



Sudan, 2003-09

Standard Note: SN/IA/5555

Last updated: 1 June 2010

Author: Jon Lunn

Section International Affairs and Defence Section

The 2005 Comprehensive Peace Agreement (CPA) between the Government and the Sudanese People's Liberation Movement/Army has been under enormous strain since its inception, but has so far just about held together. Following controversial nationwide elections in April 2010 that saw the re-election of President Omar al-Bashir, the CPA now faces its ultimate test as preparations proceed for the referendums that will decide the fate of Sudan. In January 2011 the people of Southern Sudan are due to vote for or against continued unity and the people of the oil-rich Abyei area are set to decide whether to join the North or the South. There are a host of other major obstacles to building a durable Sudanese peace that must also be overcome in the months ahead – not least, Darfur. Internationally-brokered negotiations with (and between) the many protagonists continue, often taking a step forward, then one back. Levels of violence diminished during 2009 but are now rising again.

In order to make sense of Sudan's present and possible futures, it is vital to know something of its recent past. This is the purpose of this note, which provides a detailed account of events in Sudan, including their regional impact, between 2003 and 2009. A Research Paper on the April 2010 elections and the course of preparations for the January 2011 referendums will be published in the near future.

For further background on Sudan, also see the following Research Papers:

[Sudan: Conflict in Darfur](#) (RP 04/51, 23 June 2004)

[Sudan: The elusive quest for peace](#) (RP/06/08, 8 February 2006)

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

- 1 North-South 3**
 - 1.1 The struggle to implement the Comprehensive Peace Agreement 3
 - 1.2 Developments in the South and in the 'Three Areas' 7
 - 1.3 The role of the international community 10

- 2 Darfur 13**
 - 2.1 Background 13
 - 2.2 Peace talks: The Darfur Peace Agreement and beyond 14
 - 2.3 Peacekeeping: From AMIS to UNAMID 19
 - 2.4 Regional dynamics: Chad and the Central African Republic 21
 - 2.5 The role of the International Criminal Court 24
 - 2.6 Sanctions and other international action on Darfur 28

- 3 Eastern Sudan 33**
 - 3.1 Background 33
 - 3.2 The Eastern Sudan Peace Agreement 34

1 North-South

1.1 The struggle to implement the Comprehensive Peace Agreement

Africa's longest civil war formally ended on 9 January 2005 at Naivasha in Kenya with the signing of a Comprehensive Peace Agreement (CPA) by representatives of the Government of Sudan and the Sudanese People's Liberation Movement/Army (SPLM/SPLA). In doing so, the CPA also brought to an end related conflicts in the Nuba Mountains, which are part of South Kordofan state, and in Blue Nile state.

At the heart of the CPA are deals on power- and wealth-sharing. The CPA provides for extensive autonomy in the South, amounting in effect to self-government. The South has the right to its own army, access to 50 per cent of oil revenues generated under its jurisdiction and the right to run its own branch of the National Bank. It has the right to its own foreign policy. The CPA provides for national elections to be held, as part of the country's "democratic transformation". They were originally scheduled for 2009 but were eventually delayed until April 2010. Further, the CPA provides the South with the right to secede after a six-year interim period if a majority of its population votes in favour of doing so in a referendum, although it also states that the option of continued unity should be made "attractive". The referendum is set to take place in January 2011. The CPA itself expires in July 2011. The CPA also provides for a referendum on the future of the oil-rich Abyei area on the border between the North and South. More generally, it was agreed that the border as a whole would be demarcated. At a donor's conference in Oslo in April 2005, US \$4.5 billion was pledged in support for the process of implementing the CPA.¹

The CPA survived the shock of the death of SPLM/A leader John Garang in a helicopter crash in July 2005, only weeks after he had been sworn in as Sudan's First Vice-President and President of Southern Sudan. The SPLM/A rapidly elected his deputy, Salva Kiir Mayardit, as his successor and he took up the position of First Vice-President in the Government of National Unity (GNU) established in September 2005.

However, the death of Garang inevitably proved a major blow. He was the main advocate within the SPLM for the genuine possibility that a 'new Sudan', democratised and still united, could emerge from the CPA process. With him gone, nobody has seriously taken on that mantle within the organisation. More broadly, as early as March 2006, the International Crisis Group (ICG) was arguing that since his death "the SPLM vision has blurred, and the NCP has abandoned its strategy for a political partnership with the SPLM."² The GNU has never functioned properly.³

With regard to the SPLM, the ICG went on to claim that:

Wracked by internal divisions and contradictions, and with no functional party structures or party decision-making mechanisms [...] the SPLM has been completely

¹ Additional substantial pledges were made by donors in 2008.

² ICG, *Sudan's Comprehensive Peace Agreement: The Long Road Ahead*, Africa Report No. 106, 31 March 2006, Executive Summary. Available at: <http://www.crisisgroup.org/home/index.cfm?id=4055&1=1>

³ Reflecting this fact, we have not used the term 'GNU' widely in this Note. More often we have used the phrase 'Sudanese Government' – meaning, in practice, the NCP

overwhelmed thus far, unable to successfully or consistently challenge the NCP on most issues relating to implementation.⁴

With regard to the NCP, the ICG argued that it was

selectively implementing elements of the agreement without allowing for any weakening of its grip on power or fundamental change in the way that the country is governed. Yet these strategies are not sustainable, and will ultimately lead to renewed or increased conflict. The NCP must begin to implement the agreement in good faith to help assure its political future in a peaceful Sudan by making partnership an attractive option to the SPLM, and unity an attractive option to southern Sudanese.⁵

The SPLM was largely out-manoeuvred over the initial distribution of different ministries in the GNU.⁶ The commissions and other bodies due to be established in order to implement the CPA have been created but a significant number continue to exist on paper only. Although the GoSS is receiving oil revenues, there remains mistrust over how the oil wealth is calculated and disagreement over which oilfields are in the North or the South, although there has been progress with regard to the contested area of Abyei (see below).⁷ In September 2009, the international NGO Global Witness published a report which raised serious questions about whether oil revenues have been shared equitably. Oil revenues account for 98 per cent of the GoSS's income.⁸ Some have gone so far as to suggest that the NCP has been "cheating the South".⁹

In October 2007 the SPLM suspended its participation in the GNU, declaring that it would not rejoin until its concerns on a range of issues had been addressed.¹⁰ The crisis was averted when the SPLM rejoined the GNU after a cabinet reshuffle had been agreed, despite the fact that many of its concerns had not been met. One area of concern was the forthcoming population census, the outcome of which would have major implications for future elections and the 2011 referendum. The census was eventually held during April-May 2008. While the SPLM agreed, despite reservations, that the census could go ahead, many months of argument followed about the credibility of the process and the figures it had generated. In August 2009, the SPLM declared that it rejected the results of the census, arguing that the population of the South had been seriously under-counted.¹¹

The dispute over the census figures was one of the main reasons why preparations for the April 2010 elections remained seriously behind schedule by the end of 2009.¹² Some even began to question whether all the elements of the CPA could or even should be honoured. A September 2009 IKV Pax Christi report asserted that the CPA "is not *Comprehensive*, nor *Peace*, nor an *Agreement*."¹³ Whether it was possible (or wise) to hold national elections

⁴ ICG, *Sudan's Comprehensive Peace Agreement: The Long Road Ahead*, Executive Summary

⁵ Ibid

⁶ ICG, *Sudan's Comprehensive Peace Agreement: The Long Road Ahead*, p. 3

⁷ The National Petroleum Commission, which was established in October 2005, finally met for the first time in April 2007. See UNMIS, *The CPA Monitor*, April 2007

⁸ Global Witness, *Fuelling mistrust: The need for transparency in Sudan's oil industry*, September 2009. Available at:

http://www.globalwitness.org/media_library_detail.php/804/en/fuelling_mistrust_the_need_for_transparency_in_sud

⁹ "Oil revenue row", *Africa-Asia Confidential*, September 2009

¹⁰ *Report of the Secretary-General on the Sudan*, UN Doc S/2007/624, 23 October 2007, paras 16-24

¹¹ UNMIS, *CPA Monitor*, August 2009

¹² *Report of the Secretary-General on the Sudan*, UN Doc S/2009/357, 14 July 2009, para 88. See also *Report of the Secretary-General on elections in the Sudan*, S/2009/391, 28 July 2009

¹³ IKV Pax Christi, "The state of Sudan's Comprehensive Peace Agreement", Alert No. 1, September 2009, p. 5

before the 2011 referendum was one aspect of the CPA that was challenged. The IKV Pax Christi report argued:

[...] if the elections are to be held before 2011, they are likely to be neither free nor fair, but rather too chaotic to result in a credible expression of the will of the Sudanese people. As a result, they may impede the CPA's centrepiece, the referendum, and draw the country into chaos and violence. Thus there is a need for a serious discussion on the timing of the elections.¹⁴

However, the majority view remained that any move to further postpone the elections could itself destroy the CPA. The international community remained strongly in favour of holding the elections without further delay. The NCP opposed any idea of further postponement, hoping to be 'legitimised' both at home and abroad through a victorious outcome. Others warned that the prospects for holding a credible referendum in 2011 would be gravely damaged by further postponement. For this reason alone, the SPLM stated that it wished to keep to the current election schedule if possible.

One precondition for credible elections was apparently achieved in late September 2009 when it was announced that official censorship regulations applying to the print media would be lifted immediately, but it remained to be seen what this will mean in practice.¹⁵ Concerns continued to be expressed during the remainder of 2009 about the political environment in both the North and South, with the NCP and SPLM each being accused of harassing and intimidating political opponents.¹⁶

Preparations for the 2011 referendum fell even further behind schedule during 2009. There were disagreements about who was eligible to vote and what level of threshold should be set for secession. The NCP argued for a 75 per cent threshold; the SPLM wanted a simple majority vote. The SPLM indicated that it did not rule out a unilateral declaration of independence if there was no referendum, or if the one held lacked credibility in its eyes. In a July 2009 report, the UN Secretary General, Ban ki-moon, expressed his concerns thus:

There is an urgent need for a functioning institutional and legal framework for the referendums to ensure sufficient time for a peaceful implementation of their results. Moreover, the debate on unity and secession continues to remain a zero sum game. I urge the parties to change this dynamic and initiate dialogue in order to reach agreements for the post-2011 period, irrespective of the results of the referendums.¹⁷

In August 2009, the US special envoy, Scott Gration, initiated tripartite talks between the US, the NCP and the SPLM aimed at removing obstacles to the implementation of the CPA. It produced a 'Points of Agreement' document.¹⁸ There were further moments of confrontation and disagreement between the NCP and the SPLM over the following months, but, with Gration still involved as a broker, on 13 December 2009 an agreement was finally announced that allowed the National Assembly to pass legislation governing the referendum in the South and the Abyei referendum.¹⁹ Notwithstanding this breakthrough, by the end of

¹⁴ Ibid

¹⁵ "UN welcomes order to lift censorship on newspapers", *UN News Service*, 29 September 2009

¹⁶ See, for example: *Report of the Secretary-General on the Sudan*, UN Doc S/2010/31, 19 January 2010, paras 12-13, 18

¹⁷ *Report of the Secretary-General on the Sudan*, UN Doc S/2009/357, 14 July 2009, para 91. His reference to referendums in the plural includes the referendum planned in the Abyei region, in which it will decide whether to be part of the North or the South (see below).

¹⁸ "Sudanese foes sign new peace deal", *BBC News Online*, 19 August 2009

¹⁹ The passage of this legislation took place 30 months' behind schedule. *Report of the Secretary-General on the Sudan*, UN Doc S/2010/31, 19 January 2010, paras 13-14

2009, many major issues to do with implementation of the CPA remained unresolved. One such issue was demarcation of the North-South border, over which little progress had been made since the signing of the CPA. December 2009 also saw a National Security Bill passed that many argued was highly repressive in character.

Voter registration for the April 2010 elections took place between 1 November and 7 December. There were soon reports of significant irregularities, including in the South and Darfur, with several states experiencing something that should never happen – over 100 per cent registration. Registration was 108 per cent across the South.²⁰ 16.5 million voters were registered. As the elections drew nearer, the SPLM continued to talk with Northern political forces opposed to the NCP, but showed little appetite for an anti-NCP coalition ahead of the elections, a development which might provide reassurance that it was engaging seriously with the electoral process. All the evidence by the end of 2009 suggested that the SPLM remained highly sceptical that Southern Sudan would be allowed to secede peacefully after the 2011 referendum. Such assumptions were consistent with the past record of the NCP and, notwithstanding the reforms that had been agreed to under the auspices of the CPA, many remained unpersuaded that it would be prepared in practice to accept either election defeat at the national level in April 2010 or a post-referendum break-up of Sudan in 2011. The UN Secretary-General described the relationship between the NCP and SPLM at the end of the year as one of “pervasive mistrust”.²¹

Since 2005 there have been clashes over delays and difficulties in the withdrawal of the Sudanese Armed Forces (SAF) from the South, which was agreed in the CPA. There were significant military clashes between pro-SAF and pro-GoSS forces in Malakal in November 2006, leaving hundreds dead. There were further low-level clashes between SAF elements and militias linked to the GoSS in Southern Kordofan, in September 2007.²² A degree of calm subsequently returned to Southern Kordofan, but analysts argued that this was to some extent misleading. It remained a major potential flash-point (see below). Tensions in Malakal resurfaced in February 2009. Despite efforts to create a Joint Integrated Unit (JIU) for the area featuring soldiers from both armies, ex-GoSS forces objected to alleged SAF domination of the senior posts.²³ Violence broke out again and this time an estimated 57 people died.²⁴ Tension remained high throughout the rest of the year and an agreement to move the force based in Malakal out of the area was not implemented. Overall, the establishment of JIU’s was not particularly successful. Most analysts argued that they would instantly collapse if there was a return to all-out conflict between North and South.

More generally, the second half of 2009 saw a significant deterioration in the security situation in Southern Sudan. The UN Secretary-General, Ban ki-Moon, called this “tribal violence” based on “long-simmering local conflicts”, although some contested such a

²⁰ *Report of the Secretary-General on the Sudan*, UN Doc S/2010/31, 19 January 2010, paras 15 and 29

²¹ *Report of the Secretary-General on the Sudan*, UN Doc S/2010/31, 19 January 2010, para 90

²² *Report of the Secretary-General on the Sudan*, UN Doc S/2007/624, 23 October 2007, paras 5-6

²³ JIU’s were provided for in the CPA and have, in general, not proven very successful where they have been established.

²⁴ UNMIS, *CPA Monitor*, August 2009

description, arguing that elements within the NCP were behind it.²⁵ Violent conflict killed an estimated 2,500 people in 2009 and displaced over 350,000.²⁶

Research in 2009 by the Small Arms Survey indicated that there were “accelerating arms supplies to the SPLA and – in far greater volume and sophistication – to SAF forces”.²⁷ While Russia, Belarus, China and Iran all continued to be important suppliers to the SAF, the main supplier to the SPLA appeared to have been Ukraine, which, it was alleged, played this role with the co-operation of the Kenyan Ministry of Defence.²⁸

1.2 Developments in the South and in the ‘Three Areas’

Within Southern Sudan, progress on setting up functioning central and state administrations was inevitably slow, given that the GoSS was virtually starting from scratch. The GoSS experienced an ongoing budget crisis over the period. One reason was high levels of expenditure on the military. According to Small Arms Survey:

between 30 and 40 percent of the GoSS budget since 2006 has been spent on SPLA affairs—roughly equivalent to its entire spending on education, health, and infrastructure combined (GoSS, 2009). More than 85 per cent of declared GoSS expenditure on the SPLA—nearly a quarter of the entire GoSS budget in 2009—is spent on army salaries: the continued fiscal burden of a massive, unreformed, and largely un-demobilized civil war force.²⁹

According to the September 2009 report by IKV Pax Christi, the belief that a future confrontation with the North is likely

[...] overrides many other priorities, such as development, anti-corruption, accountability, good governance, peace-building, reconciliation, justice etc. It explains why SPLM has been slow to make the transition from authoritarian liberation movement to democratic political party; the conflict has not finished yet and they feel the need to present a strong front to the NCP while the political phase of conflict continues, and do not want to disintegrate just before the military phase breaks out again. It also explains why certain individuals and groups are favoured; they may not be very good at government, they may even misbehave, but they are proven solid supporters of the movement during war time, or they represent constituencies that must be kept on board.³⁰

The absorption of most of the armed groups within the Southern Sudan Defence Forces into the SPLA under the January 2006 Juba Declaration, was a positive development.³¹ But some worried that this may have weakened the SPLA, rather than strengthened it:

²⁵ *Report of the Secretary-General on the Sudan*, UN Doc S/200/357, 14 July 2009, para 2; IKV Pax Christi, “The state of Sudan’s Comprehensive Peace Agreement”, Alert No. 1, September 2009, pp. 7-9

²⁶ ICG, “Jonglei’s tribal conflicts: Countering insecurity in South Sudan”, 23 December 2009, p. 1. Available at: http://www.crisisgroup.org/library/documents/africa/horn_of_africa/4_jongleis_tribal_conflicts___countering_in_security_in_south_sudan.pdf

²⁷ Small Arms Survey, *Skirting the Law: Sudan’s Post-CPA Arms Flows*, Geneva, September 2009. b. 13. Full text of this report is available at: http://www.smallarmssurvey.org/files/portal/spotlight/sudan/Sudan_pdf/SWP-18-Sudan-Post-CPA-Arms-Flows.pdf

²⁸ *Ibid.*, pp. 39-44

²⁹ Small Arms Survey, *Skirting the Law: Sudan’s Post-CPA Arms Flows*, Geneva, September 2009. p. 65

³⁰ IKV Pax Christi, “The state of Sudan’s Comprehensive Peace Agreement”, Alert No. 1, September 2009, pp. 5-6

³¹ ICG, *Sudan’s Comprehensive Peace Agreement: The Long Road Ahead*, pp. 13-14

Although there is a hard core of experienced and committed SPLA cadres, in general the SPLA is not a united army, but rather a collection of former militias and ethnic groups, and a constant balancing act is needed to keep them together.³²

Other former SSDF elements ended up in the JIU's and have, at times, played a destabilising role within them.

The GoSS's focus on preparing for the 'next war' with the North left little capacity for addressing insecurity within the South. A 2008 civilian disarmament campaign proved largely ineffective.³³ UN estimates in August 2009 suggested that 2,000 people had died and 250,000 had been displaced in ethnic violence, mainly between Dinka and Nuer militias, across the South since the beginning of 2009. Divisions between these ethnic groups were a strong factor within the SPLM in the past and remained so. In September 2009 the Southern Sudanese authorities began a forcible disarmament campaign that some feared could prove counter-productive in security terms.³⁴ On a more positive note, tens of thousands of Internally Displaced Persons (IDPs) and refugees returned to the South following the signing of the CPA.

In August 2006, there was a wide-ranging government reshuffle. In March 2007, as part of a wider campaign against corruption, the former Minister of Finance came under investigation for alleged embezzlement of \$60 million which had been transferred to the SPLM by the NCP in July 2005.³⁵ On 2 July 2007 the President of Southern Sudan, Salva Kiir Mayardit, reshuffled his cabinet again in what was seen as an attempt to consolidate his hold over the SPLM. Other Ministers were also removed or moved into new posts. The reshuffle was also a response to disquiet within Southern Sudan and amongst donors about failures to push ahead effectively with reconstruction efforts and anti-corruption efforts.³⁶ An Anti-Corruption Commission was established but had not begun work by the end of the period.

Overall, the SPLM/A did not play a particularly significant role, as many had initially hoped it would, in mediating between the rebel groups in Darfur and the NCP. It was already severely overstretched in the South. It was also more preoccupied with dealing with the threat to security posed by the Lord's Resistance Army (LRA). From early 2006 until late 2008 the GoSS promoted peace talks between the LRA and the Ugandan Government. However, these talks failed and LRA attacks in the South resumed during late 2008, with the states of Western and Central Equatoria particularly heavily affected.

There was always been plenty of scope for a breakdown of the CPA in areas of the country whose ownership is disputed by the North and South. These are known as the 'Three areas' of the Nuba Mountains (officially known as South Kordofan), the Blue Nile and Abyei. Significantly, neither party to the CPA committed themselves as fully to the Protocol on Abyei as they did to the Protocol on the Nuba Mountains and the Blue Nile. This may have been because, unlike the Nuba Mountains and the Blue Nile, whose people are entitled to "popular consultations" over their future governance, the people of Abyei have the right to vote in a referendum in 2011 on whether to go with the North or the South. This led some observers to

³² IKV Pax Christi, "The state of Sudan's Comprehensive Peace Agreement", Alert No. 1, September 2009, p. 6

³³ "Sudan issue brief", *Small Arms Survey*, May 2009. Available at: www.smallarmssurvey.org/sudan

³⁴ "Southern Sudan disarmament raises fears of fresh violence", *Irinnews.org*, 22 September 2009

³⁵ Ibid

³⁶ "South Sudan President shuffles cabinet, drops political rivals", *Monitor* (Uganda), 4 July 2007

fear that failure to resolve outstanding issues on Abyei could ultimately turn it into “another Kashmir”.³⁷

Abyei is the home of the Ngok Dinka. They were heavily displaced in the course of the civil war and some of their land has been settled by the Misseriya, who are neighbouring Arab pastoralists. Abyei has huge oil reserves. The Abyei Boundary Commission (ABC) was established under the CPA to determine the border and resolve residency issues. Its determination was supposed to be final and binding. However, when it reported in July 2005, the NCP rejected its conclusions and sought to mobilise the Misseriya against the report. It also refused to allow a separate administration to be set up in Abyei, as provided for under the CPA. The decision of the Commission did not affect the use-rights of the Misseriya to land and water that they had previously had access

An expert on the ABC said in 2006:

Both sides signed up to it. They signed up to the protocol; they signed up to agreeing to accept the boundary commission report; they signed up to an immediate application of the boundary commission, and to setting up the Abyei executive committee. If they are now not going to do that – if one side is refusing to implement an agreement that it has signed – it throws into doubt their commitment to the whole of the CPA. If one side is allowed to choose what part of the CPA they implement, then the other side may wish to choose what part of the CPA they implement, and then the CPA becomes full of holes and is a worthless document. It is either implemented in full, or it is discarded. The other issue is that there are a number of things that have happened in Abyei that have since happened in Darfur: the mobilisation along alleged tribal lines, the use of militia to fight a war over land use, over the retention of resources. If the Abyei protocol cannot be implemented, what possibility is there for a Darfur agreement that must address the same types of problems? [...] Finally, if there is going to be this amount of trouble over the Abyei boundary, what hope is there for the (rest of the) north-south boundary being demarcated and agreed?³⁸

However, following clashes in the region in 2008, in which approximately 100 people died, the parties agreed to refer the Abyei dispute to the Permanent Court of Arbitration, based in The Hague. This calmed the situation but observers worried that the decision of the Court might trigger a resumption of violence in the region, despite assurances from both parties that they would accept the ruling of the Court. In July 2009, the Court issued its ruling, taking some areas, including the Heglig oilfield, out of the region. The ruling effectively awarded more land and mineral wealth to the North. However, it upheld the findings of the ABC in other regards.³⁹ Although the parties accepted the ruling of the Court, by the end of 2009 they had made little progress in terms of implementing it and resistance on the ground remained strong.⁴⁰

With regard to the Nuba Mountains in South Kordofan state, October and November 2009 saw several peace accords between different ethnic groups. On 30 December 2009, the

³⁷ Endre Stianson, “Perspectives on the CPA”, *Forced Migration Review*, No. 24, November 2005

³⁸ “Interview with Douglas Johnson, expert on the Abyei Boundary Commission”, *IRINnews.org*, 29 June 2006. Available at: <http://www.irinnews.org/print.asp?ReportID=53574>

³⁹ UNMIS, *CPA Monitor*, August 2009, p. 21; “Sudanese accept oil border ruling”, *BBC News Online*, 22 July 2009

⁴⁰ *Report of the Secretary-General on the Sudan*, UN Doc S/2010/31, 19 January 2010, para 17

National Assembly passed legislation which finally enabled the “popular consultations” provided for in the CPA.⁴¹

According to a September 2009 report by IKV Pax Christi, the ‘Three Areas’ remained dangerously volatile:

On paper, Abyei gained from the CPA, as they have a referendum. Conflict now is around borders (theoretically solved by the Hague arbitration) and who will be allowed to vote in the referendum. While the immediate level of tension around Abyei has decreased, it could escalate again at any time. The Nuba Mountains (South Kordofan) and Southern Blue Nile, both of which joined the SPLA in the civil war, gained virtually nothing from the CPA. Both are defined as being part of the north, which many of their people would reject. Both have been granted limited autonomy under the presidency, but few believe this is meaningful. They have no referendum, simply an undefined ‘popular consultation’ about their governance, but without the option of joining the south [...] Immediately after the signing of the CPA, the most senior SPLM/A leaders in the two areas were asked separately why they accepted the CPA, as it clearly benefited them very little if at all. They replied similarly: that they believed that the elections would bring a new national government to power in which the SPLM would either be a majority or at least have a significant influence. They would then use ‘popular consultation’ as a basis to renegotiate their part of the CPA with this new sympathetic government to allow for a referendum. When asked what would happen if this scenario did not work out, again their replies were similar. One was diplomatic: “We tear up the CPA”. The other was blunt: “We go back to war”. Sadly, the death of Dr John Garang has ended any realistic hope of SPLM gaining significant influence in the national government, so the worst case scenario might be approaching.⁴²

1.3 The role of the international community

How did the international community perform in monitoring and pushing forward the implementation of the CPA between 2005 and 2009? As early as March 2006, the ICG was arguing that it was too often silent when the NCP acted in bad faith and had more generally been unable to sustain the kind of engagement that was so crucial to securing the CPA in the first place:

The disengagement of the international community can be explained by a number of factors. First, the world has understandably been distracted by the crisis in Darfur, and many seem to have mistakenly assumed that the agreement, once signed, was self-implementing [...] Second, Garang’s death has had a negative impact on the interest and involvement of some Western and African countries in following the implementation process [...] Third, there is no clear role for the international community within the CPA itself beyond limited roles in the AEC⁴³ and a handful of the commissions [...] Fourth, there has been infighting and a lack of coordination within the international community.⁴⁴

The ICG quoted a Western diplomat based in Khartoum as claiming at the time: “They’re running circles around us, and many of us don’t see it.”⁴⁵ A further weakness, according to some observers, was the inability of the international community to agree a common approach, with Western governments often unable to reach consensus with African

⁴¹ *Report of the Secretary-General on the Sudan*, UN Doc S/2010/31, 19 January 2010, paras 21-23

⁴² IKV Pax Christi, “The state of Sudan’s Comprehensive Peace Agreement”, Alert No. 1, September 2009, p. 19

⁴³ Assessment and Evaluation Commission

⁴⁴ ICG, *Sudan’s Comprehensive Peace Agreement: The Long Road Ahead*, pp. 27-28

⁴⁵ *Ibid*, p. 28

governments or their Chinese counterpart. This was the case despite the operation of a broad-based 'Friends of the CPA' group.⁴⁶ An 'E-6' group was also formed, involving France, UK, China, Russia, the US and the EU.⁴⁷

The Assessment and Evaluation Commission (AEC), provided for under the agreement to monitor implementation and broker dialogue on issues of contention began work in February 2006. Its 'mid-term evaluation' came out in July 2008. It identified as priority areas for progress:

resolution of the Abyei issue, starting with implementation of the Road Map; demarcation of the North/South border; timely preparation for elections and democratic transition; preparation for 2011 and beyond; and security sector reform, particularly in respect of the JIUs and DDR.⁴⁸

But some observers were critical of the AEC for a lack of effectiveness.⁴⁹ Its Chairman from February 2008 was the Briton Sir Derek Plumbly.

The UN Secretary General on several occasions criticised "the lack of disbursement of donor funds through the multi-donor trust funds [...]", administered by the World Bank.⁵⁰ As the period progressed, there was less information on the situation with regard to donor disbursements the reports of the Secretary General and finding out exactly what the current state of play was in terms of disbursements became difficult. The last year for which there was a report on the operation of the trust funds was 2007.⁵¹ It was reported that only \$181 million out of a total \$524 million committed by this route had been spent by the end of 2009. It was claimed that this had seriously held back the reconstruction and development of Southern Sudan.⁵²

At the third meeting of the Sudan Consortium, a consortium of donors jointly chaired by the GNU and GoSS, in May 2008, donors pledged about \$4.8 billion in total support to humanitarian, recovery and development efforts in Sudan for the period 2008-11.⁵³ 2007 was designated the year in which ordinary Sudanese begin to experience a significant 'peace dividend'. In 2008 a Sudan Recovery Fund for Southern Sudan was created to this end.⁵⁴ The UK was a major donor, having given £25 million at 31 August 2009.⁵⁵ However, many argued that evidence of 'peace dividends' remained thin on the ground. At times there was also criticism of the capability and effectiveness of the UN Mission in Sudan (UNMIS).⁵⁶

⁴⁶ ICG, *Sudan: Preventing implosion*, Africa Briefing No. 68, 17 December 2009, p. 15;

⁴⁷ "Recent two-week trip to Chad, Sudan, Qatar and Rwanda", press conference by Scott Gration, 4 March 2010. Available at: <http://www.state.gov/s/sudan/rem/2010/137833.htm>

⁴⁸ Available at: http://www.aec-sudan.org/docs/aec/2008_MTE-en.pdf (p. 1)

⁴⁹ See HC Deb 26 November 2007 c226W for the British Government's defence of the AEC.

⁵⁰ For example, see *Report of the Secretary-General on the Sudan*, UN Doc S/2006/160, 14 March 2006, paras 72-76

⁵¹ See:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SUDANEXTN/EXTAFRMDTF/0,,contentMDK:21007509~menuPK:2796569~pagePK:64168445~piPK:64168309~theSitePK:2193668,00.html>

⁵² "Donor fury as millions for Sudan go unspent", *Financial Times*, 17 February 2010

⁵³ See:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SUDANEXTN/0,,contentMDK:21726763~menuPK:4886495~pagePK:141137~piPK:141127~theSitePK:375422,00.html>

⁵⁴ See: <http://www.undp.org/mdtf/southern-sudan/overview.shtml>

⁵⁵ See: http://www.undp.org/mdtf/southern-sudan/pledges_commitments_deposits.shtml

⁵⁶ ICG, *Sudan's Comprehensive Peace Agreement: The Long Road Ahead*, pp. 25-29; IKV Pax Christi, "The state of Sudan's Comprehensive Peace Agreement", Alert No. 1, September 2009, p. 10. The mission currently has 9,080 mandated military personnel and over 600 police officers.

After coming to office in January 2009, the Obama Administration announced a review of US strategy on Sudan. In March it also appointed Major-General Scott Gration⁵⁷ as its new envoy to Sudan. Over the months that followed, some praised his balanced and impartial approach as a mediator. However, he was criticised by others for appearing too keen to accept the 'good faith' of the NCP as a 'partner for peace'⁵⁸ and for his apparent willingness to promote negotiations on issues that others claimed were adequately addressed in the CPA.

As already mentioned, in August, the US convened tripartite talks between the NCP and the SPLM aimed at resolving differences over the implementation of the CPA. It produced a 'Points of Agreement' document.⁵⁹ Further tripartite talks followed.

Gration's evidence to the Senate Foreign Relations Committee in July 2009 caused some controversy, when he stated that he did not believe that there was any evidence that Sudan was a 'state sponsor of terrorism' and that its presence on the US list, along with some of the sanctions in place, was having a negative effect on his diplomatic efforts. The Administration stated that this issue, like others, was under review, but that no decision had yet been taken – which many observers took to mean that there were significant divisions within the Administration on the issue.⁶⁰

The results of the US policy review were finally announced on 19 October 2009. Affirming that the new strategy would be founded upon a 'whole Sudan' approach, it set out the following objectives:

- 1) A definitive end to conflict, gross human rights abuses, and genocide in Darfur.
- 2) Implementation of the North-South CPA that results in a peaceful post-2011 Sudan, or an orderly path toward two separate and viable states at peace with each other.
- 3) Ensure that Sudan does not provide a safe haven for international terrorists.⁶¹

Details were then provided information about the concrete steps that would be taken to achieve these objectives and how progress would be monitored, although the exact benchmarks being applied were not disclosed. It was stated that lack of progress would have clear consequences, although what these would be was also not disclosed. The US-based group Enough responded to the new policy in the following terms:

Crafting a sensible policy approach on paper is a necessary but insufficient step. The conduct of the administration's Sudan policy has been deeply troubled to date. The day-to-day diplomacy has often been ill-disciplined and created considerable confusion among key actors as pressing timeliness loom and major components of core agreements remain largely unimplemented. At best, the completed policy review is a chance to start anew, and get the policy and diplomacy back on track. At worst, it is an

⁵⁷ Sometimes also described as Jonathan S. Gration.

⁵⁸ There was concern in September when Gration was quoted as recalling the expression: "You catch more bears with honey than vinegar". See: "Honey for Sudan's president?", *enoughproject.org*, 22 September 2009

⁵⁹ "Sudanese foes sign new peace deal", *BBC News Online*, 19 August 2009. The US has also convened another grouping of countries with a stake in Sudan called the Forum for the Supporters of the CPA, including the UK.

⁶⁰ US Department of State press briefing, 31 July 2009. Available at: <http://www.state.gov/r/pa/prs/dpb/2009/july/126798.htm>

For the full text of Gration's testimony, see: <http://allafrica.com/stories/200907300946.html>

⁶¹ "Sudan: A critical moment, a comprehensive approach". Available at: <http://www.state.gov/r/pa/prs/ps/2009/oct/130672.htm>

effort to rhetorically paper over an issue that has been treated as a fairly low foreign policy priority by the administration.

Allowing the status quo in Sudan to continue is a recipe for a return to war between the North and the South. If the Obama administration doesn't build a multilateral coalition around this policy, doesn't recognize the dangers of the increasing attacks in the South and the NCP's hidden hand in sowing instability in the South in advance of the referendum, and is not willing to utilize multilateral and unilateral pressures (which have a history of working) early enough to make a difference, nation-wide war will be inevitable. U.S. policy objectives, so sensible on paper, will go up in smoke as Sudan burns again.⁶²

Throughout the period, debate continued about how much influence Western governments really had over the NCP, given the growing political and economic support which the regime was receiving from China. In addition, there were claims that these governments had failed to honour promises made to the NCP at the time the CPA was agreed in 2005, that sanctions would be lifted and diplomatic relations 'normalised' as soon as an agreement had been reached.⁶³

2 Darfur

2.1 Background

From mid 2004 onwards, the conflict in Darfur, which first flared up in February 2003 while talks continued on the North-South peace process, dominated public perceptions of Sudan. Broadly speaking, the main parties to the conflict have been the GoS and its proxy militias, the Janjaweed, and three rebel movements, factions of the Sudanese Liberation Movement/Army (SLM/A), and the Justice and Equality Movement (JEM), although the last also has an 'all-Sudan' agenda. However over the years, the number of rebel factions steadily increased, making building peace ever more complex. Darfur experienced a humanitarian crisis which claimed an estimated 300,000 lives and displaced over three million people from their homes, who were unable to return home due to the threat of violence and the wider insecurity.⁶⁴ Efforts to bring peace to Darfur failed to bear fruit, despite one 'false dawn' – the Darfur Peace Agreement (DPA). In 2008 Sudanese President al-Bashir became a target of the ICC for alleged crimes against humanity in Darfur.

A humanitarian ceasefire agreement was reached in N'djamena, Chad, in April 2004 and Security and Humanitarian Protocols were signed in November 2004. A Darfur Ceasefire Commission was established. The African Union Mission in Sudan (AMIS) was deployed to verify the ceasefire. By 2006 its complement was 7,731 personnel. The ceasefire was from its inception extremely fragile and often broken. It quickly became clear that AMIS lacked the mandate and the means to do an effective job. In March 2005, following the UN's adjudication that the human rights abuses by the GoS and its proxy militias did not constitute

⁶² "The fierce urgency of implementation: The new US policy on Sudan", 19 October 2009. Available at: <http://www.enoughproject.org/publications/fierce-urgency-implementation>. Enough later issued recommendations as to what benchmarks should be used by the administration. "Clear benchmarks for Sudan", 19 January 2010. Available at: <http://www.enoughproject.org/Benchmarks>

⁶³ "Polls raise fears that democracy will be written off in Sudan", *Financial Times*, 21 April 2010

⁶⁴ The number of Darfuris who died during this period due to violent conflict was much disputed. For example, a study commissioned from the Centre for Research on the Epidemiology of Disasters by the US State Department and the UK Department for International Development, published in January 2010, claimed that 80 per cent of those often counted as casualties of conflict had died as a result of disease. "Study points to disease as main killer in Darfur", *New York Times*, 22 January 2010. The full text of the study was published in *The Lancet*, Vol. 374, No. 9711, 23 January 2010

genocide, the Security Council provided for the imposition of sanctions against those responsible for impeding the peace process or carrying out atrocities, and voted to refer those suspected of violations of international humanitarian and human rights law to the ICC.⁶⁵

Peace talks between the main parties got under way in Abuja, Nigeria, from late 2004 onwards. In July 2005, after several rounds of talks, agreement was reached in Abuja on a Declaration of Principles, setting out the parameters for a final settlement of the conflict. Following this apparent breakthrough, efforts to push the peace process forward continued. However, a split within the SLM/A brought them to a standstill for a prolonged period. The split was between two leaders, Abdul Wahid el-Nur (henceforth described as Abdul Wahid) and Minni Arko Minawi and the ethnic groups that they claimed to represent: the Fur and the Zaghawa. Diplomatic efforts focused upon trying to end this split, but these were ultimately unsuccessful. Peace talks resumed in late November 2005. On 5 May 2006, the DPA was signed by the GNU and Minni Minawi's faction of the SLM/A. It came into force on 16 May.⁶⁶

2.2 Peace talks: The Darfur Peace Agreement and beyond

The DPA required the Sudanese Government (as it had previously promised but failed to do on numerous occasions) to completely disarm the Janjaweed militia by mid-October 2006 and for the pro-government Popular Defence Forces, in which some former Janjaweed have been concealed, to downsize and restrict their movements. It required the Sudanese Government to take steps to prevent ceasefire violations. All parties were banned from demilitarised zones around displaced persons camps and aid corridors. The agreement also stated that at least 4,000 fighters from the rebel forces should be integrated into the SAF and 1,000 into the National Police and other security institutions. 3,000 were to be demobilised and assisted to return to civilian life. The DPA gave the rebels the position of Senior Assistant to the President and Chair of the Transitional Darfur Regional Authority (TDRA), which is responsible for implementing the agreement. There was to be a referendum by July 2010 to decide whether Darfur should become a single region under one government. Until elections were held in Darfur, rebel movements would chair and control at least eight of the ten seats in the TDRA. They would be given 12 seats in the National Assembly, 30% of the seats in each of Darfur's state legislatures, governorship of one of Darfur's states and deputy governorship in the other two, and senior positions in state ministries.

The DPA also set up a Darfur Reconstruction and Development Fund, to which the Sudanese Government was required US \$300 million initially and \$200 million for two years. It obliged the international community to hold a donors' conference to pledge additional funds to the region and sets up a number of commissions, including one to work with the UN in helping refugees return home and another to provide compensation to victims of the conflict. Finally, the DPA provided for the establishment of a Darfur-Darfur Dialogue and Consultation, as a means of achieving communal reconciliation.⁶⁷

The DPA was not signed by either the Abdul Wahid faction of the SLA or by JEM. Although most of his delegation at the negotiations favoured signing, Abdul Wahid himself demanded greater guarantees for security arrangements – in particular, the protection of returning

⁶⁵ Sanctions were imposed on four individuals by the Security Council in Resolution 1672 on 25 April 2006. The ICC's investigations are continuing. See below for a fuller discussion of both.

⁶⁶ According to *Africa Confidential* ("It's the government, stupid", 12 May 2006), the three rebel leaders were threatened with UN sanctions if they did not sign. See also the written ministerial statement by the then Minister for Trade, Ian Pearson, on 4 May 2006 (c64WS)

⁶⁷ The full text of the DPA is available at: <http://www.unmis.org/english/dpa.htm>

While formally part of the GNU, the SPLM/A did not play a significant part in the Abuja negotiations

refugees and IDPs and disarmament of the Janjaweed militias – and called for Darfur to get a better deal in terms of political representation. He also wanted to see greater compensation for war victims. Some believe that he took these positions because his real objective was to trigger international military intervention that would lead to the Sudanese Government entirely withdrawing from Darfur. JEM, for its part, argued that the arrangements in the DPA on power- and wealth-sharing did not adequately address the “structural inequities between Sudan’s centre and its periphery that led to the rebellion in 2003.”⁶⁸

After the DPA was signed, was further international pressure to persuade those who were outside it to sign. In June 2006 two breakaway SLM/A factions and a faction of JEM signed a ‘Declaration of Commitment’ to the DPA, under which they agreed to be bound by the DPA and participate fully in its implementation. In June 2006 President el-Bashir issued a decree granting an amnesty to Darfurian armed groups that have signed the DPA.⁶⁹ Later that month, JEM and other armed factions opposed to the DPA formed the National Redemption Front (NRF). Abdul Wahid remained outside the NRF.⁷⁰ At the same time, key non-signatories of the DPA were asked to leave the Darfur Ceasefire Commission. In November 2006 another breakaway faction from the SLM/A – Abdul Wahid signed a Declaration of Commitment to the DPA. In December 2006, Abdul Wahid and other SLM/A factions joined with JEM in signing unilateral declarations of cessation of hostilities. This meant little on the ground.

Many Fur expressed considerable scepticism about the terms of the DPA, although some claimed that this was partly because they were not aware of how favourable the terms really are.⁷¹ Following the signing of the DPA, there were protests in some of the IDP camps, several of which turned violent. There were also attacks on AMIS personnel and assets.⁷² Writing soon after the DPA was signed, Sudan expert Julie Flint accepted that a peace agreement was urgently needed and that the DPA could be the basis for peace, but was concerned in particular that the non-participation of Abdul Wahid had gravely weakened it.⁷³

Soon after the DPA was signed, the situation on the ground became even more complex and fragmented. There were outbreaks of fighting between the Minni faction and the armed groups that had rejected the DPA. Ground attacks by the SAF and the Janjaweed continued, particularly in areas where the rebels were believed to be active. There were also air attacks by the Sudan Air Force, including against civilian targets. There were reports that the Air Force had disguised some of its planes with the UN colours and logo, which would be a serious violation of international law.⁷⁴ The situation on the ground was further complicated by escalating tribal clashes. Some Arab groups appeared to have switched to the side of the rebels. Humanitarian aid access worsened. Both humanitarian workers and AMIS personnel came under attack and some died.⁷⁵ In turn, this threatened the security and survival of the civilians and IDP’s caught up in the conflict. The Darfur Ceasefire Commission was dogged by internal disagreements over representation and payment for its members. There was no

⁶⁸ ICG, *Darfur’s Fragile Peace Agreement*, Africa Briefing No. 39, 20 June 2006, p. 1

⁶⁹ Ibid

⁷⁰ UNMIS, *The DPA Monitor*, March 2007. Available at:

<http://www.unmis.org/english/dpaMonitor.htm>

⁷¹ Julie Flint, “Darfur: a peace of paper?”, *Parliamentary Brief*, June 2006, p. 5

⁷² UNMIS, *The DPA Monitor*, May-June 2006

Available at: <http://www.unmis.org/english/documents/DPAMonitor/DPAMonitor-Issue01.pdf>

⁷³ Flint, “Darfur: a peace of paper?”, p. 6

⁷⁴ “Caught in the act”, *Africa Confidential*, 11 May 2007

⁷⁵ On 24 May humanitarian charities, warning of a worsening humanitarian situation, launched a new appeal for Darfur, Chad and the Central African Republic. See: <http://news.bbc.co.uk/1/hi/wales/6685593.stm>

progress on disengagement and redeployment of forces or in terms of disarmament, although discussions continued at a very slow pace about plans to disarm the Janjaweed.

There was also some unease within the Minni faction of the SLM/A about the terms of the DPA. Indeed, tensions between the Sudanese Government and Minni Minawi led to armed clashes on the ground between the two signatories to the DPA, most notably during March 2007.⁷⁶ This is despite the fact that aspects of the DPA were implemented, with the Minni faction as the prime beneficiary. Minni was sworn in as Chairman of the TDRA and as Senior Assistant to the President, the fourth most senior government post in Sudan, in August 2006. Key DPA institutions were created and posts filled, although none of these institutions became operational. AMIS provided logistical support to the Minni faction after the DPA was signed, rendering it a party to the conflict in the eyes of those who rejected the agreement. However, Minni gained no real power or authority from his incorporation into the Sudanese Government.

Many observers based their hopes for broadening the constituency of support for the DPA on the Darfur-Darfur Dialogue and Consultation. However, little concrete progress was made following the signing of the DPA towards establishing the Dialogue. Initiatives did not go beyond public information work, using print and broadcast media, about the DPA and holding consultations about the Dialogue. Efforts to promote a needs assessment for post-conflict reconstruction were also stymied by continuing insecurity.

Jan Pronk, then the UN Special Envoy for Sudan, wrote in June 2006: “There is a significant risk that the Darfur peace agreement will collapse. The agreement does not resonate with the people of Darfur. On the contrary, on the ground, especially amongst the displaced persons, it meets more and more resistance.”⁷⁷ He suggested that it might be necessary to make “additions” to the DPA if it was not to collapse – a suggestion which the Sudanese Government was quick to denounce. At first, there was little enthusiasm for his position in the international community, which feared that the entire peace process would unravel if the DPA was in any way amended.⁷⁸ However, during 2007 there appeared to be an expressed willingness, including on the part of the Sudanese Government, to consider amendments or improvements.

In its April 2007 report, the ICG declared that the DPA had “failed”.⁷⁹ However, this did not mean that there was an obvious or straightforward course of action. The Sudan analyst Alex de Waal argued:

[...] although they are winning the battles, the holdout rebels are politically fragmented and have no plan for what to do with their military momentum. Most of them want to go back to the negotiating table, but they won't do so unless they get the chance to revise the text of the DPA [...] Bitter and fragmented, but militarily confident, the rebels are no easier to negotiate with than Khartoum's wily leaders. For anything to work, the steps must be taken in the right order: cessation of hostilities, a rebel conference to choose new representatives, proper monitoring of a ceasefire and confidence-building steps,

⁷⁶ UNMIS, *The DPA Monitor*, March 2007

⁷⁷ “Darfur peace deal in danger of collapsing, UN envoy warns”, *Daily Telegraph*, 3 July 2006

⁷⁸ “Sudan rejects UN envoy call to change Darfur deal”, *Reuters*, 3 July 2006. His comments can be found at: <http://www.janpronk.nl>

⁷⁹ ICG, *Darfur: Revitalising the Peace Process*, Africa Report No. 125, 30 April 2007, Executive Summary. Available at: <http://www.crisisgroup.org/home/index.cfm?id=4769&l=1>

and then negotiations – with a credible mediator and sufficient time to hammer out the issues. Shortcuts will just bring more failure.⁸⁰

In another article, he asserted: “fix the politics first and the peacekeeping will follow. It’s not a distant hope – the political differences are small.” He argued that the NCP signed the DPA because it believed that it needed support from the main Darfur parties if it was to retain power in the 2009 nationwide elections. Without peace, there was no chance of gaining this support.⁸¹

Sudanese Government hostility to Jan Pronk (who had also reported government defeats at the hands of the NRF) eventually led to his expulsion from the country in October 2006 and his subsequent resignation. The vacant post was not filled until mid 2007. However, in November 2006, Jan Eliason was appointed as the Secretary General’s Envoy on Darfur. Following his appointment, Eliason worked closely with his AU counterpart Dr Salim A. Salim, to try and revive the peace process.

By late 2007, their efforts appeared to be bringing some reward. They were given added impetus by the deteriorating security situation on the ground, which included an attack in September 2007 by rebels on an AMIS camp at Haskanita which left ten dead. Renewed peace talks took place in Sirte, Libya, in late-October/early-November. Initial evidence suggested that the perpetrators may have had links to JEM. Despite international warnings that those who did not attend could be subject to sanctions, the talks were marked by the absence of key rebels, most notably the Abdul Wahid el-Nur (SLM/A) faction and JEM, and therefore made little progress.

One reason why Sirte proved a damp squib was the fact that efforts prior to the talks to achieve common negotiating positions amongst an ever-increasing number of rebel groups (estimated today at least 16 in number) achieved limited success. A unilateral ceasefire while the talks were under way by the Sudanese Government did not end the violence, much of which was now between rival rebel groups. Efforts continued to try and persuade rebel groups outside the talks to join but they called for the talks to take place elsewhere than Libya and for the exclusion of some of their rivals.

Some argued that most of the rebel groups now lacked a clear political agenda, were not really interested in peace and needed to be subjected to greater pressure, including sanctions and the ICC. The ICG called for a ‘reformulation’ of the negotiation process, including by bringing in a fuller range of constituencies than were represented at Sirte.⁸² Others again questioned the genuineness of Gaddafi’s commitment to the talks; he had openly questioned whether foreign intervention over Darfur was doing any good.⁸³

During early 2008, diplomatic efforts focused on trying to bring the rebel factions into a manageable number of groupings with a coherent political position. The SPLM began to play a more active role in these efforts. Five groupings emerged – JEM, SLM/A-Abdul Wahid, SLM/A-Abdul Shafie, SLM/A-Unity and the United Resistance Front (URF, which was itself a coalition of five previously separate groups) – but the deteriorating security situation in Darfur and divisions between the groups prevented significant movement towards common

⁸⁰ Article in *The Nation* (Kenya), 19 March 2007. The Security Council has spoken in terms of a new deadline for resolving the Darfur crisis of 30 June 2007.

⁸¹ “Darfur: The Inside Story”, *New African*, April 2007

⁸² ICG, *Darfur’s New Security Reality*, Africa Report No. 134 , 26 November 2007. Available at: <http://www.crisisgroup.org/home/index.cfm?id=5180&l=1>

⁸³ “Gaddafi blows hot and cold on Darfur issue”, *East African*, 12 November 2007

negotiation positions that might justify a resumption of the process launched at Sirte. But by mid 2008, hopes of success were fading.⁸⁴ For a period it looked as if the SLM/A-Minawi might also abandon its support for the DPA, although by this time the existence of this agreement was barely being referred to.

Although a joint AU-UN Chief Mediator, Djibrill Yipene Bassole, started work in August 2008, during the second half of the year, more 'home-grown initiatives' also came to the fore. A multi-party committee was set up by the GNU with a mandate to seek a resolution of the crisis in Darfur. This initially known as the 'Sudan People's Initiative', but was later re-packaged, with a wider range of participants, as the 'Sudan People's Forum' (SPF). Critics noted that its emergence coincided with the ICC Chief Prosecutor's announcement in July 2008 that he would be seeking an arrest warrant for President al-Bashir for alleged crimes against humanity (see below).⁸⁵

In November 2008, President al-Bashir announced a series of measures proposed by the SPF: an immediate unilateral ceasefire, a programme of disarmament and the creation of a community police service for Darfur's IDP camps. He also agreed in principle to compensation measures for victims of the conflict and a debate about future governance structures for Darfur. Some rebel factions, including JEM, rejected these measures. In reality, the ceasefire meant little on the ground. At the international level, in the context of a co-ordinated African-Arab initiative, Qatar offered to host further peace talks once conditions were right.⁸⁶ However, diplomatic efforts quickly became primarily geared towards achieving a ceasefire between the Sudanese Government and JEM following a major escalation in hostilities between the SAF and that organisation across Darfur during January 2009. JEM launched an attack on Muhajeria in Southern Darfur, briefly taking the town. The SAF resumed aerial bombardments in response. These efforts led to talks in Doha and, on 17 February, the signing of an 'Agreement of Goodwill and Confidence-building for the Settlement of the Problem in Darfur'. According to the UN Secretary-General, this agreement is a

preliminary document which establishes the two parties' commitment to create an environment conducive to substantive talks. To that end, the "agreement" calls for the two parties to refrain from harassing internally displaced persons, to guarantee the smooth flow of humanitarian aid and to commit to an exchange of prisoners. The "agreement" also commits the parties to finalizing a more substantive framework agreement, which would describe in detail areas to be discussed during comprehensive negotiations. Following conclusion of the agreement, the Government and JEM left small negotiating teams in Doha in order to work with the joint African Union-United Nations mediation on developing elements of a framework agreement and to prepare for final negotiations.⁸⁷

Over the following months, other rebel factions were encouraged to join the next stage of the Doha process. Some agreed in principle, but have not yet done so. In March, following the decision of the NCP to expel 13 international NGOs and dissolve three NGOs involved in humanitarian activity in Darfur for alleged collaboration with the ICC, JEM threatened to withdraw from negotiations. It was prevailed upon not to do so, but a further round of talks in Doha in May-June 2009 made little progress. JEM called for the release of all its prisoners

⁸⁴ *Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur*, S/2008/304, 7 July 2008, para 38

⁸⁵ *Ibid.*, S/2008/558, 18 August 2008, para 49

⁸⁶ *Ibid.*, S/2008/781, 12 December 2008, paras 44-45, 58

⁸⁷ *Ibid.*, S.2009/201, 14 April 2009, para 2

before moving towards a ceasefire agreement. The Sudanese Government wanted a ceasefire agreement first. There continued to be occasional skirmishes between their forces.⁸⁸ With mediators increasingly acutely aware that elections were now just five months away, another round of talks took place in November 2009. There was also a meeting of civil society activists in Doha in the same month, which led to agreement of a 'Doha Declaration'.⁸⁹ However, civil society continued to struggle to get its voice heard in the negotiations.

The DPA was dead. The Sirte process had also come and gone. Now hopes were resting on the Doha process. But the various rebel factions were unable and unwilling to unite in any serious way and it was unclear how seriously they even wanted a deal. As for the NCP, its priority had become manoeuvring for position within the CPA process so as to ward off Southern secession. However, it appeared to many that, given its record, the NCP lacked the means and *locus standi* to lead the way towards a durable resolution of the crisis in Darfur.

Writing in October 2008, Alex de Waal said of the NCP:

Over the past five and a half years, the government in Khartoum has not wanted to pay the price demanded by Darfur's rebel leaders, believing that the insurrection will disintegrate and international concern will fade, allowing it to settle for a cheaper price. As earlier with the South, it miscalculated and the price of a settlement has risen year on year [...] They launched the Darfur firestorm to avoid conceding a power-sharing formula to Darfur and may well end up facing the ICC. It's time to settle the Darfur account at the asking price.⁹⁰

Levels of violence in Darfur significantly reduced during 2009, which some analysts suggested reflected the need of the NCP to create conditions in which sufficient numbers of Darfuris could be induced to give it their vote in the forthcoming April 2010 elections. The US-based group Enough argued: "The reports of an end to the war in Darfur are premature".⁹¹ It criticised US strategy on Darfur, claiming – amongst other things – that it was in too much of a hurry to get a deal that would allow the people of Darfur to participate in the April 2010 elections. It believed that this would produce another "flawed agreement" and that there was no prospect of credible elections in Darfur within this timeframe.⁹² The organisation also criticised the international community for failing to do enough to address the interlinked crisis in Chad (see below).⁹³

2.3 Peacekeeping: From AMIS to UNAMID

The DPA did not address the issue of a handover of peacekeeping operations from AMIS to the UN, but it was widely viewed as essential to its success. The UN and AMIS quickly agreed but the Sudanese Government was highly resistant to the idea, claiming that it would be a Western-dominated force of occupation. The UN was not able to deploy peacekeepers without Sudan's consent. An SPLM cabinet minister in Khartoum claimed in June 2006 that

⁸⁸ Ibid., S/2009/352, 13 July 2009, paras 3-4. Many believe that JEM was behind an attack on AMIS personnel in September 2007, in which seven died.

⁸⁹ "Contextualising the Doha meeting: The process and the declaration", *Sudan Tribune*, 3 December 2009

⁹⁰ "On paying the price to settle Darfur", *ssrc.org*, 2 October 2008. Available at: <http://blogs.ssrc.org/darfur/2008/10/02/on-paying-the-price-to-settle-darfur/>

⁹¹ Enough, "Avoiding total war in Sudan. The urgent need for a new US strategy", September 2009, p. 2

⁹² Ibid., p. 5

⁹³ Enough, "Chad's domestic crisis: The Achilles heel for peacemaking in Darfur", July 2009, p. 1

opposition to international forces was purely an NCP position and that the issue had not been discussed by the Council of Ministers.⁹⁴

On 31 August 2006 UN Security Council Resolution 1706, extending the mandate of UNMIS to Darfur and providing for a UN peace-keeping force of 20,000, was passed. However, as it became clear that the Sudanese Government simply would not give ground on the idea of a purely UN force (despite the presence already of over 10,000 UNMIS personnel in the country), permanent members of the Security Council, the AU and Arab League shifted to proposing a 'hybrid' UN/AU force, to be known as the AU-UN Hybrid Operation in Darfur (UNAMID) in Darfur instead. The Sudanese insisted that the force should have an "African character". In November 2006, after considerable pressure on the Sudanese Government, including from its strong ally China, the principle of a hybrid force was agreed.

For the UN, the deployment of UNAMID would be the third stage of a three stage process, with each element requiring the approval of the Sudanese Government. The first two stages would involve a strengthening of AMIS. The first stage was a 'light support package' to AMIS, under which limited UN assistance would be provided to AMIS in the form of a small number of military staff advisors, police advisors and civilian staff, and a limited amount of equipment, including armoured personnel carriers. The second stage was a 'heavy support package' which provided for up to 3,000 UN personnel in Darfur to assist AMIS, as well as helicopters. This would bring overall peacekeeping numbers up to just over 10,000. Only at the third stage, when the UN/AU force, to be known as UNAMID, was established, would the numbers reach 20,000.

Implementation of the first stage gradually got under way, although there were delays due to difficulties in finding both the advisors needed and sources of supply of key equipment, such as armoured personnel carriers. There was prolonged opposition from the Sudanese Government to UN plans to include tactical/armed helicopters as part of the second stage 'heavy support package, recognising that they would potentially challenge its current air superiority. However, in April 2007 the deployment of six attack helicopters was finally agreed.⁹⁵

It was not until June 2007 that the Sudanese Government finally agreed to the implementation of the third stage, the deployment of UNAMID. Unanimous Security Council authorisation for the deployment of UNAMID was provided by Resolution 1769 of July 2007. A Chapter VII resolution, UNAMID has powers under it to protect civilians should they come under attack. However, it can only monitor, not seize, weapons present in Darfur in violation of the UN arms embargo. Jean-Marie Guehenno, Head of UN Peace-keeping, warned in November 2007 that UNAMID might fail unless member-states, in particular Western countries, were willing to provide key equipment such as helicopters and ground transport.⁹⁶

AMIS was formally replaced by UNAMID at the end of December 2007. Since then UNAMID has moved slowly towards deployment on the ground but, despite its enhanced mandate and gradually increasing capabilities, it has struggled with many of the same challenges that afflicted AMIS – above all, the absence of a peace to keep.⁹⁷ In August 2008, the UN Secretary-General complained that there remained "serious shortfalls in communications,

⁹⁴ *UNMIS News*, 28 June 2006

⁹⁵ *Report of the Secretary-General on the Sudan*, UN Doc S/2007/213, 17 April 2007, paras 23-35

⁹⁶ "Darfur force could fail if problems not settled – UN", *Reuters*, 15 November 2007

⁹⁷ *Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur*, S/2008/558, 18 August 2008, paras 38-39

logistics, medical evacuation and treatment, and air support” and that there was little prospect of these issues being remedied for “many more months”. His complaint came in the context of an attack on UNAMID in July 2008 in which seven personnel had been killed. UNAMID increasingly became the target of armed attacks during 2008. The Sudanese Government also continued to place restrictions on UN air operations, obstructing the entry of equipment through customs and haggling over the deployment of ‘non-African’ military units from Thailand and Nepal.

By July 2009, the UN Secretary-General was reporting that UNAMID’s total military strength had reached 13,430 out of a total authorised strength of 19,555, 68 per cent of authorised strength. Total police strength, at 2,983, was 41 per cent of authorised strength. While there had been progress with regard to some of the “serious shortfalls” referred to almost a year earlier, he stated: “The continued lack of key military enabling units, including medium transport units, an aerial reconnaissance unit, 18 medium utility helicopters and a Level II hospital, continues to be a source of serious concern.”⁹⁸ The Secretary-General reported improved co-operation by the Sudanese authorities overall, although there were still problem areas – for example, with the issuing of visas for UNAMID personnel.⁹⁹ He anticipated that UNAMID would reach 92 per cent of total authorised military strength by the end of 2009.¹⁰⁰ In fact, it reached only 79 per cent.¹⁰¹

UNAMID’s task may have become a little easier due to the overall reduction in the level of violence across Darfur during 2009, but it remained extremely challenging. Its personnel continued to be the targets of attacks. In August 2009, two international civilian staff members were abducted. However, they were released unharmed in December. In late September, an armed attack in el-Geneina resulted in the death of one peacekeeper.¹⁰²

2.4 Regional dynamics: Chad and the Central African Republic

The situation in Darfur had major ramifications for Chad and the Central African Republic (CAR), two neighbouring ‘failed states’. The ICG reported in mid 2006:

Numerous armed Chadian opposition groups supported directly by Khartoum are operating in Darfur, and members of Chad’s ruling circles are giving logistical support and material to the SLA and JEM. The rebels who attacked N’Djamena on 11 April 2006 originated in Darfur, some crossing into Chad via the Central African Republic to avoid detection.¹⁰³

There was a further Khartoum-backed rebel attack on N’Djamena in February 2008. It was violently suppressed. However, the boot was on the other foot when, in May of the same year, JEM launched an unexpected attack on Omdurman, on the outskirts of Khartoum.¹⁰⁴ French troops based in Chad, which numbered about 1,000, at times became involved on the side of the Chadian army in efforts to repel rebel attacks.

⁹⁸ *Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur*, S/2009/352, 13 July 2009, paras 29, 34-35

⁹⁹ *Ibid.*, para 43

¹⁰⁰ *Ibid.*, para 45. For a list of the countries currently making military and police contributions to UNAMID, see: <http://www.un.org/Depts/dpko/missions/unamid/facts.html>

¹⁰¹ *Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur*, S/2010/50, 29 January 2010, para. 3

¹⁰² See: <http://unamid.unmissions.org/Default.aspx?tabid=888&ctl=Details&mid=1062&ItemID=6032> and <http://unamid.unmissions.org/Default.aspx?tabid=888&ctl=Details&mid=1062&ItemID=6007>

¹⁰³ ICG, *Darfur’s Fragile Peace Agreement*, p. 7. Chadian President Idris Déby is a former ally of Khartoum. Relations deteriorated in the 1990s

¹⁰⁴ There has been disagreement over whether President Déby approved JEM’s attack or not.

The main Chadian armed opposition groups receiving assistance from Khartoum have been the United Front for Democratic Change (UFCD), Rally of Forces for Change (RFC) and the Union of Forces for Democracy and Development (UFDD). Each of these groups has a strong ethnic base and is led by men that have family ties to President Idriss Déby, have been ministers or have been close to his government in the past.¹⁰⁵ For its part, JEM is a Zaghawa-dominated movement – also Déby's ethnic group. It is important to note that Chad is not simply an extension of the crisis in Darfur – it has its own complex internal political dynamics. Although it is not discussed in any depth here, the same is, of course, true of CAR.¹⁰⁶

From 2003, when the exploitation of Chad's oil industry began, oil revenues helped Déby to fund his military response to the threat from Sudan and the rebel groups which it was supporting. They also reduced incentives for political dialogue with his opponents within Chad, one of whose demands was that such revenues should be shared more equitably.¹⁰⁷

In 29 June 2006 Amnesty International (AI) published a report in which it called for international action to protect civilians in Eastern Chad from cross-border attacks. Irene Khan, AI's Secretary General claimed: "What is occurring now in eastern Chad is reminiscent of what happened in the early days of the conflict in Darfur – we see the same pattern of abuses carried out by the same perpetrators [...] The seeds of Darfur are being sown in eastern Chad and the international community will reap a bloody harvest if it does not act urgently and consistently on both sides of the border."¹⁰⁸

The DPA incorporated parts of the 8 February 2006 Tripoli Agreement, in which both Sudan and Chad agreed not to support rebel groups and to cooperate in their disarmament. AMIS was also given authority under the DPA to investigate violations by Chadian groups and report them to the mechanisms established under the Tripoli Agreement. However, these mechanisms proved ineffective. Libya continued to try and calm relations between Chad and Sudan, holding a further meeting in Tripoli in November 2006. But within days, Chad had declared itself in a 'state of war' with Sudan. In early 2007 Sudan and Chad made further peace pledges, including joint border patrols, following meetings in Libya and Saudi Arabia, in the Sirte Agreement. Again, these pledges had no impact on the ground.¹⁰⁹ By this time there were an estimated 200,000 Sudanese refugees in eastern Chad. Over 100,000 Chadians had been internally displaced by violence. Khartoum and its Chadian allies were also reported to be assisting anti-government rebels in the CAR, where there were also over 150,000 IDP's. Chadian rebels were also reported to have a base on the Sudan-CAR border.¹¹⁰ France supported government efforts in the CAR to regain control over its north east.

In February 2007 UN Secretary-General Ban Ki-Moon, with strong support from the US, called on the UN to send 11,000 peacekeepers to Chad and the CAR. President Déby,

¹⁰⁵ ICG, *Chad: A New Conflict Resolution Framework*, Africa Report No. 144, 24 September 2008, pp. 11-12

¹⁰⁶ For recent ICG reports on CAR, see: <http://www.crisisgroup.org/home/index.cfm?id=5256&l=1>

¹⁰⁷ For more background on Chad's oil industry, see: ICG, *Chad: Escaping from the Oil Trap*, Africa Briefing No. 65, 26 August 2009

¹⁰⁸ AI, "Sudan/Chad: International action needed to protect civilians from cross-border attacks", 29 June 2006. Available at: <http://web.amnesty.org/library/index/ENGAFR540282006>

¹⁰⁹ "Caught in the act", *Africa Confidential*, 11 May 2007

¹¹⁰ For more on the Darfur-Chad-CAR dynamic, see: Council for Foreign Relations, Backgrounder, 2 January 2007, "Sudan, Chad and the Central African Republic". Available at: <http://www.cfr.org/publication/12309/>. For a recent assessment of the UN's Humanitarian Co-ordinator, see: Carnegie Endowment for International Peace, "Speech by Sir John Holmes on Darfur, Chad and the Central African Republic", 19 April 2007. Available at: <http://www.carnegieendowment.org/events/index.cfm?fa=eventDetail&id=978>

having originally called for a peacekeeping force, subsequently raised doubts about its role and composition, including whether the UN was the right organisation to spearhead peacekeeping efforts. In October 2007 the EU formally agreed, with UN support, to send a stop-gap peacekeeping force of over 3,000 personnel to Chad and the Central African Republic for a period of 12 months to protect the estimated 500,000 Darfuri refugees and IDPs in camps in those countries and by facilitating the provision of humanitarian assistance to them. Established under UN Security Council Resolution 1778 of 25 September 2007, which gives it a Chapter VII mandate, the EU force was mandated to work closely with the small non-military UN Mission in the CAR and Chad (known as MINURCAT). The force was to be 3,300 strong, two-thirds French in composition, with the second largest contingent 450 soldiers from the Republic of Ireland. Known as Eufor Chad/CAR, initial deployment occurred in February 2008. The role of the UK armed forces was to be very limited.¹¹¹

In October 2007 the prospects for stability in Chad appeared to improve when the Government sealed a peace deal with a number of rebel groups. However, within hours there were disagreements about what the deal involved and it quickly unravelled. Then, in February 2008, rebel forces launched another attack on N'Djamena, which came close to succeeding. There are strong indications that the timing of the attack was designed to achieve regime change before Eufor could become established.

The prevailing pattern – conflict, followed by cosmetic reconciliation – was resumed through the March 2008 Dakar Agreement, where Sudan and Chad again agreed not to sponsor rebel groups. It created a Contact Group, chaired by Congo Brazzaville and Libya, with a mandate to oversee the normalisation of relations. Then came JEM's attack on Khartoum, which led Sudan to cut off diplomatic relations with Chad. Amidst a deteriorating security situation in Eastern Chad, in which it had become clear that monitoring or securing the border between Chad, Sudan and CAR was a "virtually impossible task", the UN Secretary-General proposed in September 2008 that Eufor should now be replaced by a reconfigured MINURCAT, with a very similar 'protection' mandate to Eufor's, but deploying only in Eastern Chad and not in Northeastern CAR. The size of the force would be about 6,000.¹¹² These proposals were endorsed by the Security Council in January 2009 in Resolution 1834. Eufor ultimately handed over to MINURCAT in March 2009 but full deployment was not expected until the end of 2009. It also remained (like UNAMID), short of "key enablers, including engineers and military helicopters." The security situation remained poor.¹¹³

Since the beginning of 2009, complementing its intervention on Darfur, Qatar has become involved in mediation efforts, offering to finance joint border patrols. In May, in Doha, Sudan and Chad signed another agreement, along what by now were the usual lines. However, within a matter of weeks, there had been a further rebel incursion into Eastern Chad.¹¹⁴ The ICG has recently described the region as a "powder keg".¹¹⁵ The latest report by the UN Secretary-General states that there are now 260,000 refugees from Sudan, 70,000 refugees from CAR and 171,000 IDPs in Eastern Chad.¹¹⁶ In late September, Amnesty International

¹¹¹ HC Deb 12 November 2007 53W

¹¹² *Report of the Secretary-General on the United Nations Mission in the Central African Republic and Chad*, S/2008/601, 12 September 2008, paras 65-77. The size of MINURCAT was subsequently reduced to 5,225.

¹¹³ *Ibid.*, S/2009/359, 14 July 2009, para 23

¹¹⁴ *Ibid.*, para 65

¹¹⁵ ICG, *Chad: Powder Keg in the East*, Africa Report, No. 149, 15 April 2009

¹¹⁶ *Report of the Secretary-General on the United Nations Mission in the Central African Republic and Chad*, S/2009/359, 14 July 2009, para 18

published a report describing the high levels of sexual violence being experienced by Sudanese women in the refugees camps of Eastern Chad.¹¹⁷

Many observers argue that the international community needs to become much more engaged in promoting a political solution *within* Chad than it has been and that, in the absence of a bigger push in that direction, the advent of MINURCAT could send “the wrong message” to President Déby. One analyst has written:

The UN force comes to the benefit of President Déby, by carrying the brunt of the security burden in a large part of his country. Yet the Security Council seems to trade the UN provision for the Chadian responsibility to protect the civilians on its territory, in exchange for toothless encouragements to the Chadian government to find political solutions (as in the case of Resolution 1834) [...] authorizing a UN follow-on force risks shifting international attention and resources from finding a viable political solution to the crisis in Chad and the greater region, to the more immediate challenges of finding sufficient troops and equipment [...]¹¹⁸

In July 2009, Enough wrote: “While international efforts to address Sudan’s internal crisis are ongoing, parallel efforts in Chad are virtually non-existent. [...] It’s time to get serious about Chad.”¹¹⁹ There is an internal political reform process under way based on an August 2007 agreement between the Government of Chad and the civilian political opposition, which is being supported by MINURCAT, but progress has been slow and Déby’s political reflexes remain highly authoritarian, as was witnessed in the aftermath of the February 2008 rebel attack on N’Djamena.¹²⁰ In addition, the reform process has not involved the armed groups.

2.5 The role of the International Criminal Court

From 2005 onwards, the International Criminal Court (ICC) loomed increasingly large over developments in Sudan. Sudan is not a state party to the ICC. However, the UN Security Council gave the ICC jurisdiction over the situation in Darfur and called upon the Sudanese Government to co-operate with its investigations under Resolution 1593 (2005). By the time the DPA was signed, the work of the Special Criminal Courts on the Events in Darfur, the Judicial Investigation Committee and the Special Prosecutions Commission – all of which had been set up by the Sudanese Government in order to show that war crimes and crimes against humanity were being dealt with adequately at the national level, so eliminating any justification for the involvement of the ICC – had led to the conviction of only junior members of the security forces. This strengthened the position of those who argued that the ICC should push ahead with its investigations.

In his third report to the Security Council pursuant to Resolution 1593 (2005) on 14 June 2006, the Prosecutor of the ICC, Luis Moreno Ocampo, stated that his office had documented evidence of thousands of killings of civilians in Darfur, including large-scale massacres and hundreds of rapes. He also criticised Sudan’s own investigations, asserting:

[...] it does not appear that the national authorities have investigated or prosecuted, or are investigating and prosecuting cases that are or will be the focus of the Office of the Prosecutor’s attention, such as to render those cases inadmissible before the ICC.¹²¹

¹¹⁷ “Sudanese refugees ‘raped in Chad’”, *BBC News Online*, 30 November 2009

¹¹⁸ B. Seibert, “UN/EU Midterm review on Chad – a few thoughts”, *ssrc.org*, 25 September 2008

¹¹⁹ Enough, “Chad’s domestic crisis: The Achilles heel for peacemaking in Darfur”, July 2009, p. 1

¹²⁰ ICG, *Chad: A New Conflict Resolution Framework*, Africa Report No. 144, 24 September 2008, pp. 19-22

¹²¹ *Third Report of the ICC Prosecutor to the UN Security Council pursuant to UNSCR 1593 (2005)*, 14 June 2006

In his fourth report on 14 December 2006 Ocampo reported that he had received no formal response from the Sudanese Government to a request for an update on their national proceedings, “although there are indications of developments, including the arrest of 14 individuals suspected of serious violations of international humanitarian law.” He stated that his office was now focusing particularly strongly on a series of incidents that occurred in 2003-4. He added that he had received some (but not full) co-operation from the Sudanese Government.¹²²

On 27 February 2007 the Prosecutor announced that he had applied to the ICC to start proceedings against the Sudanese State Minister for Humanitarian Affairs, Ahmad Muhammad Harun, who was formerly a Minister with responsibility for Darfur, and the Janjaweed commander, Ali Kushayb, on 51 counts of war crimes and crimes against humanity committed in West Darfur during 2003-4.¹²³ The Sudanese Government responded angrily to the announcement and in March declared that it would not co-operate further with the Prosecutor. It has kept its word, ignoring calls from the UN Security Council to reverse this stance. Harun has remained part of the government and is currently Governor of South Kordofan state. Kushayb had been briefly detained by the authorities as part of an apparent Sudanese investigation into the allegations but was released following the Prosecutor’s statement. Arrest warrants against the two men were issued in April 2007.

From mid 2007 onwards, the Prosecutor turned his investigatory attention towards other alleged perpetrators, most notably President al-Bashir himself. In July 2008 he applied to the ICC’s Pre-Trial Chamber for an arrest warrant for al-Bashir on ten counts of genocide, crimes against humanity and war crimes. His argument was founded on the legal principle of “perpetration through means”. This does not require establishment that al-Bashir had “command responsibility” but instead establishment that he had control over the “system” which perpetrated the abuses.

President al-Bashir and the NCP responded to the application by launching a concerted propaganda campaign both at home and across Africa and the Arab world against the ICC.¹²⁴ It also began to display greater flexibility and co-operation with regard to both the CPA process and its Darfur counterpart. The goal was to secure the agreement of the UN Security Council to defer the case against him. The Security Council can defer a case for twelve months, potentially renewable, under Article 16 of the Rome Statute by passing a Chapter VII resolution to that effect. The Sudanese Government was able to secure the support of both the AU and the Arab League for deferral. However, these efforts proved unsuccessful and, on 4 March 2009, following the decision of the Pre-Trial Chamber of the ICC to grant the Prosecutor’s request for an arrest warrant on seven counts of crimes against humanity and war crimes, the warrant for President al-Bashir was duly issued – the first such action against a sitting Head of State.¹²⁵ The Pre-Trial Chamber, by two to one, ruled against the three counts of genocide put forward by the Prosecutor. He has appealed against the decision. All countries, including African and Arab states parties, which had signed or ratified the Rome Statute were now obliged to arrest President Al-Bashir should he enter their jurisdiction. The ICC lacks any enforcement capacity of its own.

¹²² *Fourth Report of the ICC Prosecutor to the UN Security Council pursuant to UNSCR 1593 (2005)*, 14 December 2006

¹²³ For full details of the Prosecutor’s evidence against the two men, see: http://www.icc-cpi.int/library/cases/ICC-02-05-56_English.pdf

¹²⁴ The SPLM has kept a very low profile on the issue, fearing its potential to destabilise the CPA process. However, Darfuri rebel groups and IDPs welcomed the news.

¹²⁵ For the full text of the warrant of arrest, see: <http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf>

The NCP wasted little time in retaliating against the issuing of the arrest warrant. It announced that 13 international humanitarian organisations would be expelled and three local NGO's would be closed down, on the grounds that all these organisations had been co-operating with the ICC. This decision led to widespread criticism, including from some African and Arab states, above all because of fears that this would dramatically damage humanitarian operations and make IDPs and remaining humanitarian workers easier targets for armed groups and bandits in Darfur and other parts of Sudan to attack.¹²⁶

The actions of the Prosecutor on this case certainly caused controversy. Criticism not only came from the NCP, but also from the AU and Arab League. The AU set up a panel on Darfur with a mandate to explore alternatives to prosecution by the ICC. The UK Government strongly supported the ICC Prosecutor, although there was a media report claiming that its current Special Representative for Sudan, Michael O'Neill, had criticised the decision to indict al-Bashir.¹²⁷ But concern was also expressed by a range of 'Sudan experts' and by representatives of numerous humanitarian and development organisations about the potential of the case against President al-Bashir to undermine peace efforts in Sudan.

Julie Flint and Alex de Waal published an article in Spring 2009 that was highly critical of the performance of the Prosecutor, including with regard to the case against President al-Bashir.¹²⁸ Writing on 5 March, the day after the arrest warrant was issued, de Waal wrote:

The die is cast. Sudan has entered uncharted waters as a result of the ICC arrest warrant against President Omar al Bashir. And indeed it is a nothing less than roll of the dice, a gamble with unknown consequences. Yesterday marks a turning point. We cannot say for sure in which direction Sudan will turn but there are many reasons to be fearful.

Conflict resolution is in part an exercise in reducing uncertainty, bringing former enemies together, and finding a solution that everyone can live with. For the last eight years, a great deal of effort by Sudanese and their international partners has gone into trying to accommodate diverse and distrustful people, all of whom have the capability to bring the country back into the abyss of war and destruction, within a common agenda of making Sudan function. Incentives, sanctions and pressure were all part of the package. But key to success was a shared vision, often blurry but nonetheless real, that solving the Sudanese problem was a common national challenge and that all without exception have a place in the new Sudan which arises from this effort.

The ICC is the reverse: a human rights absolutism that demands that some people be ruled out entirely. The ICC pretends to be outside politics, representing principles on which no compromise is possible. The key word is 'pretense', to paraphrase David Kennedy: it is a nice fiction for the human rights community to believe that it is 'speaking truth to power' and not actually exercising power. The ICC arrest warrant is a real decision with real consequences in terms of lives saved and lost and the political life of a nation.

I for one cannot see a political way out of this mess. The International Crisis Group writes that 'the NCP is likely to look for a way out of a situation, by changing its policies or leadership. To succeed, it will need to change both.' This is groping in the dark. What is ICG actually advocating here? It seems to me that it is calling for a coup. An internal coup is possible though unlikely and not, to my mind, a solution.

¹²⁶ ICG, *Sudan: Justice, Peace and the ICC*, Africa Report No. 152, 17 July 2009, pp. 18-20

¹²⁷ "Darfur conference divides", *Yale Daily News*, 9 February 2009

¹²⁸ "Case closed: A prosecutor without borders", *World Affairs*, Spring 2009. Available at: <http://www.worldaffairsjournal.org/2009%20-%20Spring/full-DeWaalFlint.html#>

As of yesterday, everything that any commentator or expert thinks he or she knew with confidence about Sudan becomes moot.¹²⁹

Others, such as the ICG, saw things differently. While accepting that the Prosecutor has not always played his cards well, and that a deferral of the case might in some circumstances be justified, the organisation argued:

The US and other international partners of the Sudan peace process should increase pressure on the NCP in order to create a chance for meaningful policy changes. The best way to do so is to reconfirm their support for execution of the ICC arrest warrants and to deliver a firm message in Khartoum that they will only consider a Security Council resolution suspending execution [...] if the NCP first takes a series of specific and irreversible steps, including but not limited to acceptance of judicial reforms and transitional justice mechanisms as key elements of a Darfur settlement.¹³⁰

The ICG also argued that President al-Bashir should step down from office immediately. In a July 2009 report it claimed that the ICC case against al-Bashir created divisions within the NCP about how to respond to it; although those within the party who wanted al-Bashir to be replaced had been defeated for the moment.¹³¹ Some analysts attributed particular significance to the fact that Hassan al-Turabi, one of the founders of the NCP but now part of the opposition, consistently called for al-Bashir to surrender himself to the ICC; indeed, he was briefly detained for doing so in early 2009.¹³²

In November 2008 Ocampo also applied for arrest warrants for three Darfuri rebel commanders in connection with a September 2007 attack on AMIS peacekeepers, in which twelve died. Although all three declared their willingness to appear voluntarily before the court in order to contest the charges, only one has yet been identified. He is Bahar Idriss Abu Garda. He handed himself over to the ICC in The Hague in May 2009. His case is at the pre-trial stage.

In October 2009, the AU panel on Darfur, by this time headed by Thabo Mbeki, the former president of South Africa, published a report in which, while not disputing that the ICC was entitled to be seized of the matter, proposed that local tribunals should be used instead to try those accused of human rights abuses in Darfur. It stated:

The elements of the Response should include:

- (a) Measures to expand and strengthen the system of Special Courts to deal with crimes committed in the conflict in Darfur;
- (b) The establishment of a Hybrid Court to deal particularly with the most serious crimes, to be constituted by Sudanese and non-Sudanese judges and senior legal support staff, the latter two groups to be nominated by the African Union;

¹²⁹ A. de Waal, "Uncharted waters", *ssrc.org*, 5 March 2009. Available at: <http://blogs.ssrc.org/darfur/2009/03/05/uncharted-waters/>

See also: <http://africanarguments.org/2009/03/the-icc-sudan-and-the-crisis-of-human-rights/>
¹³⁰ ICG, *Sudan: Justice, Peace and the ICC*, Africa Report No. 152, 17 July 2009, p. ii. Amnesty International and Human Rights Watch are prominent amongst those which do not accept that there could be any justifiable grounds for deferral. For example, see: <http://www.hrw.org/en/news/2009/03/27/darfur-and-icc-myths-versus-reality>

¹³¹ *Ibid.*, pp. 8-12

¹³² "Sudan's Turabi says position unchanged on Bashir and ICC", *Sudan Tribune*, 10 March 2009

(c) Measures to strengthen all aspects of the criminal justice system, including investigations, prosecutions and adjudication, paying attention to its capacity to handle sexual crimes in an effective manner;

(d) Introduction of legislation to remove all immunities of State actors suspected of committing crimes in Darfur;

(e) Establishment of a Truth, Justice and Reconciliation Commission (TJRC) to promote truth telling and appropriate acts of reconciliation and to grant pardons as considered suitable.¹³³

In December 2009, the UN Security Council, which has the power to defer the ICC prosecution, welcomed the report without endorsing its specific conclusions.¹³⁴

The ICC Prosecutor announced in May 2007 that his Office would be investigating alleged war crimes and crimes against humanity in CAR during 2003-4, following the referral of numerous cases to it by the CAR Supreme Court, which argued that it was not capable of trying these cases.¹³⁵ CAR is a state party to the ICC – as, since it acceded to the Rome Statute on 1 November 2006, is Chad. One case is currently underway, that against Jean-Pierre Bemba, a national of the Democratic Republic of Congo and leader of the Movement for the Liberation of Congo, against whom there are two counts of crimes against humanity and three of war crimes. Bemba has been in ICC custody in The Hague since May 2008. His trial started in April 2010.¹³⁶

2.6 Sanctions and other international action on Darfur

Operating separately to the ICC, in April 2006 sanctions were imposed upon four individuals by the UN Security Council in Resolution 1672 on 25 April 2006 for obstruction of the peace process, responsibility for violations of international law or for offensive military over-flights. They were:

Gaffar Mohammed el-Hassan, Major-General and Commander of the Western Military Region, SAF

Sheikh Musa Hilal, Paramount Chief of the Jalul tribe in North Darfur and leader of a pro-government militia

Adam Yacub Shant, Commander of the SLA

Gabril Abdul Kareem Badri, Field Commander, NMRD¹³⁷

All became subject to a travel ban and a freeze on their assets abroad. The confidential list from which these individuals were ultimately selected for punishment was leaked in late February 2006. It reportedly contained more names, including then Interior Minister El Zubeir Beshir Taha and then Director of the National Security and Intelligence Service, Major-

¹³³ Para. 25. Full report available at: <http://blogs.ssrc.org/sudan/wp-content/uploads/2009/10/AUPD-Report-Final-October-2009.pdf>

¹³⁴ See: <http://blogs.ssrc.org/sudan/wp-content/uploads/2009/12/Security-Council-Press-Statement-Eng.pdf>

¹³⁵ See: http://www.icc-cpi.int/pressrelease_details&id=248&l=en.html

¹³⁶ For further information about this case, see: <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0105/Related+Cases/ICC+0105+0108/Case+The+Prosecutor+v+Jean-Pierre+Bemba+Gombo.htm>

¹³⁷ For full details see the *List of Individuals subject to the Measures imposed by Paragraph 3 of Resolution 1591(2005)*. Available at: www.un.org/Docs/sc/committees/Sudan/Sudan_list.pdf

General Salah Abdullah Gosh. Major-General Gosh visited the UK in March 2006 for medical treatment.¹³⁸ It has been claimed that the Major-General Gosh has been a useful supplier of intelligence to the US administration in the context of the 'war on terror'.¹³⁹ The President of Sudan, Omar el-Bashir, was apparently also under consideration for "possible future designation", as were Minni Minawi and Abdul Wahid. Most commentators agreed that the selection of individuals for punishment by the Security Council had been (and remains) to a significant extent a politically-driven process.¹⁴⁰

In October 2006, the Sanctions Committee referred a report submitted to it two months earlier by its Panel of Experts to the Security Council. The Panel of Experts reported that the UN arms embargo on Darfur continued to be flagrantly violated by all parties to the conflict and that it had received relatively little information about whether or how far the financial and travel-related sanctions imposed against the four named individuals above were being implemented by UN member states. The Panel also provided the Committee with a further (unpublished) list of individuals which it deemed to be impeding the peace process, committing violations of international law or who were responsible for offensive military overflights.¹⁴¹

The continuing behaviour of the Sudanese Government and the alleged ineffectiveness of the existing sanctions led critics to call for the imposition of stronger UN measures. During the first half of 2007 it looked as if the US, UK and France, responding in part to pressure from western campaigners such as the 'Save Darfur campaign', might well table further proposals at the Security Council. In early May Amnesty International alleged that China and Russia were continuing to supply arms to the Sudanese Government that were being used in Darfur, in violation of the existing arms embargo. Both countries denied the allegations.¹⁴²

At this time, the ICG, a strong advocate for additional sanctions, called on the international community to apply more effective pressure on the Sudanese Government by implementing the following measures:

- * apply targeted sanctions, such as asset freezes and travel bans, to key NCP leaders who have already been identified by UN-sponsored investigations as responsible for atrocities in Darfur and encourage divestment campaigns;

- * authorise through the Security Council a forensic accounting firm or a panel of experts to investigate the offshore accounts of the NCP and NCP-affiliated businesses so as to pave the way for economic sanctions against the regime's commercial entities, the main conduit for financing NCP-allied militias in Darfur;

¹³⁸ For an explanation by the British Government as to why Gosh was permitted to visit the UK, see HC Deb 29 March 2006 c839

¹³⁹ "Massacres suspect let into Britain", *Sunday Times*, 12 March 2006

¹⁴⁰ See: "Sudan ministers named in leaked UN Darfur list", *Financial Times*, 22 February 2006; "Names and blames", *Africa Confidential*, 3 March 2006. For the publicly available report of the Security Council Committee established pursuant to Resolution 1591 (2005) see UN Doc. S/2006/65, 30 January 2006. Its mandate was extended to 29 September 2006 under Resolution 1665 of 29 March 2006

¹⁴¹ *Report of the Panel of Experts established pursuant to UNSCR Resolution 1591 (2005) in accordance with paragraph 2 of Resolution 1665 (2006)*, UN Doc S/2006/795, 31 August 2006
Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/490/87/PDF/N0649087.pdf?OpenElement>

¹⁴² "China, Russia, deny weapons breach", *BBC News Online*, 8 May 2007. Campaigners have sought to increase pressure on China by focusing on disrupting the 2008 Beijing Olympics. Perhaps in part to deflect criticism, China recently appointed a Special Envoy on Darfur.

* explore sanctions on aspects of Sudan's petroleum sector, the NCP's main source of revenue for waging war in Darfur, to include at least bars on investment and provision of technical equipment and expertise; and

* begin immediate planning for enforcing a no-fly zone over Darfur by French and U.S. assets in the region, with additional NATO support; obtaining consent of the Chad government to deploy a rapid-reaction force to that country's border with Sudan; and planning on a contingency basis for a non-consensual deployment to Darfur if political and diplomatic efforts fail to change government policies, and the situation on the ground worsens.¹⁴³

The imposition of a 'No-fly zone' over Darfur was also said to be under active consideration during the first half of 2007, but ultimately it did not itself fly. Advocates of a 'No-fly zone' have argued that it could be imposed without a further resolution of the Security Council under paragraph 3 of Resolution 1591 (2005), which demands that the government, "immediately cease conducting offensive military flights in and over the Darfur region". However, it was always unlikely that China or Russia would agree with such an interpretation of the resolution. According to *Africa Confidential*, a 'No-fly zone' would make confrontation with Sudanese forces "almost inevitable".¹⁴⁴

There were also countervailing pressures not to push the Sudanese Government too hard, on the grounds that it remained a valuable partner in the 'war on terror'.¹⁴⁵ The incoming UN Secretary-General, Ban ki-Moon, argued for continued engagement with the Sudanese Government, rather than a 'rush to confrontation'. China and Russia consistently opposed stronger sanctions in the Security Council. This, along with the agreement in June 2007 by the Sudanese Government to allow the deployment of UNAMID and its subsequent willingness to take part in Darfur peace talks, helped to dissipate the momentum for further sanctions.

Accordingly, during the second half of 2007 the US and the UK held back from tabling a draft resolution that might have included naming additional individuals as subject to sanctions, the extension of the current arms embargo on Darfur to the whole of Sudan and the establishment of a formal monitoring mechanism to record violations of the ban on offensive overflights in Darfur. In November 2007, the Foreign Secretary, David Miliband, stated that no Sudanese assets had been frozen by the UK under existing UN and EU sanctions.¹⁴⁶

During 2008-09, the UN Sanctions Committee and the Panel of Experts that reports to it continued with their work. In its December 2008 report, the Panel stated that there had been "continued violations of the arms embargo by all parties in Darfur" and that "the Government of the Sudan was not implementing the travel ban and the assets freeze." It also found that "arms and related materiel delivered to the Sudan and Chad outside the provisions of the embargo were being diverted into Darfur and were fuelling the conflict."¹⁴⁷ The Panel's next

¹⁴³ See: <http://www.crisisgroup.org/home/index.cfm?id=3060&l=1>

¹⁴⁴ "Caught in the act", *Africa Confidential*, 11 May 2007

¹⁴⁵ The US State Department's *Country Reports on Terrorism 2006* used precisely this language, causing considerable public controversy.

¹⁴⁶ HC Deb 27 November 2007 c352W

¹⁴⁷ *Report of the Security Council Committee established pursuant to UNSCR Resolution 1591 (2005)*, S/2008/840, 31 December 2008, paras 30-31

report, published in October 2009, indicated that little progress had been made.¹⁴⁸ No action followed.

In September 2009, a Small Arms Survey report raised concerns about the inability of UNMIS and UNAMID effectively to monitor arms flows or holdings in Sudan in order to establish whether breaches of the UN arms embargo or of the CPA were taking place. It also argued that the EU arms embargo was being inadequately monitored and enforced.¹⁴⁹ The report went on to state:

In the absence of an expanded embargo, better enforcement of current UN and EU embargoes would require states actively to enforce measures that cover the ancillary actors involved in the supply chain. As has been shown, transporters, producers, brokers, and financiers are often based in states with existing comprehensive legal regimes restricting arms supplies to Sudan, as is the case in the European Union. If the international community is serious about reducing arms flows to Sudan, it needs to identify and interdict transporters, component suppliers, and financiers of arms supplies to Sudan and the wider region—wherever they may be located. Case Studies 2 and 3 also illustrate the limited due diligence obligations placed on commercial actors. Transporters are not required to establish the final destination of a major military cargo to East Africa, even if, according to those transporters, it is not accompanied by an end-user certificate. Likewise military co-producers in Case Study 2 are not required to enquire about the ultimate customers for vehicles to which they supply weapons systems. Insistence on documentation regarding the enduser and final destination of arms supplies, built into transport contracts and co-production deals of these kinds, would generate enforcement benefits, and probably end some of the most egregious forms of concealment.¹⁵⁰

While campaigners for additional sanctions did not give up the fight after 2007, a lot of the steam appeared to have gone out of the issue as the ICC increasingly took centre-stage in the ongoing debate about ‘pressures and incentives’. A civil society-based divestment campaign continues. It has been most effective in the US, where it has been led by the Sudan Divestment Taskforce.

The UN Human Rights Council (HRC), the body which replaced the widely discredited Commission on Human Rights in 2005, published a report in March 2007 by a High-Level Mission (HLM) on the human rights situation in Darfur.¹⁵¹ The HLM was unable to go to Darfur but did travel to the Chadian side of the border. The report accused senior Sudanese government figures of orchestrating and participating in the violence in Darfur.¹⁵²

There were disagreements within the HRC as to how much responsibility could be apportioned to Sudan for the fact that the HLM did not visit Darfur. European members of the Council sought to bring a strongly-worded motion in the HRC. Other members sought to avoid direct criticism of the Sudanese Government in the resolution. The resolution (A/HRC/4/L.7/Rev.2) ultimately adopted on 30 March 2007 focused predominantly on ‘next steps’. It decided to:

¹⁴⁸ *Report of the Security Council Committee established pursuant to UNSCR Resolution 1591 (2005)*, S/2009/562, 20 October 2009

¹⁴⁹ Small Arms Survey, *Skirting the Law: Sudan's Post-CPA Arms Flows*, Geneva, September 2009. pp. 57-62

¹⁵⁰ *Ibid.*, p. 64

¹⁵¹ For the full text of the report, see: <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-80.doc>

¹⁵² “Report condemns Sudan over Darfur”, *BBC News Online*, 12 March 2007. Available at: <http://news.bbc.co.uk/1/hi/world/africa/6440719.stm>

convene a group to be presided over by the Special Rapporteur on the situation of human rights in the Sudan, composed of the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Representative of the Secretary-General on human rights of internally displaced persons, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, to work with the Government of the Sudan and the appropriate human rights mechanisms of the African Union to ensure the effective follow-up to and to foster the implementation of resolutions and recommendations on Darfur, to safeguard their consistency and to contribute to monitoring the human rights situation on the ground.

The Sudanese Government representative at the vote pledged that the Government would co-operate with the group. The group published its final report in late November 2007. The report stated:

The group of experts concludes that the process of cooperative engagement with the Government of the Sudan has worked well in procedural terms. However, in terms of substance, it observes that few recommendations have been fully implemented or reportedly had a tangible impact on the ground. Several recommendations that were prioritized as short-term and could have been implemented within three months, given that they did not require lengthy administrative processes or additional resources, have not yet been implemented. While initial steps have been made by the Government with regard to many of the recommendations, they have not yet yielded a sufficient impact on the ground according to reports received from organizations operational in Darfur. Finally, a significant number of recommendations have not been addressed by the Government at all. The group of experts, while acknowledging the activities undertaken by the Government of the Sudan to date, is concerned that reports received clearly indicate that, with very few exceptions, those efforts have not yet led to an improvement of the situation of human rights in Darfur.¹⁵³

The Human Rights Council subsequently mandated the Special Rapporteur on the situation of human rights in the Sudan, the Afghan Sima Samar, to monitor the implementation by the Sudanese Government of the recommendations of the group of experts. She published a report in June 2009.¹⁵⁴ However, after 2008 there was a significant loss of momentum within the Human Rights Council on Sudan. Samar's report was accompanied by calls from the Sudanese Government and a number of other African states (including South Africa) that the mandate of the Special Rapporteur should now be terminated.

On 18 June, the Human Rights Council voted by a narrow majority to extend the mandate.¹⁵⁵ After serving her four year term, Samar was replaced by Mohamed Chande Othman of Tanzania.

Finally, between 2005 and 2007, there was considerable debate about the obligations of the international community with regard to Darfur in terms of the emerging norm known as the Responsibility to Protect (R2P). However, writing at the end of 2007, Alex de Waal claimed:

¹⁵³ *Final report on the situation of human rights in Darfur prepared by the group of experts mandated by the Human Rights Council in its resolution 4/8, A/HRC/6/19, 28 November 2007, p. 2*

¹⁵⁴ A/HRC/11/14, June 2009

¹⁵⁵ "UN human rights body keeps investigator", *Reuters*, 18 June 2009

The pursuit of the responsibility to protect in Darfur has not achieved its goal. Contrary to the position taken by the most ardent advocates of R2P... this failure owes much to the inadequate conceptualisation of the R2P, the inflated expectation that physical protection by international troops is indeed possible within the limits of the military strength envisaged and the confused advocacy around the issue. It is possible that more concerted international pressure could have brought a bigger and better-equipped international force to Darfur earlier. That would, in itself, have been a positive development. But the expectation that such a force could 'save' Darfur is erroneous... In pursuit of an unachievable ideal, the international community has failed to achieve practical solutions that lay within its grasp.¹⁵⁶

Between 2007 and 2009, with UNAMID (slowly) deploying in Darfur, this debate receded.

3 Eastern Sudan

3.1 Background

The rumbling, low-intensity conflict between the Government of Sudan and a rebel grouping called the Eastern Front (EF) was almost entirely ignored by the international media until 2006. Diplomatic attention was also fitful.¹⁵⁷ In January 2006 the ICG described Eastern Sudan as "on the threshold of new conflict with no forum in which to negotiate".¹⁵⁸ It also claimed that the humanitarian situation in the region, where there was only a small humanitarian presence, was "in some ways worse than Darfur's".¹⁵⁹

The conflict was essentially based on the same grievances as those that had featured elsewhere in Sudan: marginalisation and underdevelopment. The SPLM/A had long been an ally of the Beja Congress, which was the biggest group within the EF. The other main group within the EF was known as the Rashaida Free Lions. The CPA ended hostilities between the Sudanese Government and the SPLM/A in the East. Although the SPLA was due to fully withdraw under the terms of the CPA by 9 January 2006, its departure was delayed as anxieties grew that doing so could lead to a flare-up of violence between the EF and the SAF. A major potential flashpoint was the town of Hameshkoreb, which the EF described as "our town".¹⁶⁰ UN humanitarian access to the East was heavily restricted by the Sudanese local authorities, despite assurances in Khartoum that no restrictions would be imposed.¹⁶¹

One cause for hope, according to the ICG, was that the NCP and the security establishment behind it could not "afford a protracted conflict in the region on a scale comparable to the South or Darfur since that would immediately affect the supply of food and raw materials to the capital and could seriously damage its stability."¹⁶² Writing in January 2006, the ICG claimed that there was an urgent need for "comprehensive negotiations between the

¹⁵⁶ A. de Waal, "Darfur and the failure of the responsibility to protect", *International Affairs*, November 2007, p. 1054

¹⁵⁷ The British Government has been the most active player. It has supported efforts to achieve a negotiated settlement since late 2004. See the ICG's report *Sudan: Saving Peace in the East*, Africa Report No. 102, 5 January 2006, p. 26. Another useful report on the East is that by Sara Pantuliano of the Institute of Development Studies, University of Dar es Salaam, *Comprehensive Peace? Causes and Consequences of Underdevelopment and Instability in Eastern Sudan*, September 2005. Commissioned by a number of international aid agencies, a copy is available from the author of this Standard Note at lunnj@parliament.uk. See also House of Commons Library Research Paper 06/08.

¹⁵⁸ ICG, *Sudan: Saving Peace in the East*, p. 29

¹⁵⁹ *Ibid.*, p. ii

¹⁶⁰ *Ibid.*, p. 17

¹⁶¹ "Sudan bars aid access in east – UN official", *Reuters*, 19 June 2006. According to this source, there are also 120,000 refugees from Ethiopia and Eritrea in the East

¹⁶² ICG, *Sudan: Saving Peace in the East*, p. 11

Government of National Unity and the EF that can produce a sustainable peace based on the CPA framework”, adding that the international community should support these negotiations and work with key regional actors – particularly Eritrea, which has been a major supporter of the EF.¹⁶³ Another possible factor impelling the NCP towards peace was its need to build alliances ahead of nationwide elections, scheduled at that time for 2009, if it wanted to outflank its main potential electoral opponent, the SPLM/A.

3.2 The Eastern Sudan Peace Agreement

Following several Libyan-sponsored initiatives at the beginning of 2006 that achieved little, Eritrea became the key broker in talks between the Sudanese Government and the EF. Its involvement encouraged a set of synchronised steps leading to peace negotiations. On 11 June 2006 the SPLM/A officially withdrew from Hameshkoreb. On 12 June, President el-Bashir of Sudan met with his Eritrean counterpart, Issaias Aferwerki, in Khartoum to pave the way for negotiations between the Sudanese Government and the EF.¹⁶⁴ These negotiations quickly produced a Ceasefire Agreement and a Declaration of Principles on 19 June 2006. These were designed to guide future negotiations aimed at bringing about a durable peace. The Sudanese Government and the EF also formed a Joint Security Committee made up of 4 people from each of their security organisations.¹⁶⁵

While optimism grew that a peace deal for the East was within reach, some analysts worried that it had not included all the armed parties. During 2006, the Justice and Equality Movement (JEM) became an increasingly significant presence in the East. JEM leader Khalil Ibrahim stated as detailed peace negotiations got under way: “We do not accept the decision to exclude us from the talks between the Eastern Front and Khartoum [...] Khartoum will not get peace if we don’t participate in the talks.”¹⁶⁶ Others worried that divisions within the EF might also reduce the value of a peace deal. One analyst stated: “There are big divisions between the Beja Congress in Port Sudan and the Beja Congress in Asmara and communications within the movement are very poor.”¹⁶⁷

Detailed peace negotiations ultimately produced an Eastern Sudan Peace Agreement (ESPA) on 14 October 2006. Signed by the parties in Asmara, its provisions were broadly similar to those of the CPA and DPA with regard to power-sharing, although the concessions made to the EF were overall less extensive.¹⁶⁸ It contained no provisions on wealth-sharing, although it did include proposals to boost spending on development. JEM played no part in the negotiations.

However, implementation of the ESPA was delayed by splits within the leadership of the EF. These prevented it from presenting its list of nominees for the posts in the GNU allocated to it under the Agreement, which included the posts of Assistant to the President and Presidential Advisor. However, further Eritrean mediation during March and April 2007 helped to overcome internal disagreements within the EF. Following a meeting of the parties on 15 May 2007 in Asmara, it was reported by the Eritrean Government that agreement had been reached about all outstanding issues and that the EF had submitted its list of nominees. On 28 August the EF nominees were sworn into their new positions in the GNU. EF representatives also took up their positions in the governments of the three eastern states,

¹⁶³ Ibid

¹⁶⁴ “Sudan: talks on the East gear up as the SPLM/A pulls out of Hamishkorieb”, *IRINnews.org*, 13 June 2006

¹⁶⁵ *UNMIS News*, 21 June 2006

¹⁶⁶ “Sudan: talks on the East gear up as the SPLM/A pulls out of Hamishkorieb”, *IRINnews.org*, 13 June 2006

¹⁶⁷ Ibid

¹⁶⁸ For the full text of the ESPA, see: <http://www.c-r.org/our-work/accord/sudan/key-texts-espas-contents.php>

including the Deputy Governorships of Gadarif and Kassala. The next step was the disarmament and reintegration of former EF combatants. By April 2009, this process was progressing into a second phase.¹⁶⁹

In late 2007 the UN Secretary-General referred to continuing concerns about the extent of popular support in Eastern Sudan for the ESPA.¹⁷⁰ The Secretary-General reported in July 2009 that the EF had broken up, leaving the Beja Congress, the Rashaida Free Lions and the Eastern Democratic Party representing different constituencies and the Sudanese Government without a unified counterpart for peace.¹⁷¹ The remainder of the year was one of continued stagnation. In November 2009 it was reported that only \$110 million of an agreed \$600 million had been transferred from the federal budget to the Eastern Sudan Recovery and Development Fund.¹⁷²

¹⁶⁹ "UN assisted scheme to demobilise ex-soldiers in East enters next phase", *UN News Service*, 2 April 2009

¹⁷⁰ *Report of the Secretary-General on the Sudan*, UN Doc S/2007/624, 23 October 2007, para. 30

¹⁷¹ *Ibid.*, S/2009/357, 14 July 2009, para 28

¹⁷² *Report of the Secretary-General on the Sudan*, UN Doc S/2010/31, 19 January 2010, para 36

