

Prospects for Peace in Sudan

Briefing: December 2008

Overview

1. This briefing addresses the challenge of seeking and sustaining peace in Sudan over the next three-to-five years. The central question is how to ensure that the completion of the CPA, marked by the referendum on self-determination in southern Sudan, passes off without sparking a major new war and an unstable failed state in South Sudan. Such a disaster is the default outcome, which will occur if nothing is done to prevent it. It will take place because of the irreconcilable political positions adopted by the Sudanese political elites and the weakness of the country's political institutions, potentially compounded by the destabilizing impacts of external engagement.
2. Navigating the challenge of self-determination in the South without war and state failure requires a compact among Sudanese elites. This will need to take the form of a political bargain which takes care of their material interests. There is some movement towards such a compact, based on growing recognition of the potential disaster associated with contested partition, along with emerging mutual financial interdependence. But on current experience, these common interests emerge only gradually and the Sudanese political process moves too slowly for such a bargain to be within grasp within two years. Best estimates are that six years' political work (formal and informal) needs to be done to establish the necessary elite bargain.
3. Necessary steps before an elite bargain can be hammered out include a strategic decision within the SPLM leadership, the successful completion of the electoral process and the formation of a new Government of National Unity, a settlement in Darfur, and a deal on the outstanding issues between north and south, especially on revenue.
4. Two short term developments could transform, accelerate, slow down or capsize progress towards a political bargain in Sudan. The first is the imminent arrest warrant against President Omar al Bashir. While the GoS has taken some important steps towards reducing violence, facilitating UNAMID deployment, and establishing the political conditions for a peace settlement, the next steps are unclear.
5. The second development is the new Administration in Washington DC. President-Elect Barack Obama is under strong domestic pressure to take some dramatic action on Darfur.
6. Both these developments distract the Sudanese political elites, and threaten delay in the processes of grappling with the fundamental challenges facing Sudan, and raise vain hopes among the SPLA and Darfurians of a radical change in their favour.

Scenarios for 2011

7. The first premise of this briefing is that a contested partition of Sudan would be a disaster. The dimensions of this disaster would include humanitarian crisis, mass population displacement, armed conflict, a new fragile or failed state in southern Sudan, and possibly a war involving the neighbouring countries and huge and challenging UN peacekeeping operations with no realistic exit strategies.

8. The second premise is that the only way to avoid such a disaster is for the Sudanese elites, north and south, to come to a political compact among themselves in advance of the decision. A compact on unity would be an easier bargain to negotiate but a compact on consensual separation would be a workable second-best. Partition with elite interests adequately catered for would be a political trauma nonetheless, but the elite compact could minimize the risks of violence.

9. A third assumption is that the Sudanese political system operates at a certain pace, which cannot easily be accelerated, and that attempts to force the pace of political decision making risk driving the machine off the rails. The formal procedures of decision-making in the GoNU, such as passing legislation in the National Assembly, and building the institutions needed and implementing the required technical measures, operate at a given rate. The informal deal-making (bargaining over the price of loyalty) also moves at a predictable pace. It is speedier when there is more money in the system and slower when there is less.

10. The CPA was designed as a six-year transition. During this time, the parties had to succeed in two tasks, democratization and preparation for a decision on unity or separation, either one of which would have been taxing. Doing the two together was always going to be exceptionally demanding. The major decisions included forming the GoNU, implementing wealth-sharing and security arrangements provisions, holding elections and forming a new government, and preparing for the referendum. This meant that the CPA timetable was already tight, compared to the amount of political business to be transacted. When the death of John Garang and the Darfur peace process, and now the repercussions of the financial squeeze for the patronage system are taken into account, that timetable is no longer realistic. Four years into the transition, less than half the needed business has been completed.

11. The best estimate would indicate that Sudan is still 5-7 years away from the elite compact that would make it possible to decide peaceably on unity or separation. A decision made any sooner carries an extremely high risk of disaster. If the parties to the GoNU and their international partners choose to proceed with a referendum before this compact is made, they will need to have a robust contingency plan for dealing with the crisis that this will entail.

12. Any delay in the referendum carries a high political price, especially for the GoSS which would suffer a democratic deficit in its attempts to govern southern Sudan in the shadow of a broken commitment to a referendum in January 2011. If the parties to the GoNU and their international partners choose to delay the referendum until the political conditions are propitious, they will need a plan for dealing with the legitimacy gap that will follow in southern Sudan.

The SPLM's Dilemma

13. Popular sentiment in southern Sudan is broadly separatist. The unionist constituency in southern Sudan is less pro-unity than anti-separation: it includes people who are fearful of the likely ethnic domination, corruption and misgovernment that would occur in a newly-independent southern Sudan. It is very unlikely that unionist sentiment will increase sufficiently in the next two years for there to be a realistic possibility of a free vote supporting unity.

14. At present the SPLM is proposing that only southerners resident in the south will be entitled to vote, thereby disenfranchising southerners in the north and out of the country. The rationale for this is to minimize feared manipulation by the NCP, though it will open the exercise to the counter-accusation of SPLM manipulation. The possibility that pro-unionist SPLM leaders may also try to influence the vote should also be considered. Although their hearts may lie in the south, their material interests may be closely tied to the north (including residential property in Khartoum, commercial opportunities, etc.).

15. The SPLM has not decided on whether it will endorse unity (as required in the CPA) or secession (as most of its southern members prefer). Its position is that it will wait until shortly before the date of the referendum before assessing whether unity has been made attractive or not, and advising the southern electorate to vote accordingly. This is a strategy that makes secession a foregone conclusion. First, the only credible outcome from this exercise is that unity has not been made attractive. Second, while the SPLM holds off making a formal decision, other southern leaders will raise the flag of separation, and in order to compete for the nationalist vote, SPLM leaders will begin to defect to the separatist position to retain the loyalty of their constituents. This process is likely to gather pace during the 2009 elections. One SPLM leader has described this as 'drifting towards separation.'

16. The SPLM strategy of postponing its decision will lead it into crisis. The SPLM is a poorly-run organization that has a limited capacity for institutionalized governance. Nonetheless it is a stronger institution, with deeper legitimacy and affinity, than the Government of South Sudan. And there is a unionist bloc within the SPLM which, while a minority, wields a veto over SPLM decision-making. The SPLM cannot come to a decision on unity or separation without splitting. This split would be a disaster for the organization and the political competition and uncertainty unleashed by the split might create conditions in which a referendum cannot be held. Meanwhile, the SPLM's internal preoccupations are likely to slow down the process of reaching the necessary political bargains.

Outstanding National Business: The Elections

17. The national mid-term elections scheduled for 2009 present major political challenges. The key issue is timing. Technical considerations favour a late election, probably as late as early 2010 if all the preparatory steps are to be in place and a fair election campaign is to be held. A number of key bills still need to be passed.

18. Political considerations also lean towards delay. All the parties are divided internally. Some in the NCP (including the President) prefer snap elections (April 2009). The reasons for this include: (a) the President wants a democratic mandate if he is under the shadow of an ICC arrest warrant; (b) he also fears a constitutional vacuum when his term runs out in July 2009; and (c) early elections would favour the NCP as it is the best prepared part. Others in the NCP prefer later elections as this would provide an argument for postponing the referendum. The SPLM unionist bloc wants to hold elections well in advance of a referendum, anticipating that a strong SPLM showing in northern Sudan would strengthen the pro-unity bloc in the SPLM. The SPLM separatist bloc would be happy for no elections to be held at all.

19. The head of the National Election Commission, Abel Alier, is a man of tremendous credibility and integrity, who is in a deep personal and political bind. He is under tremendous pressure from all sides, but has the stature to withstand all pressure and make up his own mind.

20. In these difficult circumstances, perhaps the best advice for international partners is the following:

- a. Take no position on the timing of the elections, leaving it up to the parties and the NEC, and support whatever decision they reach;
- b. Continue with the technical assistance to the electoral process, which will be a valuable contribution under any circumstances;
- c. Keep a strategic focus on the need for a political compact ahead of the referendum.

Outstanding National Business: the Next GoNU

21. In all past Sudanese elections, the outcome was more-or-less predictable because of the known size of the rival constituencies. In the next election there is a bigger element of uncertainty, because the sectarian parties have been battered by the last 20 years, because of the rise of regional sentiments and the presence of the SPLM, and because the old constituency-based system has been replaced with a far more complicated multi-list system.

22. It is possible that some election results will be bitterly contested and there will be violence. Current political alignments suggest that the places and posts most at risk of violent contention are in the further peripheries (the south, Darfur, south Kordofan), and

that violence may be focused on elections to state assemblies and governorships. Any such violence, especially in Darfur, will be a blow to the legitimacy of the electoral process and the legitimacy of the new GoNU. We may see post-election negotiations over the acceptability of election results including some arbitration by the NEC which may drag in the international community. Any violence of this nature will also be a challenge to UNMIS and UNAMID.

23. On past record, it will take many months for a new GoNU to be set up and many more months before it begins to function and pass legislation. In particular, if the smaller regional parties or fractions of the old sectarian parties hold the balance of power in the National Assembly, we may see a bidding war for their loyalties.

Outstanding National Business: Darfur

24. The prospects of an inclusive political settlement in Darfur in the next year are remote. The armed movements consider that their stock is rising with the ICC indictment and the new U.S. administration and will not want to settle quickly, expecting that they can demand a higher price later into 2009. A settlement with JEM alone would not be sufficient to create stability in Darfur. Unfortunately the pressure for unrealistically rapid movement towards a settlement is proving a distraction from other business in Khartoum and overloading the political system.

25. The Joint Chief Mediator, Djibril Bassole, has kept his strategy to himself. Given the failure of the prior strategy of transparency and widespread consultation, it is certainly worth trying an alternative. However, unless he possesses some powerful cards that are invisible to others, it seems improbable that he will be able to deliver any rapid progress.

26. The Sudan People's Initiative/Forum made important progress in October and November but now appears to have stalled. The GoS was not sufficiently energetic in pursuing the initiative, especially in taking it from Khartoum to Darfur, to be able to sustain the momentum that it began. One of the key partners, the Umma Party, has shown distinctly less enthusiasm, with its leader Sadiq al Mahdi criticizing the initiative as insufficient. The SPLM has also been notably silent.

27. The GoS is keen to achieve recognition for a reduction in violence in Darfur. The President made the characteristic error of announcing a ceasefire without having previously clarified what he meant by a ceasefire and ensured that the armed forces GHQ issued the necessary precise orders to forces in Darfur. UNAMID and the JMST have made some progress towards identifying what an operationalizable and monitorable reduction in violence and cessation of hostilities would look like. The U.S. proposal for a Darfur ceasefire monitoring team could translate into a reputable mechanism in short order. If merged with the UNAMID proposals both could be strengthened. If successfully established, and matched with a genuine reduction in violence by the GoS, this could bring some breathing space in Darfur, removing the pressure to move with unrealistic speed towards a political settlement.

Outstanding National Business: North-South Issues

28. A number of well-known issues still divide north and south, including Abyei, the border demarcation, the status of southerners in the north (citizenship, property rights, etc.), security arrangements (JIUs, south Kordofan, DDR, rearmament) and revenue sharing. Each of these makes stop-start progress with intermittent setbacks. The fact that none have derailed the CPA is cause for congratulation. It illustrates the fact that rival parties in the GoNU can continue to do business with one another on a range of complicated and high-stakes issues, despite public recrimination and private distrust.

29. The main lesson to be drawn from the slow and uneven pace of implementation of these measures is the importance of time. Every one of the partly-resolved issues needs to come to a satisfactory settlement before any referendum on self-determination. But this will take more time than is available.

Impending Factors: the ICC

30. The Pre-Trial Chamber of the ICC is likely to issue an arrest warrant for President Bashir in January or February. The PTC may throw out the genocide charges, and may even not publicly announce its decision, preferring a sealed warrant. The GoS has abandoned any efforts to bring a case at the International Court of Justice, which would have argued that the ICC's case is inadmissible, because the downside risk should it lose its case is so great (it would be legally bound to hand over President Bashir). The warrant is unstopable except by an Article 16 Resolution at the UN Security Council.

31. Since the announcement of the application in July, the Government of Sudan has reacted coolly and been constructive. It initially sought to find ways of blocking the indictment through the UN Security Council or the International Court of Justice, but abandoned those approaches as unlikely to succeed. Instead it prioritized an effort to consolidate its domestic position by making concessions to other political parties. However, the most important of these parties (SPLM and Umma Party) have not fully reciprocated. They have not followed the NCP line of completely rejecting the ICC and instead continue to insist on the GoS 'engaging' with the ICC, without defining what that engagement might entail. These parties are waiting to see what the international response to the formal issuing of the arrest warrant will be.

32. There are four scenarios. The first (and likeliest) is that the GoS continues business as usual. In this scenario, the international community needs to find a way of managing its engagement with Sudan while minimizing its contacts with a Head of State who is an indicted war criminal. This would slow down international engagement and might cripple the UN operations. It would probably slow down the Sudanese political process too. The arrest warrant would hang like a shadow over the government and might even bring about complete paralysis. It would certainly increase the incentives for the southerners to support separation.

33. When the arrest warrant is issued, the NCP and security chiefs may continue their current strategy. But if they fear a well-orchestrated international conspiracy for regime change that includes the SPLM as a partner then they may decide instead to declare a state of emergency and revert into purely defensive mode, closing down international cooperation and perhaps even suspending the CPA. Such actions would probably unleash the scenario they are designed to forestall, namely concerted international action against the regime with domestic political elites as partners in the effort. Knowing this, they are unlikely to react in this way.

34. The third scenario is an internal coup. This cannot be ruled out, but is improbable because (a) Bashir is trusted by his close colleagues as a leader who will not throw them to the wolves, a confidence these rivals do not have in one another, and (b) the ICC prosecutor's strategy of criminalizing the entire government puts all the leadership in the same boat. Given the lack of a clear second-in-command and the near-certainty of a debilitating internal political contest for the leadership among bitter rivals, any internal coup would probably usher in a period of political paralysis at best, and turmoil at worst, in which key decisions could not be made. A change in leadership might however be a suitable pretext for extending the interim period and improving international cooperation.

35. A final scenario is regime change by a combination of internal and external forces, most probably an alliance of the SPLM with northern parties and dissidents from the NCP, backed by the U.S. Few tears would be shed for Bashir and the current government. But this would almost certainly lead to a protracted period of uncertainty. The Sudanese political elites are so fragmented that it would take time for any new configuration to emerge, and there would be great opportunities for spoilers to create chaos. In any such attempt at building a new government, international stewardship (especially from the U.S.) would be vital. But international influence and commitment would probably be insufficient to bring about an effective new government and it would be most unlikely to change the rules of the Sudanese political game (i.e. there would not be a rapid transition to strong political institutions capable of managing a liberal democratic order). However, regime change could also be the prelude to a complete renegotiation of the CPA and the Sudanese national political compact, with much greater international cooperation.

Options for Article 16

36. What realistic conditions could be placed on the GoS as the basis for an Article 16 resolution at the UNSC? These fall into the categories: judicial, security/humanitarian and political.

37. *Judicial (ICC)*. One condition placed before the GoS is 'engagement' with the ICC. The difficulty for the GoS with any form of engagement is that it is a slippery slope. Opening a case on admissibility at the ICJ entails recognizing the ICC as a legal entity and runs the risk of losing the case, at high political cost. Handing over the two earlier indictees runs the risks that (a) Bashir loses his reputation for steadfast loyalty and (b) Ahmad Harun implicates his superiors.

38. *Judicial (internal)*. There are several measures currently on offer, including the AU's High Level Panel, the option of domestic courts with international (African) judges, and special courts. Past efforts in this direction have been disappointing and none of the current efforts have yet moved fast enough to obtain credibility.

39. *Security/humanitarian*. The proposed reduction in violence/cessation of hostilities, monitored by the U.S. Darfur monitoring team or UNAMID or a combination of the two, could be a giant step towards the GoS achieving sufficient credibility. Combined with (already much improved) facilitation of UNAMID and ongoing humanitarian access, this is a strong combination of actions that the GoS could undertake unilaterally with demonstrable outcomes.

40. *Relations with Chad*. The formal normalization of relations with Chad has not been matched by an improvement in the reciprocal military threats. Given that JEM remains ready to go on the offensive it is hard to know what the GoS can be expected to do unilaterally.

41. *Political*. Progress in this area is extraordinarily difficult to measure given the need for others to cooperate for significant outcomes to be achieved. The Sudan People's Initiative/Forum can progress only with the further cooperation of the Umma Party and the SPLM, neither of which have shown much enthusiasm. The peace talks can only materialize if the rebels are ready to talk, which at present they are not. However, there may be measures that the GoS can take unilaterally to demonstrate goodwill. Prominent among these is individual compensation, which was agreed at the SPI. An individual compensation fund, nationally financed, independently administered, would be one action that the GoS could implement.

Impending Factors: The U.S. Administration

42. For domestic political reasons the incoming U.S. Administration will want to make a dramatic gesture on Darfur. It is improbable that the more extreme measures such as military action will be translated into action because of constraints on military assets. Even the rhetoric will translate into uncertainty about U.S. intentions in the NCP leadership. Meanwhile, the SPLM will be tempted to postpone addressing its internal issues in favour of blaming the NCP and seeking U.S. support to help it achieve its goals.

43. The strategic question facing the new Administration is its stand on unity or separation. If the policy is to allow a democratic choice for the people of southern Sudan in accordance with the timetable of the CPA, then this is a pro-separation stand and its policies should be adjusted accordingly. If the policy is for unity, then the U.S. Administration needs to consider how best it can use its very considerable political capital with the SPLM and the people of southern Sudan to make a decision for unity.

44. The U.S. needs to be particularly alert to the propensity of the SPLM to mis-read signals coming out of Washington DC, ignoring those which are not in its favour and only listening to its friends and their assurances of unconditional solidarity. Under this

scenario, the SPLM may believe that it has the strong support of the U.S. in a new confrontation, and instigate that confrontation and then find itself abandoned by the U.S. which is not sufficiently committed to taking sides in a new Sudanese internal war. Under another scenario, the SPLM succeeds in tying the U.S. into a partisan policy in incremental steps, committing the U.S. to taking sides in a new conflict before it has considered the strategic options of this choice.

45. Given the list of domestic and foreign policy priorities facing the new Administration, a new Sudan strategy is likely to be some months down the road. In the meantime there will be uncertainty in Sudan which will not help to accelerate the political process.

Conclusions

46. There are few options for stabilizing Sudan in such a way as to minimize the potential for disaster over the exercise of self-determination. The international community having vested its efforts in what it described as the last best chance for unity, in adopting the CPA, has been unlucky (in the death of John Garang), inattentive (in failing to properly monitor and account for the difficulties of reaching and implementing the necessary decisions in the Sudanese political system) and irresponsible (in feeding paranoia in the NCP and allowing the ICC Prosecutor to demand the arrest of President al Bashir).

47. The most probable scenario for the next two years is that the Sudanese elites and the international community will be preoccupied with the immediate challenges of the ICC, the elections, and Darfur. These are all sufficiently serious that they warrant focused effort. But in the meantime, the country will drift to partition without the necessary elite bargain in place to avert a disastrous war. As the day of reckoning approaches, the options for action diminish and the external leverage on the parties lessens.

48. The big lesson of the CPA is that Sudan's leaders are capable of acting strategically if they are focused on a common big-picture issue with the necessary incentives in place for when that goal is achieved. The big failure of the last four years has been to lose sight of the big objective, and to become bogged down in acrimonious micromanagement. President-Elect Obama may just have the political capital to put the process back on track. Whether he is contemplating this issue and prepared to take the necessary steps is another question.