

Prospects for Peace in Sudan

Briefing: April 2009

Overview

1. For eight years, the centre of gravity of the consensus on Sudan's political future has been a negotiated transition to political pluralism, self-determination for southern Sudan, and normalization of international partnerships. Even while Sudan's crisis continued, there was a consensus among the political elites in Khartoum and Juba and the international community that the country was heading in this direction. Maintaining that consensus and expectation, with the very high stakes and uncertainty facing the NCP-security leadership, is the most immediate issue.
2. Sudanese politics today is dominated by the ICC issue. One repercussion of the arrest warrant is the re-mobilization of the militant Islamist base of the regime, which has been in the shadows for the last ten years. This is cause for concern.
3. The biggest strategic challenge facing Sudan remains the successful completion of the CPA. At present this is not getting the attention it deserves. More than two thirds of the CPA Interim Period has passed with only about one third of its political business done. By maintaining its partnership with the NCP, the SPLM has positioned itself well to protect its gains under the CPA and to extract more concessions. However, this approach has a short shelf-life as 2011 nears. The electoral timetable, just announced, will prove an important test of the country's capacity to navigate political stress. An important positive signal is the electoral commission's display of independence from the NCP. The appointment of Abdel Aziz al Hilu to the deputy governorship of South Kordofan is that area's best chance to avoid crisis.
4. A humanitarian crisis following the expulsion of the NGOs from Darfur may have been averted. But government control over humanitarian operations will certainly be tighter in future. The Darfur war continues as a low-intensity conflict with 130 or so fatalities registered each month. If the JEM-SLA-Unity talks succeed in creating a united front, we may see an escalation of military activities.
5. Some within the GoS regard the current confrontation over the ICC as a fight to the finish. Others are desperately seeking a means to de-escalate the crisis. Current international efforts are too divergent, pursuing multiple different objectives and attending to different political demands, to have much traction. A holistic political approach is required, but the current GoS paranoia and widespread confusion make this a difficult time to develop the required strategy. The AU is well-positioned politically to explore solutions but desperately needs the capacity to follow through.

The Consensual Transition in Jeopardy

6. Since the 2001 U.S. Sudan policy review, the Sudanese political elites and the leaders of the international community have concurred that Sudan's political future should be a negotiated transition to political pluralism, self-determination for southern Sudan, and normalization of international partnerships. Even in the depths of the Darfur crisis, this consensus remained the centre of gravity of the country's domestic politics and international relations. The ICC arrest warrant against Pres. Bashir is the biggest challenge to date to this consensus. The extent to which the arrest warrant would be seen as humiliation and insult was underestimated by many in foreign capitals. More widely, the arrest warrant has introduced an element of uncertainty into Sudanese politics, causing every political player to consider alternative scenarios and fall-back options.

7. Some within the GoS regard the arrest warrant as tantamount to an act of war, as a demand for regime change subject to no negotiation and with no expiry. At least in the short term, the NCP leadership and security chiefs have closed ranks and adopted a common approach to the crisis. The security mentality of trained paranoia is influential. Security officers analyze all the threats they face, assume they are linked and coordinated, and take no chances. They identify the ultimate goal of their adversaries as regime change, and dismiss every discordant note in the policies or actions of the P3 and their NGO clients as merely a ruse to deceive. In the present circumstances there is a danger that the GoS as a whole will conclude that the P3 has *already* declared war, and will therefore refuse to yield concessions that would, in its view, weaken its position vis-à-vis its western adversaries, without gaining a significant concession in return.

8. Sudan's short and medium-term future hangs in the balance. The security chiefs plan for an escalation from the P3 such as additional sanctions or a no-fly zone, and having discounted this, would want to respond to such steps with further retaliation, most likely against international NGOs, the UN and foreign diplomatic missions. Others want to soft-pedal but, without anything concrete to offer, at the moment they have little leverage.

9. The most likely outcome of the current impasse is the "managing the unmanageable" scenario. If the current NCP-security leadership hangs together and refuses to yield, the international community will be compelled to find a means of doing business with the GoS, while pretending otherwise. One precedent is the way in which the IMF established "shadow programmes" of cooperation with Sudan after it expelled Sudan for non-payment of debts in 1986, formally debarring any dealings. Another is the international treatment of Hamas following its electoral success in Gaza. The Sudanese political and diplomatic leadership is more adept at playing its poor hand in these circumstances than the international community is skilled at playing its theoretically stronger hand. We can expect the GoS to turn the tables with adroit tactical manoeuvres, for example by insisting that diplomatic representatives present their credentials to their host, the President of the Republic.

10. The new U.S. Administration is under domestic pressure to make Sudan an exception to its wider policy of engaging with difficult and formerly ostracized regimes. It is hard to see how an aggressive U.S. posture would achieve any objectives in the country.

The Islamist Remobilization

11. The pattern of the GoS response to the ICC arrest warrant can now be traced clearly. When first alerted to the imminent Public Application in June, the NCP leadership was angry and bewildered. But by the time the Application was announced, it had adopted a policy of remaining cool and seeking to head off the charge by seeking an Article 16 deferral. By September, when VP Ali Osman Taha led the Sudanese delegation to the UN General Assembly, it became evident that this would not succeed. Meanwhile, the strategy of building a broad base of support across all parties (including SPLM and Umma) on the basis of an appeal to nationalism, was also not succeeding. By October, the NCP-security leadership position had consolidated into one of no compromise and mobilizing its core political base.

12. The NCP's core political base remains the Islamist movement. It mobilized this base at the time of the 1989 coup and thereafter for the *jihad*. By the late 1990s, when the movement split, it slowly demobilized, to the extent that the Islamist movement had withdrawn to the shadows by the mid-1990s. (Islamist mobilization played no significant role in the Darfur counterinsurgency.) At the end of last year, the NCP began remobilizing the Islamist constituency, while also appealing to the nationalism of the wider Sudanese public. Lacking confidence that the wider public will support the NCP, it has proceeded cautiously with nationalist appeals. For example it has not held mass rallies, fearful that these could get out of control, with unpredictable consequences. Rather it has focused on its old power base. In doing so it has extended its hands to its old allies in the Middle East including Iran, Hamas, Hezbollah and the Muslim Brothers including the Emir of Qatar. Based on assurances from these groups, the NCP was sufficiently confident of its support among the Islamists to release Hassan al Turabi from detention, knowing that he would continue to support the ICC, but knowing too that he would not be able to galvanize his constituency. Leading PCP members and backers are falling in behind the NCP position. Even al Qaida, which a few years ago denounced the NCP as an enemy, has declared that Sudan now represents its new front.

13. The GoS has issued thinly-veiled threats that it is ready to unleash the Islamist radicals but that it cannot then control them. These warnings cannot be disregarded. While ultimate responsibility for any remobilized militant constituency will lie with the security and party leadership, should the *jihadists* again congregate in Khartoum, it will not be helpful in the search for solutions. The off-budget security agencies are already operating on a long leash (and it is possible that they were involved in the alleged smuggling of weapons to Hamas). Some neighbouring countries are alarmed by the Islamist remobilization but in the short term are more concerned by what they see as the dangers of the unknown.

14. The crackdown on domestic civil society is severe. At least three organizations have been suspended and all are watched. The promised new security legislation and media act are unlikely to materialize under the current circumstances. Not since the terror days of the early 1990s has Sudanese civil society been so fearful.

The CPA and Elections

15. After some dithering, the SPLM decided that it would continue its coalition with the NCP in the GoNU. FVP Salva Kiir spurned hints that he should consider dabbling in the internal affairs of the NCP, reading this (correctly) as a counter-invitation to the NCP to play divide-and-rule within the SPLM, and distrusting (again correctly) the signal that VP Ali Osman Taha might be sufficiently dissatisfied with Pres. Bashir that he would gamble on making a decisive move. The SPLM has at the same time rebuffed some of its members who wanted to toe the NCP line completely. Salva Kiir's position has managed both to gain sufficient political credit in Khartoum that he will be able to gain some concessions on CPA implementation, and to maintain his power base intact.

16. The fact that the fundamentals of the CPA remain in place is cause for optimism. However, this does not alter the fundamental challenge of navigating the exercise in the right of self-determination in southern Sudan. This is getting more difficult with every passing month, as the political process remains focused on the ICC issue to the neglect of the key domestic challenges. The Interim Period is more than two thirds complete with perhaps two thirds of the political business yet to be done, and the pace of political business is slowing down and in some cases entirely stalled.

17. The insecurity and weak governance structures within southern Sudan are a major cause for concern. The number of violent incidents increases month-by-month and the capacity and credibility of the GoSS in Juba is not increasing. Although the NCP and security have a hand in some of the incidents the major causes are internal to south Sudan. The budget crisis facing the GoSS has compounded the difficulties of an internal security policy based on financial inducements for loyalty.

18. The appointment of Abdel Aziz al Hilu as deputy governor of South Kordofan at last brings a heavyweight SPLM presence to the challenge of that state. This is overdue. Abdel Aziz faces a huge challenge. Both the NCP and SPLM have pursued political strategies based on mobilizing opposing constituencies, each hoping to gain control of the State in the 2010 elections, ahead of the exercise in Popular Consultation. The more positive experience of Blue Nile State under Malik Agar shows that a more proactive and collaborative strategy may yield results, but time is short.

19. The National Elections Commission has announced the date of the general 'mid-term' elections, which will be held in February 2010. This is seven months later than the deadline required by the CPA and Interim National Constitution. As a consequence, additional legislation will be required so that the constitutional legitimacy of the National Assembly and the Executive (including the President) does not expire in July. Other important legislation such as the Referendum Act will also need to be passed.

20. In announcing this postponed date, the NEC under its Chairman Mulana Abel Alier, has demonstrated its independence from the NCP. Many in the NCP leadership had wanted an early election, because (a) only the NCP would be sufficiently organized to run an effective campaign and (b) a quick re-election of the President would enable him to put his domestic legitimacy on show. The NEC resisted this pressure and has chosen an electoral timetable based on broader considerations, both technical and democratic. This is encouraging.

21. The perils of a democratic election in an unstable post-conflict state should not be underestimated. The elections were introduced into the CPA with the intent of ensuring the inclusivity and legitimacy of the Government of National Unity. Experience with post-conflict elections elsewhere is that there is a high risk that these objectives will not be achieved and that the outcome of the elections will be less inclusivity and less legitimacy. The Sudanese situation is further complicated by:

- a. The ICC arrest warrant. For the NCP, the principal function of the election is now a plebiscite on the legitimacy of the President, which it cannot afford to lose. For the NCP's political adversaries, the inevitable allegations of foul play in the elections will merely be another source of ammunition in claiming that the Government is illegitimate.
- b. The impending exercise of self-determination in the South, which is scheduled to take place ten months after the elections, implying that the new GoNU will have the sole task of presiding over this, along with the Abyei referendum, the 'popular consultations' in South Kordofan and Blue Nile, and the Darfur referendum. The implications of this have yet to be fully considered. One of the implications is that few southern politicians will want to stand for election to a National Assembly in which they will serve for just a short while before becoming unemployed.
- c. The multiplicity of elections (Presidency, National Assembly, Governors, State Assemblies, plus President of South Sudan and South Sudan Assembly) multiplies the possible loci of disputes.
- d. The census results are already the subject of controversy. The (leaked) count indicates a considerably smaller number of southerners than the SPLM/GoSS had anticipated (22%), a number that the SPLM is challenging.
- e. The Darfurians should be happy with the high number of people counted for Darfur (20%) but the armed movements and the IDP camp leaders will likely seek to disrupt and discredit the elections.

22. On current political calculations, both the NCP and SPLM will want the elections to proceed smoothly and to legitimize a new GoNU in which their partnership is sustained. This is a positive outcome insofar as it minimizes the risks of political deterioration. However an additional danger of the electoral process is that its imminence obscures the much bigger challenge of the exercise of the right of self-determination in the south, and the preceding exercises in the three areas. All focus group and opinion polling evidence

points to an overwhelming vote for secession in the south, although the SPLM leadership is aware that separation runs a high risk of the destruction of the SPLM constituencies in the north. One possible scenario for violence is that it is sparked by the Abyei referendum—in which the Abyei residents vote to join the south—and the South Kordofan and Blue Nile ‘popular consultations’—at which point the Nuba realize they cannot join the south.

Humanitarian Policy in Darfur

23. The humanitarian situation in January and February this year was unremarkable. According to humanitarian sources the only health crisis was a meningitis outbreak which had 46 cases and four deaths. Malnutrition and mortality rates were within the normal range. Food security was significantly improved from earlier years due to a good harvest, reduced crop destruction by nomads, and the economic integration of many IDPs into strong urban economies.

24. The expulsion of the international NGOs on 4 March was predictable in the light of GoS statements. Unfortunately the humanitarians’ contingency plans were insufficient. The stated reason for the GoS expulsion of the international humanitarian agencies was their collaboration with the ICC. While both the ICC and the INGOs have denied any collaboration in gathering evidence, neither is keen to draw attention to a number of statements, some of them dating back to the beginnings of the ICC investigation in 2005 and some more recent, indicating that the Prosecutor was indeed consulting NGOs.

25. The international donor response to the NGO expulsion has been muted for another reason, which is that return to the status quo ante is not attractive. With no progress towards an overall political solution, donors were committed to a huge and expensive humanitarian effort with no end in sight. The expulsion is forcing a belated debate on the merits of a humanitarian effort that had undoubtedly succeeded in alleviating much human suffering, but which had not contributed to a sustainable solution for its millions of recipients.

26. A humanitarian crisis will take some time to unfold. The expelled NGOs were an important part of the relief delivery system in Darfur, but the wholesale delivery to Darfur (by WFP) and the local distribution (by relief committees) remain in place. Food security is expected to deteriorate in May. The major loss will be in the health sector where expertise and assets have been lost which cannot readily be replaced. The shutdown of clinics is leading to a creeping health crisis and stories of children dying for want of basic health care. These individual tragedies will gradually mount into a generalized deterioration in health. Action is needed for both humanitarian and medical reasons. However, the breathing space provided by the relative stability of the crisis allows for a transition to longer-term solutions to be canvassed.

27. An agreement whereby the GoS permits selected NGOs to re-register as ‘development corporations’ is on the cards. While in general a positive step, the devil will lie in the details. Will the NGOs be able to exercise sufficient oversight to ensure that

they meet standards for accountability? Will they be able to hire staff based on merit? Will they be restricted solely to service delivery or will they be able to undertake peace, reconciliation and advocacy activities?

28. Among the options for a longer-term solution to the IDP crisis are the incorporation of the IDP camps as residential neighbourhoods of the cities and the reconstitution of former international NGO operations under national management, using the former national staff who are now unemployed. The major challenges to such approaches are political, especially the high level of militant mobilization in some of the larger IDP camps. If the IDPs see a deteriorating situation and are unhappy with the response, they could easily lay siege to UNAMID bases which are close to the camps as a means of creating political pressure.

Patterns of Violence in Darfur

29. The low-intensity conflict pattern of violence continues essentially unchanged over the last three months. This consists in several distinct kinds of violence, which together amount to an average of about 130 recorded fatalities per month. The patterns of violence include the following:

- a. Fighting between government and rebels. The major armed encounter has been in Muhajiriya from mid-January to early February. Approximately 30 civilian fatalities and more than 100 combatant fatalities were reported. Aerial bombing around Muhajiriya and Jebel Marra killed at least 24.
- b. Fighting among government forces. This has been at a low level recently but there have been incidents between different government security forces and army and militia.
- c. Government attacks on the civilian population. During the last three months these have taken the form of isolated incidents. The presence of UNAMID in the major IDP camps, especially Kalma, has had an important deterrent effect.
- d. Fighting within and among rebels and former rebels and attacks by rebels. Details about the alleged killing of JEM dissenters on 1 January remain murky. The attack on Wada'a by the forces of renegade SLA commander Ali Karabino in mid-February killed at least 35 civilians.
- e. Inter-tribal fighting among the pro-government tribes (mostly Arabs) was the cause of about one third of all reported fatalities during 2008. After a lull during January and February, there are worrying signs that this is resurgent. More than 100 were reported killed in armed clashes between the Fellata and Habbaniya in late February and March, with the Rizeigat becoming involved.
- f. Criminal attacks continue to be a major problem, accounting for the largest number of reported violent incidents.

30. The Muhajiriya fighting was an important turning point for UNAMID. In refusing to withdraw, as demanded by the GoS, UNAMID strengthened its credibility among

Darfurians. In the event, UNAMID lacked the airlift capacity for a safe withdrawal (it would have needed a two-stage evacuation, which would have left the contingent that remained after the first stage vulnerable to a besieging IDP population). Muhajiriya was a success for UNAMID.

31. The loss of Muhajiriya and Gereida was also a blow for Minni Minawi. He lost his two major strongholds to SAF—the army reoccupied Muhajiriya and he was compelled to ask SAF in to help defend Gereida. Tactically, various other armed groups allied with SLA-Minawi against JEM. Meanwhile, JEM has been engaged in unification talks with SLA-Unity, which has been weakened by lack of finance. Should these talks succeed (and the announcement by Suleiman Jamous that he is joining JEM indicates that it is probable, in the short term at least) then JEM will be strengthened militarily, but will also become even more definitively identified as a Zaghawa-dominated movement. Many Darfurians expect the next major violent conflict in the region to be a coalition of all other groups versus the Zaghawa. Already there is an exodus of Zaghawa from Muhajiriya with Birgid residents returning to their homes there, reportedly happy that the Zaghawa are leaving.

The Darfur Peace Process

32. Peace talks between the GoS and JEM convened in Doha, Qatar, in February. Although Qatar was initially chosen because of its recent emergence as a mediator on Middle Eastern issues and the confidence it enjoyed with France, another significance of the Qatari role has become prominent in the last few months. Qatar is the centre of the international Muslim Brotherhood. In 2000-01, Qatar tried to mediate between the two wings of the Sudanese Islamist movement. Its efforts were unsuccessful but it remains in good standing with all the wings of the Sudanese Islamists, including JEM. Combined with its financial clout (e.g. its ability to pay a show-up fee for JEM), this provides Qatar with leverage on both sides. The Islamist dimension also gives Qatar an additional incentive for success.

33. The Doha talks produced a statement of good intentions by both sides. The GoS delegation was ready to sign, partly because it has consistently said that it is ready to talk, and it is the rebels who are the problem., and also because it wanted to look cooperative in advance of the ICC arrest warrant. For JEM, the chief value in the declaration was that it has maintained for more than two years that it is the sole armed movement fighting the GoS, and it wanted international recognition for that. In JEM's eyes, Doha provided it.

34. The repercussions of this could play either way. The other movements might tactically coalesce against JEM (as they did against Minawi in 2006), or JEM might effectively play on the widespread disillusion with the rest of the rebel leadership to consolidate its leadership role. The immediate likelihood is that JEM will manage to bring in SLA-Unity and therefore consolidate support among the Zaghawa only. Given the links of both groups to Chad, it would be difficult for the GoS not to see the resulting coalition as a front for Chadian interests, and perhaps by implication, P3 interests. The mediator will need to be attentive to the potential Zaghawa-versus-the rest scenarios,

alongside the fact that the GoS will pay a high domestic price if it is forced to cut another deal with a Zaghawa group, after the backlash against the DPA.

35. Subsequently, JEM announced its rejection of the declaration it had signed and withdrawal from the next round of peace talks on the grounds that Qatar was ready to receive Pres. Bashir for the Arab League summit. This shows the extent to which the manoeuvring around the peace talks is largely tactical, to gain recognition one way or the other. JEM will find it difficult to reject Qatar indefinitely because of it cannot easily cast aside the precious international recognition it has obtained in Qatar and nor can it rebuff the Islamist movement so lightly. It is clear, however, that the ICC arrest warrant has only complicated the peace process by giving both parties a pretext for stalling at any time.

The Regional Response

36. The extent of African and Arab unhappiness at their perceived marginalization over the ICC issue at the Security Council should not be underestimated. The gulf between New York and Addis Ababa is not as great as some commentators would make out, but the differences cannot be overlooked. The Africans have preferred to emphasize the need for a holistic and political-led response in which the different principles of peace and accountability are kept in proportion. The Africans have called a meeting of the African states parties to the ICC's Rome Statute, without a clear agenda other than making their unhappiness at the Prosecutor evident.

37. The AU High-Level Panel on Darfur, headed by former President Thabo Mbeki, has been set up. Pres. Mbeki has studiously refused to regard his task as rebuffing the ICC or rallying Africa against a neo-colonial conspiracy. He insists that, irrespective of anything the ICC may do, Africa needs to find a solution to Darfur. Sceptics will write off this initiative as Zimbabwe redux. However, in Mbeki's mind the real comparison is with South Africa after Apartheid, when a fractured country was reborn through a process that balanced peace, accountability and reconciliation. It should be noted that Mbeki was a friend and admirer of John Garang. Mbeki knows he has immense leverage over Pres. Bashir and is determined to use it. The NCP leadership recognizes that the AU HLP is important but overplayed its hand during Pres. Mbeki's visit to Sudan in early April. By preventing the Panel from meeting openly with independent civil society, the NCP angered Mbeki and challenged him to stand up to the GoS.

38. The African Union co-ownership of UNAMID will be an important asset in protecting UNAMID in the coming months and years.

The International Dilemma

39. In allowing the ICC arrest warrant to proceed, the UNSC and its members have ushered in a new era of diplomacy, in which old rules are being significantly altered. The long-established principle of letting an adversary have the opportunity to climb down, no matter how heinous the crimes committed, has been challenged. The GoS portrays this as

old-fashioned regime change in new garb. The reality is more complicated, and the advocates of accountability as a mechanism for conflict resolution face the challenge of explaining how their agenda is truly different.

40. The GoS hardliners have already discounted the next step of escalation, which they expect to be military. If the P3 takes measures which are seen as enforcement measures for the ICC arrest warrant or punishment of the GoS for failure to cooperate with the warrant, the hardliners within the GoS are certain to advocate additional steps against P3 NGOs, diplomatic missions and citizens. In the absence of a viable moderate alternative, they will prevail. In turn this will put the P3 in an unenviable situation of either backing down or making good on threats, which might ultimately entail a significant military commitment. If this is considered unworkable, the most likely alternative is a protracted effort to “manage the unmanageable,” accepting that there is no solution within immediate grasp.

41. Internationally, this version of the Gordian Knot is most easily cut by U.S. leadership of the P5, ignoring the ICC and raft of specific demands made of the GoS over recent years, and adopting (presumably in an unannounced manner) a policy of engagement with Khartoum similar to that which the Obama Administration intends for other countries that have been ostracized by the previous Administration. If the Administration identifies the priority as managing the exercise in self-determination so as to avoid a future war, then its strategy towards all the other issues in Sudan will fall into place. Sustaining the precarious consensus on the managed transition remains the absolute priority for Sudan, with all other considerations secondary.

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