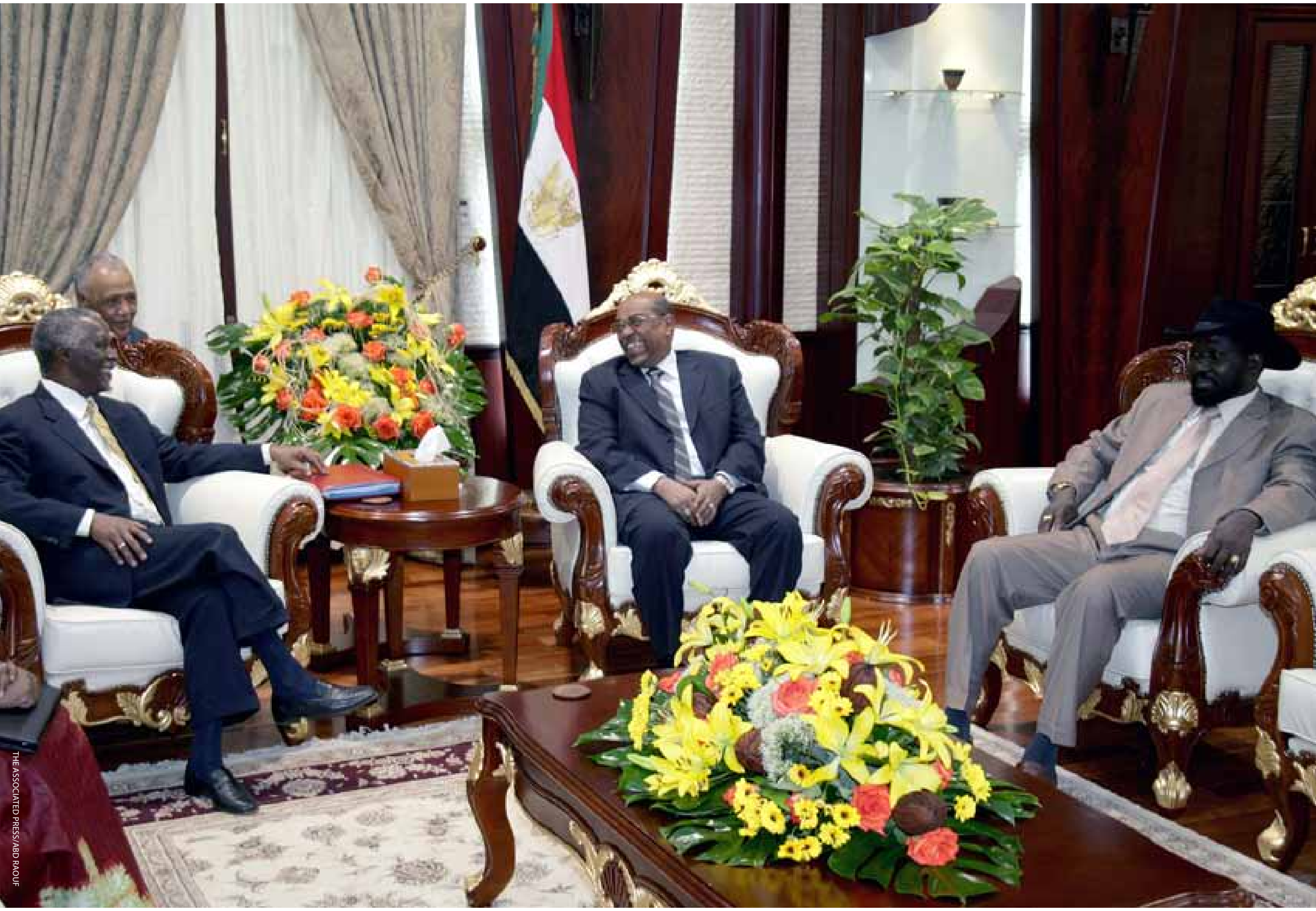

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Negotiations Between the Two Sudans

Where They Have Been, Where They Are Going

December 2011

enough

The project to end genocide and crimes against humanity

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COVER: Sudanese President Omar al-Bashir, center, speaks with his South African counterpart Thabo Mbeki, left, and Sudan's First Vice President Salva Kiir, right, in Khartoum, Sudan, in 2007. Mbeki was on a two-day visit to Sudan to discuss bilateral relations and regional and international issues. Currently, Mbeki is the Chairman of the African Union High-level Implementation Panel and Kiir is President of the Republic of South Sudan. (AP Photo/Abd Raouf)

Executive summary

The last round of negotiations between the government of Sudan, or GoS, and the Sudan People's Liberation Movement/Republic of South Sudan, or SPLM/RSS, saw significant concessions made by the SPLM/RSS and a lack of political will to negotiate on the part of Khartoum.[1] Although the two parties remain far apart in their positions, the SPLM/RSS proposal put forward in the last round paves the way for a comprehensive deal going forward. By virtue of the dynamics between the two parties, a package deal inclusive of a transitional financial arrangement for the North, Abyei, and the border is still the only feasible endgame.

The African Union High-Level Implementation Panel, or AUHIP, led by former South African President Thabo Mbeki, must be focused on achieving such a comprehensive agreement between the parties, rather than following the inconsistent approach it has been pursuing, which has yielded few results. To this end, the AUHIP process must be strengthened by the more active participation of countries that have influence and leverage over the parties. China, Ethiopia, the Sudan Troika of Norway, the United Kingdom and the United States, and other relevant actors in the international community should increase their involvement through a concerted mechanism that would both pressure the government of Sudan to play a more constructive role as well as support the AUHIP's ability to bring the parties together.

The United States should actively pursue a carrot-and-stick approach with Sudan that encompasses both the North-South negotiations and the promotion of a comprehensive peace agreement within Sudan that leads to credible elections. In particular, the U.S. must heighten its engagement in support of the African Union panel by deploying high-level representatives to future rounds of talks and assuming a leadership role in coordinating international engagement. The U.S. government can play an essential role in coordinating states and international financial institutions in the implementation of an economic roadmap that would offer economic assistance, debt relief, and the lifting of sanctions to the GoS. All such steps must be conditioned on a resolution of North-

South issues, as well as a negotiated settlement and constitutional review process aimed at addressing the fundamental issues underlying marginalization and conflict within Sudan. Now is not the time for the U.S. to play a passive role. The stakes are too high, and the threat of renewed war between the two Sudans is all too real.

The current status of the negotiations

It has been nearly 18 months since the start of the AUHIP-facilitated negotiation process between the GoS and the SPLM/RSS on post-referendum arrangements. As of today, the process has yet to produce lasting agreements on the vast majority of issues under discussion. A long list of unresolved issues stands between the normalization of North-South relations and continues to undermine confidence between the two governments. The AUHIP has prioritized three fundamental North-South issues that most acutely require third-party facilitation, including transitional financial arrangements—an issue that implicates oil transit fees—the status of Abyei, and border management.

Transitional financial arrangements

At the center of the dialogue over economic issues is the concept of the "mutual economic viability" of Sudan and South Sudan following the latter's secession, a concept that both parties have committed to as an overarching goal of the negotiations.[2] As part of this commitment, negotiations on economic issues have focused on a "transitional financial package" that South Sudan could offer Sudan to partially offset the impact of South Sudan's independence on Sudan's economy. This impact is framed most frequently in terms of Sudan's loss of an estimated 75 percent of its pre-July 2011 oil revenues. According to the International Monetary Fund, or IMF, Khartoum stands to lose over half of its revenues and 90 percent of exports as a result of southern independence.[3] What portion of this economic gap should be filled by Juba, in what form, and for how long, has been at the center of discussions surrounding an economic package.

What is the impact of secession on Khartoum's economy?

During the round of negotiations in June and July 2011, it was tacitly agreed that the two parties and the AUHIP would use an IMF estimate of Khartoum's fiscal gap. The IMF has calculated that Khartoum's fiscal gap amounts to $7.77 billion, while its balance of payments gap amounts to $15.99 billion from July 2011 until the end of 2015. Of these two calculations, the IMF asserts that the fiscal gap is more reliable. In the November talks, the SPLM/RSS and the AUHIP adopted the IMF's $7.77 billion calculation. The GoS refuted it, however, arguing that the calculation of the fiscal gap did not factor in its balance of payments problem. The GoS subsequently argued that its gap amounts to $10.4 billion.

During the latest round of negotiations held in Addis Ababa, Ethiopia, last month, the parties failed to reach agreement on transitional financial arrangements. The round was initiated to discuss an AUHIP proposal that the burden of Khartoum's estimated $7.77 billion fiscal gap would, over the next five years, be distributed equally between Khartoum, Juba, and the international community, with each party assuming one-third of the gap.

Positions of the parties: The Sudan People's Liberation Movement/Republic of South Sudan

In response to the AUHIP's proposal, the SPLM/RSS offered to provide Khartoum with a cash transfer of $2.6 billion over four years. In conjunction with this cash transfer, Juba proposed to forgive $2.8 billion out of what it has calculated to be $5.8 billion of arrears and outstanding debts that Khartoum owes Juba. The SPLM/RSS conditioned this offer on the resolution of the final status of the Abyei area; demarcation of the agreed-upon areas of the North-South border; and resolution of the parties' disagreement over the remaining six border areas in dispute through an arbitration process. All of these conditions are to be fulfilled prior to the conclusion of the four-year period during which the South would make cash transfers to Khartoum. The SPLM/RSS position was a compromise from a prior proposal offered to the AUHIP ahead of the November negotiations, which provided for a $2.04 billion cash transfer over three years, conditioned on the immediate transfer to South Sudan of the Abyei area and disputed areas along the North-South border.

The $5.8 billion in arrears claimed by the SPLM/RSS was, however, disputed by Khartoum. When the SPLM/RSS economic package is examined in total, the resulting assistance offered to Khartoum is less than the suggested $2.6 billion when offset by the remaining debts that the SPLM/RSS claims that Khartoum owes Juba. To account for this difference, the SPLM/RSS proposed that a portion of these outstanding arrears serve as a credit line for South Sudan in future trade with Sudan.

In lieu of this cash transfer proposal, the SPLM/RSS offered to pay transit fees of 74 cents and 66 cents a barrel, respectively, for the use of the two pipelines that traverse Sudan. Citing international industry standards, the SPLM/RSS argued that any transit fee applied should be cost-based and not arbitrary. The SPLM/RSS also argued that the fee should be non-discriminatory, in that it should be applied to all shippers, or companies, using the two pipelines under the pre-existing contracts. This alternative proposal would ultimately result in Khartoum earning less than it would under the SPLM/RSS's cash transfer proposal.

Positions of the parties: The government of Sudan

For its part, Sudan's negotiators took issue with the proposal that the international community fill one-third of Sudan's fiscal gap, arguing that such assistance could not be guaranteed. The facilitation did not identify in its proposal international actors willing to contribute to the one-third payment, nor did the facilitation detail the mechanism through which the international community would provide $2.6 billion to the Sudanese government. Khartoum, not surprisingly, rejected this proposal.

In its proposal, the GoS identified its economic gap as $10.4 billion, out of which it could shoulder $3 billion. The GoS proposed that South Sudan make up the remaining difference, or $7.4 billion, through a fee of $32 per barrel of southern oil shipped through Sudan's two pipelines. This fee, as broken down by the GoS, is comprised of a transit fee, as well as pipeline tariffs and fees for the use of both the central processing facility and the marine terminal. The rationale behind the $32 figure was called into question by the SPLM/RSS, who asserted that South Sudan is already paying pipeline tariffs, which are inclusive of marine terminal costs, and central processing facility fees, under the existing pipeline contracts. The SPLM/RSS calculated the GoS's proposal as amounting to a payment of $12.9 billion over five years. This figure far exceeds even the GoS's own calculation of its economic gap, $10.4 billion. The inconsistencies in Khartoum's position, and the increasingly hardline posturing of Khartoum's negotiators as the talks progressed, suggests that Khartoum's representatives did not arrive in Addis ready to negotiate.

Transit fees 101

A key focus of these talks has concerned the transit fee—a dollar amount per barrel of oil—that South Sudan may pay Sudan for the use of the pipelines traversing Sudanese territory to export southern oil. A country typically levies transit fees against shippers wishing to transport oil through its territory for export. Shippers pay the country a transit fee on top of any tariffs paid to the owners of the pipeline. In the case of Sudan, the GoS currently owns a majority portion of the Greater Nile Petroleum Operating Company, or GNPOC, pipeline and will obtain ownership over the Petrodar pipeline in the future.

The two parties are far apart in their positions on what transit fee, if any, should be applied. Khartoum has asked for economic assistance purely in the form of inflated transit and related fees, citing numbers as high as $32 a barrel. The SPLM/RSS insists that any transit fee applied should be cost-based and non-discriminatory, in that the transit fee should be applied to all shippers currently using the two pipelines—international oil companies and the South Sudan government. Because any transit fee agreed between the SPLM/RSS and Khartoum would likely remain in place for decades, the SPLM/RSS believes that to accept an inflated fee would permanently disadvantage Juba. This is in contrast to the transitional nature—a lump sum over only four years—of the financial package the SPLM/RSS offered. The African Union proposal, which identified $2.6 billion as the amount that Juba should pay Khartoum, did not specify the form of this payment. The proposal did, however, stipulate that, should transit fees be applied, those fees would not be applied above and beyond the $2.6 billion, but be deducted from the cash transfer.

Moving forward: Commercial talks

After rejecting the SPLM/RSS's offer, Sudan's negotiators proposed entering into "commercial negotiations" on all petroleum-related issues. The AUHIP adopted this suggestion, forwarding a proposal that asked the South Sudanese government to transfer $300 million to the Sudanese government as an interim payment for Juba's use of oil infrastructure, a payment that would later be taken into account within the terms of a final agreement on related fees. The draft agreement put together by the AUHIP would have also committed the Sudanese government to guaranteeing Juba's access to oil infrastructure for the exportation of southern oil. The SPLM/RSS negotiating team ultimately agreed to commercial negotiations, but rejected the proposal to pay Khartoum $300 million in initial fees.

The AUHIP believes that commercial negotiations are a forum in which the parties might settle their disputes concerning the fees and tariffs that the RSS should pay to the GoS for the use of oil infrastructure located in Sudan, even if that settlement is ultimately that the two parties agree to disagree. Given the parties' divergent positions concerning these fees and tariffs, and the improbability that the two sides will reach a compromise position, the AUHIP anticipates that negotiations will again return to focus on a transitional financial package discussion, inclusive of Abyei and the border. For the SPLM/RSS, a settlement only dealing with the North-South oil relationship is a non-starter. The party is firm about a package deal, as it is about the establishment of transit fees based on industry norms, and thus a normalized commercial relationship with Sudan. Juba will not agree to any deal in this next oil-specific round if it does not include the other unresolved issues.

As of the publication of this report, the next round of talks was slated to begin December 17 in Addis Ababa.

Abyei

The disputed border area of Abyei remains a flashpoint for the two Sudans. The Comprehensive Peace Agreement, or CPA, provided for the residents of Abyei to have a referendum to determine whether the territory belongs to the North or the South. This referendum was to occur at the same time as the Southern Sudan referendum. The vote, however, never took place, owing to disagreement between the parties over the definition of a "resident" of the Abyei area, which would determine who was eligible to cast a vote. Negotiations over the final status of Abyei again became deadlocked this past May when fighting broke out in the territory. The subsequent Sudanese military incursion and occupation of the territory created facts on the ground that favored Khartoum and made further discussions on the status of the area impossible. The temporary agreement on Abyei, signed in June by the SPLM and the government of Sudan, resulted from an initiative led by the African Union panel, Ethiopia, and the U.S. to restore pre-crisis dynamics to the negotiation process. The agreement commits the two parties to the establishment of temporary security and political arrangements—including the pullout of all armed forces, the introduction of Ethiopian peacekeepers, and the establishment of a number of administrative bodies—in Abyei until the status of the area is finally determined.

Because critical pieces of the June agreement remain unimplemented, the environment for a resumption of talks on the final status of Abyei still does not exist. As of late November, the Sudan Armed Forces, or SAF, still occupied Abyei and areas to the north, despite an agreed timeline for full and unconditional withdrawal of such forces by the close of September. Sudanese officials continue to set conditions for the withdrawal of their forces, although no such conditions exist in the June agreement.[4] Since early November, the South Sudan Armed Forces, or SSAF, have not been observed by U.N. peacekeepers within Abyei's boundaries, although the South Sudan Police Service, or SSPS, remains in the area. At the time of writing, about 68 percent of the 4,200 Ethiopian peacekeepers provided for in the June agreement had been deployed to Abyei.

None of the civilian bodies provided for in the Abyei agreement are fully functional. Although the SPLM/RSS and the Sudanese government have appointed their respective members of the Abyei Joint Oversight Committee, or AJOC, the highest administrative body established by the agreement, this body has not convened since its inaugural meeting in early September. The Abyei Area Administration, a secondary body known as the AAA, has not been established due to disagreement between the parties over who should be appointed to two key positions.

In the last round of talks, the AUHIP did not put forward a proposal on the question of Abyei, as it hopes first to achieve further progress on implementation of the temporary agreement and see peaceful seasonal migrations occur. As described above, in the latest round of negotiations, the SPLM/RSS proposed a time-bound mechanism, tied to the cash transfer of $2.6 billion to Khartoum, by which the final status of Abyei would be resolved. According to the proposal, payments as part of the transitional financial package would begin once the SAF fully withdrew from Abyei. Completion of the payments would be contingent on the resolution of the area's final status. The SPLM/RSS has long held the position that a resolution regarding Abyei must be included in a comprehensive package deal, which includes, among other things, agreements on oil-related issues. Khartoum's negotiators did not explicitly respond to this piece of the SPLM/RSS's latest proposal, nor did they forward a proposal on Abyei.

The SPLM/RSS's proposal represents a significant compromise from the South's previous stance, which sought to secure Abyei as southern territory in a package deal rather than establishing a deadline by which a final status resolution would be reached. Although prior agreements make clear that no preconditions exist for the full withdrawal of SAF from Abyei, the SPLM/RSS proposal offers an incentive for the withdrawal of forces. This compromise is a reaction to current, hard-line political realities in Khartoum and paves the way for a package deal going forward that does not have to wait for the political situation in the North to stabilize first.

North-South border

Since late 2010, the two parties have tentatively agreed to a number of mechanisms in support of the creation of a soft border, across which people and goods can freely move. These include a demilitarized border zone that would stretch 20 kilometers across the North-South border, the introduction of 300 Ethiopian peacekeeping troops to provide protection for joint North-South border teams that would monitor and secure the demilitarized zone, and a bilateral implementation structure—a Joint Political and Security Mechanism, or JPSM, composed of military, security, police, and government officials from both sides. Implementation of the border zone agreements remains stalled due to a disagreement over where the border lies. A solution to this problem will continue to be challenged by developing realities on the ground, including multiple conflicts along the border and the continued stoppage of North-South trade. The Security Council adopted a resolution in early December to expand the mandate of the Ethiopian peacekeeping force in Abyei to include a border monitoring support role.

In the latest round of talks, the SPLM/RSS included in its offer of a transitional financial package a time-bound proposal for the demarcation of the agreed-upon areas of the border and the resolution of the six disputed areas through arbitration. Khartoum contends that there are five disputed areas, not six (excluding the area where the Heglig oilfield lies) and wants the issue of these five disputed areas to be resolved bilaterally. Juba's position on arbitration and claim of Heglig are non-starters for Khartoum, a sign of continued posturing on the border issue. Neither side has shown the political will necessary for finding a resolution.

The parties: Motivations and end goals

South Sudan

In the absence of crisis or impending crisis since independence, the government of South Sudan has been under little economic or political pressure to settle unresolved issues with Sudan. Juba's bargaining position has been strengthened by sovereignty. The government of South Sudan now negotiates with equal international rights and privileges, and with less pressure to compromise than before independence.

Oil continued to flow after July 9 from South Sudan, even in the absence of a deal with Khartoum on oil transit fees and related issues. With theoretically twice the amount of revenues currently flowing into the South's coffers relative to pre-independence, there is little incentive for Juba to settle on a transit fee quickly with Khartoum, especially in light of Sudan's inflated proposals.[5] Moreover, immediately prior to independence, South Sudanese officials began a dialogue with oil companies operating within the

South's territory. This has helped to ensure the continued export of oil from South Sudan, with the government of South Sudan continuing to pay to the owners of Sudan's two pipelines the pipeline tariffs stipulated in the relevant contracts.

South Sudan, whose development and basic infrastructure needs are severe, remains desperately dependent on its oil revenues; even as uncertainty surrounds just how much, and for how long, oil revenues can be relied on to sustain the economy.[6] This uncertainty, coupled with high expectations from the South Sudanese public, is further incentive for the government to remain inflexible.

War in South Kordofan and Blue Nile, and the increased fragility of the Sudanese regime, is a factor in Juba's views on its relationship with Khartoum. Providing significant economic assistance to Sudan, while the Sudanese government continues an offensive against the South's former brothers-in-arms in South Kordofan and Blue Nile, would be politically tricky for decision-makers in Juba. The ongoing Sudan-South Sudan proxy war is suggestive of Juba's calculations as to whether the regime in Khartoum remains a viable negotiation and implementation partner. Sudanese President Omar al-Bashir's rejection of the agreement negotiated by his assistant and the ruling National Congress Party, or NCP, Vice President Nafie ali Nafie has raised questions as to who in that regime can credibly guarantee an agreement. This political volatility in Sudan creates a level of uncertainty—and some disincentive—for Juba's negotiators to commit to a deal.

At the same time, the last round of talks demonstrated that the SPLM/RSS is ready to make concessions and put forward concrete proposals that can serve as the basis of a genuine back-and-forth with Khartoum. The SPLM/RSS has made clear that they are willing to provide assistance to Khartoum, but not to the point of incapacitating the economic growth of the new country. Ultimately, the party seeks to preserve the territorial integrity of South Sudan, buy security guarantees from Khartoum, and open a new chapter in Sudan-South Sudan relations, one in which the two states are on equal footing.

Sudan

Although Khartoum faces an economic crisis that could be mitigated by a deal with South Sudan, political instability in Sudan will likely cause the regime to continue to resist the compromises that would be necessary to reach such a deal. Instead, the current regime seeks to cultivate and maintain an environment that will ensure its political survival in the short run at the cost of violence in the periphery and economic deprivation throughout the country.

The regime is under considerable economic pressure to strike a package deal with the South. One expert called the Sudanese economy "a ticking time bomb," which "needs an emergency aid injection" that the regime would be hard-pressed to find given its relative political isolation.[7] Since Southern independence, Sudan has seen its currency drop in value by as much as 60 percent on the black market.[8] In November, Sudan was experiencing 19.1 percent inflation.[9] Sudan further faces a looming balance of payments crisis, as it continues to import necessary commodities, such as food, while lacking desperately needed foreign currency revenue because of the drop in its exports.

At the same time, a full picture of the Sudanese economy is difficult to piece together, as a significant portion of government revenues and expenditures are off the books.[10] In recent months, Sudanese officials have publicly sought assistance from a number of Arab states, including a public request for $1.5 billion a year of assistance at a gathering of Arab finance ministers in September.[11] Separately, Sudan's central bank governor has also asked Arab states to deposit $4 billion into Sudan's central bank.[12] It is, however, unclear the total amount of bilateral assistance that Khartoum has secured.

Despite these economic realities, Khartoum's intransigence in the latest round of negotiations suggests that the economic situation in the North has not reached the point at which the regime believes its survival is threatened. Should popular discontent over the economy grow, that pressure, along with rebellions in the peripheries and resistance by traditional opposition parties, could, however, topple the regime.

Since the South's secession, the rise of hardline military elements within the ruling National Congress Party, or NCP, has left the North in an even more desperate and unpredictable regime with which Juba must negotiate. It has been rumored that the South's secession weakened President Omar al-Bashir's position politically within the NCP. Those now making decisions in Khartoum take an aggressive posture, pursuing military solutions in South Kordofan and Blue Nile. Without a position of internal political strength from which to negotiate, the Bashir regime has little political space to make substantial concessions, especially territorial. A final resolution on the status of Abyei—which, for Juba, must ultimately end up in the South—would be a high-risk concession for the Sudanese regime to make in the current political context. Regardless of the "ransom" Sudan would be paid, the regime is unlikely to make a decision that could isolate sensitive constituencies during such an unstable time.

Even as the regime faces political obstacles that limit the level of compromise that can be made at the negotiating table, Khartoum has not shied from aggressive attempts to pressure Juba into concessions, including crossing international borders to bomb South Sudan, delaying Southern oil shipments at Port Sudan, and announcing that Khartoum will confiscate 23 percent of Southern oil as a transit fee. These unilateral actions are an indication of the regime's disregard for negotiations at the table, as well as an increasingly desperate state. Given political realities, and convinced that a better deal can be negotiated through the use of force, Khartoum is unlikely to negotiate sincerely at the table anytime soon. What may alter this dynamic is the degree to which external actors, in particular China, intervenes.

The AUHIP and the international community

AUHIP

The international effort to bring the two parties together in an agreement can only realistically continue to be led by the AUHIP, despite the panel's inability to facilitate the conclusion of critical and lasting agreements. The AUHIP, headed by former South African President Thabo Mbeki, is one of the few international actors with access to both Presidents Kiir and Bashir and is likely the only facilitator who would be accepted by Khartoum. Nevertheless, the AUHIP, along with the broader international community, should reconsider carefully its future engagement in the negotiation process, taking into account the multiple rounds of negotiations that have, nearly 15 months since their commencement, yielded few if any viable agreements.

A key constraint of the AUHIP is the lack of leverage the panel has over the parties when neither has the political will to compromise. As a result, the AUHIP has adopted a risk-averse approach, with a desire to keep the parties in the room and in dialogue, despite the lack of progress. This was evident in the latest negotiation round, during which the AUHIP reacted to Khartoum's unrealistic proposals concerning oil-related fees by endorsing its proposal to pursue commercial negotiations. Although both the AUHIP and the SPLM/RSS were broadly aligned on a reasonable proposal, the panel lacked the leverage to push Khartoum toward a deal.

Since the inception of the AUHIP, the format of the talks has undergone several iterations. The long list of unresolved issues was originally consigned to technical discussions in separate working groups, largely without AUHIP engagement. In October 2010, discussions began within the lead negotiation panel on an aspirational framework agreement, which brought together all the disparate issues. Thereafter, the AUHIP bifurcated the talks, conducting simultaneous lead panel and working group negotiations. Just prior to the South's independence, the financial and natural resources negotiations were largely combined into a single discussion of financial transition arrangements. And finally, following the conclusion of this last round of talks, it appears as if the format of discussions will again shift, if only temporarily, to commercial negotiations on oil alone.

At this moment, it is critical for the AUHIP to structure talks in a way that recognizes that the top-tier issues of economic assistance from the South to the North, Abyei, and the disputed border areas must be negotiated as one package, and not in isolation. Such a comprehensive approach recognizes, correctly, the relationships inherent in all outstanding North-South issues and the ultimate bargain that the two sides will have to strike. While the details need to be negotiated, the contours of such a bargain are clear enough. In return for an undefined amount of economic support that would provide a level of political stability for Khartoum, the SPLM/RSS hopes to achieve security and territorial integrity, the latter of which means the South's gain of as much territory as it can among the disputed border areas, along with the recognition of the Abyei area as being part of the Republic of South Sudan. The AUHIP should therefore make it a priority to return to a comprehensive approach to the talks. Should commercial oil negotiations begin to make progress, the two parties' positions on the other issues must be integrated into the discussion.

During the many phases of negotiations, the AUHIP has tabled various draft agreement texts—holistic agreements and issue-specific agreements alike—which, at times, seem detached from the parties' positions and realities on the ground. In the latest round, the panel's proposal that the international community would fill one-third of Khartoum's fiscal gap was not matched by guarantees from any international actors. This demonstrated a failure on the part of the AUHIP to take seriously the realities of Khartoum's relationship with the international community as well as a lack of effort to coordinate with key international actors. These issues, in turn, ultimately ensured that Khartoum would reject the proposal.

Similarly, the panel sets out proposals that, while grounded in international law and state practice, are largely unworkable within the Sudanese context. For instance, in late 2010, the panel forwarded a proposal that would split the disputed Abyei area between Sudan and South Sudan. This proposal demonstrated a lack of understanding of the significance of the disputed area to the two parties and a disregard for the distribution and movement of populations within and through the region. Moving forward, the panel's ability to couple issue-specific expertise with a historical, political, social, and economic understanding of the two Sudans is crucial to reviving the negotiation process.

International community

The international community, led in large part by the Sudan Troika of Norway, the United Kingdom, and the U.S., achieved success in facilitating the signing of the Comprehensive Peace Agreement, or CPA, and shepherding through the subsequent referendum and independence of South Sudan. Sustained diplomatic engagement is similarly necessary to achieve a post-separation agreement between Sudan and South Sudan. A reinvigorated process should include regional state and non-state actors, chief among them Ethiopia, the African Union, and the Intergovernmental Authority on Development, or IGAD, along with China, the Troika, and Arab states in a concerted diplomatic effort to shore up the AUHIP's resources and leverage with the two parties.

To date, the panel has not received sustained political support from countries with the most leverage to induce the two Sudans to sit at the negotiation table together. Ethiopia and China—whose diplomatic engagement in moments of crisis has consistently yielded quick results—must be convinced that sustained engagement is ultimately necessary to stabilize North-South relations in the long term.[13] In particular, China, which has recently increased its diplomatic engagement in relation to the negotiations on oil, must be convinced that it is in its best economic interests to push the parties toward not only an agreement on their oil relationship, but also a resolution on the border, Abyei, and the conflicts in South Kordofan and Blue Nile. All these issues have the potential to affect, in some way, the oil sector and the two countries' continued economic cooperation.

International engagement with the AUHIP must include the presence of high-level representatives from key stakeholders at the negotiations, those representatives' formulation of creative proposals, which complement or bolster existing and future AUHIP proposals, and the exercise of sustained diplomatic pressures on the two parties to negotiate and conclude comprehensive agreements. One previously existing mechanism, the Sudan Consultative Forum, could be revived as a means of sustaining and coordinating international engagement.

Key stakeholders also have the potential to restrain either party from taking further actions that negatively affect the negotiating context. In particular, the international community, through the U.N. Security Council, should take appropriate actions in response to aggression and blatant violations of sovereignty, such as Khartoum's bombing of South Sudan. Serious steps should be taken to mitigate the undeclared proxy war that is currently taking place across the North-South border. Stakeholders in the oil industry should continue to make clear that unilateral actions taken by either side will not be tolerated. Finally, the same concerted international push that brokered the June agreement on Abyei is needed once more to enforce the implementation of that agreement, in particular, the withdrawal of all forces from the Abyei area.

The international community must remember that its engagement in the negotiation process cannot end once an agreement is concluded. Sustained diplomatic pressure must continue to be applied to both parties to ensure implementation of existing and future agreements. As was seen during the CPA interim period, failure to implement agreements only proves to further destabilize the fragile relationship between Khartoum and Juba. Moving forward, the international community must help to ensure that this relationship does not again disintegrate into all-out conflict by making all efforts to promote implementation of any agreements that the two parties conclude.

Finally, North-South reconciliation is only sustainable if paired with a resolution of both the conflicts in the North as well as the fundamental governance issues at the root of Sudan's chronic instability. For international engagement in the North-South negotiations to be effective, vested actors must not only work toward the comprehensive goal of peace between North and South, but also towards peace within Sudan.

Recommendations to the United States government:

Given its past engagement in Sudan and the potential "carrots" it has to offer Khartoum, the continued engagement of the U.S. government in the negotiation process is crucial to the talks' ultimate success. The removal of the state sponsor of terrorism designation, the lifting or expansion of the current sanctions regime, and support behind debt relief for Khartoum are viable tools that can be applied when needed during the negotiations. However, these tools should not be employed to advance a North-South deal alone. Rather, the U.S. should actively pursue a carrot-and-stick approach with Sudan that encompasses both the North-South negotiations and the promotion of a comprehensive peace agreement within Sudan that leads to credible elections.

In order to help create a more stable North-South environment in which an agreement can be brokered, the U.S. government should:

- Apply the appropriate diplomatic pressures on both parties to ensure implementation of the June temporary agreement on Abyei, in particular the unconditional withdrawal of all armed forces from the area, which will in turn create the appropriate environment within which negotiations on the final status of the area may resume.

- Assist in the creation of a mediation team and a comprehensive process, including offering resources and permanent staff, to holistically address center-periphery issues in Sudan.

- Provide material assistance to non-violent, pro-democratic groups in Sudan to support efforts toward democratic reform in the country.

- Examine ways to protect civilians from aerial bombardments in Sudan and Abyei. In particular, the ban on offensive aerial flights over Darfur should be extended to Abyei, South Kordofan, and Blue Nile, and mechanisms to enforce those bans should be implemented.

In order to intensify engagement behind the AUHIP's efforts toward brokering an agreement, the U.S. government should:

- Deploy to future rounds of talks high-level representatives who are empowered to propose creative solutions to issues under negotiation that complement or bolster existing and future AUHIP proposals and offer resources and individuals to permanently staff the negotiation process.

- Play a leading role in coordinating international engagement with the AUHIP, in particular encouraging heightened engagement on the parts of Addis and Beijing, and ensuring that the international community assumes a coordinated position behind a comprehensive deal.

- Offer an economic roadmap to secure both a resolution on remaining North-South issues as well as the completion of a North-North dialogue. Specifically, the U.S. government should line up guarantees from the appropriate states and international financial institutions to fill one-third of Sudan's fiscal gap, as per the compromise AUHIP proposal. This coordination of the appropriate financiers, in particular those states that have historically benefited from Sudan's oil industry, along with a U.S. government offer to support the lifting of sanctions and debt relief for Sudan, should be conditioned on the resolution and implementation of a North-South package deal on transitional economic arrangements, Abyei, and the border, as well as a resolution of North-North conflicts, including: a cessation of hostilities against civilian populations throughout Sudan; access for international humanitarians throughout Sudan; a negotiated holistic settlement mediated by a third party between the Sudan government and all key opposition groups, including those involved with the Sudan Revolutionary Front; and the completion of a fair, transparent, and all-inclusive constitutional review process followed by democratic elections.

Endnotes

1 The Sudan People's Liberation Movement, as a signatory of the Comprehensive Peace Agreement, remains a party to the post-separation negotiations.

2 This concept appears in both the guiding principles signed by the two parties at the commencement of negotiations in July 2010 (albeit, presented in the context of unity or secession) and the February 2011 guiding principles of the Finance, Economic, and Natural Resources Working Group.

3 IMF, "South Sudan Faces Hurdles as World's Newest Country" (2011), available at http://www.imf.org/external/pubs/ft/survey/so/2011/car071811a.htm.

4 In October, a Sudan official said that the withdrawal of SAF would take place once the deployment of UNISFA was completed. More recently, Sudanese officials have said that withdrawal is contingent on the establishment of the Abyei Area Administration.

5 According to a press release from the RSS Ministry of Petroleum and Mining, South Sudan contracted the sale of 22 million barrels of crude oil for export between July and October 2011. The ministry estimated the value of exports at $2.14 billion based on the market prices at that time. See Republic of South Sudan Ministry of Petroleum and Mining, "South Sudan contracts $2.14 billion in export crude oil," Press release, October 5, 2011.

6 According to a public presentation by the Republic of South Sudan Minister of Finance and Economic Planning in October 2011, in Juba, South Sudan, oil production and revenues from existing blocks will "decline significantly over the next few years."

7 Interview with international economist, October 2011, Addis Ababa.

8 William Wallis, "Sudan's economy reels from loss of South," *Financial Times*, October 17, 2011, available at http://www.ft.com/cms/s/0/ce7f675a-f8c9-11e0-ad8f-00144feab49a.html?ftcamp=rss#axzz1b43Mf6JL.

9 "Sudan inflation remains high, stokes tensions," Reuters, December 8, 2011, available at http://af.reuters.com/article/investingNews/idAFJOE7B706E20111208.

10 See International Crisis Group, "Divisions in Sudan's Ruling Party and the Threat to the Country's Future Stability" (2011), pg. 17-19.

11 "Sudan needs around $1.3-1.5 bln foreign aid – FinMin," Reuters, September 7, 2011, available at http://af.reuters.com/article/commoditiesNews/idAFL5E7K717R20110907.

12 "Sudan to lift fuel subsidies to close budget gap-central bank," Reuters, October 31, 2011, available at http://af.reuters.com/article/sudanNews/idAFL5E7LV24120111031?sp=true.

13 Ethiopia's unique position makes it a valuable asset in productive negotiations. Government officials in both Sudan and South Sudan trust Ethiopia, which shares a border with both Sudan and South Sudan and has a keen interest in regional stability. Moreover, Ethiopia purchases around 80 percent of its refined oil from Sudan, giving it an incentive to help establish normal commercial relations between Sudan and South Sudan. Ethiopia is also an important player in stabilization. It is a leading country in IGAD and in the African Union, and has actively engaged in the stabilization of the Abyei area through the provision of peacekeeping forces.

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