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Sudan-South Sudan Negotiations: Can They Meet the Deadline?

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Sudan and South Sudan are engaged in a final round of talks to settle the outstanding issues of Abyei, border disputes and demarcation, security arrangements along the border, and citizenship. In the previous round, the two parties provisionally agreed to an economic deal. This deal, and the resumption of oil shipments from South Sudan through Sudan, should be implemented when the two parties reach a comprehensive agreement on the remaining issues. A comprehensive deal continues to be the only means of securing sustained peace between the Sudans.

The dynamics of the upcoming round will differ from previous sessions. With the provisional oil deal on the table, the two parties—South Sudan in particular—will have less leverage in negotiations over the remaining issues. The amount the South will pay in transit fees and in financial assistance to the North has been provisionally fixed, and can no longer be leveraged to strike a bargain on the disputed border territories and Abyei. Since Khartoum and Juba have tentatively come to an agreement on the size of the financial package both parties have less of an economic motivation to reach a comprehensive deal in the upcoming round. The outcome of this round will be influenced in part by which country is more in need of the revenue derived from the resumption of oil shipments.

The negotiating dynamics of the next round will also be determined by the level of interest both parties have in resolving the remaining territorial disputes and the status of Abyei. Khartoum politically benefits from maintaining the status quo of administrative limbo in Abyei rather than from the situation's resolution. For Juba, territorial integrity remains a priority, but perhaps not at the expense of continued economic stagnation and the political threats sparked by austerity measures. Neither Juba nor Khartoum faces serious domestic pressures to resolve the border disputes in this round.

The international community is eager for the oil to flow again since the resumption of oil production will likely stop the ongoing damage to both countries' economies. Therefore, the international community is unlikely to maintain the unified resolve that was a hallmark of the negotiations over the oil impasse. As a result, elements of both parties and the international community could be tempted to move forward with an oil

deal and avoid addressing the politically challenging issues of Abyei and border disputes. Nevertheless, a timely and comprehensive agreement is fundamental to ensuring an end to conflict and long-term stability between the two Sudans. Both Abyei and disputed border areas have been sources of recent tensions and fighting. These areas are of economic and political significance to both Juba and Khartoum because of the mineral wealth and importance of key constituencies found in these territories.

In its last communiqué, the African Union Peace and Security Council set September 22, 2012 as the date by which the facilitating African Union High-Level Implementation Panel, or AUHIP, should present its final report. To increase the chances of a comprehensive agreement, the interested international actors should treat September 22 as a hard deadline by which the two parties should come to agreement on all outstanding issues or face potential consequences.

The Role of International Leverage

A deal on the outstanding issues will be challenging, but not impossible. During the next round of negotiations, the international community should contemplate the necessary incentives and pressures that can address the probable lack of political will, and the loss of leverage, between the two parties to negotiate a deal on these remaining, critical issues.

Therefore, those interested countries with leverage in the two capitals should push both parties, at a minimum, to arrive at an agreement on 1) the centerline for a demilitarized border zone, 2) the modalities of a referendum on Abyei, including voter eligibility, and 3) a process for resolving border disputes. The AUHIP will find it challenging to provide Juba and Khartoum with the necessary incentives and political cover needed to justify to their domestic constituencies giving up disputed territories along the North-South border. Nevertheless, relinquishing some territory will be necessary compromises for peace.

Security arrangements

Khartoum continues to prioritize a solution for security-related issues, including an end to Juba's support to rebels operating in Sudanese territory. The international community and South Sudan are in agreement on the appropriate security arrangements for creating a demilitarized border zone between the two countries, which would help deter the escalation of hostilities between the two militaries. However, Khartoum continues to reject the AUHIP-proposed centerline from which the demilitarized zone would be drawn. Sudan's objection is that under the AUHIP map, the 14-mile wide strip of disputed territory that lies between Northern Bahr-el Ghazal in the South and Darfur in the North, falls in South Sudan. Khartoum should have been pushed to accept the AUHIP map in the last round so that the demilitarized border zone could be estab-

lished. In the next round, China, Ethiopia, and the League of Arab States, among others, should continue to exert pressure on Sudan to accept the AUHIP map. Ethiopia's ability to influence Sudan could be diminished after the death of Prime Minister Meles Zenawi, who played a significant role in the negotiation process.

Abyei

In the current round, discussions concerning Abyei will likely revolve around the modalities of the referendum that will decide the area's final status. These modalities are so sensitive that they will likely require negotiations at the presidential level to achieve a resolution, along with some significant compromises from one or both sides. Under the 2005 Comprehensive Peace Agreement, or CPA, members of the nine Ngok Dinka chiefdoms and other residents of Abyei are entitled to a referendum in which they will vote on whether the territory should be part of Sudan or South Sudan. The CPA guaranteed a vote by January 9, 2011 (at the same time as South Sudan's independence referendum) but it was not held because of the two parties' impasse over what defines a resident of Abyei. The definition of this critical voter eligibility term, which could affect the outcome of the referendum, remains the key issue in negotiations on Abyei.¹

It is widely presumed that Abyei will eventually go to the South because of the recognition of the area, according to the CPA, as the traditional lands of the nine Ngok Dinka chiefdoms and because there is little legal basis to define Misseriya pastoralists—who migrate through Abyei seasonally—as “residents” for the purposes of a final status referendum. As such, the real question, and crux of the negotiations on Abyei, is how to provide Khartoum with the political soft-landing that it needs to part with the territory.

Khartoum will likely remain reluctant to come to a deal on Abyei. The economic incentive—resumption of oil shipments—for Khartoum to reach a deal with Juba on Abyei is undermined by the fact that South Sudan is under as much economic pressure to turn the oil back on. Politically, the continued lack of resolution of the status of Abyei is beneficial to Sudan for several reasons, including Khartoum's current political limitations, its unwillingness to concede more territory following southern secession, and the importance of the Misseriya constituency to the ruling National Congress Party. International pressure will be needed to push the two parties toward a solution. One remaining bargaining chip with which the two parties can negotiate is a potential wealth-sharing agreement concerning the existing reserves at Diffra. Diffra is Abyei's only producing oil well that currently produces about 3,000 barrels of oil a day, which accounts for an estimated two percent of Sudan's total oil production. A formula for sharing the oil in Diffra could involve a portion for Khartoum to serve their domestic consumption and refinery needs, a portion for basic services and development for Misseriya who migrate through Abyei, and a portion for basic services, development, and reconstruction for the Ngok Dinka community.

The negotiations regarding the border disputes may also impact discussions on Abyei, depending on the process through which the disputes are resolved and the timing of the resolution.

Even if an agreement is reached at the political level, a key obstacle to ensuring implementation on the ground is the spoiler potential of Misseriya militias in the area. These groups may react violently to a referendum vote that decides Abyei is part of the South. To help mitigate potential violence, a negotiated agreement between Sudan and South Sudan must include stipulations protecting Misseriya rights, regardless of whether Abyei ends up in Sudan or South Sudan. In particular, an agreement must provide guarantees preserving Misseriya grazing rights as well as address the economic marginalization of the Misseriya community as a whole. The South Sudanese government could demonstrate its commitment to nomadic rights—in particular nomads’ right to access grazing lands and water in the South—through political decisions such as the passing of state legislation, or the creation of a political position or body for nomadic representation at the local level.

Border disputes

At the conclusion of the last round, the AUHIP introduced a “panel of experts” on border disputes to informally arbitrate the two sides’ claims. This experts process is meant to offer the two sides a glimpse into what an international arbitral body might decide—if arbitration is the route they ultimately chose—and potentially to reduce the number of disputed areas that eventually go through an arbitral process, thus reducing time and cost. The informal ruling of these border experts could also create new pieces of leverage for either party with which to negotiate a solution.

Given the political sensitivities surrounding the border disputes—and the lack of political urgency to resolve them—it is unlikely that the two parties will reach a final solution on these disputes. Rather, the parties may agree on a process to resolve the disputes in future rounds. In the absence of a resolution of the border disputes, the establishment of a demilitarized border zone is all the more important for defusing tensions and maintaining security until an agreement is reached.

In the last round, South Sudan maintained its preference for arbitration. Arbitration would offer a time-bound process to reach an internationally backed solution, but the parties would have to agree upon enforcement mechanisms to ensure implementation of the arbitral award. Arbitration would allow Juba the chance to avoid the politically sensitive decision of which communities’ and constituencies’ lands to cede in negotiations with Khartoum by sending the decision to a third party. Moreover, arbitration would delay a decision to be made on the border disputes to a time when, perhaps, political tensions between Sudan and South Sudan over the issue of land have lessened.

Pursuing an arbitration process would put the border disputes question on a separate track from the other remaining issues, with an independent timetable. In direct and simultaneous negotiations on border disputes and Abyei, the two parties would approach the outcomes of the two issues as a grand bargain. For example, if Khartoum assumes that Abyei will go to the South, it may seek territorial concessions in disputes along the border. Arbitration could, by contrast, have the parties making trade-offs between the processes that will decide where Abyei and the disputed areas along the border lie. Therefore, if Khartoum agrees to a voter eligibility definition that would result in Abyei going to the South, it could seek terms in the arbitration process that may ultimately be favorable to its territorial claims. Negotiations over the arbitration process could include discussion of how the arbitrators would be chosen, the scope of the information provided to the arbitrators, the variables the arbiters take into consideration, whether the arbitration would rule on the five disputed territories between the two parties as well as further territories claimed, and the method of implementing the award. The arbitration approach would mean the South could not directly leverage the border disputes outcome into a concession from Khartoum on Abyei.

Conclusion

The immediate economic crises facing Sudan and South Sudan are only the most recent manifestations of strained relations between the two countries. A unique window of opportunity exists in this final round of negotiations to put in place processes to address long-simmering sources of tension along the two countries' shared border. In a context in which the two parties will have fewer pieces of leverage with which to negotiate, sustained and coordinated international pressure is critical for pushing Juba and Khartoum toward a comprehensive deal.

Endnotes

¹ This question is significant because of the seasonal migrations of Misseriya pastoralists into the Abyei area. Should the definition of resident include Misseriya nomads—in addition to the area's Ngok Dinka residents—the referendum may decide that Abyei belongs to Sudan; if the vote were limited to Ngok Dinka voters, Abyei would go to South Sudan. As such, agreement between Sudan and South Sudan's negotiators on voter eligibility is effectively an agreement on whether Abyei will be part of Sudan or South Sudan.