Ali Karti lambasted it, insisting that it could not decide territorial disputes.¹⁶ After several ambassadors complained about their lack of consultation on the previous communiqué, the AUPSC backtracked, announcing that it was deferring a decision on Abyei until the AU summit in January.¹⁷ This provoked the fury of South Sudan.¹⁸ Mbeki did not intervene to stop this delay, prompting another lament from Lyman.¹⁹

The discontent on either side was broader than Abyei. When the Joint Political and Security Mechanism (JPSM) convened in Juba in November, generals on both sides strove to spoil the work of the politicians. First of all, one Sudan People's Liberation Army (SPLA) general attempted to annul the passages of the agreements relating to the Fourteen Miles on the grounds that they had not been agreed by the JPSM, a gambit the AUHIP shut down by pointing out that the relevant agreement was signed by the JPSM cochairs. The Sudan Armed Forces (SAF) generals then courted controversy by maintaining that the JPSM must address the question of SPLA disengagement from its ninth and tenth divisions, which the southern generals tried to rebut by observing that this matter concerned an area more than fifty kilometers away from the border and as such did not fall within the purview of the JPSM's ad hoc committees.²⁰ The northern rejoinder was that since the September Agreements covered the harboring of rebels, the mandate of the ad hoc committees needed to be expanded. On the ground, SAF troops blocking the oil ministry's plans to immediately resume pumping oil had also prevented traders crossing the newly reopened border.²¹ Pagan, now positioning himself as a dove, would go on to lament that the army was deliberately undermining the efforts of the *Naivashiuun* to make the agreement stick.²²

By December, the gains made in the September Agreements were fragile. Nhial Deng said that they had "lost traction."²³ The conflict in South Kordofan had intensified with fierce fighting around Kadugli.²⁴ The SPLA generals

introduced new demands on the Fourteen Miles, insisting that its length should be truncated so that only the area inhabited by the Malwal Dinka was incorporated, not its full length. They also attempted to reintroduce the ten kilometer buffer zone to the north of the Fourteen Miles area—either Pagan had not informed them of the understanding reached in Addis Ababa, or they deliberately ignored him.²⁵ The northern generals, however, had an advantage. South Sudan was faring worse in the race to the economic bottom. It insisted on full implementation of the security agreements before reopening the oil pipeline.²⁶ Everything stalled.

The AU Border Program experts had hoped to complete their work in October but were frustrated. They traveled to Khartoum and Juba, but both sides asked for more time.²⁷ Their terms of reference had been restricted to “disputed areas” only, the “claimed areas” excluded because they did not have an agreed process to examine them. On the southern side, Riek Machar Teny had been the highest-ranking champion of the new map, and—determined to find documentation for the claimed areas—he flew to London to meet historians and delve into the colonial archives. He reportedly found little that could bolster the legal case. By February, the GoS had submitted more than five hundred documents and maps to the team of experts, and the Republic of South Sudan (RSS) just one hundred, and Riek’s staff asked for another postponement so they could continue their research.²⁸

The January 2013 Summit

Mbeki’s strategy for Abyei had not changed: It could only be settled by agreement between the two heads of state. The January 5, 2013, summit was an opportunity to try this one more time. One new factor was that almost all other issues were either settled or on track. Another was that each felt vulnerable domestically.

Mbeki and Hailemariam invited al-Bashir and Salva Kiir Mayardit to Addis Ababa and they agreed promptly. They arrived the day before and had separate bilateral meetings on January 4 with Mbeki and Hailemariam.²⁹ The delegations then assembled at the Jubilee Palace the following morning. Hailemariam was enthusiastic to help. He was also deferential to Mbeki insisting that he was acting as Intergovernmental Authority on Development (IGAD) chair in support of the AUHIP, and asked Mbeki to open and chair the meeting.³⁰ At the opening meeting, foreign ministers were also present, but Mbeki proposed that for the substantive discussions, it should be the presidents alone. The foreign ministers left, reluctantly. Lissane Yohannes remained as minute-taker. The meeting

lasted two and a half hours. It went smoothly. They agreed to implement the steps agreed upon: constituting the Abyei administration, council, and police, and, when that was done, to reconvene to consider the referendum.³¹ Three other items were included on the agenda: border security (the perennial Fourteen Miles), the process for disputed and claimed areas, and Juba's support for the Sudan People's Liberation Movement-North (SPLM-N).

The last point was the only fractious issue. In the previous day's bilateral meeting with al-Bashir, Mbeki said that he believed Kiir would be willing to write a letter officially disengaging the SPLM-N, but others close to him were reluctant.³² When the item came up in the summit, Kiir stuck to his position that nothing more needed to be said or done.³³ Al-Bashir accepted that a letter had been written, but said what mattered was deeds, not words, and the SPLA continued to support its northern divisions. Kiir replied that some officers might be helping the two divisions without his knowledge.

The summit outcome was not a formal agreement, but instead a report signed by Mbeki and Hailemariam, and agreed by al-Bashir and Kiir. The relevant section on security matters reads: "The Presidents confirmed that any complaints or concerns relating to this matter should be dealt with by the JPSM according to the processes contained in the agreed Security Arrangements."³⁴ The other key decision was an "Agreement on the implementation of existing agreements," specifically that "the AUHIP will act immediately to draw up a Matrix, with Timeframes, for the speedy, unconditional and coordinated implementation of all these Agreements."³⁵ These two outcomes—the complaints mechanism and the implementation matrix—became the focus of the Panel's activities during the year.

After the meeting, Mbeki wrote a succinct, four-page report. It has Mbeki's distinctive prose and paragraph numbering. Lissane hand-delivered copies of the draft to al-Bashir and Kiir, making sure they received them personally, to ensure that no copies circulated among the delegations before the text was finalized. Al-Bashir agreed it was an accurate record. Kiir had three small amendments.³⁶ A press conference was scheduled for that evening, at which Mbeki and Hailemariam would speak and formally sign the report.

Until that point, the summit had passed without drama. The group of SPLM leaders who hailed from Abyei—widely known as the "Abyei boys"—tried to inject some, apprehending Ethiopia's new Foreign Minister Teodros Adhanom and demanding, without success, that the decisions be frozen until they could have their input, and pressing Lyman, too.³⁷ Lyman had some sympathies, lamenting, "summitry is not enough."³⁸ But no progress could be made on Abyei without Kiir pressing for it. Kiir and al-Bashir had some appreciation of each other's constraints, and Kiir's acceptance of the Panel's September 21

proposal had contained language that, decoded, meant he would wait for more propitious circumstances before pressing for a decision.³⁹

Kiir had to respond to internal pressures, too. He signed a letter to Mbeki on January 10, taking a tougher line. The gravamen was that the AUPSC had adopted the Panel's proposal as final and binding; al-Bashir had agreed to set up the administration, council, and police by the January 13 meeting of the delegations; and, as soon as those decisions were acted on, "What makes us not determine the final status of Abyei?"⁴⁰ He proposed another summit with al-Bashir for January 24, just before the AU annual summit in Addis Ababa, exactly a year on from the oil shutdown.

The JPSM met on January 17–18 alongside the Lead Negotiating Panel and the AJOC. The meetings did not deliver the promised implementation steps. Imad Adawi continued arm-twisting, insisting that Khartoum would not allow South Sudan's oil to be pumped until it had its way on the Fourteen Miles.⁴¹ Afterward, Mbeki wrote to al-Bashir and Kiir proposing that they meet again to resolve all the pending items other than the final status of Abyei.⁴² Although Lissane shuttled between the GoS and RSS delegations in the AU's new conference hall as its summit was in session, no meeting between the two could be arranged.

The AUPSC met at presidential level on January 25, and Mbeki presented his report. The council urged al-Bashir and Kiir to continue their negotiations and asked for the Panel to report again in March. The "final and binding" words were dropped—the communiqué instead called only for "further determination on the matter."⁴³

The Implementation Matrix and Tensions over Abyei and the Two Areas

There was a new deadline—March—and the Panel convened more negotiations over the following weeks. Mbeki and Abubakar were required to be intrusive in a manner that they neither sought nor welcomed. Buyoya had taken the post of AU high representative for Mali and the Sahel and was no longer active on the Panel.

The power relations and calculations between al-Bashir and Kiir were shifting. Al-Bashir had seen off the immediate threats to his position, but had also given up on normalizing relations with Washington, D.C. Kiir was getting weaker as dissent in the SPLM became public. The US was keen to deter Khartoum from its economic warfare and signaled that it would convene donors to prevent South Sudan's economic collapse.⁴⁴ And the pipeline was still not

reopened. The Panel was, reluctantly, cajoling the two governments to cooperate to save themselves from their worst instincts. It was a tedious and demanding job. After stepping back during the October to December period, Mbeki was now actively engaged on an almost daily basis. He served as the pen-holder, recording decisions made by al-Bashir and Kiir and assessing progress, with frequent letters to the two presidents, the ministers of defense, and the lead negotiators. Abubakar chaired a series of special JPSM meetings. Meanwhile, Panel staff drew up matrices for the implementation of JPSM decisions, the temporary arrangements for Abyei, and indeed all of the September Agreements.

The JPSM agenda focused on specifying the implementation matrices and then implementing the items one by one. The first was on March 8–11. The two sides agreed to implementation modalities for the security agreement, including provisions for the Fourteen Miles. Involving the lead negotiating panel in an overlapping session, the meetings concluded with the adoption of a detailed implementation matrix, which was drawn up by the Panel and signed by the parties in the early hours of March 12.⁴⁵ As the final details were being pinned down, and the GoS prepared its instruction for reopening the oil pipeline, Abdul Mohammed remarked: “In the entire Sudanese political system, nothing gets any finality. Wars don’t solve their problems. We didn’t solve their problem, but we prevented them from going to Hell.”⁴⁶

At the next JPSM on March 19, the focus was on the complaints mechanism.⁴⁷ Although the disengagement of RSS from SPLA-N was not an agenda item, it was discussed and noted that “the GoS position is that the documents [provided by RSS] do not suffice and that an additional mechanism to manage disengagement is key.”⁴⁸ The progress unlocked the “coordinated” first steps on the remaining agreements—most important, a belated resumption of oil exports. South Sudan’s oil production resumed on April 6. A week later, al-Bashir flew to Juba where his meetings with Kiir were “cordial and fruitful,”⁴⁹ and the South Sudanese president suggested that recent developments augured “a new phase in our history.”⁵⁰ After another meeting in Addis Ababa, orders were given to reopen border crossings.⁵¹

Remarkably, al-Bashir and Kiir reached their agreements, although almost no political progress was made on Abyei and the Two Areas, and against a background of generals on both sides stoking tensions by fabricating claims about offensives planned by their opposite numbers.⁵² It appeared that Kiir’s letter formally announcing that the RSS was disengaging from the SPLM-N was enough to make the difference.⁵³ The SPLM-N raised noisy objections to the implementation matrix, arguing that it would never work because they controlled large parts of the border.⁵⁴ The Panel, United Nations Interim Security Force for Abyei (UNISFA), and the internationals were well aware that, as

Lyman put it, the situation on the ground left the Safe Demilitarized Border Zone (SDBZ) and Joint Border Verification and Monitoring Mechanism (JBVMM) “unable to fulfil their proper functions.” The SPLM-N were also unhappy about the planned location of the JBVMM in Kadugli, since they were fighting for Kadugli.⁵⁵ It seemed, however, that the GoS had decided the best way to make progress on these issues was to try to lever Kiir apart from the SPLM-N and the Abyei boys. They had been afraid earlier in the year that Kiir was losing his grip and could easily be sidelined by SPLA generals who would take a more hard-line anti-Khartoum stance.⁵⁶ Month by month, the GoS espied more opportunities for fomenting division in the south. By March 2013, Kiir was facing a major leadership challenge, as Machar, Pagan, and John Garang’s widow Rebecca Nyandeng each declared that they would stand against him in the next elections, scheduled for 2015. On April 15, Kiir suspended the executive powers delegated to Machar as vice president.

On Abyei, at the January summit, the presidents reached their first significant accord since June 2011. The presidency gave the AJOC cochairs instructions to immediately form Abyei’s administration, council, and police service. Thereafter, Luka Biong as the southern cochair removed the previous stumbling block by agreeing to the appointment of a Misseriyya to chair the council.⁵⁷ As soon as one impasse ended, however, another emerged, as RSS representatives on AJOC demanded that the Ngok should have 60 percent representation on the council, citing the similar distribution during the CPA period. On April 12, the two presidents agreed to set in motion the creation of the Abyei Area Referendum Commission.

Nothing of substance happened after that. The referendum commission was not formed. The SPLM organized its own referendum in October 2013, the date penciled in thirteen months earlier. More than 99 percent of sixty-three thousand registered voters, almost exclusively Ngok Dinka, cast their ballots to join South Sudan. The vote was, of course, boycotted by the Misseriyya, dismissed by Khartoum, and not recognized by the AU or UN. Meanwhile, UNISFA held the ring. Over the decade, the mission became a form of humanitarian territorial control, operating a buffer zone between the two countries.⁵⁸ In 2014, the AUHIP reported tersely to the PSC, “There has been no progress in terms of the implementation of the existing agreements on Abyei.”⁵⁹ The same line could be repeated, year after year.

Returning the narrative to March 2013, al-Bashir and Abd al-Rahim had gone ahead over the strong reservations of their generals who said that the south had started pumping oil without the necessary security guarantees and that the SPLA, having withdrawn its forces from the SDBZ as demanded, was now reoccupying its positions. Based on intelligence reports, Panel staff wearily

concluded that “it looks as though those objections were well-grounded.”⁶⁰ At the April 22–23 JPSM meeting, Abubakar and the pro-cooperation lobbies in Khartoum and Juba hoped to sustain the momentum. Abd al-Rahim headed the GoS delegation. On the RSS side, the confusion was ominous. The staff meeting notes read: “SPLA delegation: [Defense Minister] John Kong is sick. [Deputy] Majak is not coming (and in the past [Abd al-Rahim] has refused to sit opposite him). Nhial Deng has vanished. His deputy has never said a word in JPSM (also Grace Daterio). Paul Mayom is not officially part of JPSM but is the most senior. Meeting start delayed so that [SPLA MI head] Majbol can arrive. But he also does not show up.” Mayom led the delegation but he had not been briefed on all the issues. That slowed down the proceedings. Abd al-Rahim complained that “each time we are faced with a new person.” Mayom conceded, “It’s true. I needed to work through with some of the comrades who had not had [the] text and convince ourselves.” Mayom was, however, a capable delegation leader. Abubakar patiently but firmly steered the meeting and at its close, signing the document with the agreed decisions, Abd al-Rahim described it as “opening a new page.”⁶¹

As so often, momentum forward met an equal and opposite force in the other direction. On this occasion, it arose from the Two Areas talks. For the first time since Meles’s last-ditch effort in August 2011, the GoS and SPLM-N agreed to meet face-to-face. Much had of course happened in the meantime. The SPLM-N had jointly constituted the Sudan Revolutionary Front (SRF) with the Darfurian movements. The GoS had been active soliciting local allies in South Kordofan. Nafie Ali Nafie had coopted the former SPLM governor Daniel Kodi and the Sudan National Party as Nuba allies against Abdel Aziz al-Hilu. Kodi and his supporters made the argument that the Nuba were fighting and dying while politicians like Yasir Arman and al-Hilu were negotiating Khartoum politics in hotels.⁶² At a meeting of Kodi’s party, Nafie declared that al-Hilu and Yasir should be defeated militarily to force them to negotiate without preconditions.⁶³ Nafie was underestimating the extent of local support for al-Hilu in particular, but his campaigning undermined the efforts of moderates in the National Congress Party (NCP) to come to terms with the SPLM-N. Al-Bashir had meanwhile announced plans for a national dialogue and constitutional review process, including only legally registered political parties.

The tripartite proposal for humanitarian access had died a death. There was no agreed mechanism for relief aid to reach civilians in the SPLM-N-held areas. Part of the problem was that the SPLM-N continued to refuse any talks over humanitarian access upon formal legal recognition of itself by the GoS. Mike Bailey assessed that the SPLM-N was still focused on securing military advantage and that its humanitarian agenda came a poor second.⁶⁴ He worked

with Lyman to find ways to get aid to the Nuba Mountains without Khar-toum's consent.

The AUPSC had repeated its demand for direct negotiations between the GoS and SPLM-N, but the GoS had twice postponed. When the Panel persuaded the two sides to meet in April, Yasir first asked why he should sign an agreement with him when he had already signed with the "more senior" Nafie almost two years earlier.⁶⁵ He agreed to come, but insisted that he wanted to discuss the constitutional process. For the GoS, Ibrahim Ghandour gave a new reason for rejecting the June Framework, namely that Nafie was not mandated to sign on behalf of the NCP, only the GoS.⁶⁶ Ghandour's delegation included Kodi and other non-NCP groups from South Kordofan. He said that his delegation represented the GoS and was mandated only to talk about the Two Areas. The Panel drew up a proposal with four elements: "humanitarian-plus" cessation of hostilities; direct negotiations between the GoS and SPLM-N; national dialogue on the future of Sudan; and modalities for third-party engagement.

Following a spate of meetings, Mbeki summed up the challenges in the evening of April 24: "Both sides committed to make progress; stop shooting and humanitarian assistance—practical steps to be taken; how do we address the other elements of a political agreement?; and what should be the role of the third party, and who should take that role."⁶⁷ He was repeating points he had made many times over the months.⁶⁸ It was also clear that preliminary meetings with each side would be needed to clarify their positions before they could begin negotiations proper. Mbeki tasked his staff with drafting a "declaration of common intent"—changing the name from the previously-used "guiding principles" and resembling a skeletal version of the June Framework but starting with a focus on a cessation of hostilities and humanitarian access and concluding the political agenda modestly with the formation of negotiations committees.⁶⁹ This document was completed just before midnight and delivered to each delegation. The idea was that each side would study the paper and respond the next day.

Verbal responses came in the morning, each was "initially negative" saying that the draft gave far too much to the other side.⁷⁰ Ghandour signaled that the GoS position was unchanged since September, and so it transpired when he met with the Panel in the afternoon. In turn, when Yasir met the Panel, he presented a long political analysis and manifesto that did not engage with the substance of the document at all. This response signaled a lack of readiness to engage at best, and internal divisions that made engagement impossible at worst. The next morning, each delegation delivered its written paper. They were as far apart as was feared. For example, the GoS paper recognized "citizens of Sudan who are members of SPLM-N," and did not recognize the SPLA-N and had no structures (such as a ceasefire commission) that would engage with the rebel army in

an organized way.⁷¹ The SPLM-N presentation had details on the ceasefire and humanitarian action but no onward link to a negotiating process.⁷² Its proposed ceasefire was limited to six months. Abubakar commented, “give them [each other’s] papers and read the riot act to them.”⁷³ In its later report to the AUPSC, the Panel wrote: “The AUHIP considered that the positions of the two parties were so far apart that it would serve no purpose for the Panel to seek to reconcile their positions.”⁷⁴

Mbeki and Abubakar were resolved that the session should not close without the two delegations having met face to face. At midday on April 26, they summoned Ghandour and Yasir to meet. It was a short encounter in which they exchanged papers and Ghandour and Yasir walked out hand in hand. They met privately that afternoon. At nightfall SPLM-N and Justice and Equality Movement (JEM) forces attacked two towns in South Kordofan and took the war into North Kordofan with a surprise attack on the city of Um Ruwaba. In the fighting overnight and into the next day, at least fourteen civilians died.⁷⁵

Keeping Talking While Things Fall Apart

The Um Ruwaba attack was potentially no less destabilizing than the Heglig attack a year earlier. Sanity was losing the race again. Each side knew exactly how to destabilize the other and each was using that expertise efficiently. Security in Abyei sharply deteriorated, and on May 4, the Ngok Dinka paramount chief, Kuol Deng Majok, was assassinated while he was being escorted by UNISFA.⁷⁶ An Ethiopian peacekeeper was also killed, as well as seventeen Misseriyya militiamen who mounted the attack.⁷⁷ The SPLA reoccupied three areas of the SDBZ from which it had recently withdrawn. The GoS was angry and on May 19, al-Bashir announced his intention to shut down the oil pipeline, just weeks after it had reopened. Mbeki raised the crisis the following week on the sidelines of the special AU summit marking fifty years since the establishment of the Organization of African Unity on May 25, 1963. He met with al-Bashir who demanded that the SPLA withdraw from the SDBZ and stop supplying the SPLM-N and SRF. He met with Kiir the following day, and then wrote to al-Bashir, copying Kiir, with the outcome of his discussions: “I informed President Salva Kiir that Your Excellency’s decision with regard to the two (2) matters I have mentioned above was that if the GoRSS did not address these satisfactorily, the GoS would take steps to suspend the transport and export of South Sudan oil through Sudan.”⁷⁸

The “D-Day” for this was the meeting of the JPSM scheduled for June 5 in Juba. Mbeki continued: “H.E. President Salva Kiir informed me that he had

made an undertaking to Your Excellency which he would honour, that on his return to Juba after the AU Summit Meetings in Addis Ababa, he would immediately direct the SPLA to send senior officers to the areas concerned to establish the truth with regard to the disagreements relating to the SDBZ.”

Both governments then asked the AUHIP to convene an extraordinary meeting of the JPSM.⁷⁹ Juba’s delegation arrived on June 8. So, too, did news that al-Bashir had ordered the petroleum minister, Awad al Jazz, to set in motion the process of shutting down the oil pipeline.⁸⁰ This news was correct: The companies had been directed to submit plans within a week and be prepared to shut down the pipeline after sixty days.

Ever since de Waal published his “doomsday machine” article in the *New York Times* at the time of the oil shutdown, Pagan had greeted him with the words, “prophet of doom!”⁸¹ As the months passed, the salutation became less rancorous. Arriving that afternoon in Addis Ababa, Pagan greeted him, “Prophet of doom . . . now it seems your prediction is coming true.”⁸² He was speaking about both the economic calamity and the crisis within the SPLM. Little more than a month later, Pagan would be fired. Meanwhile, news from every quarter was getting worse. Conflict in Jonglei had escalated, with the SPLA’s eighth division dispatched to suppress a rebellion using scorched-earth tactics redolent of the most horrific episodes of the civil war. There was a political vacuum in Juba, and General Majbol was said to be using the opportunity to resupply the SPLA’s ninth division in South Kordofan. The GoS did not send a delegation to Addis Ababa. There was no JPSM.

Instead, Mbeki wrote a twelve-page letter to both presidents outlining their respective commitments, actions, and allegations. He copied IGAD, the AU, and the UN. Having detailed the reciprocal claims by each side of the other supporting rebels and the absence of any report on how these claims were being verified, he concluded: “We have received no Report from either Party and therefore conclude that this process has run into a cul-de-sac and has been abandoned.” He continued, that if the parties themselves could not resolve this question,

As the AUHIP, so far we have had no way to mediate the dispute about this immensely important issue. Rather, we have been subjected to what has amounted to a sterile, unproductive and exasperating process of:

- accusation vs denial;
- counter-accusation vs counter-denial;
- presentation of contradictory “facts” to the Panel; and,
- mutual communication of shared mistrust.⁸³

The letter went on to detail the other disputes over the SDBZ and hostile propaganda. Mbeki proposed that, the bilateral mechanism having broken down, the AU and IGAD should set up an Ad Hoc Investigation Mechanism (AIM) “for ascertaining the facts relating to any claim by either Party with regard to the matter of support and harbouring of any armed rebels” with a deadline of June 20 for the parties to submit all relevant information, whereupon the AU and IGAD would assess, follow up, and propose next steps by July 25 (a few days before a scheduled PSC meeting). He also proposed an investigation by the AU Border Program to resolve the controversy over whether SPLA forces were inside the SDBZ.

The Panel did not want the matter to go back to the AUPSC or the UNSC without the chance for this investigation first. The letter was intended to start a dialogue between the two sides, without drawing the AUHIP into the role of arbiter.⁸⁴ Khartoum would have understood that the AIM was now all that stood between them and another UNSC resolution, which was something they feared. Juba understood that this was what stood between them and a shut-down. Both al-Bashir and Kiir accepted the proposal.

The GoS sent a long report on the South’s failures to implement its commitments: “The joint efforts led by the Commander of UNISFA, have so far failed to determine the Zero-line in Al-Tashween area, the Heglig-Pantio [*sic*] corridor, due to direct obstruction from South Sudan armed forces which prevented the technical team, including representatives from South Sudan, from entering the area. It is to be noted that the South Sudan armed force still exist inside the Sudanese territories in the said area. This was confirmed by the commander of UNISFA.”⁸⁵

Annexed to the report, the GoS supplied the coordinates of fourteen SPLA positions north of what it said was the border.⁸⁶ It also provided credible details of South Sudan’s military and logistical support to all four military components of the SRF (i.e., SPLA-N, JEM, and the two SLA factions), including the vehicles used in the attacks on North Kordofan, and alleged that the ninth and tenth divisions were still on the SPLA payroll.⁸⁷

Kiir responded on June 15. The lack of detail in his letter reflected his limited command and control over all his SPLA divisional commanders or military intelligence. He wrote: “When we met in Addis Ababa, President Bashir continued to threaten me that he would shut down the oil flow if we did not stop supporting the SPLM-N (SRF). [*sic*] During that meeting, I reiterated the fact that we are not supporting them, nor do we have the economic capacity to do so as we have not had oil revenue for over fifteen months.”⁸⁸ Kiir questioned Mbeki’s repeated raising of this issue, questioning why the Panel “seemed to agree” with the GoS claims of continuing support. He continued: “Our historic relationship

with the SPLM-N is not a secret, but I made my point clear and gave instructions that since the independence of South Sudan, non-South Sudanese are not to be part of the SPLA. Copies of these instructions have been communicated to you and President Bashir. I am therefore left to question where this insistence comes from.” The fact was, of course, that intelligence sources continued to indicate substantial assistance, and that if Kiir had indeed given those instructions, his generals had not followed them. Ever since his meeting with President Obama, Kiir’s denials had a credibility gap. Moreover, with the threat of a second oil shutdown hanging, observers were increasingly worried about the disintegrating cohesion of both the government and army in South Sudan.

Meanwhile, the war in the Two Areas was intractable. An internal strategy memo for the Panel observed, “Although they have relied on external military and financial support to be able to take the offensive, the Nuba fighters of the SPLM-N are quite capable of mounting a very sustained defensive action with minimal or no external support at all.”⁸⁹ The GoS was coming to a similar conclusion, namely that its existing forces could not defeat al-Hilu. Khartoum faced a similar problem with the JEM in Darfur. Al-Bashir explored alternatives, and in August 2013, he inaugurated a new paramilitary, the Rapid Support Forces (RSF). Formally answerable to National Intelligence and Security Service (NISS), the RSF coordinated its operations with SAF, although the SAF chief of staff and other senior officers were unhappy about its capacity. The RSF was commanded by General Mohamed Hamdan Dagolo, known as “Hemedti,” and most of its officers and men were Darfurian Arabs.

Mbeki wrote to al-Bashir on June 23, proposing that the progress on the implementation matrix, the agreed principle that actions needed to be taken in a “joint and coordinated manner,” and the existence of the AIM meant that the shutdown threat should now be suspended. Al-Bashir responded on July 7, indicating that he agreed to give the necessary time for AIM and the AU Border Program team to conclude their work, and he had opted to delay the shutdown plan to begin on the expiry of the sixty days deadline. Mbeki briefed the AU and the internationals accordingly. Then, the Panel received word from the oil companies and South Sudan that the GoS had given instructions to proceed with the shutdown on an unchanged timetable. Mbeki wrote a stern letter to Idris saying that this posed a “quandary and embarrassment” to the Panel.⁹⁰ With a meeting of the AUPSC pending on July 29, Mbeki sent Idris the report on the AIM which, in his words “indicates the virtually immediate readiness of these mechanisms to discharge their responsibilities” and changed his schedule to be able to visit Khartoum on July 25 on his way to Addis Ababa. On that day, al-Bashir hosted Mbeki and the Ethiopian foreign minister, Teodros Adhanom. The Sudanese president asserted that the south was buying equipment for

rebels and that while the GoS wanted the money from the TFA and oil fees, this should not be at the expense of the survival of the Republic of Sudan.⁹¹ But he conceded Mbeki's request: The GoS was prepared to extend the deadline to August 22, but if no progress was made toward cessation of southern support to the rebels by then, he would have no option except to impose the shutdown.

The AUPSC met on July 29 at ministerial level. It endorsed the AUHIP report and extended the Panel's mandate for six months. It also finally moved to unify the AU's Sudan strategy, bringing Darfur back in. The communiqué's words reaffirmed its "belief that the agreed goal of achieving two mutually viable States can only be achieved in the framework of an agenda of democratization, conflict resolution and peaceful coexistence between and within both States."⁹² It then requested the Panel to consult the GoS on how best to reengage on Darfur. The AUPSC was reasserting the principles it had enunciated when mandating the AUHIP back in October 2009.

Al-Bashir and Kiir had come to terms. But, as Mbeki noted, "[The] internal situation in both countries is more pronounced than inter-state."⁹³ In brute fact, the question of "who dies first" had been answered. South Sudan had lost. On July 23, Kiir dismissed his cabinet, removing (among others) Machar, Pagan, Alor, and John Kong. Those were the men most determined to confront Khartoum. He did not purge the army, however. Two weeks later, Abdul Mohammed found Kiir "fatigued but content," explaining that the actions of the men he had dismissed "had left him with no choice but to take the drastic actions he did. Their continuous 'bad-mouthing' of his Presidency had even undermined their performance of their governance functions." The new cabinet included "a number of individuals on the list [who] are not considered true SPLM cadres but are perceived as having close links to Khartoum." Meanwhile Sudan's ambassador in Juba, Mutrif Siddiq, "said that he was by and large, very supportive of the new administration and finds them more conducive for improved relations with Khartoum." Abdul concluded that "for now, President Salva is focussed on consolidating his grip on the administration and the military, as well as on keeping the oil flowing, and consequently is seeking to improve relations with Khartoum" and added that his challenge lay within the SPLM.⁹⁴ Kiir had settled for the junior place with respect to al-Bashir.

South Sudan's Path to Civil War

Kiir had brought his quarrelsome lieutenants into his "big tent" when he took over from Garang. At some point, he was going to have to strike camp and move on with a smaller band. His decision to do so, under duress, in mid-2013,

turned quarrels into war. Over the next four months, the rival camps inside the SPLM maneuvered against each other. Kiir's opponents were confident that they had a majority among the fifty members of the politburo and would pass a vote of no-confidence. They did not agree on what would follow. Knowing the numbers, Kiir refused to convene the politburo and instead planned to call the National Liberation Council, the more senior and much larger body, where he expected to prevail.⁹⁵

Mbeki followed the escalating tensions within the SPLM with concern. Visiting Juba in September, he offered his good offices to help the party leaders resolve their differences. Mbeki met first with Kiir, and then separately with Machar, Pagan, and Alor. His view was that Kiir had been elected and could be removed only by constitutional means. All acknowledged that their country was in crisis and what was holding it together was the SPLM. Party mechanisms were more robust than government institutions, so that the dispute had to be resolved within the party. All feared that tribalizing political differences would be calamitous.

Mbeki proposed that the rivals should meet in his presence, having first prepared their positions in writing. He could either chair the meeting or serve as the scribe keeping an independent record of what transpired. If the SPLM leaders could not agree a path forward, Mbeki would be on hand to formulate suggestions. They agreed. But they never called him for the meeting. Abdul and Neha Erasmus followed up with a visit to Juba, but neither Kiir nor his challengers committed to a date. Neha was frustrated: "We should have been engaging intensely at that moment. And fine, we may not have been able to stop it [but] I really feel the South Sudanese would have listened to us."⁹⁶ Mbeki planned to visit again in December, but on the day he was en route to arrive in Ethiopia, Nelson Mandela died, and Mbeki returned home. Kiir flew to South Africa to pay his respects to the revered freedom fighter as his body lay in state. There, on December 11, in response to Mbeki's questions, Kiir said that he was managing the internal dispute, and Mbeki did not need to intervene yet. He promised to call, but did not. On December 15, the day of Mandela's funeral, Kiir was back in Juba and the National Liberation Council met. As expected, the debate was fractious, and that evening, shots were exchanged between ethnic Dinka and Nuer soldiers at the SPLA headquarters. This spark turned the political dispute into a civil war.

Abdul, Haile Menkerios, and US Special Envoy Donald Booth decided that a high-level delegation should go at once. Ethiopian foreign minister Teodros Adhanom led a group of IGAD foreign ministers, as well as the UN (Menkerios), the AU (Ramtane Lamamra), and the Panel (Abdul), arriving on 19 December—possibly the fastest response to civil war in African history.

Some diplomats, notably the Americans, had been frustrated at the AUHIP style, which they saw as insufficiently assertive. Because it was South Sudan, the Americans had direct access to the president and longstanding relationships with all the major actors. They wanted a fast resolution and pushed for it. Panel staff wrote briefing notes and outline proposals that Tedros and his delegation took to Juba. These focused on an immediate humanitarian ceasefire and political talks. Kiir, however, was reluctant to meet.⁹⁷ After keeping the ministerial delegation waiting, Kiir finally asked them to enter his office, but he gave the floor to SPLA generals to explain the situation. Kiir's office resisted the delegation's request to meet with the opposition, claiming, falsely, that the detained politicians were under house arrest outside Juba. Abdul was in contact with them, and with Machar, by phone, and knew the truth.⁹⁸ They met only with Rebecca Nyandeng, the widow of John Garang. As they left Juba, they learned that Ugandan troops were deploying to defend Juba—information not shared by the Ugandan minister on the team.

The delegation debated whether to call for political negotiations or just a ceasefire.⁹⁹ Immediately on their return to Addis Ababa, African Union Commission Chair Nkosazana Dlamini-Zuma called for political dialogue and an "immediate humanitarian truce for the Christmas season."¹⁰⁰ The next day AUHIP staff drafted modalities for a ceasefire.¹⁰¹ In consultation with Mike Bailey, the US military adviser to the special envoy, the draft was slimmed down to a temporary cessation of hostilities with a basic complaints mechanism.¹⁰² Bailey's logic was to keep it as simple as possible to avoid them raising objections on details.¹⁰³ In the process, the role of United Nations Mission in South Sudan (UNMISS) was limited, reflecting a crisis of confidence in UNMISS. The Special Representative of the Secretary-General (SRSG), Hilde Johnson, hinted at this in her memoir.¹⁰⁴ The AUPSC met on December 24 and reiterated the call for dialogue, humanitarian truce, and protection of civilians.¹⁰⁵ The UNSC echoed this the same day.¹⁰⁶ The South Sudanese belligerents took no heed and fighting and atrocities escalated. The US pushed Ethiopia and Kenya for a more assertive intervention, while quietly giving a green light to Uganda to dispatch armored and airborne troops to stop the insurgents marching on Juba. On December 27, Kenya convened an IGAD summit and appointed General Lazaro Sumbeiywo, the veteran Kenyan soldier who had been the lead mediator for the CPA, Seyoum Mesfin, and an as-yet-unnamed Sudanese official as special envoys for South Sudan.¹⁰⁷ Three days later, the AUPSC, at heads of state level, endorsed this.¹⁰⁸ It was an extraordinary, concerted, high-level effort. It did not work.

In response to Panel staff suggestions, Mbeki put his views in writing. He defined the conflict as originating in a split within the ruling party, which had

led to an armed insurgency aimed at overthrowing the constitutional order—something that could not be accepted. A dispute within the SPLM should not, he implied, be reason for forming a transitional government. Instead, South Sudan had the responsibility of ending the armed conflict and restoring order, and “encouraging and supporting the Government and people of the RSS to prepare for and engage in an inclusive dialogue to consider and agree on all matters relevant to the building of a peaceful, united, democratic, prosperous and viable Republic.” He concluded, “It is important that the AU should also take the lead in rallying support for IGAD as the focal point in terms of mediating the resolution of the conflict in the RSS.”¹⁰⁹ Mbeki was handing on the baton.

Sudan’s Road to Failure

Al-Bashir did not “die first.” But Sudan had been badly hurt, and the government’s survival was not assured. The Cooperation Agreements revived the two countries’ promise jointly to approach international donors and creditors. The March 2013 implementation matrix also encouraged the International Monetary Fund (IMF), which wrote that it “offer[ed] an opportunity to continue the adjustment process by implementing bold reforms to address the post-secession challenges.”¹¹⁰ Both governments sent delegations to the annual meetings of the IMF and World Bank in October. On the sidelines, the Technical Working Group on Sudan’s external debt met.¹¹¹ Mbeki was invited. He revived his proposed package for comprehensive debt relief, international transitional assistance for Sudan, and development aid for South Sudan. Before the meeting, Mbeki consulted with Paatii concerning the message to be conveyed, agreeing that it should range beyond the immediate issue of debt relief technicalities.¹¹² Mbeki wrote that, if Sudan and South Sudan were not able to address successfully their political-economic challenges, then “the present and grave danger that these [threats] can transform both States into the kind of ‘weak or failed States’ we mentioned earlier.” In its coverage of the meeting, *Sudan Tribune* quoted a senior IMF official on the challenge of Sudan securing debt relief “even if it satisfied technical and economic requirements.” Edward Gemayel, deputy director of the IMF Middle East and Central Asia department, said, “I’m not saying this is impossible but it is difficult because it is linked to political issues which requires a public relations effort with member countries.”¹¹³ The optimistic moment of 2011 had passed, and both governments were regarded with deep skepticism by the international donors. A joint delegation to the 2014 spring meetings of the IMF and World Bank was politely received but also made no progress. It was not until after the 2019 revolution in Sudan,

that the technocratic government of Prime Minister Abdalla Hamdok devised a credible plan for rescheduling and relieving the debt, and the realpolitik of General Abd al-Fattah al-Burhan was able to strike a bargain with the US administration for lifting the state sponsor of terror designation, as a quid pro quo for Sudan joining the Abraham Accords and recognizing Israel.¹¹⁴ Only then could the technical work done almost a decade earlier bear fruit. That the lifting of sanctions was too late.

In the meantime, al-Bashir's priority was political survival rather than economic adjustment. In September 2013, Khartoum belatedly introduced severe austerity measures, bringing unrest to the streets of Khartoum and dissent among the political class. Leading Islamists, including Ghazi Salah al-Din, petitioned al-Bashir, calling for the reforms to be reversed.¹¹⁵ Against a backdrop of widespread popular protests and their violent suppression, a coalition of political and civil society groups, including the Sudan Professionals Association, created a resistance movement. They recognized it might be a long struggle.

In January 2014, al-Bashir made a much-heralded speech in which he made a prominent commitment to national dialogue, to address questions of peace, political freedoms, development, and—significantly—Sudanese national identity. The speech was groundbreaking insofar as al-Bashir promised to include armed groups in the national dialogue, in addition to civil society groups and parties.¹¹⁶ He went beyond his prepared text in promising liberalization. It raised the tantalizing prospect that he might be ready to contemplate a managed transition in which he would step down from his executive role—something he had long indicated that he wanted to do. Elections were scheduled for April 2015, and if the national dialogue were to be meaningful, it would have to be completed before the deadlines for registering parties and voters. Critics of al-Bashir's national dialogue were correct in claiming that it was a salvage operation by a regime that had long ago lost its political credibility, but the supporters of the initiative were equally correct that it was the best chance for establishing a workable political dispensation that could allow for a process of reform managed from the top, which might provide a soft landing for the NCP—and indeed for the state.

The AUHIP seized the chance. Mbeki met with al-Bashir in February 2014 and remained closely engaged, including offering a role for the Panel should the Sudanese parties want it. During the course of the year, Mbeki sought to bring the NCP, the civilian opposition, and the armed groups into a single process.¹¹⁷ The Panel's Roadmap included seeking a resolution of the conflicts in Darfur and the Two Areas as part of the democratization of Sudan. In September, the AUPSC adopted the AU Roadmap and empowered the Panel to facilitate a "preparatory meeting" ahead of the dialogue that would ensure "trust building

measures” would be put in place to reassure the opposition.¹¹⁸ This did not take place: Senior NCP officials deployed their skills at delay to prevent a meeting between Mbeki and al-Bashir at which, they feared, the president would support the Panel’s inclusive approach. The SRF rejected the AU Roadmap. After the failure of the ninth round of talks on the Two Areas, Mbeki wrote a fifteen-page letter to Ghandour and Arman elucidating what he saw as their positions and their need to engage more constructively with one another.¹¹⁹ The NCP ran down the clock on the 2015 elections, which returned an overwhelming but delegitimizing majority for the NCP. Henceforth, any national dialogue would at best be a salvage operation. But al-Bashir proceeded, spurning entreaties from the opposition, and opened the national dialogue on October 10. Mbeki declined to attend. The 108 political parties and 38 armed movements that did attend included some (such as the Democratic Unionist Party) that had become opposition in name only, some of the Islamists who hoped for a rapprochement with the NCP, and many small parties that had no significant following or were clients of the NCP.¹²⁰ Al-Bashir had closed the door to meaningful political reform.

While the opposition reflected on the failure of its protests and began reorganizing, the economy continued to slide. In 2014, the price of oil on world markets fell by nearly half. When the agreement on TFA expired in 2016, South Sudan and Sudan renegotiated it bilaterally without any third party. The details were not made public, beyond the fact the TFAs were now being extended for another three years, while the original formula was no longer relevant because of reduced oil production and lower prices.¹²¹ Al-Bashir instructed his reluctant oil minister to reduce fees, and in return, Kiir began withdrawing troops from the border.¹²² They agreed to technical cooperation to try to develop the cross-border oilfields.¹²³ This cooperation coincided with scaling back reciprocal destabilization and later with the signing of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCISS), which bore the fingerprints of Khartoum and Kampala.¹²⁴ By that time, the Sudanese economy had crashed, and millions of urban Sudanese could no longer afford to buy bread.

Part V

REFLECTIONS

THE PANELS AND THE SUDANS IN PERSPECTIVE

The African Union High-Level Implementation Panel for Sudan (AUHIP) engaged in Sudan at possibly the most critical juncture in that country's modern history and was present at the birth of South Sudan as an independent country. This book has sought to document and analyze its role. Making an overall assessment of its contribution is difficult, because of the complexity of the issues with which it engaged and the multitude of factors with which it had to contend. Paramount among the aims of this book is to put on the public record the activities of the Panel and the Sudanese and South Sudanese with whom it engaged to provide insight into what happened in this important chapter of the history of the Sudans.

This book is primarily a work of narrative history. The members and staff of the Panel lived and worked in hope. History, it is said, is lived forward. A decade after the Panel wound down, the story reads as one of hopes confounded and promises betrayed. History is written backward. This account tries to balance these perspectives.

In many regards, the events of the 2009–2014 period in which the Panel was most involved represented a continuity with the long-term patterns in the history of the Sudans than those of the subsequent years. In contrast to the war between the Sudan Armed Forces (SAF) and the Rapid Support Force (RSF) that has been ongoing in Sudan since 2023, the conflicts of this period—in Abyei, Darfur, Blue Nile, South Kordofan, and numerous parts of South Sudan—were largely asymmetric, fueled as they had been before by a dominant financial-military complex in Khartoum. Despite the emergence of an independent state

in South Sudan, a “two countries, one system” logic emerged.¹ After 2012, the Sudan People’s Liberation Movement (SPLM) in Juba did not seek regime change in the north, but its economic war against Sudan represented a crack in Khartoum’s hegemony, which played out over the following decade.

The Panel faced the simultaneous challenges of trying to help the Sudanese transform the long-term patterns that had brought about so much inequality and suffering and preventing secession bringing about an outright calamity. In more favorable circumstances, the Panel had the potential to be part of a transformative political project in Sudan, reorienting the country around the principles of Pan-Africanism after a generation of elites had followed the mode of authoritarian politics of the Middle East and North Africa.

As a former fighter against apartheid, with a lifelong dedication to a democratic, nonracial nation, Mbeki came to this task with unparalleled bona fides. The Sudanese were ambivalent about this. Historically, the Sudanese government had been one of the most prominent allies of the African National Congress, yet its internal opponents accused it of practicing its own system akin to apartheid.² Colonial, and then postcolonial governance in Sudan pursued a logic similar to the apartheid system, with marginalized rural citizens assigned to subnational “tribal homelands.”³ Mbeki’s record of opposing colonialism and racism and championing Pan-Africanism gave him unparalleled political capital, enabling the Panel to achieve the political breakthroughs they did. Yet the Panel members were also mortified by the ethnocentrism and intolerance of some within the ruling circle, most notably during the debates over the government of Sudan’s (GoS’s) plans to strip southerners of citizenship following secession. During the talks, the more radical actors used apartheid analogies to try to push the Panel away from the National Congress Party’s (NCP’s) strategy of using partial peace talks to avert a more revolutionary transformation that could break down the racial hierarchies of Sudan as a whole.⁴ The GoS’s skills in obstructionism and its divide-and-rule tactics, which played against an already-fragmented array of opposition parties, were probably the single-most-important cause of frustration and failure.

Political economists will espy a dreadful inevitability in the cycle of conflict and suffering, of the *longue durée* of the Sudans working itself out in another, overdetermined spiral. Arguably, the country was in the grip of forces far more powerful than could have been resisted even by leaders blessed with vision and capability. However, the peacemaker cannot surrender to such fatalism. By reproducing the analyses of the actors at the time, it should be clear that there were few illusions about the high stakes involved and the implications of failure. Few of the key figures put their true feelings and worries on the public record, instead expressing them in private. When leading UN and AU staff met

in New York in April 2008, they worried about the possible collapse of Sudan and its ramifications.⁵ Meles Zenawi, whose capacity for strategic assessment had few equals, saw the perils clearly.⁶ Thabo Mbeki, Abdulsalami Abubakar, and Pierre Buyoya shared these concerns, which is why they devoted so much time and energy to the Panel. I have tried to capture the hopes, the frustrations, the failures, and the trying again as the Panel and an array of engaged diplomats grappled with the crises of the day with a view to a better future.

This book is also an account of the AU at the height of its promise, when the designs of the African peace and security architecture were at their grandest. For the AU, the Panel was scaffolding—temporary and sometimes rickety—but erected to enable a more solid multilateral edifice to be built. But the concrete was not poured and the pillars were not capped. That moment of possibility has passed, but the norms and principles remain, and the institutions, albeit weakened, still exist.

The Sudans' Descent into War and Famine

Ten years after the disengagement of the AUHIP, its legacies appear forlorn. South Sudan and Sudan, including Darfur, are in a worse state than when the Panel began its work.

South Sudan was born with sky-high hopes. But the third anniversary of independence was celebrated in muted style in the throes of civil war. The AU, Intergovernmental Authority on Development (IGAD), and UN responded promptly to the outbreak of war in South Sudan but struggled to find a path to a solution. It was violent and destructive, redolent of the darkest days of the 1980s and 1990s. Famine was declared.⁷ By 2018, that war was estimated to have cost at least four hundred thousand lives from violence, hunger and disease.⁸

Within days of the outbreak of hostilities in Juba, an internationally mediated peace process in South Sudan was put in place. It was led by IGAD with active support from the US, the other members of the troika (Norway and the UK), the UN, European Union, and others. The mediators were energetic and proactive, pushing a ceasefire, a human rights investigation, and a power-sharing deal. It was a unified effort, giving President Salva Kiir Mayardit and his government, and the Sudan People's Liberation Army (SPLA)-in-Opposition led by Riek Machar, no political escape. The result in 2015 was the Agreement on the Resolution on the Conflict in South Sudan (ARCISS).⁹ What the process lacked was credibility that arose from defining the deeper problem. The initial rush for a ceasefire and a rapid return to the status quo ante was justified in the first weeks of the violence. But when the pressure for a quick end to the fighting did not

succeed, the mediators remained committed to continue down the path they had started, according to the formula they had designed. Essential preconditions for success, beginning with a definition of the problem, and including the lack of ownership of the deal, were not met. As Aly Verjee has detailed, the mediators had one process but no fewer than six different competing conceptions of what peace entailed. He observed: "The extreme rapidity with which the process was constituted allowed little time for thoughtful consideration of what the mediators should, or could, seek to achieve, nor what their priorities and sequence of activities should be, nor how they would go about achieving those aims, nor what they would do if they encountered resistance or suffered setbacks."¹⁰

What doomed the ARCISS was neither lack of a unified peace forum nor a shortage of competence, but the political realities of South Sudan. The mediation could not escape the external demand for a framework consisting of standard-formula power sharing, allocation of wealth and security arrangements, with justice and democracy added as secondary priorities. These were overly ambitious, inconsistent, and ill-fitted to the internal political context. The ARCISS was criticized as an imposed deal¹¹ and as a "payroll peace" based on material incentives.¹² Neither the formal commitments in the text nor the informal bargains among the signatories could be implemented without enormous financial inflows, which were not forthcoming. The allocation of political portfolios and positions in the national army did not reflect the reality of where power lay. After the collapse of the agreement, the parties' external sponsors, namely President Omar al-Bashir and President Yoweri Museveni of Uganda, stepped in to initiate talks. The Revitalized ARCISS (R-ARCISS) was based on a more realistic model of money and power.¹³ Neither Sudan nor Uganda, however, had the resources or political focus to follow through on implementation.¹⁴ South Sudan was impoverished, autocratic, and violent and had lost its standing in the world.

In 2009, Darfur was a lawless place, suspended between thwarted efforts for peace and the specter of anarchy, which in the minds of many people there, was no less grievous a failing than genocide.¹⁵ The road taken was the worst in prospect: The thorough-going militarization of society under the domination of a military-commercial enterprise, linked to the militia that had nurtured a toxic Arab supremacist doctrine in the previous war. The Doha talks were, at their best, a forum for the Darfurians to debate their collective challenges and, at their worst, an exercise in designing an idealized solution for a conflict far distant from the realities on the ground.¹⁶ For ten years, a vast peacekeeping force held the ring, until it was drawn down, for reasons of cost and frustration, at the very moment when it could have played a constructive role in accompanying peace and providing security amid the flux of returning former combatants.

President al-Bashir and the NCP refused meaningful steps toward democracy. They resisted both democratic and economic reform, pouring more and more of their limited resources into the SAF, the RSF, and the National Intelligence and Security Services (NISS). They were overthrown in April 2019 by the Sudanese people in an exemplary nonviolent popular uprising. The civic revolutionaries had sky-high aspirations for democracy, justice, and peace. However, the twin heads of the military—General Abd al-Fattah al-Burhan of the SAF and General Mohamed Hamdan Dagolo (known as “Hemedti”) of the RSF—rapidly turned against the demonstrators who demanded that they hand over power to civilians. More than a hundred were killed in a violent crackdown just weeks later, after which the civilians, undeterred, redoubled their protests. A compromise was brokered by the quartet of the US, Britain, Saudi Arabia, and the United Arab Emirates (UAE), with the AU and IGAD providing the public face for the deal. The Khartoum Declaration of August 2019 brought a civilian cabinet, headed by Prime Minister Abdalla Hamdok, into office, but real power still rested with the generals. The Khartoum agreement did not include the armed groups in Darfur or the Two Areas. The new government promised that reaching a peace settlement with them was a priority, but the provincial rebels were suspicious that they were once again being treated as second-class political actors, and they quickly deduced that the military retained the power in the land. The Juba Peace Agreement—that brought the Justice and Equality Movement (JEM), the Sudan Liberation Movement (SLM-Minawi), and several others into government—was a classic share-out among specialists in violence, which marginalized the democrats, presumably as was intended by its drafters.¹⁷ Meanwhile, United Nations–African Union Hybrid Operation in Darfur (UNAMID) was replaced by the United Nation Integrated Transition Assistance Mission in Sudan (UNITAMS). Premised on the wildly optimistic assumption that Sudan most needed technical assistance to achieve its democratic transformation, it did not have the clout to play a significant role.

In October 2021, General al-Burhan and General Hemedti mounted a coup, dissolving the civilian cabinet, which they accused of incompetence. The coup makers had no agenda other than power, and they could not agree among themselves who would be in charge. They fell out, predictably, over the question of the relationship between the RSF and SAF. The rival forces destroyed much of the country in a civil war that ravaged the capital, forced millions to flee, and caused mass starvation. In 2024, famine conditions existed in Darfur,¹⁸ and projections for excess death ranged into the millions.¹⁹

Africa’s peacemakers, having struggled to resolve the conflict in South Sudan, fronted the negotiations that led to the Khartoum Constitutional Declaration, but the agenda and principles were not in their hands. Each year that

followed, the credibility of the AU and IGAD diminished until they became all but irrelevant in the Sudanese civil war of 2023. The real powerbrokers were the Middle Eastern states that backed the warring parties: The UAE provided the RSF with arms and money, while Saudi Arabia and other countries, including Egypt, Iran, Qatar, and Turkey, leaned toward SAF.

These outcomes were, needless to say, the exact opposite of the goals of the Panel. After 2014, the Panel continued with only some of the items of unfinished business such as Abyei. Mbeki's efforts on Sudan's national dialogue were thwarted. The Panel's capacity was also reduced. Buyoya had stepped down from the AUHIP in October 2012. He passed away on December 17, 2020. In 2013, Abubakar also stepped down to turn his attention to challenges in West Africa. The ad hoc funding streams that had supported the Panel staff and travel dried up. In 2013, the AUHIP was also mandated to address the challenges of the Horn of Africa, tasked with preparing and convening a conference on peace, security, stability, cooperation, and development in the Horn of Africa, in close consultation with the chair and secretariat of IGAD.²⁰ It commissioned research, visited national capitals, and convened a conference at which it initiated a debate on how to reconfigure the regional peace and security in light of the assertive engagement of the rising powers of the Middle East.

Peacemaking in Unpropitious Circumstances

By definition, the peacemaker faces unpropitious circumstances. In the past decade, almost everywhere in the world, armed conflicts and state crises have become more complicated and intractable. The academic field of peace studies is grappling with new framings, including illiberal peace,²¹ disorder,²² fragmentation,²³ and political unsettlement.²⁴ Peacemaking efforts in the Sudans in the years of the Comprehensive Peace Agreement (CPA) and its aftermath provide a complex and colorful tapestry, with threads that illustrate both the zenith of the liberal multilateralism that was represented by the Panel and the UN missions, and the imminent unraveling of that order. Much has been written, with great insight, on the CPA, the Darfur peace efforts, and the IGAD mediation in South Sudan.²⁵ Hitherto missing from this picture has been a thorough account of the African Union High-Level Panel on Darfur (AUPD) and AUHIP. This book fills this gap and adds details, confirming the singularity of the case of the Sudans and the significance of this particular historical juncture.

Drawing general conclusions is hazardous. Nonetheless, an organizing framework can be constructed to review the Panel's efforts in context. Experience from

Sudan's long history of wars points to six key preconditions for reaching a peaceful settlement.²⁶ These are as follows: (1) agreeing a definition of the problem; (2) internal cohesion and leadership within each party; (3) economic and budgetary expansion; (4) inclusiveness; (5) a single credible process; and (6) timing. Each is both elementary and remarkably difficult to achieve. With reference to this framework, we can assess the multiple factors that obstructed the work of the panel at the time, and have caused it to unravel since.

Defining the problem comes first. The warring parties, and the mediator, need to agree on an accurate definition of the problem they are trying to solve. There is no ideal solution, no perfect template. There is a trade-off between analytic purchase on the issues (which are, necessarily, contested) and consensus among the key political players, not least because if the belligerents and mediator come to an agreement on the nature of the conflict, that creates a new political reality. Defining the problem is a political exercise as well as a scholarly diagnostic.

The Panel defined the problems of the Sudans in three intersecting ways, with a fourth later added. It defined the "Sudanese conflict in Darfur" that could be resolved only by democratization, a more equitable and inclusive governance of diversity, and a Sudanese-owned process of accountability. This definition was embraced by Darfurians and acknowledged by the GoS—which correctly feared the implications for its hold on power. The definition was accepted by the AU but not by the UN and the US, which pushed for a Darfur-only solution throughout the period from 2009 to 2013. The Panel argued, second, that when Sudan split, it would become two African countries, each characterized by diversity, not into two entities, respectively (and antagonistically), defined as "Arab" and "African." This was rejected by some in the GoS, who, under the influence of the hard-liners of the Just Peace Forum, vetoed the Two Areas Framework Agreement, condemning postsecession Sudan to war. Third was that the challenge of secession was the achievement of two viable states. A viable state is one that is democratic (it commands the support of its citizens), is able to deliver economic development and essential services, and has sufficient autonomy to determine the goals and strategies for its national future. Economic viability is essential to this, and both South Sudan and Sudan were ready to undermine each other's economies in pursuit of an advantage, an approach that led to economic disaster for both.

Arising from the Panel's later research into the Horn of Africa, a final element in the definition has also emerged. This could be called the "Red Sea Arena rivalry in Sudan," consisting of Sudan's entanglement in the politics of the Red Sea and Gulf of Aden, whereby regional and global powers intervene in pursuit of a security and political dispensation favorable to their interests,

disregarding the norms, principles, and institutions of the AU. Neither the AU, IGAD, nor the UN has developed a strategy for engaging in this element of the Sudanese crisis.

With the outbreak of the new Sudanese Civil War (post-2023), peacemakers are now facing a different challenge to that faced by the Panel or, indeed, by any other previous conflict resolution efforts in the Sudans. From independence until the 2020s, the central dynamic within Sudanese conflict was a financial-military complex in Khartoum exploiting the marginalized regions either through direct military campaigns or proxy militia warfare, provoking the emergence of regionalist and secessionist movements in those areas. The warfare was asymmetric and the central challenge for both national and international peacemakers, including the Panel, was to find a solution to the conflict that did not perpetuate the power imbalance between center and periphery or further encourage centrifugal tendencies. The current war represents a more symmetric conflict than any in recent history, with two belligerents that are well matched both in terms of military resources and support from regional actors. Khartoum, the previous political and military powerhouse that survived the country's twentieth- and twenty-first-centuries wars, coups, and revolutions, has been devastated by a militia that transcended the role of regional proxy assigned to it by al-Bashir's regime. The militias spawned by Khartoum continue to wreak destruction in the provinces, but Khartoum no longer remains as the solitary power center. The nature of the problem has changed, both in terms of its multipolarity and its regional scope.

The second requirement is that a peace settlement needs internal cohesion and leadership within each political party or armed movement. It is immaterial which comes first—some leaders impose a uniform party line, some arise through consensual process. Agreement can be reached, and its provisions, only if the leaders are able to make decisions and implement them. Repeatedly in the Sudans, internal divisions within the NCP and SPLM, and among the Darfurians, made progress impossible. The paradigm of leadership failure is the case of Abyei, where neither President al-Bashir nor President Kiir was ready to overrule obstructive subordinates to make a deal for the greater good. Each presided over a divided party and either could not rein in militants or did not want to do so.

Sudan and South Sudan have been troubled by a lethal combination of leaders who are weak but skilled manipulators in pursuit of their power. Constantly obsessed with the tactical maneuvers of politicking, and preoccupied with the who's who among their political class, they have been unable to design and implement policies for the long term or to impart national visions that are more than slogans. This is in part a failing of the personal character of leaders, but

it is also a systemic product of a political system that rewards those who are specialists in violence and bribery. The result is a transactional form of political life, reduced to managing a turbulent political marketplace.

A third requirement for a peace deal is economic growth, or to be more precise, budgetary expansion. An institutionalized political economy entails either (or both) an economic boom creating incentives for peace or a peace dividend from aid and investment, which will fill the state coffers and allow for expanding employment and incomes. In a political marketplace, this means flush political budgets so that more members of the political elite can be brought inside the tent. The standard formula for Sudanese peace agreements is a division of power and wealth, which is a political “bull market.”²⁷ In a “bear market,” public and political budgets are contracting, and those at the center of power need to limit the constituency inside the tent or use coercion to reduce the price of loyalty. All key agreements in Sudan and South Sudan, such as the CPA and the Juba Agreement of 2006, were forged in a political bull market. South Sudan’s ARCISS (in both its original and revitalized version), and Sudan’s 2019 Constitutional Declaration and 2020 Juba Agreement were signed in times of austerity, but they required massive inflows of funds to make them work. Neither the formal commitments in the text nor the informal bargains among the signatories could be implemented without those funds. The sad paradox of implementing a power-sharing bargain in a political bear market is that the leaders appropriate more funds for themselves, at the expense of the citizenry, including their constituents.

The Sudans’ economic contraction was the result of both internal and external factors. Sudan and South Sudan waged economic war against one another, dragging them both down. Sudan suffered from the failure of the US to remove sanctions. Some economic headwinds were inescapable—such as the collapse in international oil prices in 2014—but the economic disasters were largely avoidable.

At independence, the South Sudanese economy was free of debt and its revenue from oil made it, according to accounting metrics, a middle-income country. It also had the sympathy of major international donors. South Sudan was confident that it had a prosperous future. The Sudanese economy was weighed down by its past. It was characterized by, first, massive external debt and a US sanctions regime; second, by addiction to oil and the inescapable prospect of losing that resource; and, third, by a host of structural inequalities and distortions. The plan agreed to by the two governments to address Sudan’s external debt and revenue decarbonization was a combination of transitional financial arrangements and a joint approach to the donors and creditors for a debt-for-peace swap. The plan to redress structural inequalities, including dismantling

the military-commercial complex that sat like a bloated parasite at the center of the economy, required domestic political action.

The economic plan was not honored by the governments in Khartoum and Juba. The details of the failure of the economic negotiations before independence and South Sudan's oil shutdown are featured in [chapters 13](#) and [14](#) of this book. The result was economic collapse. South Sudan imploded first. Having shut down the country's oil production, the ruling party had to decide what political concessions to make to Khartoum to regain the funds needed to operate the state and lubricate the political machine. Disagreements over that question were a crucial focus in the political struggle among the SPLM leadership in 2013. In turn, without the necessary money, the mechanism for political management ceased to function.²⁸ Thereafter, South Sudan's political economy reverted to forms of forcible extraction of resources familiar from the civil war of the 1980s and 1990s.²⁹

Sudan received neither the expected funds from South Sudan nor from debt relief. It therefore also found itself without the budget needed to run the state apparatus and operate its political machine.³⁰ The scarcity of funds was worsened by a large and avaricious military sector. The lack of political finance paralyzed the ruling party, which felt vulnerable to the threats of popular uprising alongside armed insurgency, but it was unable to lead the necessary reform. Instead of using the end of oil as an opportunity for developing the productive sector, such as small-scale agriculture, Sudan embarked on a gold rush. Initially in Darfur and then nationally, gold intensified the armed conflict, as political actors used force to secure their slice of a shrinking economic pie. Gold served both as the object of violent competition and the means of financing it.

The US was a secondary culprit in Sudan's economic slide. Its economic sanctions prevented economic normalization. During the period focused on in this book, the US kept moving the goalpost, introducing new preconditions for lifting the sanctions. On each occasion, the GoS had engaged in a new violation, but Khartoum drew the obvious conclusion that it could do nothing to satisfy Washington. The US's most egregious wrong was when it failed to support the democratic revolution of 2019, condemning the civilian-led government to preside over an economic crisis of unprecedented depth, and thereby sealing the fate of the country's democratic experiment. Only in 2020 when Sudan agreed to join the Abraham Accord and recognize Israel did the US administration remove the state sponsor of terror designation, by which time it was far too late.

The stark outcome of the failure of Sudan to achieve economic viability is famine. The nationwide food emergency and mass starvation that began unfolding in 2023–2024 was the logical result of the processes described.

Sudan's route to that catastrophe was longer and more complex than that followed by South Sudan, but the deprivation and trauma for Sudanese citizens has been comparable. Although we might hope that the prospect of mass starvation might make a government or public authority clamor for peace, history indicates that the reverse is more often the case. As Janam Mukherjee has eloquently written, drawing particularly on the experience of Bengal in the 1940s, "Whenever there is civil war, ethnic violence, communal riots, or any other type of horizontal violence—particularly in the Global South—look for the hunger that preceded it, and it is more often than not very easily found."³¹ Famine strengthens the cycle of war, especially a war of predation in which the strong profit from the weak, and weakens the incentives for peace.

The fourth requirement for a workable peace is inclusiveness. It is widely acknowledged in the peacemaking literature that the inclusion of civilian parties, civil society groups, and women is important for the legitimacy of a peace process.³² Peace must also be founded on recognizing diverse ethnic identities.

These two dimensions of inclusion can be difficult to reconcile. No peacemaking in Sudanese history has ever managed to bring about democratic transition and an end to conflict simultaneously. Internationally sponsored peace processes have been accused of "killing" democratic politics in Sudan,³³ while in attempting to resolve the civil war in South Sudan, both the SPLM and UN officials continued to treat South Sudanese as "natives" occupying "homelands."³⁴ Meanwhile, democratic uprisings in Khartoum have failed to set political agendas that meet the aspirations of the perennially marginalized peripheries.³⁵ The civil movements of the riverain center had grand visions to emancipate the country at large, although they frequently failed to win over the inhabitants of the marginalized periphery to those visions. The SPLM and SPLM-N tended to rehearse the rhetoric of victimhood at the expense of seizing partial solutions that were within its reach. Across the provinces, armed resistance became parochial, seeking emancipation on a regional or ethnic basis, a process described by one northern leftist as "liberating the bantustans."³⁶ Consequently, the underlying problems of Sudan were not solved. They reappeared in more intense, more injurious form.

Additionally, the bar of inclusion must be set at a level that does not invite unmanageable processes or unrealistic aspirations. Too often, complexity has become a pretext for mediators to exclude civic actors and marginal communities. This book has shown how turning away from civilian groups was fatal, first for Darfur, and then for Sudan as a whole, and how downplaying the importance of minorities, such as the people of the Two Areas, unraveled the prospects for a simplified north-south separation. The challenge of inclusion is not insuperable. The substantial history of Sudanese and South Sudanese civic input

into the agenda of peacemaking has demonstrated that even when the actual negotiations among the political principals are conducted in a narrow, closed manner, the issues and norms are those demanded by the wider population.³⁷

Reflecting the demands of citizens, the CPA committed the GoS and SPLM to democracy. It promised that “other armed groups” would cease to exist and that a state would have a single professional army. The CPA did not, however, deal with the question of accountability. The AUPD report placed accountability within the framework of peace, reconciliation, and the democratic transformation of Sudan. During the period of the Panel’s engagement and subsequently, South Sudan and Sudan did not honor their commitments to democracy, demilitarization, and accountability.

In theory, self-determination is democratic empowerment. As Mbeki emphasized, a vote for independence should be the beginning of a process of democratization for the people of South Sudan, not its culmination. But, as Pagan Amum acidly observed, “one country, two systems” evolved into “two countries, one system.”³⁸ That “system” was the pervasive mercantile politics of regime survival. South Sudan’s civil war of 2013 arose from the SPLM’s failure to manage its internal democracy in advance of the scheduled elections of 2015, and from its failure to transform the SPLA from an amalgam of armed units into a unified professional military force. The ARCISS and R-ARCISS promised democracy, a unified military, and accountability for crimes committed during that war, especially the ethnically targeted killings of its early weeks. None of those promises have been fulfilled.

In 2014, the GoS had the opportunity to address the political challenges of the insurgencies in Darfur and the Two Areas through a democratic opening offered by national dialogue. It chose not to do so, notwithstanding the hard line taken by SPLM-N, JEM, and other armed opposition groups. Instead, the GoS pursued a military option, the central pillar of which was building up the RSF. This reproduced the same problems as before, on an even grander scale. Like a sorcerer’s apprentice, the RSF came to outmatch the regular army in combat capability, resources, and political clout. Sudan’s revolution demanded democracy, demilitarization, and justice—“freedom and change.” The civilians faced the same strategic challenges that had defeated their predecessors, and their efforts were thwarted by opposition from the entrenched power of the military-commercial complex of the “deep state.” They were not helped by international engagement that lacked strategic urgency and generosity and their credibility was undermined by internal fractures.

Intrinsic to inclusiveness is the embrace of diversity. As Mbeki insisted in the days prior to the referendum, northern Sudan would remain an African country, characterized by diversity. Al-Bashir’s decision to repudiate the framework

agreement for the Two Areas, which required the ruling NCP to work with the SPLM-N, was the original sin of Sudan as the successor state, and it condemned the country to internal war and conflict with South Sudan while shutting the door on lifting US sanctions and international debt relief. The path from exclusive identitarianism to state collapse has rarely been clearer.

A fifth requirement is a single credible peace process. Rivalrous mediators doom peace negotiations. A single process is a minimum precondition. The fact that the AU adopted the AUPD report but the UN Security Council (UNSC) did not was an ominous augur for Darfur. As [chapter 5](#) has recounted, the lack of international consensus on the way forward in Darfur was fatal to peace efforts there. The limited consensus that existed was formulaic and incompatible with Darfurian ownership of the process, so the result in Doha was hollow. It was only in 2014 that the UN belatedly recognized that an integrated national peace process was needed.

For the north-south negotiations, the story was different. A remarkable convergence of the key international actors formed around a single process, with the Panel at its center. Recurrently throughout the negotiations over the Abyei crisis, the conflict in the Two Areas, and most strikingly, the border war of April 2012, and the subsequent AU Roadmap that culminated in the September 2012 summit, there was remarkable coordination among the AU, IGAD, the UN, and other international bodies, including the US. At a time when the UNSC was deadlocked over Syria, the AU was able to present a proposal that won unanimous backing. The AU's leadership ensured that, whatever their differences on other issues, Washington, D.C., Beijing, and Moscow, at a minimum, did not obstruct the Panel's efforts, and for the most part actively supported them. This success was a testament to several key individuals, in addition to the three members of the Panel. Among them were Princeton Lyman, Haile Menkerios, and Meles Zenawi, all of them supported by capable staff. It is also a testament to the design of the African peace and security architecture, which embedded the AU and its institutions in a complex web of multilateralism.

The AUPD was distinguished by its exploration of how the norms and principles of the AU—in particular, the question of how the principle of “nonindifference” should be related to the challenge of peacemaking—and by its innovative and inclusive method of work. The AUHIP was mandated to implement, not to explore. It was the most complex process of political accompaniment, conflict prevention, management, and resolution in which the AU has engaged in its history. In addition to engaging with numerous actors inside Sudan and South Sudan, the Panel coordinated with a wide range of international stakeholders, notably Ethiopia and IGAD, the UN, the US and European governments, the

League of Arab States, and China, as well as the Bretton Woods Institutions in the context of the debt-for-peace plan. The Panel reported to the AUPSC and, after May 2012, to the UNSC. Throughout this process, its core principle, steadfastly upheld (sometimes to the frustration of other international partners) was that conflicts could be resolved, and progress toward democracy and accountability could be achieved, only with the ownership of the process and outcomes by the leaders of Sudan and South Sudan.

A unified process is necessary but not sufficient. Indeed, the process whereby diplomats negotiate among themselves to reach agreement on a single mediation process may result in a superficial definition of the problem, reproducing a standard formula for the process and final document. The Doha process has been criticized on these grounds, and this was even more evident in South Sudan in December 2013. This mediation effort was energetic and focused, and there was no alternative. The mediators stayed the course. The result was ARCISS, and subsequently, with Sudan and Uganda as active participants, the R-ARCISS. It was the very unanimity of the external brokers that made these agreements possible: The belligerent parties had no alternative but to go along with the process and, ultimately, to sign on to the document that was produced. The problem was that the other preconditions for success, beginning with a definition of the problem, were not met. A similar problem afflicted Sudan after the 2019 revolution. The united stance taken by the quartet along with the UN and AU created a single, unified process, for the Constitutional Declaration and the Juba Agreement. The problem was that the Sudanese problem had not been adequately defined and other preconditions for success were not in place.

Peacemaking must seize the moment. There are moments at which peace is possible, amid long periods when it is elusive. The concept of “ripeness,” much debated by scholars of conflict resolution, captures this notion.³⁹ The Panel faced intersecting challenges in this respect. A continuing frustration was the Sudanese practice of *tajility*—the politics of delay. Many actors gambled on waiting out their adversaries, along with international mediators, hoping that in due course, with the rotation of the political dials, the stars would align. A truism about the Sudans, however, is that they change from week to week, but if you return after five or ten years, you will find it unchanged—that is, in a state of turmoil. The Panel also faced an opposite problem, which was that key deadlines had been set, notably the dates of the referendum and independence for South Sudan. Relatedly, mediators in Sudan recurrently grapple with the question of whether to focus tactically or strategically on the overall picture or on the details. Some conflicts become ripe, whereas others do not. The negotiations leading to the CPA had adopted the principle of “nothing is agreed until everything is agreed” with the intention that the fruits of peace should be

harvested together, not one at a time. The CPA was not, of course, comprehensive, as it excluded Darfur and eastern Sudan, so that the alternative “peace-by-piece” approach was adopted, purportedly in a complementary way.⁴⁰ In the negotiations facilitated by the Panel, the maxim “nothing is agreed until everything is agreed” held everything else hostage to Abyei until the September 2012 summit, by which time many of the previously ripened fruits had rotted.

The Sudans’ best chances were missed. South Sudan’s tragedy was that the moment of independence, when the leadership of the new country had the political capital at home and abroad to make the necessary decisions to set the country on the right path, was squandered. Sudan’s tragedy was that the civic revolution of 2019, when the long-suffering citizens had peace and democracy within their reach, was sabotaged by corrupt military men, and the international community did not protect the fragile democracy from those generals and their outside facilitators. At the time of writing, there is no workable peace process in Sudan, while the country descends into famine. Awaiting “ripeness” is not a humane option in these circumstances, while the peoples of Sudan see their communities eviscerated, their livelihoods destroyed, their children starve, and their hopes trampled. While the belligerents vow that they can fight indefinitely, the deadline imposed by the logic of famine expires every day.

Looking back, South Sudan’s independence day may have been the high-water mark for African multilateralism. The African peace and security architecture was designed and developed at a time of low geostrategic rivalry and when the engagement of Middle Eastern powers in the Horn of Africa was minimal. That has now changed. The world has become multipolar and disorderly and, of particular relevance to Sudan, the middle powers of the Middle East have emerged as key determinants of politics and security on the African shore of the Red Sea. These middle powers are bringing a new dimension to the definition of the crisis in Sudan, which is seen in the marginalization of the AU and its institutions by the Gulf powers’ prewar Framework Agreement talks and the Saudi-led Jeddah Process that followed the outbreak of conflict.

By Way of Conclusion

Sudanese have long joked that when God created Sudan, he laughed. On the eve of independence, a British journalist borrowed that phrase for a book, which concludes with the warning that “the Sudanese vessel of state has certainly started its voyage with an exceptionally explosive cargo.”⁴¹ Sudanese have spent the succeeding seven decades debating this predicament from every angle, and at times, it appears that only their readiness to talk has kept their country

afloat. Sudan won an ambiguous independence in 1956, unsure as to whether it was in the waiting room of a union with Egypt, an incipient federation with the south, or a unified modernizing postcolonial nation. Explosions followed as the Sudanese tried to resolve whether they were one country or two, ruled by an autocrat or governed by parliamentarians. Indeterminacy has marked every national turning point: the 1964 civic uprising in which Islamists, communists, and people of every political color in between united to remove a military autocrat; the 1972 peace agreement that ushered in a decade of development and hope but exposed deep cracks in the national polity; the second uprising of 1985, which reprised many of the contradictions of its predecessor; and the Islamist experiment of the 1990s. The 2005 CPA was a masterpiece of ambiguity: It certainly was not comprehensive, and arguably not even an agreement, but rather an artful construct of the skill of postponing the reckoning. Smothering one fire, the CPA ignited others. When the Republic of South Sudan was born, even its name signified only an incomplete disentanglement from Sudan, its intimate oppressor. Throughout seven tumultuous decades, Sudan has been at once a vibrant, civic national conversation and a chapter in the annals of bloodshed and criminality.

It would have been unrealistic to expect the Panel to change these unpropitious historic dynamics, especially given the disarray and conflicting agendas of the multiple international actors engaged in Sudan. Those who hoped for an outcome that met every aspiration for peace, democracy, justice, and equality were certain to be disappointed. There was no ideal practice and no ideal outcome. From its first consultations in Darfur through to its painstaking engagement with presidents al-Bashir and Kiir, the Panel sought to keep the Sudanese and South Sudanese talking and to encourage them to think deeply about the future of their countries. By such political accompaniment, Thabo Mbeki, Abdulsalami Abubakar, Pierre Buyoya, and their counterparts and staff sought to bend the practice of Sudan toward talking rather than fighting, while at the same time grappling with extraordinarily harsh material circumstances. As Abdul Mohammed repeated, negotiations could not take the Sudanese and South Sudanese to heaven, but they could prevent them going to hell.⁴²

FOREWORD

1. African Union, 'Report of the African Union High Level Panel on Darfur,' Addis Ababa, October 29, 2009, PSC/AHG/2(CCVII), p. vii.
2. Ibid, p. viii.
3. Speech by Thabo Mbeki, Chairperson of the AUHIP, University of Khartoum: Friendship Hall, Khartoum, January 5, 2011, p. 9.
4. Address by President Thabo Mbeki, Chairperson of the AU High Level Implementation Panel For Sudan, University of Juba, Juba. January 7, 2011, p. 4.
5. Ibid p. 3.
6. Statement of Thabo Mbeki, AUHIP chair, at the Launch of the Sudan Post-Referendum Negotiations, Khartoum, July 10, 2010.

1. INTRODUCTION AND OVERVIEW

1. The panel was at different times constituted as: The AU High-Level Panel for Darfur, March–October 2009; the AU High-Level Implementation Panel for Sudan, October 2009–October 2012; the AU High-Level Implementation Panel for Sudan and South Sudan, October 2012–onward.
2. Daly, *Darfur's Sorrow*, 77. The term was coined with specific reference to Sultan Idris Abu Bakr of Dar Gimir, who for fifty-six years honed his skill of forestalling and fence-sitting, seeing out successive regimes in Sudan and Chad without making any definitive commitment. He outlasted the Dar Fur sultanate, the Wadai sultanate, the Mahdist government, the restored Fur sultanate, and the Masalit sultanate, and he correctly expected that his son would outlast the Anglo-Egyptian condominium and French colonial rule in Chad.
3. "AUHIP Non-Paper: Background Note for High-Level 3+3 Negotiations on Oil and Related Issues, 2012-02-23," Neha Erasmus Papers, TARC, MS207.002.00283.
4. Sharkey et al., "Rethinking Sudan Studies," 9.
5. Sharkey et al., "Rethinking Sudan Studies," 4.
6. Sharkey et al., "Rethinking Sudan Studies," 4.
7. See discussion in Berridge, *Civil Uprisings*.
8. de Waal, "Sudan's Elusive Democratisation."
9. Mamdani, *Neither Settler nor Native*, chap. 4.
10. Vezzadini, *Lost Nationalism*, 5; see also chapter 10 of this book.
11. Flint and de Waal, *Darfur*, 175.
12. The decision was taken at the AU Assembly in January 2018 to seek, through the UN General Assembly, an advisory opinion from the International Court of Justice on the immunity of heads of state with respect to the ICC.
13. Mills, "Bashir Is Dividing Us," 420–422.
14. Note that the US was a latecomer to advocating for southern Sudanese self-determination. Francis Deng coauthored with Stephen Morrison the influential report of the Center for Strategic and International Studies on Sudan in 2000–2001. See Deng and Morrison, "US Policy to End Sudan's War." Deng noted that when the CSIS Task Group met, "I was the only Sudanese among the fifty to sixty members with interest

and expertise on the Sudan; and all of them except me were opposed to the right of self-determination and the prospects for Southern Sudan independence.” See Deng, “Clearing the Dimming Vision,” 2.

15. See the “Protocol Relating to the Establishment of the Peace and Security Council of the African Union,” Article 17, Relationship with the United Nations and Other International Organisations, 2003.

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2. SUDAN IN AFRICA

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8. Vezzadini, “Making the Sudanese,” 79–81.

9. Hasan, *Sudan in Africa*.

10. Gilroy, *Black Atlantic*.

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12. See, Vezzadini, *Lost Nationalism*, 32–33, and Mamdani, *Saviors and Survivors*, 150.
13. As quoted in Idris, *Conflict and Politics of Identity in Sudan*, 40.
14. Sharkey, *Living with Colonialism*, 31–38.
15. Troutt-Powell, *Different Shade of Colonialism*.
16. Mbeki, January 5, 2011, p. 8.
17. AUPD, “Darfur: The Quest for Peace.”
18. See, Sharkey, *Living with Colonialism*.
19. Garang, “Dilemma of the Southern Intellectual,” 175–196 (originally published in 1971).
20. Stevens, “1972 Addis Ababa Agreement and the Sudan’s Afro-Arab Policy.”
21. Manoeli, *Sudan’s “Southern Problem,”* 119.
22. The dates of the First Sudanese Civil War are commonly given as 1955–1972, but Rolandsen and Daly suggest a more appropriate date at which the fighting could first be characterized as a “civil war” would be 1963. See Rolandsen and Daly, *History of South Sudan*, 73, 79–83.
23. Nash, *African Peace*, 79.
24. Touray, “Common African Defence and Security Policy,” 638.
25. Nash, *African Peace*, 82, 99–104.
26. Manoeli, *Sudan’s “Southern Problem,”* 95, 96.
27. Poggo, *First Sudanese Civil War*, 177.
28. Alier, *Too Many Agreements Dishonoured*.
29. Stevens, “1972 Addis Ababa Agreement,” 258–259.
30. Stevens, “1972 Addis Ababa Agreement,” 258–259; Poggo, *First Sudanese Civil War*, 188.
31. Johnson, *Root Causes*, 63.
32. De Waal, “Ambiguities of Self-Determination.”
33. Lesch, *Sudan: Contested National Identities*.
34. See Gallab, *First Islamist Republic*.
35. Khalid, *War and Peace*, 360.
36. De Waal, “Politics of Destablization in the Horn, 1989–2001.”
37. Khalid, *War and Peace*, 363.
38. Whether or not the regime did agree to the principle of-self-determination of Frankfurt has been questioned—the accord signed declared that “the people of the South shall exercise their right to freely choose the political and constitutional status that accords with their national aspirations without ruling out any option.” The government negotiator Ali al-Haj would claim he had made no concession, however, and that unpublished sections of the agreement had ruled out a referendum of independence. See Lesch, *Sudan: Contested National Identities*, 159, 177–178.
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69. “*Rafd al-ba’ad awamir jadida*.”

70. “Meeting Notes Ismat, 2011-01-25.”

71. LeRiche and Arnold, *South Sudan: From Revolution to Independence*, 164.

72. “NCP/SPLM Joint Recommendation on Agenda (d) Southerners Associated with the Sudan Armed Forces 2011-04-04,” De Waal AUHIP Papers, TARC, MS201.002.02512.

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74. Personal conversation with de Waal, April 4, 2011.

75. “Presidency Meeting, 2011-04-07,” De Waal AUHIP Papers, TARC, MS201.002.01716.

76. “Meeting Notes, Political Committee Meeting Juba,” April 6, Mbeki files uncataloged. The note is incorrectly dated April 6, when the political committee was supposed to begin its meeting. A meeting on Abyei was held on that day.

77. “Meeting of Political Committee,” April 13, 2011, Khartoum, Mbeki files uncataloged.

8. ABYEI

1. Kuol, "Political Violence," 575–576.
2. Johnson, "Why Abyei Matters," 3–4.
3. A similar principle informed the 1924 "Wheatley-Munro" agreement whereby the boundary between Darfur and Bahr al-Ghazal, and thus between Rizeigat Baggara and Malwal Dinka, immediately to the west of Abyei, was set fourteen miles south of the river.
4. Kuol, "Political Violence," 578, 579, 577–579.
5. Kuol, "Political Violence," 580.
6. Kuol, "Political Violence," 584; De Waal, "Some Comments on Militias."
7. "Abyei Meeting Panel UN, 2010-08-15," De Waal AUHIP Papers, TARC, MS201.002.00109.
8. Mukhtar Babu Nimr interview with *al-Mihjar al-Siyasi*, December 9, 2012, <https://www.sudaress.com/almeghar/7451>.
9. Johnson, "Why Abyei Matters," 9; Kuol, "Justice in Sudan."
10. "Panel Meeting with Abdel Basit Saed 2011-03-29," De Waal AUHIP Papers, TARC, MS201.002.01957.
11. "Protocol Between the Government of Sudan and Sudan People's Liberation Movement/Army on the Resolution of Abyei Conflict," Naivasha, Kenya, May 26, 2004, US Institute of Peace, https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/abyei_05262004.pdf.
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13. Young, *Fate of Sudan*, 180; Mustafa Abu'l-Aza'im, "Wa'l-Misseriyya idha ghad-abuu," Akhir Lahza, January 3, 2010, <https://www.sudaress.com/akhirlahza/2502>.
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15. Johnson, "Abyei, the Comprehensive Peace Agreement, and the War in Sudan's New South."
16. Mbeki Notebook 2, "Mbeki Meeting with Abyei Chief Admin," July 6, 2010; Mbeki Notebook 2, "Mbeki Meeting with Ngok Chiefs, July 6, 2010," Mbeki files.
17. See comments by youth leaders in Mbeki Notebook 2, "Mbeki Meeting with Misseriyya Leaders," July 6, 2010, Mbeki files. The meeting in Juba was also mentioned by Ghazzali. See "Meeting with Ahmed Ghazzali, translator to Pres. Bashir, 2010-08-15," MS201.002.01841.
18. Mukhtar Babu Nimr interview with *al-Mijhar al-Siyasi*, December 9, 2012, reproduced at, *Sudaress*, <https://www.sudaress.com/almeghar/7451>; Sadiq Babu Nimr interview with Fatima Raabih, *al-Sahafa*, September 15, 2013, reproduced at Nilein, <https://www.alnilin.com/699171.htm>.
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20. "Abyei Meeting Panel UN, 2010-08-15."
21. Mbeki Notebook 2, "Abyei: 30/08/2010," Mbeki files.
22. Summary of discussions between NCP and SPLM, with US special envoy, Washington, Khartoum, and Yei, June–August 2009, on implementation of CPA; BCL for NCP Group Meeting, August 26, 2010, Tucker files.
23. "Note to S. Draft 2," Princeton Lyman files.
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25. "Abyei Negotiation Meeting, 2010-10-09," De Waal AUHIP Papers, TARC, MS201.002.00130.
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29. "Abyei Negotiations Update, 2010-10-11," De Waal AUHIP Papers, TARC, MS201.002.00137.
30. "Abyei Negotiations Update, 2010-10-12," De Waal AUHIP Papers, TARC, MS201.002.00138.
31. "Addis Diary, 2012-07" (entry dated July 22), De Waal AUHIP Papers, TARC, MS201.002.01354.
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34. "Gration Email to NSC, DoS," October 3, 2010, Lyman files.
35. "Dirdeiry Gration Messages 2010-11-21," De Waal AUHIP Papers, TARC, MS201.002.00156.
36. "Meeting with Misiriya Leadership, 2010-10-27," Neha Erasmus Papers, TARC, MS207.001.00732.
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41. "Internal Meeting 271010, 2010-10-27," Neha Erasmus Papers, TARC, MS207.001.00651.
42. Mbeki Notebook 2, "Mbeki Meeting with Ngok Leadership," October 28, 2010, Mbeki files.
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44. "Meeting Notes with Ahmed Ghazzali, 2010-11-08," De Waal AUHIP Papers, TARC, MS201.002.01900.
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46. "Princeton Lyman to [DoS]: Perspectives on the Current Situation," November 9, 2010, Lyman files.
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49. "AUHIP Proposals Towards a Resolution of the Issue of Abyei, 2010-11-27," De Waal AUHIP Papers, TARC, MS201.002.00050.
50. "Abyei Internal Meeting, 2010-11-10," De Waal AUHIP Papers, TARC, MS201.002.00704.
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58. “Notes Meeting Ahmed Dirdeiry, 2011-03-29,” De Waal AUHIP Papers, TARC, MS201.002.01958.

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66. “Notes Meeting Deng Alor et al., 2011-03-26.”

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69. “Notes Meeting Ahmed Dirdeiry, 2011-03-29.”

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80. “Lyman email to various DoS,” May 5, 2011, Lyman files.
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82. Young, *Fate of Sudan*, 266.
83. Neha Erasmus, online interview with Willow Berridge, January 6, 2022.
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9. AVERTING WAR BEFORE INDEPENDENCE

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2. “Letter from Thabo Mbeki to Omar al-Bashir, 2011-05-26,” De Waal AUHIP Papers, TARC, MS201.002.02579.
3. “De Waal email to Mbeki,” May 27, 2011, Mbeki files.
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5. See “Thabo Mbeki to Ali Osman Taha,” May 29, 2011, Mbeki files. The letter is dated May 29, but it was transmitted in the early hours of May 30.
6. “Diary, 2011-06” (entry dated June 5), De Waal AUHIP Papers, TARC, MS201.002.00603.
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10. “Diary, 2011-06” (entry dated June 8), De Waal AUHIP Papers, TARC, MS201.002.00603.
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13. “Diary, 2011-06” (entry dated June 9), De Waal AUHIP Papers, TARC, MS201.002.00603.

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17. “Proposal for Temporary Arrangements for Administration and Security of Abyei Area, 2011-06-12,” De Waal AUHIP Papers, TARC, MS201.002.00019.

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21. “Security Negotiations: Next Steps, 2011-06-02,” De Waal AUHIP Papers, TARC, MS201.002.02592; “Diary, 2011-06” (entry dated June 9).

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23. Lyman to Clinton, June 15, 2011, US State Department, FOIA Library, Doc. No. C05781183.

24. Lyman to Clinton, June 19, 2011, US State Department, FOIA Library, Doc. No. C05781100.

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26. Mbeki Notebook 3, entry titled, “18/06/2011,” Mbeki files.

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28. “Diary, 2011-06-19–2011-06-20,” De Waal AUHIP Papers, TARC, MS201.002.00792; “AU Panel Letter to Gadir and Okiech, 2011-06-18,” De Waal AUHIP Papers, TARC, MS201.002.00785.

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43. “Diary, 2011-06-28,” De Waal AUHIP Papers, TARC, MS201.002.00611.

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46. ‘Agreement between the Government of Sudan and the Government of Southern Sudan on Border Security and the Joint Political and Security Mechanism, 2011-06-29’, Neha Erasmus Papers, TARC, MS207.001.00249. The June 28 draft has a slightly different order of phrases and sets the third sentence of paragraph 2 in bold, indicating it is pending agreement in the session.

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10. THE TWO AREAS

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3. Komey, *Land, Governance, Conflict*, 30, 35–36.

4. James, “Some Perspectives on Blue Nile,” 196.

5. Vezzadini, *Lost Nationalism*.

6. See James, “Some Perspectives on Blue Nile,” 198; Komey, *Land, Governance, Conflict*, 40; Sharkey, “Christians Among Muslims.”

7. Komey, *Land, Governance, Conflict*, 40–41.

8. James, “Perspectives on Blue Nile,” 198; Johnson, *Root Causes Root Causes of Sudan’s Civil Wars*, 136.

9. Komey, *Land, Governance, Conflict*, 73–74; Lesch, *Sudan: Contested National Identities*.

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12. De Waal, "Nuba Mountains, Sudan," 69–70; Johnson, *Root Causes of Sudan's Civil Wars*, 132.
13. De Waal, "Nuba Mountains, Sudan," 72–75.
14. Young, *Fate of Sudan of Sudan's Civil Wars*, 228.
15. Johnson, *Root Causes of Sudan's Civil Wars*, 136.
16. Johnson, *Root Causes of Sudan's Civil Wars*, 136; James, "Some Perspectives on the Blue Nile," 199–200.
17. James, "Some Perspectives on Blue Nile," 200.
18. De Waal, "Ambiguities of Self-determination."
19. Komey, *Land, Governance, Conflict*, 127.
20. Souverijn-Eisenberg, "Lessons Learned from the Joint Military Commission."
21. Matus, "The Three Areas: A Template for Regional Agreements," 34–37.
22. "The Comprehensive Peace Agreement Between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army" (2005), chap. 5, https://peacemaker.un.org/sites/peacemaker.un.org/files/SD_060000_The%20Comprehensive%20Peace%20Agreement.pdf.
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11. NATIONALITY AND CITIZENSHIP

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89. “Issues Discussed Between the Government of the Republic of Sudan/National Congress Party and the Government of Southern Sudan/the Sudan’s People’s Liberation Movement—Concerning the Petroleum Sector, 2011-03-05.”

90. “Sudan Final Negotiations—Minutes Opening Session June 17, 2011, 2011-06-17,” Mozersky Papers, TARC, MS205.004.00380.

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99. Mbeki Notebook 3, “TFA: Addis: 27/06/2011,” Mbeki files.

100. Faiz al-Shaikh and Mustafa Sirri, “*Harb umlat tahtadim bayna shimal al-Sudan wa janubhu*,” *al-Sharq al-Awsat*, July 18, 2011, <https://www.sudaress.com/alrakoba/25278>.

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14. THE OIL SHUTDOWN CRISIS

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11. “*Deng Alor: La Hiwar Bidun Wisata Ajnabiyya*,” *al-Sharq al-Awsat*, October 3, 2011, <https://www.sudaress.com/sudanyiat/2973>.

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23. "Mbeki to Sabir," October 2, 2011, Mbeki files.
24. "Meeting in Juba with SPLM Negotiators," October 26, 2011, James AUHIP Papers, TARC (uncataloged).
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35. Mbeki Notebook 3, "Pres Bashir: 21/11/2011," Mbeki files.
36. Mbeki Notebook 3, "TFA Negotiations 26/11/2011," Mbeki files.
37. Mbeki Notebook 3, "TFA Negotiations 26/11/2011."
38. De Waal, "Sudan's Elusive Democratisation," 227.
39. Mbeki Notebook 3, "TFA Negotiations 27/11/2011," Mbeki files.
40. Mbeki Notebook 3, "TFA Negotiations 29/11/2011."
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43. "Anders Oil Update.docx," James AUHIP Papers, TARC (uncataloged).
44. Anders conversation with oil company representatives, in "Anders Oil Update.docx."
45. "Lyman to Buyoya," December 21, 2011, Mbeki files (uncataloged).
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47. "Addis Diary January 2012, 2012-01," De Waal AUHIP Papers, TARC, MS201.002.00996.
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49. “17 January 2012 Meeting Between Buyoya and Pagan,” 201201, AUHIP Documents, James Papers, TARC (Uncataloged).

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57. “Supergroup Meeting: Opening Session May 19, 2011,” James AUHIP Papers, TARC (uncataloged).

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61. “Machar Says Oil Shutdown Implies ‘Economic Independence’ for South Sudan,” *Sudan Tribune*, January 24, 2012, <https://sudantribune.com/article40829>.

62. “Addis Diary January 2012, 2012-01” (entry dated January 22, on Amum meeting with Buyoya and panel staff).

63. “Notes of Meeting: AUHIP and PM Meles Zenawi, 2012-01-23,” De Waal AUHIP Papers, TARC, MS201.002.01031.

64. “Addis Diary January 2012, 2012-01.”

65. “Addis Diary January 2012, 2012-01” (entry dated January 23).

66. In the following days, a rumor circulated that Meles had supported the shutdown.

67. “Bart Stokes to Lyman,” January 26, 2012, Tucker files.

68. “Terms of Agreement Between The Republic of Sudan and The Republic of South Sudan Concerning Oil, Transitional Viability Arrangements and Other Related Issues,” James AUHIP Papers, TARC (uncataloged).

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71. GoS edited version of “Terms of Agreement,” Mbeki files (uncataloged).

72. “Addis Diary January 2012, 2012-01” (entry dated January 26, 7:20 p.m.).

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76. “Addis Diary January 2012, 2012-01” (entry dated January 28).

77. “Addis Diary January 2012, 2012-01” (entry dated January 26, 8:20 p.m.).

78. “Addis Diary January 2012, 2012-01” (entry dated January 27).

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80. Mustafa Sirri, “*Salva Kiir Rafad Ijtima’a Thuna’i ma’ al-Bashir*,” *al-Sharq al-Awsat*, January 28, 2012, <https://www.sudaress.com/alrakoba/42449>.

81. Lissane Yohannes, telephone interview with Alex De Waal, August 16, 2022.

82. Mbeki Notebook 3, “IGAD: Addis Ababa, 27/01/2012.”

83. “Addis Diary January 2012, 2012-01” (entry dated January 31).

84. Mbeki Notebook 3, “IGAD: Addis Ababa, 27/01/2012.”

85. Zach Vertin has a slightly different version of events, writing that Pagan had informed Kiir in advance of the meeting. See Vertin, *Rope from the Sky*, 232. His source appears to be Pagan.

86. “Addis Diary January 2012, 2012-01” (entry dated January 27).

87. “Addis Diary January 2012, 2012-01” (entry dated January 27).

88. SPLM Press Conference, January 27, in “Addis Diary January 2012, 2012-01.”

89. AUHIP Internal Meeting, January 29, in “Addis Diary January 2012, 2012-01.”

90. “Negotiations Update: 10–15 February 2012, Addis Ababa,” AUHIP Documents, James AUHIP Papers, TARC (uncataloged).

91. “Update for Negotiations, 2012-02-08,” Erasmus Papers, TARC, MS207.002.00265.

92. Laura James, “Likely Economic Implications of an Uncontrolled Shutdown of Oil Operations in South Sudan,” January 23, 2012, Mbeki files (ununcataloged).

93. “Addis Diary January 2012, 2012-01” (entry dated January 31).

94. “Addis Diary January 2012, 2012-01” (entry dated January 29).

95. Rice, *Tough Love*, 277.

96. “Briefing by Marcelo Giugale, World Bank Director of Economic Policy and Poverty Reduction Programmes for Africa,” March 1, 2012. Online at: <https://paanluelwel2011.wordpress.com/wp-content/uploads/2012/05/world-bank-south-south-economic-analysis.pdf>

97. “*Lual: al-Nift satajmad ba’ad usbu’ayn wa hukumatna hiya dahiya*,” *al-Ahram al-Yom*, February 6, 2012, <https://www.sudaress.com/alahram/28333>.

98. James, “Likely Economic Implications.”

99. “Addis Diary January 2012, 2012-01” (entry dated January 31).

100. “Statement by H. E. Gen. Salva Kiir Mayardit, President of the Republic of South Sudan, on the occasion of AU Summit—Addis Ababa,” January 30, 2012.

101. “Kiir Explains South Sudan’s Refusal to Sign Oil Deal with Khartoum,” *Sudan Tribune*, February 2, 2012, <https://sudantribune.com/article40916>.

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103. Mbeki’s frustration at this was reported in an email; see “Cecily Brewer to Princeton Lyman,” January 29, 2012, Tucker files.

104. “Email from Lyman to Clinton,” April 4, 2012, Tucker files.

105. “Update for Negotiations, 2012-02-08.”

106. “Bulletin for PL After AU Summit,” no date [internal references indicate January 30 or 31, 2012], Tucker files.

107. “Update for Negotiations, 2012-02-08.”

108. As quoted in Patey, *Kings of Crude*, 236.
109. "Update for Negotiations, 2012-02-08."
110. "Lyman Letter to Susan Rice," January 26, 2012, Tucker files.
111. "Lyman Email to Clinton," January 29, 2012, Tucker files.
112. "Lyman Letter to Clinton," January 31, 2012, Tucker files.
113. "Bulletin for PL After AU Summit."
114. "Notes on Meeting with Hon LoWilla," Tuesday, February 7, 2012, AUHIP Documents, James AUHIP Papers, TARC (uncataloged).
115. Patey, *New Kings of Crude*, 66, 104–106.
116. International Crisis Group, "China's New Courtship," 3.
117. Luke Patey, "Learning in Africa."
118. Patey, "Learning in Africa"; International Crisis Group, "China's New Courtship."
119. Patey, "Learning in Africa."
120. International Crisis Group, "China's New Courtship," 23.
121. Mbeki correspondence, December 23, 2011, Mbeki files (uncataloged).
122. "Addis Diary January 2012, 2012-01" (entry dated January 21).
123. "Meeting with the Oil Companies," February 11, 2012, SPA, Erasmus files.
124. International Crisis Group, "China's New Courtship."
125. International Crisis Group, "China's New Courtship"; "Meeting with the Oil Companies," February 11, 2012. The apparent disparity had already been raised in a Global Witness report; see Global Witness, "Fuelling Mistrust: the Need for Transparency in Sudan's Oil Industry," September 2009, https://cdn.globalwitness.org/archive/files/pdfs/v12_final_sudan_fuelling_mistrust_lowres.pdf.
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129. Magdi el-Gizouli, "The Sudans: Government by War," *StillSudan*, February 5, 2012, <https://stillsudan.blogspot.com/2012/02/sudans-government-by-war.html>.

15. BORDER WARS

1. "Statement by the Government of the Republic of Sudan in Recognition of the Republic of South Sudan, 2011-07-08," De Waal AUHIP Papers, TARC.
2. "Letter from Isman Abdul Rahman Zain al-Abideen to Gen. James Hooth May [sic] Re: Termination of the JIU Mandate in Blue Nile and South Kordofan Areas, 2011-05-23," De Waal AUHIP Papers, TARC, MS201.002.02577; see also chapter 9.
3. "Proposed Agreement on Friendly Relations and Cooperation Between the Republic of South Sudan and the Republic of Sudan: A Republic of South Sudan Proposal, 2012-07-22," De Waal AUHIP Papers, MS201.002.01384.
4. "Agreement Between the Government of Sudan and the Government of South Sudan on Border Security and the Joint Political and Security Mechanism, 2011-06-29," Neha Erasmus Papers, TARC, MS207.002.00073. ; Craze, *Dividing Lines*, 28.
5. "Agreement on the Border Monitoring Support Mission Between the Government of Sudan and the Government of South Sudan, 2011-07-30," De Waal AUHIP Papers, TARC, MS201.002.00870, https://archives.tufts.edu/repositories/2/archival_objects/133064.

6. “Draft Note on the JPSM, 2011-12-09,” De Waal AUHIP Papers, TARC, MS201.002.00976.

7. “Brief on the JPSM: Area of Operations of the SDBZ, 2011-10-23,” De Waal AUHIP Papers, TARC, MS201.002.00948 (emphasis in original).

8. Technical Committee to Draw Borders 1956/1/1, The Committee Tasked with Applying Documents and Maps, “Sketch Showing Applications and Differences in the Five Western Areas,” December 2009, Mbeki files.

9. “Brief on the JPSM: Area of Operations of the SDBZ, 2011-10-23.”

10. The involvement of the UK was based on the request made by Kiir and endorsed by the NCP, in September 2010, for technical assistance from the British with delineating the border.

11. CPA, Chapter VI, Security Arrangements, p. 87, para 3.

12. CPA, Chapter VI, Security Arrangements, Annexure 1, Permanent Ceasefire and Security Arrangements Implementation Modalities and Appendices, p. 97, para 8.2.

13. UN Cartographic Unit maps from July 2011 onward also include the additional line: “Final boundary between the Republic of Sudan and the Republic of South Sudan has not been determined.”

14. International Crisis Group, “Sudan: Defining the North-South Border,” 8.

15. CPA, Chapter VI, Security Arrangements, p. 87, para 3.

16. Gramizzi and Tubiana, “Forgotten Darfur,” 66–68.

17. “Letter from First Ltd. Gen. (RTD) Bakri Hassan Salih to Thabo Mbeki, 2011-11-17,” De Waal AUHIP Papers, TARC, MS201.002.00964. The letter referenced the CPA, and the agreements of June 29 and July 30 in support of the claim that the 1/1/56 border ran fourteen miles south of the river and also claimed that the UNMIS had respected this.

18. Mbeki Notebook 3, entry November 21, 2011, Mbeki files. Mbeki’s normally copious handwritten meeting notes record just a single line, “2 – In west Bahr al-Arab not shown.”

19. “Letter from Thabo Mbeki to Idris M. Abdel Gadir Re: Security Map for the Safe Demilitarised Border Zone (SDBZ), 2012-06-05,” De Waal AUHIP Papers, TARC, MS201.002.01272.

20. Craze, *Dividing Lines*, 49, 44, 70.

21. “Subject: Establishment of the Border Monitoring Mechanism, 2011-12-09,” De Waal AUHIP Papers, TARC, MS201.002.00978.

22. Gramizzi and Tubiana, “Forgotten Darfur.”

23. Embassy of the Republic of Sudan, Washington DC, “Sudan Files Complaint Against Support Provided to JEM by South Sudan,” press release, December 29, 2011.

24. “Non-Paper: Prospects for Peace Between the Two Sudans, 2012-03-04,” De Waal AUHIP Papers, TARC, MS201.002.01093.

25. Hereward Holland, “Oil Well Bombing Raises Heat in Sudan Oil Dispute,” *Reuters*, March 6, 2012, <https://www.reuters.com/article/us-sudan-oil-idUSTRE8250HY20120306>; see also Patey, *New Kings of Crude*, 234.

26. Mbeki wrote privately to Pagan on February 6 detailing the misrepresentations. Mbeki files (ununcataloged).

27. “Non-Paper: Prospects for Peace Between the Two Sudans, 2012-03-04.”

28. “JPSM Minutes, 2011-02-10,” De Waal AUHIP Papers, TARC, MS201.002.00720

29. “Record of Decisions Meeting of Joint Political Security Mechanism, 2012-02-10,” De Waal AUHIP Papers, TARC, MS201.002.01071.

30. “JPSM Minutes, 2011-02-10.”

31. “Briefing to the Security Council on Sudan/South Sudan by Mr. Ladsous, 2012-02-29,” De Waal AUHIP Papers, MS201.002.01085.

32. Mbeki Notebook 3, “Oil Negotiations: 12/02/2012, Addis Ababa”; “Oil Negotiations: 13/02/2012”; and “Oil: Addis Ababa: 14/02/2012,” Mbeki files.

33. “Lyman Email to NSC and DoS Various,” February 16, 2012, Tucker files.
34. Non-Paper: Prospects for Peace Between the Two Sudans, 2012-03-04.”
35. Laura James, “Background to the Sudan/South Sudan Economic Negotiations: Update on Economic Developments in the Week to 23 March 2012, 2012-03-23,” De Waal AUHIP Papers, TARC, MS201.002.01116.
36. Cable from Johnson to Ladsous, February 13, 2012, in “UN The First Post-Independence SPLM Political Bureau Meeting: 6–7 February 2012, 2012-02-13,” De Waal AUHIP Papers, TARC, MS201.002.01072.
37. Laura James, “Background to the Sudan/South Sudan Economic Negotiations: Update on Economic Developments, 2012-05-15,” De Waal AUHIP Papers, TARC, MS201.002.01229.
38. Mbeki Notebook 3, “Oil Negotiations: 12/02.2012, Addis Ababa.”
39. Mbeki Notebook 3, “Oil Negotiations: 13/02.2012 (19.04 talks),” Mbeki files.
40. Mbeki Notebook 3, “Oil: Addis Ababa: 14/02/2012,” Mbeki files.
41. “Non-Paper: Background Note for the High-Level 3+3 Negotiations Between South Sudan and Sudan on Oil and Related Issues., 2012-02-23,” De Waal AUHIP Papers, TARC, MS201.002.01077.
42. Thabo Mbeki to UNSG Ban Ki-moon, February 23, 2012. Mbeki files (uncataloged).
43. The meeting was originally scheduled for February 27 but was held on February 29.
44. “Note of the Secretary-General’s Meeting with H.E. Mr. Thabo Mbeki, the Former President of the Republic of South Africa and Current Chair of the African Union High-Level Implementation Panel (AUHIP), Held at United Nations Headquarters/ New York,” February 29, 2012.
45. “Letter from Princeton Lyman to Susan Rice,” October 31, 2011, Tucker files.
46. Princeton Lyman, “US Strategy for Sudan and South Sudan In the Coming Three Months,” February 21, 2012, Tucker files.
47. Lissane Yohannes, telephone interview with Alex de Waal, August 18, 2022.
48. Mbeki Notebook 3, “March 9, 2012, Oil, Addis Ababa,” Mbeki files.
49. “Princeton Lyman email to Larry Andre,” February 16, 2012. Tucker files.
50. “Lyman-Zhong Jianhua 10.00am Friday,” March 02, 2012, meeting notes, Tucker files.
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19. Abdul Mohammed, telephone interview with Alex de Waal, January 18, 2012.

20. “English Translation Available—Abyei Area Executive Committee, 2012-08-16” [letter from GoS to UNISFA Force Commander], De Waal AUHIP Papers, MS201.002.00039.

21. “Agreement on The Final Status of Abyei Area, 2012-09-19,” De Waal AUHIP Papers, TARC, MS201.002.03015.

22. “Letter to Abdul from Princeton Lyman, 2012-09-19,” De Waal AUHIP Papers, TARC, MS201.002.03017.

23. “Al-Bashir to Mbeki, September 21, 2012, Mbeki files. See also “Analysis of President Bashir’s Letter of 21 September 2012 on Abyei, 2012-09-22,” [internal Panel memo], De Waal AUHIP Papers, TARC, MS201.002.03030.

24. “Al-Bashir to Mbeki,” September 21, Mbeki files.

25. “Lyman Email to Clinton and Others,” September 22, 2012, 10.18 am ET, Tucker files.

26. “Narrative Agenda for Panel for Bilateral Talks with the GoS and SPLM-N on the Resolution of the Conflict in Blue Nile and Southern Kordofan States, 2012-09-05,” De Waal AUHIP Papers, TARC, MS201.002.02994.

27. “Key Points Meeting Between Panel (Abu Bakr/Buyoya) and GoS lead by Dr Kamal el Obeid 8 September 2012,” discussed in “CL notes two areas Sept 2012, 2012-09,” De Waal AUHIP Papers, TARC, MS201.002.02992. The RSS told the JPSM in March 2013 that the name change would happen soon. “Report on the JPSM Meeting, 2013-03-20,” De Waal AUHIP Papers, TARC, MS207.002.00931.

28. “Draft Agreement Between the Government of Sudan and the Sudan People’s Liberation Movement-North for the Resolution of the Conflict in Blue Nile and Southern Kordofan States and Related Issues, 2012-09-17,” De Waal AUHIP Papers, TARC.

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32. “Brief on Temporary Resolution of Border Security Arrangements,” Luckham note for Gen. Samora [Lt. Gen. Mohamed Yunis, Chief of Staff, Ethiopian National Defense Force] September 22, 2012, Luckham files.

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34. "Muwatinun madina Daein yatazaharun tandidan bi-dam mintaga Samaha bi Bahr al-Arab li-Janub al-Sudan," *Dabanga*, August 14, 2012, <https://tinyurl.com/knpv7a84>.
35. "Panel Meeting with Rizayqat Leaders and Representatives of the GoS," September 16, 2012, Luckham files.
36. "Amru Sha'aban," *Kharita Mbeki . . . indama tahawwalat 'la' Khartoum ila 'na'am'!*, *al-Ra'i al-'Aam*, September 24, 2012, <https://www.sudaress.com/raayaam/206932>.
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38. "Lyman Email to Clinton," September 20, 2012, Tucker files.
39. "Notes Ministers SDBZ," Luckham files.
40. "Proposal for Temporary Resolution of Border Security Arrangements," September 17, 2012, Luckham files.
41. "Notes Ministers SDBZ."
42. "Notes Ministers SDBZ."
43. "Khartoum wa Juba tuwaafiqan ala Kharita Mbeki," *al-Intibaha*, September 23, 2012, <https://www.sudaress.com/alintibaha/22443>; Al-Nur Ahmad Nur and Alawiyya Mukhtar, "Tadarub hawla 'mil 14' wa muqtarahat li-Mbeki bi-shi'in Abyei," <https://www.sudaress.com/alsahafa/51150>.
44. "Al-Sudan yurabit muwafaqa ala al-Kharita amniyya bi 'mil 14'," *Al-Shorooq*, September 23, 2012, <https://www.sudaress.com/ashorooq/26350>.
45. Ahmad Dugash, "Al-Hukuma Tuwafiq ala Kharita Mbeki wa Salva Yasil Addis," *al-Sudani*, September 23, 2012.
46. "Wazir al-Difa'a: Qabalna Kharita Mbeki wa Talabna Tartibat bi 'Mil 14'," *Al-Mijhar al-Siyasi*, September 23, 2012, <https://www.sudaress.com/almeghar/5481>.
47. "Lyman to Clinton," September 22, Tucker files.
48. Sha'aban, "Kharita Mbeki"
49. "Nationality Cluster Meeting, 7th September 2012, Agreed Minutes" [Barney Afako document], Onunga files.
50. "Response of the Government of the Sudan (GoS) to 'Process for Claimed Areas,'" September 18, 2012, Onunga files.
51. "Annotated Note for the Panel: LNP Meeting on Border Cluster Issues," September 16, 2012 [Barney Afako document], Onunga files.
52. "AU Team of Experts on the Settlement of the Boundary Disputes Between Sudan and South Sudan," Progress Report, September 20, 2012, Onunga files.
53. "AU Team of Experts on the Settlement of the Boundary Dispute," 4. The meeting took place on August 21 in Juba.
54. "Process for Claimed Areas," September 19, 2012 [Barney Afako document], Onunga files.
55. "Brief on Temporary Resolution of Border Security Arrangements" [Notes for PM on security], September 23, 2012, Luckham files.
56. "Lyman Email to Clinton and Others," September 22, 2012, 4.16 pm ET, Tucker files.
57. "Statement by the President of Sudan and the President of South Sudan On the Occasion of the Summit Meeting, 23 September 2012, 2012-09-22" [Internal Draft], De Waal AUHIP Papers, TARC, MS201.002.03033.
58. "Statement: On the Summit Meeting Between Sudan and South Sudan, 2012-09-22," De Waal AUHIP Papers, TARC, MS201.002.03031.
59. Dia al-Din Bilal, "Mufawadat Addis Ababa (Sura min al-Qurb)" [the Addis negotiations: a picture from up close], *al-Sudani*, September 24, 2012, <https://www.sudaress.com/alsudani/10235>.
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62. Chris Luckham, interview with Willow Berridge, January 27, 2023.
63. “Lyman Email to DoS Various,” September 23, 2012, Tucker files.
64. Lissane Yohannes, telephone interview with Alex de Waal, January 25, 2023.
65. Abdul Mohammed, interview with Alex de Waal, January 18, 2023.
66. Dia al-Din Bilal, “Mufawadat Addis Ababa,” September 24.
67. “Pagan Amum to Mbeki, Re: Separation Between SPLM/A-N and SPLM/A,” September 22, 2012, Mbeki files.
68. “Lyman Email to DoS Various,” September 23, 2012.
69. “AUHIP Interim Report to the AU PSC on the Matters Detailed in the 24 April, 2012 Communiqué of the Council,” Mbeki Files
70. Dia al-Din Bilal, “Mufawadat Addis Ababa (*Sura min al-Qurb*),” *al-Sudani*, September 24, 2012, <https://www.sudaress.com/alsudani/10235>.
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73. “AUHIP Interim Report to the AU PSC on the Matters Detailed in the 24 April, 2012 Communiqué of the Council.”
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76. “Lyman Email to [DoS Various],” September 24, 2012; Lissane, telephone interview with Alex de Waal, August 18, 2022.
77. “Lyman Email to [DoS Various],” September 24, 2012.
78. Lissane, telephone interview with Alex de Waal, August 26, 2022.
79. Lissane, telephone interview with Alex de Waal, February 2, 2023.
80. Dia al-Din Bilal, “Mufawidat Addis (*Sura min al-Qurb*) fi Intizar al-Tawqia 4 jawlat hiwariyya bayna al-Bashir wa Salva Kiir!,” *al-Sudani*, September 25, 2012.
81. Lissane, telephone interview, February 2, 2023.
82. Lyman meeting with Pagan Amum, as mentioned in “Email, Lombardo to [Various DoS],” January 28, 2013, Tucker files.
83. “Agreement on Security Arrangements Between The Government of the Republic of the Sudan and The Government of the Republic of South Sudan, 2012-09-24,” De Waal AUHIP Papers, TARC, MS201.002.03041. [Internal Panel draft]. Prior drafts in Luckham files.
84. “Draft 14 Mile Proposal,” September 25, 2012, Luckham files.
85. “Agreement on Security Arrangements Between the Republic of Sudan and South Sudan,” September 27 2012, Article 3. <https://peacemaker.un.org/en/node/9017>
86. Barney Afako, video interview with Alex de Waal, February 7, 2023.
87. Abdul Mohamed, video interview with Alex de Waal, February 7, 2023.
88. “Compromise Proposal for Process for Claimed Areas,” September 25, 2012, [Barney Afako document], Onunga files.
89. “Lombardo Email to S-USSESSS-Neg.,” September 25, 2012. 6.24 pm ET [1.24 am EAST Sept 26], Tucker files.
90. Lissane, telephone interview with Alex de Waal, February 8, 2023.
91. Lissane, telephone interview with Alex de Waal, February 2, 2023.
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94. “*Tafasil ta’attul ittifaq*.”

95. “Lyman Email to Clinton,” September 25, 2012, 6.00 pm ET, Tucker files.

96. “Panel—New Proposal on Abyei, 2012-09-25,” De Waal AUHIP Papers, TARC, MS201.002.03047; “Letter from Mbeki to Bashir, 2012-09-25,” De Waal AUHIP Papers, TARC, MS201.002.03043; “Letter from Mbeki to Kiir, 2012-09-25,” De Waal AUHIP Papers, TARC, MS201.002.03045.

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98. “Lyman Email to Clinton,” September 25, 2012.

99. “*Al-Ghadab sayyid al-mawqif*.”

100. Lissane, telephone interview with Alex de Waal, August 26, 2022.

101. Afako, video interview with Alex de Waal, February 7, 2023.

102. Bilal, “*Za’al Deng Alor!*,” *Ahmad al-Bilal al-Tayyib*, “*Hal Tashad Addis al-Yawm Ittifaqan Bayna al-Raisayn am Protocolan au Ittifaqan au Bayyanan Mushtarakan?*,” *Sudan Safari*, September 27, 2012, <https://www.sudaress.com/sudansafari/22412>.

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104. “*Al-Ghadab Sayyid al-Mawqif fi Milaff Abyei, wa Tafasil Tajaawuz al-Mil 14*,” *al-Sahafa*, September 27, 2012, <https://www.sudaress.com/alsahafa/51325>.

105. “Lyman Email to DoS Various,” September 26, 2012, 6.26 am ET, Tucker files.

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107. “*Al-Bashir . . . Salva . . . al-Shaitan fi Abyei*,” *al-Ra’i al-Aam*, September 27, 2012, <https://www.sudaress.com/rayaam/207173>.

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109. “*Al-Ghadab sayyid al-mawqif*,” “*Al-Bashir . . . Salva . . . al-Shaitan fi Abyei*,” *al-Ra’i al-Aam*, September 27, 2012, <https://www.sudaress.com/rayaam/207173>.

110. Dia al-Din Bilal, “*Za’al Deng Alor!*,” *al-Sudani*, September 27, 2012, <https://www.sudaress.com/alsudani/10317>.

111. “Lyman Email to Clinton,” September 26, 2012, 6.26 am ET Tucker files.

112. “*Al-Ghadab sayyid al-mawqif*.”

113. “Lyman Email to DoS Various,” September 26, 2012, Tucker files.

114. “Lyman Email to Clinton,” September 26, 2012, 6.09 pm ET, Lyman files.

115. “*Al-Mihjar Tanqul Tafasil min al-Sheraton: Tatwij Qimma al-4 Ayyam bi-Addis bi-Ittifaq Itari Khaal min Abyei*,” *al-Mihjar al-Siyasi*, September 28, 2012, <https://www.sudaress.com/almeghar/5615>.

116. “The Co-operation Agreement Between the Republic of Sudan and the Republic of South Sudan,” September 27, 2012. <https://peacemaker.un.org/en/node/9014>

117. “*al-Tafasil al-Kamila li-Makhad Mufaawadat Addis al-Khartoum wa Juba Tawaqqa’an al-Yowm ala Brotocol min 8 (ittifaqiyyat)*,” *al-Sudani*, September 27, 2012, <https://www.sudaress.com/alsudani/10306>.

118. “Agreement Between the Government of the Republic of Sudan and the Government of the Republic of South Sudan on Oil and Related Economic Matters,” September 27, 2012. <https://peacemaker.un.org/en/node/9019>

119. “Agreement Between Republic of Sudan and Republic of South Sudan on Certain Economic Matters,” September 27, 2012. <https://peacemaker.un.org/sites/default/files/document/files/2024/05/sd20ss120927agreement20on20certain20economic20matters.pdf>

120. “Agreement Between the Republic of Sudan and Republic of South Sudan on Border Issues,” September 27, 2012. <https://peacemaker.un.org/en/node/9021>

121. Fifth Meeting of the Sudan/South Sudan Consultative Forum, Communiqué, New York, September 27, 2012, <https://digitallibrary.un.org/record/3870517>

122. “Lyman Email to Clinton,” September 27, 2012, 10.44 am ET, Tucker files.

20. RACE BETWEEN AGREEMENT AND COLLAPSE

1. It had many features of what Christine Bell calls “ungovernance”; see Bell, “It’s Law Jim.”

2. Lyman wrote to Clinton: “The whole package might be put in a beautiful red folder and signed by the two presidents à la the Comprehensive Peace Agreement of 2005.” “Lyman Email to Clinton,” September 25, 2012, Lyman files.

3. “Update on Situation in Sudan After Agreements, 2012-10-17,” Erasmus Papers, TARC, MS207.002.00751.

4. “Statement by H. E. Mr. Hailemariam Desalegn, Prime Minister of the Federal Democratic Republic of Ethiopia at The General Debate of the, 67th Session of the United Nations General Assembly,” September 28, 2012, *Horn Affairs*, <https://hornaffairs.com/2012/09/29/pm-hailemarim-desalegn-speech-at-the-un-full-text/>.

5. United Nations, “Secretary-General Congratulates Parliaments of Sudan, South Sudan for Ratifying Co-operation Agreements,” press release, October 17, 2012, <https://www.un.org/press/en/2012/sgsm14592.doc.htm>.

6. “Update on Situation in Sudan After Agreements, 2012-10-17,” Erasmus Papers, TARC, MS207.002.00751.

7. “Northern Bahr al-Ghazal Governor Objects to ‘Demilitarization’ of Mile 14 Area,” *Sudan Tribune*, September 30, 2012, <https://sudantribune.com/article43345>.

8. Majak D’Agoût, “Coping with Traps of Vulnerability.”

9. “Lombardo Email to Various DoS,” January 29, 2013, Lyman files.

10. “Addis Diary” (entry dated March 5), SPA/Facilitation/March 2013, De Waal Papers (uncataloged).

11. AUPSC, 339th Meeting at Ministerial Level, October 24, 2012, communiqué, (PSC/MIN/1(CCCXXXIX), <https://www.peaceau.org/uploads/psc.339th.com.sudan-south-sudan.pdf>).

12. AUPSC, communiqué, October 24, 2012, para. 13 and 14.

13. “Lyman Email to Clinton,” October 23, 2012, Tucker files.

14. “Report of the Chairperson of the Commission on the Status of the Negotiation Between the Republic of Sudan and the Republic of South Sudan on the Outstanding Issues in their Post-Secession Arrangements, 2012-02-14,” Neha Erasmus Papers, TARC, MS207.001.00856.

15. “AUHIP Update, 2012-12-09,” Erasmus Papers, TARC, MS207.002.00777.

16. “AU PSC Notes 14 December 2012,” Luckham Papers. Russia, China, and Azerbaijan were concerned over this. Also see de Waal, “Addis Diary,” entry March 7, 2013, De Waal AUHIP Papers, TARC (uncataloged).

17. AUPSC, 349th meeting, December 14, 2012, communiqué, PSC/PR/COMM(CCCXLIX).

18. AUPSC Notes, December 14, 2012, Luckham Papers; Luka Deng Biong “Abyei Final Status: An Account of Indecision by the African Union,” *Sudan Tribune*, July 2, 2013, <https://sudantribune.com/article46241>.

19. Visit to Sudan November 26–30, Princeton N. Lyman, US Special Envoy for Sudan and South Sudan, November 29, 2012, Tucker files.

20. JPSM Secretariat Minutes, November 2, 2012, Luckham files.

21. “Lombardo to Various,” January 29, 2013, relaying notes on Lyman’s meeting with Pagan, Lyman files.

22. “Lombardo to Various,” January 29, 2013.

23. “AUPSC Notes 14 December 2012,” Luckham files.
24. “Report of the Chairperson of the Commission on the Status of the Negotiation Between the Republic of Sudan and the Republic of South Sudan on the Outstanding Issues in their Post-Secession Arrangements, 2012-02-14,” Neha Erasmus Papers, TARC, MS207.001.00856.
25. “AUHIP Internal Brief for JPSM,” December 8, 2012, Luckham files.
26. “AUHIP Update Briefing,” November 16, 2012, SPA,, Luckham files,
27. “Update on Borders Issues,” in “Updates,” James AUHIP Papers, TARC (uncataloged).
28. De Waal, “Addis Diary,” entry March 5. “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).
29. Lissane was in attendance. Abdul Mohammed and the AUHIP staff were not present at this time.
30. Lissane Yohannes, telephone interview with Alex de Waal, February 14, 2023.
31. “Report on the Outcomes of the Summit Meeting Between the Presidents of Sudan and South Sudan, H.E. Omar Hassan al-Bashir and H.E. Salva Kiir Mayardit,” January 5, 2013. <https://www.peaceau.org/en/article/report-on-the-outcomes-of-the-summit-meeting-between-the-presidents-of-sudan-and-south-sudan-h-e-omar-hassan-al-bashir-and-h-e-salva-kiir-mayardit>
32. Mbeki Notebook 3, “04/01/2012 [sic: 2013]. Pres Bashir, PM Desalegn, AUHIP Chair, 15.20 hrs,” Mbeki files.
33. Mbeki Notebook 3, “05/01/2013. Contd,” Mbeki files.
34. Report on the Outcomes, p. 3, para. 2.3.1.
35. Report on the Outcomes, p. 2, para. 2.1.
36. Al-Bashir had left for the airport before Mbeki was able to confirm the changes. Mbeki considered them minor enough to go ahead without his prior approval and wrote to him the following day to confirm. “Mbeki to al-Bashir, Re: Report on the Outcomes of the Summit Meeting,” January 6, 2013, Lissane files.
37. Lissane, telephone interview, February 14, 2023.
38. “Lyman to Clinton,” January 8, 2013, Tucker Files.
39. “President Kiir to President Mbeki, REF: The Final Status of Abyei,” September 25, 2012. Lissane files; Lissane, telephone interview, February 14, 2023.
40. “Letter from President Kiir to President Mbeki,” January 10, 2023, Lissane files.
41. “Michael Bailey Email to Tucker and Lyman,” January 18, 2013, Tucker files.
42. “Letter from Mbeki to al-Bashir and Kiir, Re: Request to meet Your Excellencies in Addis Ababa,” January 20, 2023, Lissane files.
43. AUPSC at the Level of Heads of State and Government, Addis Ababa, Ethiopia, 353rd meeting, January 25, 2013, communiqué. PSC/AHG/COMM/1(CCCLIII). <https://www.peaceau.org/en/article/communiqué-of-peace-and-security-council-353th-meeting-at-the-level-of-heads-of-state-and-government>
44. “Lombardo Email to Lyman,” January 29, 2013, Lyman files.
45. The matrix specified “D-Day to be March 10.”
46. “Addis Diary” (entry dated March 11), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).
47. “Decisions Adopted by the JPSM, Addis Ababa, 19 March 2013”; “Report on the JPSM Meeting,” March 19, 2013, both in “Facilitation,” De Waal AUHIP Papers, TARC, (uncataloged).
48. “Report on the JPSM Meeting,” March 19, 2013, in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).
49. “Joint Communiqué, Juba, 12 April 2013,” in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

50. “*Al-Bashir fi Juba . . . waqa’ia ziyara tarikhiyya*,” *Akhir Lahza*, April 13, 2013, <https://www.sudaress.com/akhirilahza/127865>.

51. “Report of the Joint Technical Border Corridors Committee, Between the Republic of Sudan and the Republic of South Sudan, Addis Ababa, 20–21 April 2013,” De Waal AUHIP Papers, TARC (uncataloged).

52. “Lyman Email to Kerry,” February 20, 2013, Tucker files.

53. “Mission Report of AUHIP to New York: 25–27 March 2013,” James Papers, TARC (uncataloged).

54. Ibrahim Arabi, “*Al-Sudanayn . . . ittifaq lahu ma ba’adahu!*,” *al-Sahafa*, March 12, 2013, <https://www.sudaress.com/alsahafa/56640>.

55. “Lyman to Mbeki,” January 22, 2013, Mbeki files.

56. “JPSM Notes,” January 18, 2013, Luckham Papers; “Summary of Views from Juba and Khartoum, 2013-01-03,” Neha Erasmus Papers, TARC, MS207.002.00855.

57. Republic of South Sudan, Republican Decree No. 29/2013, RSS/RD/J/29/2013, March 18, 2013. De Waal files, ununcataloged

58. Jansen, “Humanitarianism as Buffer.”

59. African Union, Peace And Security Council, 456th Meeting, Addis Ababa, Ethiopia, “Progress Report of the African Union High Level Implementation Panel for Sudan and South Sudan,” September 12, 2014, PSC/PR/2.(CDLVI), para.14, *African Union Common Repository*, <https://archives.au.int/handle/123456789/8438>

60. “Addis Diary” (entry dated April 22), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

61. “Addis Diary” (entry dated April 23), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

62. Ahmed Uthman Khalid, “*Al-mufawadat al-muqbila ma bayna ru’ya Dr Nafie wa siyasa lajna Thabo Mbeki*,” *al-Sahafa*, January 3, 2013, <https://www.sudaress.com/alsahafa/54689>.

63. Khalid, “*Al-mufawadat al-muqbila*.”

64. “Email, from Michael Bailey to S-USSESSS-Neg, Subject: Proposed Points for the Military/CoH discussion with the SPLMN,” January 11, 2013, Tucker files.

65. “Two Areas Meeting 24 April 2013 5pm, 2013-04-24,” Neha Erasmus Papers, TARC, MS207.002.01001.

66. “Addis Diary” (entry date April 24), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

67. “Addis Diary” (entry dated April 24), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

68. “Non-Paper on the Resolution of the Conflict in the Two Areas,” January 23, 2013, SPA/Facilitation/April 2013.

69. “Declaration of Common Intent Between The Government of Sudan and The Sudan People’s Liberation Movement-North for The Resolution of the Conflict in Blue Nile and Southern Kordofan States,” Draft, April 25, 2013, SPA/Facilitation/April 2013.

70. “Addis Diary” (entry dated April 25), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

71. “Draft Proposal for the Final Resolution and Settlement of the Conflict in Southern Kordofan and Blue Nile States,” GOS Response to the AUHIP of September 17, 2012, April 25, 2013, SPA/Facilitation/April 2013.

72. “Addis Diary” (entry dated April 26), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

73. “Addis Diary” (entry dated April 26), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

74. AUPSC, 387th Meeting, July 29, 2013, “Report of the African Union High-Level Implementation Panel for Sudan and South Sudan,” PSC/MIN/2(CCCLXXXVII), para 31. <https://archives.au.int/handle/123456789/8432>

75. “Sudan Revolutionary Front (SRF) Attacks in South and North Kordofan,” *Sudan Tribune*, April 29, 2013. The GoS claimed 130 deaths. See: “The Fact-Finding Committee’s Report on the Violations of International Humanitarian Law and International Law for Human Rights in Um Rawaba and Abu Karshola in the State of North Kordofan by the So Called Sudanese Revolutionary Front,” Sudan Embassy, London, June 14, 2013. De Waal files, uncataloged.

76. African Union, “The African Union strongly condemns the killing of the Paramount Chief of the Ngok Dinka Community and a United Nations Peacekeeper in Abyei,” May 6, 2013, *African Union PeaceAu.Org* <https://www.peaceau.org/en/article/communique-of-the-374th-psc-meeting-on-the-latest-developments-in-the-situation-in-abyei>.

77. The AUPSC met on May 7 on Abyei. It condemned the attack and set up an investigative mechanism. AUPSC, 374th Meeting, Addis Ababa, May 7, 2013, communiqué, <https://oau-aec-au-documents.uwazi.io/en/document/9n1mmjkurqn7jj4ukerp8ehfr?page=1>.

78. “Mbeki to al-Bashir, cc. Kiir, Re: Report,” May 27, 2013. He also wrote to the defense ministers, Abd al-Rahim Hussein and John Kong Nyuon, the same day.

79. “John Kong to Mbeki, Re: Requesting the Convening of the Coming JPSM Meeting in a Neutral Venue,” June 1, 2013, SPA/Facilitation/June 2013.

80. “Addis Diary” (entry dated June 8), in “Facilitation,” De Waal AUHIP Papers, TARC (uncataloged).

81. Alex de Waal, “South Sudan’s Doomsday Machine,” *New York Times*, January 24, 2012.

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