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14. ABSTRACT The organization of our political world into states and territories of varying sizes, cultures, capacities and geological endowments easily suggests the potential for conflicts over access to scarce resources. International conflicts become disputes when the rights being asserted or benefits being claimed are traceable to a legal provision, whether legislative or customary. The dispute over Abyei's final status (i.e. whether the historic Abyei Area belongs to Sudan or to South Sudan) is clearly an international dispute given its origin, dynamics and potential for bilateral devastation. Though abounded by international law, this territorial alteration in the Sudan region is					
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Building peace in Africa: Reviewing the international framework to resolve Abyei's final status between Sudan and South Sudan

By

Onyekachi Obi-Okoye

The organization of our political world into states and territories of varying sizes, cultures, capacities and geological endowments easily suggests the potential for conflicts over access to scarce resources. Many conflicts arise in connection with domestic legislation or international law. Justifiable as it may seem for any government to vie with the next one for its rightful share of limited natural resources, such national claims are not always civil (let alone peaceful) especially as regards disputed territory. Of all the issues in international politics, disputes over naturally endowed territory are by far the most likely to culminate in violent warfare. Long before the Great Conference,¹ scrambles for territorial domination were at the center of international wars that ravaged Europe and Africa, waged by Alexander the Great, Napoleon Bonaparte, King Leopold II, Otto von Bismarck, Julius Caesar, William the Conqueror, and Islamist cleric, Usman dan Fodio.

International juridical writers describe disputes as “specific disagreements concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counterclaim, or denial by another”.² Now man is by nature a political animal; so whenever three or four are gathered, an imaginary amphitheater is set, where individuals will employ strategy or intrigue to up their relational power and personal influence. This could be the reason why matrimony, humanity's second oldest form of relationship, consists chiefly of one person with only one partner; because of politics and the potential for interpersonal conflicts.

Like natural ecosystems or any complex society, the potential for social conflict can be lesser or greater, depending on how large, dense and diverse the population is, vis-à-vis the environment. As if to borrow attributes from Nigeria, the former Sudan³ is a “deeply divided state”⁴ in which sociopolitical and economic issues were vigorously contested along the complex ethnic, religious, regional and ideological divisions running through the country. With an estimated 47 million people,⁵ the Sudan was in 2010, Africa's largest country by land mass and could have been the seventh most populous country in the world had it not split apart. In today's Sudan region, the ubiquity of social disputation is undeniable, given that every society has its share –

¹ i.e. the Conference of Berlin 1885, where major powers divided African territories among themselves, for effective colonization.

² Merills, J.G. (2011) *International Dispute Settlement*, 5th ed., Cambridge: Cambridge University Press, p. 1.

³ i.e. the Republic of Sudan prior to July 2011 when Southern Sudan Autonomous Region successfully seceded.

⁴ Osaghae, E.E. and R.T. Suberu (2005) *A History of Identities, Violence, and Stability in Nigeria*. Centre for Research on Inequality, Human Security and Ethnicity, University of Oxford: CRISE Working Paper No. 6, p. 5.

⁵ US Central Intelligence Agency (2014) *World Fact Book*. Available at: <www.cia.gov>

Building Peace In Africa: Reviewing The International Framework To Resolve Abyei's Final Status Between Sudan and South Sudan

Conflict and disputes are pervasive in society. They touch every individual, every family, every organization and every relationship between and among these individuals and groups.⁶

The dispute over Abyei's final status (i.e. whether Abyei Area belongs to Sudan or to South Sudan) is essentially an international dispute given its origin, characteristics and potentials. Debatably, international conflicts become disputes when the rights asserted or benefits claimed are traceable to a legal provision, whether legislation or custom. In this vein, Black's Law Dictionary defines a dispute as "Any conflict or controversy, especially one giving rise to legal action".⁷

Remarkably, there need not be tangible evidence for suspicions of an adverse intention to spark off conflicts between proximate groups. At this point, the dominant frame of reference would be something like "We'll never be able trust those folks, did you ever think they like us?"⁸

International conflict resolution is not about suppressing conflict or magically eliminating conflicts, nor yet about disputing parties trying hard to defeat the other by mustering superior military force to overwhelm the other. On the contrary,

Conflict resolution refers to the range of formal and informal activities undertaken by parties to a conflict, or outsiders, to limit and reduce the level of violence in conflict, and to achieve some understanding on the key issues in conflict by political agreement or jointly acceptable decision on future interactions and distribution of resources.⁹

In other words, resolution has to do with recognizing the dispute – particularly its harmfulness and level of risk – acknowledging the need to settle it and whatever means there are to do so, and engaging in a strategic program of action without which cordial relations may not be restored.

The knotty question in international conflict intervention is how to get conflicted parties to reorganize and redefine their relations in such a way as to prefer achieving each party's mutually exclusive goals in spite of one another, not at the other's cost.¹⁰ In the current situation, it is interesting to conjecture how Ukraine, United States, Russia and the rest of Europe will reorganize their mutual relations' considering the highly charged controversy over Russia's annexation of Ukraine's Crimea region earlier this year¹¹ – just "like robbery"¹² – in alleged

⁶ Riskin, L.L., J.E. Westbrook, C. Guthrie, R.C. Reuben, J.K. Robbenholt and N.A. Welsh (2009) *Dispute Resolution and Lawyers*. 4th ed., New York: West Publishers, p. 1.

⁷ Garner, B.A. (ed.) (1999) *Black's Law Dictionary*. 7th ed., St. Paul MN: West Publishing Group, p. 485.

⁸ Stroh, L.K., G.B. Northcraft and M.A. Neale (2002) *Organizational Behavior: A Management Challenge*. 3rd ed., New Jersey: Lawrence Erlbaum Associates, pp. 123-124.

⁹ Bercovitch, J. and R. Jackson (2009) *Conflict Resolution in the Twenty-First Century: Principles, Methods and Approaches*. Ann Arbor MI: University of Michigan Press, p. 1.

¹⁰ Susskind, L. and E.F. Babbitt (1992) "Overcoming the Obstacles to Effective Mediation of International Disputes," in J. Bercovitch and J.Z. Rubin (eds.) *Mediation in International Relations: Multiple Approaches to Conflict Management*. New York: St. Martin's Press.

¹¹ See "Russia lawmakers vote to annex Crimea; U.S. steps up sanctions." CNN World, March 21, 2014.

¹² See "Ukraine cries 'robbery' as Russia annexes Crimea." CNN World, March 18, 2014.

violation of customary international law.¹³ Not counting the Crimea crisis, up to seventy territory disputes rage on globally.¹⁴

Considering the overall importance of preventing violent confrontation, the machinery of resolution by diplomatic intervention often downplays legalistic reliance on exclusionary principles like *damnum sine injuria*¹⁵ because invoking the law without necessarily adjudicating it reflects how disputes should be tackled in international politics.¹⁶

Abyei Area

Abyei is a petroleum-rich territory measuring 4,075 sq. miles, lying directly south of Sudan's West Kordofan State and north of South Sudan's Unity, Warrap, and Northern Bahr el Ghazal States (i.e. in between Sudan and South Sudan). In August 2005, West Kordofan State was actually abolished and its territory divided between neighboring North and South Kordofan States pursuant to a separate agreement between Sudan's ruling party¹⁷ and SPLM/A. However, in a recent bid to strengthen its grip on Abyei Area, the Sudan Government Khartoum restored West Kordofan to statehood in 2013.¹⁸ West Kordofan is ancestral home to Misseriya pastoralists (who are of Arab descent), and the State has many oilfields besides the ones that originally fell within Abyei (before the consequential arbitral award).¹⁹

The Area, which includes Abyei Town and environs, was granted special administrative status under Abyei Protocol 2004, an international accord formally known as "Protocol on the Resolution of the Abyei Conflict."²⁰ It was integrated into the 2005 Comprehensive Peace Agreement (CPA), which officially ended 22 years of civil war between former northern and southern Sudan – requiring both governments to refrain from claiming the Area until after a popular referendum by its bona fide residents, to determine which administration should enjoy sovereignty following Southern Sudan's independence poll.

¹³ See "Obama Says Referendum in Crimea Will Violate [both international and Ukrainian constitutional] Law." The New York Times, March 6, 2014.

¹⁴ Wiegand, K.E. (2011) *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy and Settlement*. Athens, GA: University of Georgia Press (Rear paperback cover)

¹⁵ i.e. the legal concept of tangible damage without actionable injury.

¹⁶ Taulbee, J.L. (2011) "The Politics of International Law", in S. Silverburg (ed.) *International Law: Contemporary Issues and Future Developments*. Cited in Von Glahn, G. and J.L. Taulbee (2013) *Law Among Nations*. 10th ed., New York: Pearson Education, p. 102.

¹⁷ i.e. the National Conscience Party

¹⁸ It appears President al-Bashir appointed Mr. Ahmed Khamis as governor to consolidate grass root alliances in the struggle for Abyei's soul. See "Governors of Kordofan States Sworn in Before President", Sudan Vision, July 14, 2013; and "States of the Sudan since 1991". Available <http://www.worldstatesmen.org/Sudan_prov.html>

¹⁹ "West Kordofan State: Historical Background." Sudan Tribune. Available at <<http://www.sudantribune.com/spip.php?mot1844>>

²⁰ Designated as Chapter IV of the Comprehensive Peace Agreement signed in Naivasha, Kenya on May 26, 2004.

Traditionally considered the bridge between north and south, Abyei comprises “[T]he area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905.”²¹ Per Article 1.2.1 of the Protocol, Abyei residents are deemed to be joint citizens of Sudan and South Sudan via the alignment of West Kordofan and Northern Bahr el Ghazal States.²² According to UNMIS, the (now defunct) UN Mission in Sudan, Abyei's total population is about fifty-two thousand.²³ At present, the Area is bound by three South Sudan states: Unity, Warrap and Northern Bahr el-Ghazal – with Sudan's West Kordofan (recently carved from South Kordofan State) on its north side. There are no local buses, taxi services or hotels in Abyei. The overwhelming majority language is Dinka, but probably to improve her own chances in the status dispute, Sudan has since imposed Khartoum-Arabic as official language of the Area.²⁴

Understanding the conflict

As at 2005, the Sudan was home to the longest running ethno-religious war in Africa.²⁵ By the mid-eighties, most nations in Africa had achieved independence from their respective colonialists, but arbitrarily carved boundaries adopted by insensitive European governments at the Berlin Conference 1885 continue to exacerbate ethnic divisions and foster political instability. Traditional kingdoms and communities in Africa were arbitrarily divided; unrelated areas and peoples were just as arbitrarily joined together. In view of ongoing crises in Northern Mali, Eastern DRC, Western Sahara, Central African Republic, and now Abyei Area, the well-worn homily about “finding African solutions to African problems”²⁶ has once more catapulted itself to the fore.²⁷

Disputes with the Government of Sudan over ownership of Abyei Area, sharing of oil revenues and national debt has plagued South Sudan since seceding three years ago. On several occasions, Sudan has launched air attacks into South Sudan, whereas the latter has been accused of supporting militant rebel groups within the Sudan.²⁸ Border hostilities mounted in mid-2012, when SPLA (i.e. the South Sudan armed forces) took over the disputed

²¹ Abyei Protocol, Art. 1.1.2

²² Bahr el Ghazal was a large state in the former Southern Sudan region. In February 1994 it was divided into newer states called Western Bahr el-Ghazal, Bahr el Jebel and Northern Bahr el-Ghazal.

²³ As at July 2011. See the general information paragraph under “Abyei Area” on UNMIS website. Available at: <<http://unmis.unmissions.org/Default.aspx?tabid=4627>>

²⁴ Id

²⁵ As acknowledged by each party to the Comprehensive Peace Agreement, per Paragraph 2 of the Preamble (i.e. the ‘Chapeau’).

²⁶ Communique after 403rd meeting of the AU Peace and Security Council – October 26, 2013, paragraph 10.

²⁷ Vorrath, J. (2012) *Imbalances in the African Peace and Security Architecture: The Current Approach to Capacity-building Needs to Be Challenged*. Berlin: German Institute for International and Security Affairs, p. 1.

²⁸ The Telegraph News: “Sudan accuses South Sudan of backing armed rebel groups”, 31 March 2012. Available at: <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/sudan/9177672/Sudan-accuses-South-Sudan-of-backing-armed-rebel-groups.html>>

oil fields in Heglig, in greater Abyei Area; a move the African Union and United Nations firmly denounced.²⁹ Both sides traded ground and aerial attacks, with Sudanese President Omar al-Bashir vowing not to negotiate with Juba any longer, but “[...] to teach them a lesson by force.”³⁰

As per the controlling Agreement, the international dilemma over Abyei's legal status predates the January 1956 independence date, when the former Sudan walked free from Anglo-Egyptian colonization.

I suggest the following broad-based factors account for the non-prospect of resolving the question of sovereignty over Abyei without recourse to special sanctions under Arts. 41 and 42 of the UN Charter. The factors themselves constitute the basis of ongoing warfare between Sudan and South Sudan, especially as *par in parem non habet imperium*.³¹

- Scarred history and social dynamics – including ethnic, religious and colonial domination as well as communal conflicts.
- Legal experimentation, unaddressed impunity and a tendency to trivialize human security by politicizing key elements of human identity.

Scarred history

In 1899, Egypt and Great Britain signed a condominium treaty by which the Sudan was to be administered through British and Egyptian colonial secretariats.³² Early into the twentieth century, European missionaries converted large segments of the animist southerners to Christianity, teaching them to read and write in English language.

Unlike the dark-skinned Arabs who migrated to Sudan from further east (and who now dominate the North), the southern tribes are tall, thin Negroes who are actually indigenous – hence the Arabic country name, Sudan, which means Land of the Blacks. Through administrative and trade interactions with Egyptians and Middle Easterners, Islam became established as the dark Arabs' religion of opportunity as well as choice.³³

Shortly before Sudan's independence, Negro army personnel attached to the army base in Equatoria Province committed mutiny, an unexpected development that helped foster nationalist instincts among southerners generally. Calling themselves the *Anyanya* (which means 'snake venom' locally) the soldiers alleged that government was trying to institutionalize Islam in the armed services.³⁴ Prime Minister Ismail al-Azhari, himself

²⁹ Press TV News: “UN chief denounces seizure of oil-rich Heglig by South Sudan”, 19 April, 2012. Available at: <<http://www.presstv.ir/detail/2012/04/19/237090/uns-ban-slams-sudans-oil-district/>>

³⁰ Al Arabiya News: “Sudan's Bashir vows to teach Juba a 'lesson by force' over Heglig's seizure”, 19 April 2012. Available at: <<http://english.alarabiya.net/articles/2012/04/19/208869.html>>

³¹ I.e. Equals do not have authority over one another. In international law, this means that one sovereign power cannot exercise jurisdiction over another sovereign power. It is the basis of the act of state doctrine and sovereign immunity.

³² “Sudan: A Historical Perspective”, Sudan Net: Complete Guide on Sudan, December 2013. Available at <<http://www.sudan.net/history.php>>

³³ “South Sudan: History”, Infoplease Online Encyclopedia, December 2013. Available at: <<http://www.infoplease.com>>

³⁴ O'Balance, E. (1977) *The Secret War in the Sudan: 1955-1972*. Hamden, CT: Archon Books, pp. 57-59.

an Arab, was then criticized for reneging on his earlier promise to grant the non-Arab south some autonomy by instituting a federal system of government akin to the United States.³⁵ The resulting turmoil metamorphosed into civil war between northern and southern interest groups late 1955.³⁶ This confrontation clearly hastened the independence effort, as many colonial administrators felt unable to remain there once fighting began. Hostilities continued until the Addis Ababa Accord 1972, when Southern Sudan Autonomous Region was finally created, under a new head of state.

Unfortunately the 1972 Accord was short lived. At this point, control of Abyei was being contended and there was no love lost between the regions. Apparently President Gaafar Nimeiry sought to disenfranchise southerners from enjoying the associated industries of oil exploration in their territory.³⁷ Up to this point Abyei had been part of the south, as later reflected in the Comprehensive Peace Agreement. Months after Chevron Corp. of USA discovered crude oil in commercial quantities in Abyei, a new law was promulgated to re-demarcate the regional boundary so Abyei would now form part of the North's Unity Province. This legislation incited fresh conflict by jeopardizing the ethno-political status of Abyei's absolute majority Ngok Dinka population who perceived they might easily be subjugated, enslaved and perhaps executed by the powers that be. It was therefore a no-brainer for them to resist this ploy to isolate them from kith and kin so soon after bloody civil war.

A graduate of the US Army Command College in Ft. Leavenworth, Kansas,³⁸ Gaafar Nimeiry abrogated southern regional autonomy in 1983 by passing the Regional Government Act which repealed the Addis Ababa Accord 1972. With scant regard for historical affinities or economic and social rights, he decreed Arabic the national language and Islam the mandatory state religion of Sudan. Reacting to the outcry that greeted his actions, Nimeiry retired southern soldiers erstwhile deployed in and around Abyei, replacing them with Arab soldiers. He further announced that all revenues accruing from mineral extraction shall belong to the north.³⁹ Almost immediately the peace was broken and the Sudan plunged into her second civil war.

During this war, opposition groups sympathetic to the now-abolished Southern Sudan Autonomous Region amalgamated to form Sudan People's Liberation Movement, alongside Sudan People's Liberation Army (jointly known as SPLM/A). The immediate goal of SPLM/A was to protect southerners and ethnic/religious minorities from irregular warfare and acts of aggression orchestrated by belligerent Arabs, particularly the politicians.⁴⁰ With another two decades of war under their belt and 2.5 million Sudanese lives down the drain,⁴¹ the national government finally agreed to a temporary ceasefire for negotiations with SPLM/A late 2002. A series of peace conferences hosted in Naivasha, Kenya, by the Intergovernmental Authority on Development (IGAD) then produced the array of protocols jointly known as the Comprehensive Peace Agreement 2005. Enabled under Articles 1.3 and 2.5 thereof, "An overwhelming majority of South Sudanese voted in a January 2011 referendum

³⁵ "History of South Sudan", Encyclopedia Britannica, December 2013. Retrieved from <<http://www.britannica.com/EBchecked/topic/1779609/history-of-South-Sudan>>

³⁶ See "The background to Sudan's Comprehensive Peace Agreement." Report of the United Nations Mission in Sudan. Available at <<http://unmis.unmissions.org/Default.aspx?tabid=515>>

³⁷ Garang, J. (1987) *The Call for Democracy in Sudan*. London: Kegan Paul International, p. 21.

³⁸ Jessup, J.E. (1998) *An Encyclopedic Dictionary of Conflict and Conflict Resolution: 1945-1996*. Greenwood Publishing Group, pp. 530-531.

³⁹ Shinn D.H. (2004) "Addis Ababa Agreement: was it destined to fail and are there lessons for the Current Sudan Peace Process?", in *Annales d'Ethiopie*, Vol. 20, année 2004, pp. 239-259, at p. 248.

⁴⁰ Young, J. (2012) *The Fate of Sudan: The Origins and Consequences of a Flawed Peace Process*. London: Zed Books, chap. 1.

⁴¹ "South Sudan, History", World Fact Book, 2013. Langley, VA: Central Intelligence Agency.

to secede and become the first new nation in Africa since Eritrea split away from the Ethiopian Federation in 1993.”⁴²

For an overwhelming majority of freed Africans, the concept of organizing a referendum to determine political independence is fairly exotic. In most former dependencies, the pathway to independence was paved by sectional warfare and nationalist engagement.⁴³ Throughout the vast continent (both second largest and second most populous in the world), Algeria, Guinea-Conakry and Eritrea are the only other nations to gain independence through public referenda, especially after civil unrest.⁴⁴ July 9, 2011 saw a newly autonomous South Sudan proclaim her republican status after seceding from the Sudan at the peak of a long and tortuous emancipation process facilitated by international organizations⁴⁵ and conscientious foreign governments.⁴⁶ South Sudan was first of all admitted to the UN General Assembly (on recommendation of the Security Council),⁴⁷ then to African Union membership later that month.⁴⁸

Social dynamics compounding the prospect of peace

Africa as a whole has begun to make significant economic and political progress in recent years, but in many parts of the continent progress remains threatened or impeded by conflict. For the United Nations there is no higher goal, no deeper commitment and no greater ambition than preventing armed conflict. The prevention of conflict begins and ends with the promotion of human security and human development.⁴⁹ The consequences of conflicts have seriously undermined Africa's efforts to ensure long-term stability, prosperity and peace for its peoples.⁵⁰

“Sudan is ominously close to the precipice of war”, John Kerry exclaimed, then chairperson of the foreign relations committee in the US Senate.⁵¹ The future Secretary of State urged Presidents Omar al-Bashir and Salva

⁴² “South Sudan Profile: Overview”, BBC News Africa, 2013. Available at <<http://www.bbc.co.uk/news/world-africa-14069082>>

⁴³ E.g. Ghana, Ethiopia, The Gambia and Sudan.

⁴⁴ For instance, the United Nations Observer Mission to Verify the Referendum in Eritrea (UNOVER) was established under General Assembly Res. A/RES/47/114 (1992), remaining active through the ballot held April 1993; Algeria's status referendum of April 1962 was executed under the 1962 Évian Accords (a treaty between France and Algeria's local provisional government to end the Algerian War and seek independence from the French); Guinea's status referendum held in September 1958, was part of a constitutional accession process organized across French-Africa territories and France itself, on whether to adopt the French Constitution as governing law – Guineans rejected the offer and gained their independence.

⁴⁵ I.e. the UN, African Union and IGAD - particularly the Intergovernmental Authority on Development (IGAD), for facilitating talks leading to the Machakos Protocol – the first of 6 major accords that constitute the CPA.

⁴⁶ Including the US, Italy, Norway and the UK inter alia

⁴⁷ UN Security Council Res. S/RES/1999 (2011).

⁴⁸ I.e. on July 27, 2011. See AU Press Release N 79/2011, “African Union Welcomes South Sudan as the 54th Member State of the Union.” Available at: <<http://www.au.int/en/content/african-union-welcomes-south-sudan-54th-member-state-union>>

⁴⁹ S/1998/318, *Report of the UN Secretary-General: Causes of conflict and the promotion of durable peace and sustainable development in Africa*, para. 3.

⁵⁰ *Ibid*, para. 4.

⁵¹ “Sudan 'ominously close to war' says US senator John Kerry.” The Australian, May 23, 2011.

Kiir⁵² to resume negotiations on resolving Abyei dispute, etc. Two-and-a-half years later, Senator Kerry was almost quoted by a grim-faced President Obama in his letter to Congress after deploying troops to secure American citizens in the new insurgency plaguing the region.⁵³ “South Sudan stands at the precipice of war,”⁵⁴ wrote Mr. Obama, “Leaders must recognize that compromise with one’s political enemy is difficult, but recovering from unchecked violence will prove much harder.”⁵⁵

December 2013 – April 2014 saw a violent interethnic insurgency engulf South Sudan in what the UN quickly denounced as “purely unwarranted warfare.”⁵⁶ This latest recourse to violence was occasioned by a controversial decision by President Salva Kiir, of *Dinka* ethnicity, to relieve his highly popular deputy, Riek Machar, himself a *Nuer* man. Kiir accused the VP of attempting to oust him through coup d’état.⁵⁷ Violent clashes erupted between the *Dinka* and *Nuer*, who have a long history of communal conflict, when Mr. Machar protested his innocence.⁵⁸

Machar and Kiir’s ethnic groups constitute two-thirds of South Sudan’s population, despite being only two of sixty-three distinct ethnicities.⁵⁹ As at April 2014, about 10,000 deaths had been reported with over one million internally citizens displaced and fleeing from war.⁶⁰ This is the character and effect of irregular warfare waged along ideological lines; unless worked out with dispatch, it will escalate and engulf the proximate identity groups. According to World Bank, the eruptive potential for newer disputes is the greatest threat to development across the Sudan.⁶¹

Social dynamics

Hereunder is a concatenation of issues and incidents affecting the immediate prospects for achieving peace among the separate communities residing in, or otherwise laying claim to Abyei. I these are insights as to why various conflicts surrounding Abyei have so far defied resolution. To be sure, President Nimeiry’s move to alter the ancient landmarks in 1983 sparked off new disputes between Arab settlers and Abyei locals (i.e. bottom-up communal tensions) whose mutually adverse reactions have since escalated the conflict to a crisis of international

⁵² The President of Sudan, and President of South Sudan respectively.

⁵³ See “*South Sudan is 'on the precipice' of war, President Obama warns.*” The Independent, December 20, 2013.

⁵⁴ See “*S Sudan on precipice of civil war, Obama warns.*” BBC News Africa, December 20, 2013.

⁵⁵ See “*US troops deployed in South Sudan, on 'precipice' of civil war.*” The Global Post, December 20, 2013.

⁵⁶ See “*UN: South Sudan Struggle is Political.*” Cable News Network, December 24, 2013 (Video interview with Hilde Johnson, Special Representative of the UN Secretary-General in South Sudan, by veteran CNN presenter, Richard Quest). Available at <<http://www.cnn.com/video/data/2.0/video/world/2013/12/24/south-sudan-crisis-un-hilde-johnson-intv.cnn.html>>

⁵⁷ See “*South Sudan quashes coup attempt, President says.*” CNN World News, December 16, 2013.

⁵⁸ See “*South Sudan coup plot charges baseless, says Machar.*” BBC News Africa, January 29, 2014.

⁵⁹ Moses, J., “*Ugandan President Has a Deadly Hand in South Sudan’s Political Crisis.*” The South Sudan News Agency, July 27, 2013.

⁶⁰ See “*South Sudan conflict: Pro-Machar forces 'seize' Bentiu.*” BBC News Africa, April 15, 2014.

⁶¹ See “*Remarks by World Bank President Robert Zoellick at the South Sudan Engagement Conference.*” December 14, 2011. Washington DC: The World Bank

proportions. Up till now, the security situation in Abyei has been “unpredictable” and “increasingly volatile.”⁶² The following points tell why:

- 1) Arrangements regarding Juba's liability for a financial contribution towards settling the external debts incurred by Sudan prior to the breakup.⁶³ This has been a thorny issue for at least 2 reasons:
 - i. When southerners successfully divorced the North in 2011, they took with them 75% of Sudan's oilfields.⁶⁴ For an economy with near-exclusive dependence on petroleum revenues, the Sudan cannot now eat its cake and have it. Having demanded and received in August 2012 a South Sudan Government promissory note for US \$3.028 billion to compensate for loss of oil revenues on account of her secession⁶⁵ – and this could be Juba liquidating its own share of Sudan's foreign debt – Khartoum can hardly expect Juba to concede the Heglig, Bor, Diffra and Abyei oil fields over a cup of tea with a few foreigners led by Mr. Mbeki. In the meantime, the International Monetary Fund has been breathing down al-Bashir's neck to *not* fritter away the proposed \$3 billion windfall on superficial amenities such as would not improve quality of life for the majority of Sudan's citizens.⁶⁶
 - ii. Secondly, in the current Global Corruption Perceptions Index,⁶⁷ Sudan ranks 174 out of 177 countries surveyed, only better than Afghanistan, North Korea and Somalia.⁶⁸ According to Eric Reeves, a Sudan expert at Smith College, Massachusetts, this is an important factor because:

Some of the reasons for Sudan's external indebtedness derive from corruption, which takes various forms: the impunity afforded to the security services in extortion and asset-stripping of humanitarian organizations and 'non-Arab' Sudanese, and the monumental graft that has defined the Khartoum regime for more than two decades [...] with President al-Bashir personally siphoning over US \$9 billion from public coffers.⁶⁹ Yet, his government has waged expensive wars against the marginalized peoples of former Sudan's 'periphery'.⁷⁰

It almost seems as if the former Sudan's external debt consists in part of monies sourced abroad to develop economic infrastructure throughout the country, yet with relatively less development carried out in the South. It is further possible that Omar al-Bashir's government may have drawn on public funds to support the irregular warfare against non-Arab populations by Janjaweed marauders, especially in Darfur region. Against this hypothetical background, it is easier to understand why a fortuitously emancipated

⁶² See S/2013/706, *Report of the Secretary-General on the situation in Abyei*. November 27, 2013, para. 3.

⁶³ UN Security Council Res. S/RES/2046 (2012), para. 2 (i).

⁶⁴ See “Sudan and South Sudan reach ‘understanding’ over oil.” BBC News Africa, August 4, 2012.

⁶⁵ See “US seeks \$3bn for Sudan oil deal.” Financial Times, August 7, 2012.

⁶⁶ See “IMF Urges Sudan to Use \$3 Billion Oil Payment to Support Reforms.” Bloomberg (International) News, April 22, 2013.

⁶⁷ Published by Transparency International Inc. (2013 ed.)

⁶⁸ Transparency International, see *Home>What We Do>Corruption by Country/Territory>Sudan* (2013). Available at: <<http://www.transparency.org/country#SDN>>

⁶⁹ The Guardian (UK), December 17, 2010. Cited in “Debt Relief for Sudan from the Netherlands: What Next?” *infra*

⁷⁰ Reeves, E. (2013) *Debt Relief for Sudan from the Netherlands: What Next?* The Enough Project, 5 December 2013.

Available at: <<http://www.southsudannewsagency.com/opinion/analyses/debt-relief-for-sudan-from-the-netherlands>>

Government of South Sudan (headed by Kiir, a *Dinka* man) is in no hurry to concede to Khartoum “the [whole] area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905.”⁷¹

- 2) The dispute concerning how much Juba should pay Khartoum to transport South Sudanese crude oil northward to Sudan-owned refineries in Khartoum and Port Sudan.⁷² This dispute resulted in South Sudan shutting down all oil productions for close to a year in January 2012, devastating both nations' economies.⁷³ In a recent development however, the South is set to begin exporting her crude oil through Kenyan ports.⁷⁴
- 3) A final award by the Permanent Court of Arbitration (located in The Hague, Netherlands) in July 2009 placed the Heglig region in Sudan's South Kordofan State. But South Sudan has disputed this aspect of the ruling, asserting that Heglig actually falls within her own Unity State. Heglig lies along the disputed border between the parties and has been the focal point of two years of clashes between their armies, prompting the collapse of AUHIP talks in 2012. It is home to oil fields that yield over half of Khartoum's oil production, a critical source of income for Sudan's flagging economy.⁷⁵
- 4) There were episodic battles all over the Area in 2007 when the then Government of Southern Sudan Autonomous Region unilaterally appointed an administrator for Abyei. This “affront” drew the ire of locals, especially the pro-North Misseriya Arabs who reacted by forming their own militia group, the Abyei Liberation Front.
- 5) Both nations came close to an all-out declaration of war in April 2012, when South Sudanese forces (i.e. the SPLA) contravened international law by taking over, and occupying Heglig, a disputed oil city earlier awarded Sudan by the Permanent Court of Arbitration. Inasmuch as they claimed the invasion to be an act of legal retorsion⁷⁶ in response to the Sudan Armed Forces' illegal occupation of heavily disputed Abyei, the United Nations had nothing but strictures for Juba, describing its action as “an infringement on the sovereignty of Sudan and a clearly illegal act.”⁷⁷

Sudanese President al-Bashir openly accused South Sudan of “choosing the path of war,” in the wake of these border clashes. Sudanese warplanes later attacked a major South Sudanese town at dawn, bombing the capital of the oil-producing Unity State. Military aircraft had targeted a strategic bridge on the Rubkhona airstrip just outside Bentiu town, close to a UN compound situated about 60km from the border area established at Sudan's independence in 1956.⁷⁸ Unfortunately, violent skirmishes continue between

⁷¹ Abyei Protocol, Art. 1.1.2

⁷² UN Security Council Res. S/RES/2046 (2012), para. 2 (i).

⁷³ South Sudan is now working towards building a pipeline through Kenya, a move that would end the country's dependence on Sudan's support for oil transportation through its territory to the international market. See “*South Sudan says oil pipeline via Kenya to cost \$3 billion.*” op. cit.

⁷⁴ See “*South Sudan says oil pipeline via Kenya to cost \$3 billion.*” Chicago Tribune, August 10, 2012.

⁷⁵ See “*Sudan troops 'advance on Heglig oil field'.*” BBC News Africa, April 13, 2012.

⁷⁶ According to G. Von Glahn and J.L. Taulbee (2013), retorsion is a legal retort actioned by any state against another in response to the latter's violation of the former state's right or legal benefit. See *Law Among Nations*. 10th ed., New York: Pearson Education, p. 114.

⁷⁷ See “*UN chief: South Sudan's seizure of Heglig illegal.*” China Daily.com.cn, April 20, 2012.

⁷⁸ See “*South Sudan rejects UN appeal to withdraw troops: South Sudan said it would only withdraw after certain conditions are met, including Sudan's withdrawal from Abyei.*” Aljazeera Africa, April 12, 2012.

national forces stationed along several disputed border areas⁷⁹ (including Heglig and Abyei). According to President Omar al-Bashir, the recurring violence has “revived the spirit of jihad and martyrdom among the Sudanese people.”⁸⁰ Juba claims it had to repulse four attacks from Sudan over a 24-hour period as the border skirmishes persisted between military forces.

- 6) A concatenation of diplomatic conflicts continues remain unresolved, concerning the legal status of nationals of either country residing in the other.⁸¹
- 7) Bilateral non-cooperation continues on account of al-Bashir's resort to impunity measures in order to suppress the separate referendum on Abyei's final status, as ordered by the Permanent Court of Arbitration, the Hague, in its international arbitration award made July 22, 2009. Inter-Sudan disputes over the proposed African Union-monitored referendum for Abyei residents, earlier scheduled by the Peace and Security Council to hold in October 2013 – which was completely undermined by reason of the stalemate between both countries at the negotiating table on joint administration of Abyei as envisaged by the CPA – prompted President Kiir's expression of frustration to the AU Commission last October.⁸²
- 8) There is inter-Sudan malice arising from allegations that Juba continues to support SPLM/North, the Sudan-based political affiliate of South Sudan's ruling party, the SPLM.⁸³ The Government of Sudan refuses to recognize SPLM/North as a political movement, preferring to label them rebels to be stamped out by force. Thus, Khartoum blames SPLM/North for abetting the inter-communal troubles that have plagued South Kordofan and Blue Nile States where the Movement has so far been well-received on account of its ethno-cultural indigeneity and unpretentious social justice ideology. Bloody clashes between government forces and SPLM/North in the Nuba Mountains region have failed to repress the Movement, which continues to agitate for political recognition to enable it participate in Sudan's electoral process at the grass root level. By labelling SPLM/North as rebels, Sudan simply seeks to call in a violation against South Sudan, of S/RES/2046 (2012), especially para. 1 (iv.), by which the UN Security Council ordered an immediate cessation to the harboring of, or support to one people's rebel groups against the other nation. By so doing, Khartoum's goal would be to portray the government in Juba as a spoiler deserving international sanctions, whilst Khartoum officials masquerade as saints.
- 9) Regardless of the very flowery Memorandum of Understanding on Non-Aggression and Cooperation,⁸⁴ Sudan herself has also been accused of arming and supporting militia bands to create havoc in South Sudan. One of such militias is the Lord's Resistance Army, a notorious rebel group of Uganda origin.⁸⁵ Another group being sponsored by Khartoum is Abyei Liberation Front, comprising one hundred percent Misseriya. Naturally enough neither side will ever admit fault – but then, a word is enough for the wise.

⁷⁹ UN Security Council Res. S/RES/2046 (2012), para. 2 (iii).

⁸⁰ See “UN chief calls on S. Sudan to withdraw.” Taipei Times, April 21, 2012.

⁸¹ UN Security Council Res. S/RES/2046 (2012), para. 2 (ii).

⁸² See “S. Sudan's Kiir writes to AU over Abyei conflict with Sudan.” Sudan Tribune, October 11, 2013.

⁸³ i.e. the SPLM/A or Sudan People's Liberation Movement/Army. This is the umbrella group of Southern Sudan nationalists which has represented the region at all matters of dispute resolution from the second civil war era to the CPA, through arbitration in the Hague, and internationally, etc. It now enjoys political party status in South Sudan, whereas the current president was one of late President John Garang's deputies in the SPLM/A.

⁸⁴ Dated February 10, 2012. See *Report of the UN Secretary-General on Sudan and South Sudan*, S/2012/877, para. 13.

⁸⁵ See “North Sudan seizes disputed Abyei, thousands flee.” Reuters, May 22, 2011.

- 10) The continued presence of Sudanese oil police in Diffra town remains a political dispute between the two nations and their respective communities in that locality.⁸⁶ Located in Northern Abyei, Diffra is the most important town in Abyei and home to major oil-fields and mining facilities.
- 11) June 20, 2011 marked the execution of a milestone agreement between Sudan and SPLM, concerning Abyei's future status.⁸⁷ The Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area⁸⁸ completely forbids the deployment or use of Southern Sudanese and Sudan security forces within the disputed territory's boundaries⁸⁹ – which have at this time been redefined by the Permanent Court of Arbitration. Art. IV of the Agreement further prescribes the institution of an exclusive police service to be managed by Abyei Joint Oversight Committee, the intergovernmental agency created under Art. II to administer Abyei until its final status is settled. Hence, by deploying armed oil police to occupy Diffra, the Republic of Sudan has been violating this Agreement. United Nations deplores the failure to redeploy these security forces in accordance with the June 20 Agreement as well as Res. S/RES/1990 (2011)⁹⁰ issued barely a week later.⁹¹ Instructively, the continued presence of Sudan law enforcement personnel in Abyei violates a litany of Security Council resolutions including 2032 (2011), 2046 (2012), 2047 (2012) and 2075 (2012), etc.
- 12) A successful but unofficial status referendum organized by the Dinka community in October 2013 has further heightened communal tensions and potentially undermines the progress made by Khartoum and Juba in resolving the status impasse facing Abyei.⁹² More than 6,000 Ngok Dinka people arrived from South Sudan as returnee residents to participate in the controversial referendum held late October. The disorganized influx of people into Abyei placed a strain on resident communities and poses new challenges for UNISFA in its effort to maintain security.⁹³
- 13) Social tensions are often exacerbated during the annual dry season, during which Misseriya pastoralists from West and South Kordofan States traditionally migrate southward into Abyei in search of greener savannah.⁹⁴ Tens of thousands of Misseriya nomads usually “crowd” into the territory (herding upwards of 1.6 million heads of cattle) to escape Sudan's harsh aridity.⁹⁵ Despite the recurrent potential for interethnic and/or inter-occupational clashes during the migratory dry season, the right of nomadic peoples to traverse national borders to enhance their cattle grazing experience is preserved by the CPA.⁹⁶
- 14) The lack of concrete progress in the establishment of special administrative institutions for Abyei Area, as contemplated by the governing Protocol and Addis Ababa Agreement, has created a dangerous political

⁸⁶ See S/2013/59, *Report of the Secretary-General on the situation in Abyei*, January 25, 2013, para. 2.

⁸⁷ Negotiations leading to the Addis Ababa Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area, were facilitated by the African Union High-Power Implementation Committee, and came into effect upon parties' signature on June 20, 2011.

⁸⁸ This Agreement is available as the Annex to S/2011/384: “Letter dated 23 June 2011 from the Secretary-General addressed to the President of the Security Council,” dated June 24, 2011.

⁸⁹ The June 20 Addis Ababa Agreement, Art. IV, Paras. 20 and 25.

⁹⁰ Particularly para. 2 (e), (f) of S/RES/1990 (2011)

⁹¹ S/RES/2046 (2012), p. 2.

⁹² S/2013/706 *supra*, para. 36.

⁹³ S/2013/706 *supra*, para. 5.

⁹⁴ S/2013/706 *supra*, para 36.

⁹⁵ See S/2013/294, *Report of the Secretary-General on the situation in Abyei*. May 17, 2013, para. 5.

⁹⁶ Protocol on the Resolution of the Abyei Conflict, Art. 1.1.3

and administrative vacuum with heightening tensions between the black *Dinkas* and Arab *Misseriya* communities.⁹⁷ The former have a significant concentration of crop farmers whereas the latter are nomadic pastoralists whose livestock would often invade Dinka farmlands, destroying valuable produce whilst the Misseriya simply look on. A similar type of crisis pervades the eastern middle-belt region of Nigeria, where Fulani herdsmen and their herds from farther north routinely plunder the crops of ethnic *Berom*, *Tiv*, and *Idoma* farmers (scattered across Plateau, Nassarawa and Benue States of Nigeria) with reckless impunity.⁹⁸ Needless to say, this age-long problem continues to breed interethnic killings between Muslim settlers and Christian indigenes in Jos metropolitan area, Plateau State.⁹⁹ Statistics from the National Emergency Management Agency indicate that satanic Islamists have since displaced over one hundred communities in Benue State, north-central Nigeria.¹⁰⁰ According to *The Daily Punch*,

Nigeria's landscape is dripping with the blood of innocent people, including women and children, who are being hacked to pieces by suspected marauding Fulani herdsmen. The violence is basically driven by decades-old land disputes between semi-nomadic, cattle-keeping communities such as the Fulani and settled farming peoples across the country. In Benue State, the bloodshed is akin to genocide on the native Tiv and Idoma people. The past three months have witnessed the deadliest campaign ever by the unrestrained nomads rearing cattle outside their own provinces. The pastoralists, bearing AK 47 rifles and other sophisticated weapons, have raped and slaughtered hundreds of people, razed houses and levelled whole villages. It is a gloomy specter.¹⁰¹

- 15) Intermittent and targeted killings across ethnic lines in Abyei also continues to stagnate prospects for achieving sustainable peace within the Area, especially since the Misseriya are overtly backed by the Sudan, whereas the black Dinka majority typically identify with South Sudan on ethno-racial grounds. Following the dastard assassination of Abyei's Ngok Dinka paramount chief, Chief Kuol, in May 2013, the Government of South Sudan has consistently refused to participate in meetings called by the Khartoum-led Abyei Joint Oversight Committee.¹⁰²

Chief Kuol and other members of Ngok Dinka were moving with UN on 4th May as part of their normal visit to inspect the areas of Abyei, particularly the northern areas. On their way back to Abyei town, the armed Arab militias supported by Sudan Government stopped the UN vehicles and asked instead the UN to hand them the Ngok Dinka passengers in the UN vehicles, particularly the Paramount Chief with clear intention of assassinating them. The UN force commander refused their demand and negotiated with them for almost six hours to allow them to proceed to Abyei town. During the six hours negotiation, the armed Arab militias used all possible means to provoke and humiliate UN forces and Ngok Dinka passengers. When the UN force commander accepted their demand to return back with UN vehicles to the oilfield area of Kec (Differa), one of the armed Arab militia singled out Paramount Chief and shot him in the UN vehicle and died instantly.

While Government of Sudan, unsurprisingly, embarked on blaming the deceased for provoking the armed Arab nomads to overact, the Sudanese people, civil society organizations and other political parties abhorred the assassination of paramount chief and some even held the Sudan Government responsible.¹⁰³

⁹⁷ See S/2013/577, *Report of the Secretary-General on the situation in Abyei*. September 27, 2013, para. 3.

⁹⁸ See "Herdsmen killing spree must stop[!]" *The Punch Newspaper*, December 20, 2013 (Editorial).

⁹⁹ Higazi, A. (2011) *The Jos Crisis: A Recurrent Nigerian Tragedy*. Discussion Paper No. 2 (January). Abuja: Friedrich-Ebert-Stiftung, pp. 2-3.

¹⁰⁰ See "Herdsmen displace 100 communities in Benue –NEMA." *The Punch Newspaper*, March 20, 2014.

¹⁰¹ See "Fulani herdsmen's endemic killings." *The Punch Newspaper*, March 20, 2014 (Editorial).

¹⁰² See S/2013/294 *supra*, paras. 6-9.

¹⁰³ Deng, L.B. (2013) "The Invasion of Abyei: two years of more agony." *Sudan Tribune*, May 20, 2013.

- 16) Looking at CPA provisions on interim administration of Abyei, it is fairly obvious that Sudan has hitherto enjoyed considerable jurisdictional superiority over the SPLM, giving Khartoum substantive privileges over Juba in terms of physical occupation, taxation of locals and the use of military force to displace the Ngok Dinka¹⁰⁴ no doubt in favor of a pro-Misseriya electorate shortly ahead of the proposed status referendum.
- 17) Sporadic attacks have been carried out on the bilateral petroleum mining installations in Diffra, northern Abyei, by rebel groups based in South Sudan.¹⁰⁵ The combined effect of such rebel attacks has been the sabotage of confidence building measures orchestrated from both sides of the border and through Addis Ababa.
- 18) The Protocol on the Resolution of Abyei Conflict (2004) established Abyei Boundaries Commission (ABC) to survey and demarcate the Area's present-day perimeter.¹⁰⁶ Art. 1.3 of the Protocol then provides for an exclusive referendum to enable bona fide Abyei residents determine their homeland's future by popular vote – i.e. whether to be absorbed into South Sudan's Northern Bahr el Ghazal State on the one hand, or to retain the Area's current status as a specially administered territory of Sudan.

According to the Protocol, ABC was to comprise 15 persons: 5 appointed by Khartoum, another 5 by the SPLM/A, 3 by IGAD, and 1 each by the UK and USA. To avoid the possibility of deadlock, only the 5 external experts could present the final report. Whereas Art. 5.3 of the Protocol makes it clear that whatever report produced by the Boundaries Commission would be binding on all parties, al-Bashir and his Party¹⁰⁷ stoutly rejected the July 2005 demarcation report, thereby renewing old wounds of interethnic mistrust between the north and SPLM/A.¹⁰⁸ Therein, ABC defined the Ngok Dinka chiefdoms area as approximately 18,559 square kilometers; the territory within which any adult must first be domiciled in order to vote on Abyei's final status.¹⁰⁹

- 19) As if to add insult to injury, President John Garang of the then Southern Sudan Autonomous Region (and SPLM/A leader) died in a mysterious helicopter accident shortly after the ABC report, birthing rife speculations of a political assassination by Khartoum mafia. By October 2007, inflamed tensions between the SPLM/A and Government of Sudan had resulted in the former resigning its place in their Government of National Unity on account of deadlocked issues, particularly Abyei's status.¹¹⁰
- 20) In a last-ditch effort to salvage their harshly battered CPA and restore stability after Sudanese armed forces were done bombing Abyei that May, Omar al-Bashir and Salva Kiir¹¹¹ signed the June 2008 Roadmap Agreement to implement Abyei Protocol. Being the weaker party at the time (the Roadmap Agreement was put together less than a month after Sudan Armed Forces completely devastated Abyei,

¹⁰⁴ See "North Sudan seizes disputed Abyei, thousands flee." Sunday, May 22, 2011. Available at: <<http://www.reuters.com/article/2011/05/22/us-sudan-abyei-north-idUSTRE74L14L20110522>>

¹⁰⁵ See "Sudan accuses South and Darfur rebels over Abyei oil blast." BBC News Africa, June 14, 2013.

¹⁰⁶ Described in Art. 1.1.2 of the Protocol as "the nine Ngok Dinka chiefdoms [arbitrarily] transferred to Kordofan in 1905." (Paraphrased)

¹⁰⁷ i.e. the National Congress Party

¹⁰⁸ Deng, L.B. "Abyei: A test of African solutions for African problems." Sudan Tribune, July 1, 2013.

¹⁰⁹ See "The Abyei Protocol Demystified." Sudan Tribune, December 11, 2007.

¹¹⁰ See "SUDAN: Southern leaders in talks to salvage unity government." IRIN News, October 18, 2007.

¹¹¹ Kiir had since taken over as President of Southern Sudan Autonomous Region following the death of John Garang.

displacing its residents and razing sections of Abyei Town to the ground),¹¹² the SPLM/A simply gave in to pressures from the Government of Sudan, to go submit the status dispute and ABC's demarcation report to international arbitration under the auspices of the Permanent Court of Arbitration, situated in The Netherlands.¹¹³

By its final award dated July 22nd 2009, the PCA tribunal ordered the redrawing of Greater Abyei's northern, eastern and western boundaries, thus decreasing Abyei's perimeter to approximately 10,460 sq. km (almost fifty-four percent less than the perimeter originally delimited by Abyei Boundary Commission). Abyei's size is a crucial factor in the dispute, as only her residents will be entitled to vote in any referendum to determine final status.¹¹⁴ This notwithstanding, PCA-demarcated boundaries actually give control of richer oil fields such as Heglig's to the north, allocating fewer of these to the south. Interestingly, most homesteads belonging to the Misseriya fell outside the redrawn borders, making it much more likely the Ngok Dinka would win their vote to join the south. Shortly after the verdict, acceptance announcements by the SPLM/A, and Government of Sudan were hailed by the US, EU and UN.¹¹⁵

- 21) Months after the international arbitral award however, an importunate President of Sudan began to agitate for Misseriya nomads to participate in the proposed referendum. This time he refused to establish a referendum commission to be chaired by a nominee of the SPLM/A as ordained by the Protocol. Once again, Sudan soldiers were given the go-ahead to invade Abyei. Their operation displaced 150,000 Ngok Dinka from their home areas, thereby forcing an indefinite deferral of the status ballot earlier scheduled for the very next month (i.e. June 2011).
- 22) Satellite images taken a week after Khartoum's military invasion of Abyei in May 2011 reveal how Sudanese soldiers plundered and burned down about thirty-three percent of its buildings. A US organization called the Satellite Sentinel Project (SSP)¹¹⁶ reported that "up to thirty-five thousand children" were displaced by the takeover. According to SSP, the satellite imagery provides evidence of state-sponsored crimes against humanity and ethnic cleansing throughout Abyei Area. The charity, which is pushing for action on Abyei by the International Criminal Court, has urged the Obama White House "to punish Sudan by isolating it diplomatically and denying it debt relief."¹¹⁷
- 23) Mid-2012, Khartoum's claim that Sudan People's Liberation Army was in illegal occupation of Heglig oilfields (now removed from contentious territory on account of the international arbitration ruling), was met with an assertion that South Sudan had only invaded Heglig in legal self-defense following a

¹¹² See the report by Human Rights Watch Inc., on Sudan Government's destruction and displacement in Abyei during May 2008: "Abandoning Abyei", dated July 22, 2008 (ISBN: 1-56432-364-1). Available at: <<http://www.hrw.org/reports/2008/07/21/abandoning-abyei-0>>

¹¹³ See *Arbitration Agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army on Delimiting Abyei Area*. Dated July 7, 2008.

¹¹⁴ See "New borders for Sudan oil region." BBC News Africa, July 22, 2009.

¹¹⁵ Otterman, S., "Court Redraws Disputed Area in Sudan." New York Times. July 23, 2009.

¹¹⁶ The Satellite Sentinel Project was founded by John Prendergast, pro-African human rights activist and recipient of six honorary doctorates, alongside Hollywood actor George Clooney, to use satellite images and on-the-ground reports to help deter the resumption of full-scale civil war between Sudan's north and south.

¹¹⁷ See "US group says Sudan army committed war crimes." Aljazeera Africa, May 30, 2011.

Sudanese military attack on her territory.¹¹⁸ The next day Sudan's Air Force shelled Unity oilfields near Bentiu in South Sudan's Unity State from dawn till dusk.¹¹⁹ A visibly disturbed President Kiir later exclaimed that "Sudan has declared war on South Sudan just as they promised."¹²⁰

24) According to the UN Secretariat:

The nature of political power in many African States, together with the real and perceived consequences of capturing and maintaining power, is a key source of conflict across the continent. It is frequently the case that political victory assumes a "winner-takes-all" form with respect to wealth and resources, patronage, and the prestige and prerogatives of office. A communal sense of advantage or disadvantage is often closely linked to this phenomenon, which is heightened in many cases by reliance on centralized and highly personalized forms of governance. [...] In extreme cases, rival communities may perceive that their security, perhaps their very survival, can be ensured only through control of State power. Conflict in such cases becomes virtually inevitable.¹²¹

In recent months, violent clashes between non-state armed groups in the region have left hundreds of citizens maimed or dead. Analysts worry that such clashes could lead to a full-scale resumption of warfare between Sudan and South Sudan. Abyei Area is the proverbial "line in the sand", a prize possession neither country will ever concede.

Intergovernmental initiatives

Since the late nineties, at least eight African states have been embroiled in disputes over mutually claimed territory believed to be endowed with significant natural resources – or access to same.¹²² Within the same period, numerous intrastate conflicts have occurred with very serious implications for international peace and security.¹²³ The UN archive is replete with recent Secretary-General's reports and Security Council resolutions issued in apprehension of worrisome conflicts and humanitarian dilemmas across the region.¹²⁴

The unprecedented multiplicity of identity-based, and associated natural resource conflicts in Africa has necessitated the evolution of international peace and security policies, necessitating a paradigm shift in the way states and non-state actors respond to the threat of conflict. One fundamental premise of the structural-

¹¹⁸ See "South Sudan says Sudan bombs oil fields in border region." Euro News, February 27, 2012.

¹¹⁹ See "S. Sudan, Sudan Clash Along Tense, Disputed Border." Voice of America News, February 27, 2012.

¹²⁰ See "South Sudan's Salva Kiir says Sudan has declared war." BBC News Africa, April 24, 2012.

¹²¹ S/1998/318, *The causes of conflict and the promotion of durable peace and sustainable development in Africa: Report of the UN Secretary-General*, p. 4.

¹²² Including the Cameroon-Nigeria dispute over Bakassi Peninsula, 1994-2002 (leading to extensive litigation at the ICJ, with final judgment entered in favor of Cameroon); the Eritrea-Ethiopia dispute over *Badme* Region, 1998-date (which led to the Algiers Agreement 2000 and later the establishment of UN-backed boundary and claims commissions with support from the Hague-based PCA); the Djibouti-Eritrea border dispute in *Ras Doumeira* Region, 2008-date (which led to a Djibouti-Eritrea *Agreement to Mediate in Qatar* 2010); and the Sudan-SPLM/South Sudan dispute over *Abyei* Area, 2002-date (which led to the *Abyei Protocol* in the Comprehensive Peace Agreement 2005, followed by international arbitration in the Hague) with irregular warring ever since.

¹²³ E.g. in Sierra Leone, Cote D'Ivoire, Liberia, Mali, Somalia, the Sudan, Uganda, Kenya, Angola, Rwanda, Burundi, Algeria, Central African Republic, Egypt and Democratic Republic of the Congo, etc.

¹²⁴ Some of these documents may be viewed on <<http://www.un.org/en/sc/documents/>>. For an abridged list of historically targeted countries, see the foot note above.

functionalist theory of international relations is that peace can be preserved by getting states to work together in resolving practical problems.¹²⁵

As acknowledged in Art. 17 (1) and (2) of the Protocol Establishing the African Union Peace and Security Council,¹²⁶ the UN Security Council is cardinally responsible for maintaining peace and security in Africa. In its eighth chapter however, the UN Charter recognizes the important role and responsibility of regional organizations in the prevention, management and resolution of disputes generally. In response to the severity of continental peace and security challenges, the roles of AU and regional economic communities have increased significantly, both qualitatively and quantitatively. With various international support, the AU's capacity has been enhanced to play a more comprehensive role in maintaining peace and stability on the continent, through the African Peace and Security Architecture.

Unlike the Security Council, the African Union Peace and Security Council (PSC) was in 2002 created by an independent protocol enacted outside the constitutive charter. One can easily imagine the litany of current events that necessitated the Protocol: a 19-year long civil war between Arab north and Negroid south regions of the Sudan, Mali, Niger and Chad regional insurgencies in the Maghreb, Somali civil war, Eritrea-Ethiopia international war, *Titanic Express* and Gatumba massacres in Burundi, the war of Cote D'Ivoire, Guinea-Bissau civil war, the Second Liberia War, Sierra Leone's civil war, post democratic transition jihad by Nigerian Islamists, a civil war in Congo Republic, the DRC Congo War II, Central African Republic civil war, post-9/11 warfare on terror, etc., the list of post-millennium crises was fairly endless. It should be noted that each one of these conflicts involved ethnic or religious revivalism besides underlying struggles to control territory and access natural resources.

The African Union was formed in 1963 "To achieve unity between African states" by promoting peace, security, and stability on the continent.¹²⁷ Accordingly, the use of force between states is prohibited¹²⁸ because members are encouraged to seek intervention from the Union *during* peace and security lapses.¹²⁹ Perhaps Art. 4 (j) also envisages situations requiring humanitarian intervention on other bases than ongoing conflict in the region; however, its wording is obviously a nosedive from the proactive and broader-based phraseology in its alter ego or "equivalent" provision in the UN Charter.¹³⁰ Another consequential difference between AU and UN conflict methodology is with regard to territorial disputes in the light of Africa's wide scale colonial heritage. The African Union is legally bound to respect the trajectory of her states' municipal and international borders as such boundaries existed on achievement of political independence.¹³¹ This principle has been a major drawback in her efforts to settle the dispute over Abyei's final status.

Intermediation is a major area in which synergy between the UN and AU has increased over time. In accordance with Art. 52 of the Charter, the UN Security Council encourages pacific settlement of local disputes through regional arrangements. Through mediation partnerships with African regional organizations at the operational

¹²⁵ Macionis, J.J. and L.M. Gerber (2010) *Sociology*. 7th Canada ed., Don Mills, ON: Pearson Education, p. 14

¹²⁶ Established by the African Union Assembly pursuant to Art. 5 (2) of the Constitutive Act of the African Union.

¹²⁷ Constitutive Act of the African Union, Art. 3 (a), (f).

¹²⁸ Constitutive Act of the African Union, Art. 4 (f).

¹²⁹ Constitutive Act of the African Union, Art. 4 (j).

¹³⁰ Charter of the United Nations, Arts. 34 and 35 (1).

¹³¹ Constitutive Act of the African Union, Art. 4 (b).

level, the quality of peacemaking in Africa has improved over time.¹³² Two salient mandates of the PSC are to anticipate and prevent conflicts from happening¹³³ (which would almost require divine prescience), and undertake peace-building initiatives to arrest budding crises¹³⁴ without further incident.¹³⁵

At Sudan's subregional level, the Intergovernmental Authority on Development (IGAD) was founded inter alia, to "Promote peace and stability in the subregion and create mechanisms within the subregion for the prevention, management and [sustainable] resolution of inter and intra-State conflicts through dialogue."¹³⁶ Generally speaking, it was IGAD that spearheaded mutual declaration of a ceasefire and co-facilitated the peace talks that eventually produced the CPA, thereby putting on hold the longest running war in Africa.

African Union High-Level Implementation Panel

Pursuant to Arts. 52 (1), (2) and (3) of the UN Charter concerning the utilization of regional organizations to optimize dispute settlement potentialities within and between states, the African Union stepped up in March 2009 to inaugurate a special panel to look into the disturbing spate of humanitarian crises occurring in Darfur region, west of Khartoum. The panel was requested to make recommendations for a collaborative regional intervention towards post-conflict peacebuilding and restorative justice in Darfur. This investigative body comprised three former presidents of their respective countries: Thabo Mbeki of South Africa (Chair), with Abdulsalami Abubakar of Nigeria and Pierre Buyoya of Burundi as members.

The elite panel investigated the Darfur crisis and submitted its report in October 2009. Later on, the AU Peace and Security Council requested them to oversee the implementation of Darfur recommendations, support the implementation of Sudan's Comprehensive Peace Agreement, and facilitate post-secession negotiations between the then northern and southern Sudan. This is how the African Union High-Level Implementation Panel (AUHIP) was born.

AUHIP facilitates various dialogue in Addis Ababa between Sudan and South Sudan with input from the Intergovernmental Authority on Development (represented by the Prime Minister of Ethiopia as its current Chair), and Haile Menkerios, the UN Secretary-General's Special Representative for Sudan and South Sudan, among other international partners. Its revised mandate is to facilitate inter-Sudan negotiations on post-CPA matters including disputes over oil, security, citizenship, assets, common borders, and resolution of the final status dispute.

¹³² See S/2011/805, *Report of the Secretary-General on United Nations-African Union cooperation in peace and security*. Dated December 29, 2011.

¹³³ Protocol Establishing the African Union Peace and Security Council, Art. 3 (b).

¹³⁴ Protocol Establishing the African Union Peace and Security Council, Art. 4 (a).

¹³⁵ Protocol Establishing the African Union Peace and Security Council, Art. 4 (b).

¹³⁶ Agreement Establishing the Intergovernmental Authority on Development, Article 7 (g). This Agreement was obviously drafted to enhance intergovernmental synergies through legal cohesion, this provision is *in pari materia* with Art. 1 (1) of the Charter of the United Nations, as well as the Constitutive Act of the African Union, Arts. 3 (f) and 4 (e).

For over a year now, the African Union has been dithering over the idea of further empanelling a commission of inquiry¹³⁷ to produce an advisory legal opinion on the status dispute. Whether this option is actioned or not, both governments remain under a strict obligation – consistent with the CPA¹³⁸ – to maintain the north-south boundary lines that existed when the Sudan achieved independence in 1956. Unfortunately, neither nation has much patience for a purely peaceful process any more.¹³⁹

Dispute settlement and international security

As early in time as the Roman Empire and the city states of ancient Greece, the desirability of settling territory disputes with very minimal recourse to war began to evolve. The philosophy was not far-fetched; disputes material to a large group's ideological identity typically result in retrogressive outcomes, spurred by mutual resentment, mutual distrust, mutual disenchantment and potential devastation.¹⁴⁰ A common thread in these macro disputes is both parties' apprehension of own potential injury insecurity (or diminished security at least) based on the imagined potential to end up denied, deprived or otherwise marginalized by the "other" social actor, possibly a rival; in Abyei's case, the counterclaiming state.

The two Hague Conventions on Pacific Settlement of International Disputes 1899 and 1907¹⁴¹ were among the first modern instruments to suggest that armed warfare is a fairly capricious option for settling disputes.¹⁴² The Conventions envisage a global framework for nonviolent dispute settlement, but international politicking impeded actual progress on implementing them until after World War I, when Articles 11-13 of the League of Nations Covenant came into force. Encouraged by the post-WWI Treaty of Versailles, more and more nations began to embrace the ideology of international negotiations for territory disputes, as utilized in the Albania-Greece dispute (Northern Epirus), the Albania-Yugoslavia dispute, and the Poland-Czechoslovakia disputes over Teschen, Spisz, and Orava border areas respectively.¹⁴³

With nagging British-American recalcitrance on the question of equal human rights protection across races (proposed at the Paris Peace Conference 1919), the League of Nations was rather short-lived. Its survival was compounded by ideological disagreements between world powers – with a weak structure that almost extolled non-intervention – thereby impeding its ability to contain the circumstances leading to WW II.

More than a century after the Hague Conventions, the architecture for building global peace is the Charter of the United Nations.¹⁴⁴ No doubt recognizing the primacy of international conflict as a defining circumstance in

¹³⁷ As envisaged by Art. 33, Charter of the United Nations

¹³⁸ Protocol on the Resolution of the Abyei Conflict, Art. 8.3

¹³⁹ See "African Union High-Level Implementation Panel on Sudan (AUHIP)." Sudan Tribune, April 16, 2014. Available at: <<http://www.sudantribune.com/spip.php?mot505>>

¹⁴⁰ Stroh, L.K., G.B. Northcraft and M.A. Neale (2002) *Organizational Behavior: A Management Challenge*. 3rd ed., New Jersey NJ: Lawrence Erlbaum Associates.

¹⁴¹ Made 1899 and revised in 1907; ratified by 105 nations as at December 2013. This Convention established the Permanent Court of Arbitration based in The Hague, Netherlands.

¹⁴² Karns, M.P. and K.A. Mingst (2010) *International Organizations: The Politics and Processes of Global Governance*. 2nd ed., Boulder CO: Lynne Rienner Publishers, pp. 302-304.

¹⁴³ Ndumbe-Anyu, J. (2007) *The International Court of Justice and Border-Conflict Resolution in Africa: The Bakassi Peninsula Conflict*. Mediterranean Quarterly, Vol. 18, Number 3 (Summer 2007), pp. 39-55.

¹⁴⁴ Signed June 26, 1945 at San Francisco by delegates from 50 independent nations including the United States. The Charter entered into force on October 24, 1945.

international relations, three of the four main objects for establishing the United Nations correlate directly with peacemaking:

- ✚ To practice tolerance and live together in peace with one another as good neighbors;
- ✚ To unite national strengths to maintain international peace and security; and
- ✚ To ensure [...] that armed force shall not be used, save in the common interest.¹⁴⁵

These undertakings are amplified by Article 1 (1), which sets forth the United Nations' strategic purpose:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace [...]

Article 2 (3) of the Charter further requires that –

All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Intergovernmental organizations (IGOs) are usually formed to facilitate steadier provision of human needs, particularly those affecting member states' nationals, such as national security and trade, etc. Some IGOs have narrow objectives (e.g. North Atlantic Treaty Organization, for common defense), while others are intended to be versatile, reflecting a supranational form of governance (e.g. the European Union); or otherwise responsive to economic and human security needs nearer home (e.g. the Economic Community of West African States). Likewise, Article 2 (a) objectives of the Charter establishing the Organization of American States (OAS) include to strengthen international peace and security in the interest of its members.

OAS, for instance, was established in order to achieve among its member states – as stipulated in Article 1 of the Charter – “...an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.” These ideals have been amplified in Article 26 of the Protocol of Cartagena de Indias, which gives OAS the mission of promoting democracy as “an indispensable condition for the stability, peace and development of the region.”

Original state parties to the UN Charter purposefully allocated a wide discretion to the Security Council. A conflation of Articles 39 – 42 with Chapter VIII of the Charter indicates how omnipotent the Security Council (SC) was intended to be in terms of international security maintenance. Contrary to the specificity of Chapter VII provisions however, Chapter VIII – which regulates the relationship between the Council and regional bodies – is rather vague, regrettably.

Challenges to international security have become more complex than what the framers of the UN Charter could have foreseen in 1945. The actors that characterized the Second World War were full-fledged states with an agenda, for the most part, to appropriate or destroy resources located in another state – be they economic or social resources. This informs the wording of chapters I and II of the Charter, which make it clear that membership is not open to persons but to states. The proliferation of non-state actors in contemporary conflicts is therefore of huge concern for the Security Council, whose official mandate is unduly state-centric.

¹⁴⁵ Preamble to the Charter of the United Nations.

Happily enough, some challenges of collective security posed by strict adherence to the state sovereignty doctrine were recently upturned by Council while instituting a *coalition of the willing* approach to implementing physical measures. Coalitions of the willing refers to a decentralized policy of suasion whereby the SC initiates armed enforcement against an errant state, then invites eligible states to “jump in and render every assistance” to the UN effort. The dispute that arose when North Korea unlawfully invaded Republic of Korea utilized this option,¹⁴⁶ and so did UN Security Council Res. S/RES/1973 (2011), which sanctioned a multi-state coalition for military intervention in Libya that year.

International aggression has been known to erupt from similar factors as local wars, the difference being location and nature of the actors involved, because bilateral warfare is sometimes triggered by “deep-seated intrastate affairs”,¹⁴⁷ e.g. Nigeria and Cameroon nearly went to war over Bakassi Peninsula because of Cameroon's repeated harassment of Nigerian-born Bakassi locals. Equally provocative in the literature vis-à-vis localized warfare, is how identity conflicts can quickly assume international dimensions through the involvement of inter-Sudan diaspora communities.¹⁴⁸

In this era and age, conceptions of “international peace” should do more than lean onto banal ideals of Westphalian sovereignty to suggest nothing but *harmonious coexistence as between national governments*. As in Abyei, intrastate disputes featuring such wide scale social upheavals will also constitute an *ipso facto* threat to international peace and security because of their potential to spill into other countries in the region,¹⁴⁹ spreading malnutrition, disease, insecurity and crime through frustrated refugees. At least in the sub-Sahara region, the historically crucial canalization of conflicts into interstate and intrastate typologies is currently a little less salient for this reason.¹⁵⁰ Even diplomatic relations tend to sour when IDPs from Country A flood into, and foul up the social serenity of Country B.

A rational conceptualization of international conflict should therefore be cognizant of aggravated intrastate conflicts¹⁵¹ such as the Sudan experienced with Southern Sudan Autonomous Region before its abrogation under President Nimeiry. Even without a direct export of hostilities from one country, the influx of displaced persons into nearby countries bears along problems of hunger, disease, and violent crime. In this sense, the spread of interethnic and racial violence from Abyei Area into South Kordofan, Blue Nile and Northern Bar el Ghazal States (spanning both sides of the international border) has further exacerbated the Abyei status dispute, as may be shown presently.

At every stage of dispute the character of which Article 33 of the UN Charter refers to, or in any situation of like nature, the Security Council may recommend such means or methods of dispute settlement as it considers expedient in the circumstances. To meet its objectives under Art. 1 therefore, Art. 33 (1) enjoins the parties to any

¹⁴⁶ Abbas, A. (2006) “The Security Council and the Challenges of Collective Security in the Twenty-First Century: What Role for African Regional Organizations?” In D. Lewis (ed.) *Global Governance and the Quest for Justice. Volume I: International and Regional Organisations* (Oxford, and Portland, OR: Hart Publishing) pp. 91-112.

¹⁴⁷ Lederach, J.P. (1997) *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington DC: United States Institute of Peace.

¹⁴⁸ *Breaking the Conflict Trap*, op. cit.

¹⁴⁹ Collier, P., V.L. Elliot, H. Hegre, M. Reynal-Querol, and N. Sambanis (2003) *Breaking the Conflict Trap*. Washington DC: Oxford University Press.

¹⁵⁰ McCandless, E. and A.K. Bangura (2007) “African Challenges and Experiences”, in *Peace Research for Africa: Critical Essays on Methodology*. Addis Ababa: University for Peace.

¹⁵¹ Bercovitch, J. and R. Jackson (2009) *Conflict Resolution in the Twenty-first Century*. Ann Arbor MI: University of Michigan Press, p. 4.

international dispute to “first of all, seek a solution by negotiation, mediation...” etc. Having found the associated perennial rebel fighting in Sudan's Blue Nile and South Kordofan States to be closely associated with the Abyei status dispute, the Security Council unanimously determined that the Abyei situation constitutes a viable threat to international peace and security.¹⁵² Council went on to establish UNISFA,¹⁵³ then after several months, invoked its special powers under Art. 36 (1) to mandate Sudan and South Sudan to resume negotiations through the African Union High-Level Implementation Panel immediately and unconditionally.¹⁵⁴ Thus, the accreditation of African Union intermediaries to negotiate Abyei's status derives from treaty. Art. 33 provides:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Regardless of the extent or intensity of extraterritorial provocations, the international legal principle is that national boundaries should never again be altered by armed force. In other words, territorial disputes should be settled without resort to armaments.¹⁵⁵ To give effect to this policy vis-à-vis the dispute over Abyei, the Security Council has insisted on full implementation of the Comprehensive Peace Agreement in accordance with Article 2 (3) of the UN Charter.¹⁵⁶

Except for Resolutions 1990 (2011) and 1996 (2011), which established UNISFA¹⁵⁷ and UNMISS¹⁵⁸ respectively, Res. 2046 (2012) clearly represents the most significant attempt by United Nations to orchestrate a resolution of the international dispute over Abyei. Reiterating that territorial boundaries encompassing Abyei shall not be altered by force, the Security Council determined for the very first time, that inter-Sudan warfare within and over Abyei constitutes a serious threat to international security.¹⁵⁹ By bypassing Arts. 33 (2) and 36 (1), it is clear that Council no longer views Abyei dispute as an ordinary claim between member states as may be handled by a harmless referral to the ICJ under Art. 36 (3), but as a matter urgently requiring humanitarian intervention.

Local insecurity v. International security

The international system has been in a state of flux since after the Cold War – the end of which signified for many, the triumph of liberal capitalism over Soviet and Sino communism. The ensuing period has been marked by a major shift in the general nature of belligerency, from the avalanche of interstate battles that characterized World War II, to irregular warfare fought along the lines of ethnic prejudices, religious intolerance and mutual competition for control of scarce natural resources.

¹⁵² Security Council Res. S/RES/1996 (2011).

¹⁵³ UNISFA – United Nations Interim Security Force for Abyei

¹⁵⁴ Security Council Res. S/RES/2046 (2012).

¹⁵⁵ Security Council Res. S/RES/2126 (2013).

¹⁵⁶ Ibid.

¹⁵⁷ UNISFA is the United Nations Interim Security Force for Abyei

¹⁵⁸ UNMISS is the United Nations Mission in the Republic of South Sudan

¹⁵⁹ Security Council Res. S/RES/2046 (2012), p. 3.

Both WW II and Cold War tensions had a divisive effect on Western nations, who felt that their “romance” with USA might expose them to Soviet hostility, a KGB-enforced hostility no right thinking leader could ever want. Europeans was so concerned for their safety and security that they set up the North Atlantic Treaty Organization, “to keep the Americans in, the Russians out, and the Germans down.”¹⁶⁰

Fortunately, the Iron Curtain's collapse proved a crucial turning point for international peace and security coordination, as it heralded the resuscitation of an erstwhile polarized (and therefore paralyzed) UN Security Council, with USSR and communist China leading one faction whilst USA and the UK led the other. However, the prospect of a “peaceful world order” was short-lived as the nature of regional conflicts began to change, particularly in African and European “proxy countries” like the former Sudan, former Zaire, former Czechoslovakia, and former Yugoslavia, etc., whose governments had enjoyed significant economic patronage by the Cold War powers. In all these countries, internal conflicts arising from ethno-religious intolerance and the natural resource curse resulted in such violent disputes as compromise international peace and security in the region.¹⁶¹

In many parts of Africa, ethno-religious conflicts are driven by perceptions of impending danger to one's self or his society on account of a tangible attribute demonstrating fixed social identity. Denial by the state or other social group, of one's prerogative to freely express his identity can amplify that sense of threat to self-existence, promoting emotions like fear, anger, resentment, then malice and hate, all of which can fuel violent conflict.

The wanton politicization of salient bases of identity like race, ethnicity and religion by successive Sudan leaders has made the resolution of Abyei natural resource dispute (and all others which bestride such a divide), almost intractable. The exploitation for political ends, of ethno-religious differences among the population has led to many sins, like ethnic cleansing of black populations through massive rape campaigns against black females and the destruction of Negroes' villages by government sponsored Arab *Janjaweed* militia.¹⁶²

The corruption of social ideology for relatively cheap political gains has also resulted in acts of genocide, war crimes and crimes against humanity being committed against non-Arab Sudanese people residing in Darfur region. To answer to these charges, the International Criminal Court has twice issued warrants for the immediate arrest of Sudanese President Omar al-Bashir, under Article 25 (3) (a) of the Rome Statute.¹⁶³ Khartoum is further accused of displacing the indigenous Ngok Dinka (i.e. ethnic cleansing) to try and annex Abyei rather brazenly, using Sudan's military advantages.¹⁶⁴

¹⁶⁰ *International Organizations: The Politics and Processes of Global Governance*, op. cit., p. 155.

¹⁶¹ Ibid, pp. 3-6.

¹⁶² See “ICC » Situations and Cases » Situations » ICC-02/05 » Related Cases » ICC-02/05-01/09 » Press Releases » ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan.” Available at: <http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/related%20cases/icc02050109/press%20releases/Pages/icc%20issues%20a%20warrant%20of%20arrest%20for%20omar%20al%20bashir_%20president%20of%20sudan.aspx>

¹⁶³ See “ICC » Situations and Cases » Situations » ICC-02/05 » Related Cases » ICC-02/05-01/09 » Press Releases » Pre-Trial Chamber I issues a second warrant of arrest against Omar Al Bashir for counts of genocide.” Available at: <http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/related%20cases/icc02050109/press%20releases/Pages/pr557.aspx>

¹⁶⁴ See “North Sudan seizes disputed Abyei, thousands flee.” Reuters, May 22, 2011.

Incidentally, conflicts rooted in ethnic ideology and social identity are manifestly intractable, they are inherently more difficult to resolve than resource based conflicts.¹⁶⁵ Unfortunately, Abyei combines both elements. Admittedly, the Area is well endowed with petroleum and natural gas deposits; more pertinently, Abyei Area encapsulates the destiny of Dinka tribes indigenous to “the area of the nine Ngok Dinka¹⁶⁶ chiefdoms transferred to Kordofan in 1905.”¹⁶⁷

Ethno-territorial disputes like Kashmir (between India-Pakistan), Northern Ireland (between Ireland-UK), Badme (between Eritrea-Ethiopia) and Northern Cyprus (between Greece and Turkey) historically resisted resolution because of inalienable identity factors attaching to each group. Many ideologically exposed disputes touching racial, or ethno-religious affinity become orphans, just like Somalia after the controversy that led to a hasty pullout of US' UNITAF troops.¹⁶⁸ The underlying objective in ethno-territorial dispute resolution is to move beyond provisional settlement arrangements to eradicate root causes and the structural factors triggering conflict.

Attempting to eradicate such causes typically becomes a tall order however, when mutual claims to disputable territory incorporates racial (thus, largely immutable) forms of ethnic hostility fused with everyday competition for economic resource advantage (as in former Ethiopia, where government was so keen to retain defense and trade access through Gulf of Aden and the Red Sea, that it was soon caught up in unsuccessful warfare to prevent her northward Eritrea region from breaking loose. Their warfare lasted decades). Interestingly though, all the international treaties designed to abate conflict since 1648 include an obligation to settle future disputes without recourse to violence.¹⁶⁹

There are a couple noteworthy perspectives underpinning the development of dispute settlement policy in the security paradigm. The first is that state officials need not gravitate towards making unfriendly promises without properly evaluating the comparative issues and prospects for justifying fighting.¹⁷⁰ Second, the machismo that is often present in threats to engage another nation militarily leaves statesmen with a loss of face problem where mostly third-party intermediaries may help them save face. Less than a year ago, United States charged that Syria's al-Assad regime was in violation of international humanitarian law for allegedly committing *jus cogens* offenses; to wit, employing chemical weapons to massacre a thousand plus civilians in the Ghouta agricultural belt near Damascus in August 2013. According to UN, the recent use of toxic *sarin* substances in Ghouta constitutes the “most significant confirmed use of chemical weapons against civilians since Saddam Hussein used them” in 1988 near Halabja in Iraq.¹⁷¹

On this point, it would almost seem that the United States made a startling volte-face on its path to invoke the somewhat controversial¹⁷² responsibility to protect norm to invade Syria and wallop the military forces loyal to

¹⁶⁵ Esmen, M.J. (2004) *An Introduction to Ethnic Conflict*. Cambridge: Polity Press.

¹⁶⁶ *Ngok Dinka* is a Negro ethnicity that is indigenous to South Sudan's Bahr el Ghazal and Warrap region.

¹⁶⁷ Article 1.1.2, Protocol on the Resolution of Abyei Conflict, p.1. (2004).

¹⁶⁸ *International Organizations: The Politics and Processes of Global Governance*, op. cit., p. 305.

¹⁶⁹ Von Glahn, G. and J.L. Taulbee (2013) *Law Among Nations*. 10th ed., New York: Pearson Education, pp. 102-103.

¹⁷⁰ *International Organizations: The Politics and Processes of Global Governance*, op. cit.

¹⁷¹ See “*Syria chemical attack: What we know.*” BBC News (Middle East), September 24, 2013.

¹⁷² Since 2003 and 2011 respectively, when US/UK invaded Iraq and NATO allies exploited the doctrine to get rid of Libyan President Muammar Ghaddafi illegally, the responsibility to protect has been steeped in controversy as developing countries have become wary of the Western nations' capacity to manipulate its operationalization for self-serving ends. Early attempts by United States and the Arab League to invoke the doctrine against Syria in 2012 were partly doomed on account of wide scale international disapprobation regarding the modus of executing Security Council Res. S/RES/1973 (2011) against Tripoli.

President al-Assad.¹⁷³ Before this time, both Russia and China had used their vetoes as permanent members of the Security Council to halt Washington from intervening against the Syrian establishment.¹⁷⁴ It is an open secret that Moscow and Damascus have been bedfellows with large scale armaments deals negotiated out of Moscow, alongside billions of dollars in debt forgiveness for Syria. Russia's protection of Syria concerns the Mediterranean port of Tartus, which could save Russia's navy the strain of long voyages across the Black Sea. September 2008 marks when work started on converting Tartus port facility to a Russian naval base.¹⁷⁵ In November 2012, Russian Foreign Minister Sergei Lavrov claimed unequivocally that Russia was against Assad's removal.¹⁷⁶ The very next day, one Syrian official boasted that "Russia is our political shield!"¹⁷⁷ One can almost imagine a potentially embarrassed senior official in the State Department having to eat up his/her promise of "immediate consequences" on account of Moscow's firm promise to assist al-Assad if indeed the US should strike. The scenario was far from pretty, because the Russians swiftly advanced four major warships carrying "unspecified cargo"¹⁷⁸ into Syria's international waters while Uncle Sam dragged his feet.

Intervening strategically

Nowadays, assisted negotiation is employed more frequently than all other mechanisms for international dispute settlement put together.¹⁷⁹ Even when different methods are used, negotiation itself is not to be replaced, but used to work out incidental procedural issues like terms of reference for instituting joint commissions, or resolving the modalities for implementing previous agreements¹⁸⁰ or judicial/quasi-judicial decisions. Much more than a settlement mechanism, negotiation is a practical platform to activate communication channels in the wake of a conflict or other offense, as well as a technique for preventing future disputes from occurring.

Negotiation is, broadly speaking, an interactive facility through which dialogue is brokered between individuals with perceived incompatible goals or interests, with a view to reaching a mutually acceptable agreement on settlement of the perceived dispute. Effective negotiation is used to resolve conflicts, as well as gain competitive advantage, reduce costs, and build better relationships between parties.¹⁸¹ Modern international negotiations can be *inter praesentes*,¹⁸² *inter se*,¹⁸³ and/or by other expeditious means of communication such as video

¹⁷³ The *responsibility to protect* was never mentioned though.

¹⁷⁴ See "Russia has pride, contracts at stake in Syria." Washington Post, January 31, 2012.

¹⁷⁵ See "What's at stake for Russia in Syria?" CNBC News, September 3, 2013.

¹⁷⁶ See more at: <<http://crisisproject.org/russia-and-syria-its-all-business-2/#sthash.RR8fD1FB.dpuf>>

¹⁷⁷ See "Russia and Syria: It's all business." Transnational Crisis Project (online), December 1, 2011.

¹⁷⁸ See the article, "I'll help Syria if the U.S. attacks, says Putin in chilling threat to Obama as G20 summit breaks up in acrimony." UK Daily Mail, September 7, 2013.

¹⁷⁹ Carter, B.E and A.S. Weiner (2011) *International Law*. 6th ed., New York: Aspen Publishers, pp. 283-286.

¹⁸⁰ E.g. the watery international Cooperation Agreement signed in Addis Ababa, dated September 27, 2012

¹⁸¹ (2005) *Essentials of Negotiation*. Boston MA: Harvard Business School Press, p. 3.

¹⁸² Carried on in the presence of all parties or at least the key ones.

¹⁸³ Carried on directly between the parties themselves.

conferencing, electronic mailing, telephone, instant chat networks, and so on.¹⁸⁴ Where a third party is engaged to manage the process, those negotiations are said to be assisted or, simply put, facilitated.

Distributive negotiation (as opposed to integrative bargaining methodology) seeks to maximize the acquisition of value in a fixed-pie/fixed-sum situation, so is inherently contentious and can lead to unwanted stalemates.¹⁸⁵

Nevertheless, stalemates often come handy to force discussions on sensitive topics, acquire bargaining chips for future concession making, and convey a party's perception of the importance or non-negotiability of a contentious issue. Here, each nation authenticates its grievance level by engaging in cross-border attacks and media warfare in violation of S/RES/2046 (2012), as well as their Memorandum of Understanding on Mutual Non-Aggression.

I think realist peace scholars should begin to recognize that achieving peace after a crisis is often the outcome of effective spy work, regional alliances and superior military capacity, in order to support international political negotiations in deeply divided developing polities like Sudan and South Sudan. As noted in my analysis of the 1995 proximity talks in Dayton, Ohio, which led to the General Framework Agreement for Peace in Bosnia and Herzegovina, the threat or demonstration of readiness to deploy overwhelming force is often critical to the success of an international peace process.¹⁸⁶ Thus, recent crises in Ukraine, Egypt, Israel/Palestine and Syria may end up testing which nations are the main powers and which ones are not. Another good question for scholastic enquiry is what keeps "enemy states"¹⁸⁷ of the WW II era from achieving a permanent seat on the UN Security Council. As cleverly defined by the winning armies of WW II, an enemy state is any country which, during that war, could have been classified an enemy of any present signatory of the UN Charter.¹⁸⁸

Depending on individual foreign policy interests, sympathetic members of the international community have been known to offer arms or other aid to either party in order to create a politically significant (dis-) equilibrium for their ally disputants. Such 'profile boosting' can be useful if the conflict escalates or is 'joined' by others – as with nations like China, Uganda, Kenya and the US seeming to throw their weight behind South Sudan on the Abyei question.¹⁸⁹ With France's surrender to the Nazi Army in mid-1941 for instance, the White House worried that Germany might thereafter be successful in subduing Britain and mustering the military power it needed to attack the US – by expropriating French and British military equipment. To checkmate this potentiality, President 'FDR' Roosevelt heeded advice from Prime Minister Winston Churchill and moved Congress to approve a generous package of fifty naval destroyers etc., for London. These armaments equipped Her Majesty's armed forces to 'discourage' German forces (then presumed to have access to France's naval fleet, seeing that Germany was in occupation of France) from invading Britain and subduing the rest of Europe as a prelude to attacking the United States and perhaps dominating the whole world.¹⁹⁰

¹⁸⁴ Starkey, B., M.A. Boyer and J. Wilkenfield (2010) *International Negotiation in a Complex World*. 3rd ed., Plymouth UK: Rowman and Littlefield Publishers.

¹⁸⁵ (2005) *Essentials of Negotiation*. Boston MA: Harvard Business School Press, pp. 48-50.

¹⁸⁶ Darby, J. (2001) *The Effects of Violence on Peace Processes*. Washington DC: United States Institute of Peace Press, pp. 39-45.

¹⁸⁷ Charter of the United Nations, Article 107.

¹⁸⁸ Charter of the United Nations, Article 53 (2).

¹⁸⁹ While remaining noncommittal on the outside.

¹⁹⁰ See "Mass murder or a stroke of genius that saved Britain? As closer ties with France are planned, the 'betrayal' they still can't forgive." Mail Online (UK), February 5, 2010. <<http://www.dailymail.co.uk/news/article-1248615/Mass-murder-stroke-genius-saved-Britain-As-closer-ties-France-planned-betrayal-forgive.html>>. Also see the televised documentary series on National Geographic Channel UK, titled "Secrets of the Dead: Churchill's Deadly Decision."

Speaking legally, it is the UN – not the US, UK or UAE – that bears primary responsibility for maintaining international peace and security.¹⁹¹ Since 1945, the UN Security Council has enjoyed preemptive authority to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.¹⁹²

Condemning the repeated incidents of cross-border violence between Sudan and South Sudan – including troop movements, the seizure and occupation of Heglig, support to proxy forces, and Sudanese Armed Forces aerial bombardments – the Security Council, via Resolution S/RES/2046 (2012), invoked Chapter VII of its Charter to mandate the immediate cessation of hostilities, and unconditional resumption of African Union-led negotiations to determine Abyei's final legal status. At this juncture, it is pertinent to note that –

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.¹⁹³

Adopted unanimously on May 2, 2012, Security Council Res. S/RES/2046 mandated Sudan and South Sudan to cease all hostilities immediately, withdraw their troops from across the border; report their compliance of such to UNSC-President and AU-Chairperson; activate Joint Border Verification and Monitoring Mechanisms (JBVMM) and the Safe Demilitarized Border Zone; activate the Joint Political and Security Mechanism to investigate complaints and allegations made against either party, and to desist from supporting rebels or publishing inflammatory propaganda. Judging from afar, there is little concrete evidence to support allegations that either country still supports the other's rebel militias; except perhaps for SPLM/North, which is widely considered a Sudan-based offshoot of South Sudan's ruling party.

Sudan would, in my opinion, be hard-pressed to grant SPLM/North the political party status it keeps demanding, because doing so could be tantamount to ceding her Southern Kordofan and Blue Nile States to South Sudan – particularly because their indigenous Nuer, Dinka, and Nuba peoples are essentially Negroes of South Sudanese heritage. By extension, legitimizing SPLM/North may totally erode Sudan's influence over the contiguous Abyei Area.

A slight reduction in cross-border violence has trailed S/RES/2046 (2012), but UNMISS¹⁹⁴ mandate prevents its troopers from moving beyond the undisputed border areas. In Southern Kordofan and Blue Nile States, the battle for supremacy rages on between Darfur regional militia groups: SPLM/North, and the Justice and Equality Movement. The former lot has now refused to participate in peace talks over its alleged roles in Southern Kordofan and Blue Nile conflicts except Sudan approves the independent political party status it so covets. Moreover SPLM/North is unhappy with Khartoum over unprecedented delays in the delivery of mutually agreed humanitarian relief materials to all those areas under the Liberation Movement's control. Although SPLM and SPLM/North leaders have never ceased to assert the latter's autonomy, evidence of historical ethnic and religious affinity between social groups across the region make these claims a pretty hard sell.

The notion of 'peaceful settlement' contemplated by Chapter VI of the UN Charter cannot, in my opinion, properly exclude the threat, or use of armed force to achieve the noblest of ends. Every international dispute is

¹⁹¹ Charter of the United Nations, Article 24 (1).

¹⁹² Charter of the United Nations, Art. 34

¹⁹³ Charter of the United Nations, Article 103.

¹⁹⁴ UNMISS – United Nations Mission in South Sudan

unique. Thus, the question to ask is whether the invocation of armed force imagery (e.g. where mutually adverse parties have been on the war path) will assist in consensus-building to prevent further assaults on international peace and security within the intendment of Article 1. The well-known Chapter VII prerogative to sanction "operations by air, sea, or land forces" is what distinguishes the United Nations in global security governance. Besides, the imagery of force has been critical in securing peaceful outcomes to contentious international claims. According to Theodore Roosevelt, Vice-President of the United States in 1901 (and later President), in promoting the causes of mankind, America as a world power must learn to "Speak softly but carry a big stick."¹⁹⁵ In remarkably successful negotiations to resolve the East Slavonia territory dispute and international warfare in the Balkans,¹⁹⁶ US Envoy Richard Holbrooke promised to seek the deployment overwhelming military force against the perpetrators via UN-NATO airstrikes, amidst prospects of international criminal prosecution to make certain parties cooperate fully in the peace negotiations hosted by the Clinton Administration at Wright-Patterson Air Force Base in Dayton, Ohio.¹⁹⁷ Some information on the Dayton Accord proximity talks will be provided in the addendum to this paper.

Nineteen years later, United States' epoch-making diplomacy in Dayton, Ohio will be remembered for three main things: exposing the capricious nature of irregular warfare; marking an end to communal bloodbaths in the Balkans (thereby arresting "the greatest collective failure of the West since the 1930s"¹⁹⁸), and for operationalizing the international intervention plan that midwifed the General Framework Agreement for Peace in Bosnia and Herzegovina. It is pleasing to note that Ambassador Holbrooke and Secretary of State Warren Christopher managed to broker previously impossible peace in the war-torn Balkans region, between fifteen main interest groups¹⁹⁹ in slightly less than twenty-one days, by using dynamic intermediation strategies guaranteed by military operations.²⁰⁰ As Italian-American mob boss figure "Al Capone" earlier enthused to his Chicago confederates in Brian de Palma's classic prohibition-era crime movie, *The Untouchables* (1987),²⁰¹ "In my experience, a good negotiator gets much farther with a gun and kind words, than with only the kind words."²⁰²

¹⁹⁵ Excerpted quote from an article on display in the Cold War Museum, State of Kansas Cosmo-Sphere and Space Center (2014).

¹⁹⁶ Cigar, N. (1995) *Genocide in Bosnia: The Policy of "Ethnic Cleansing."* College Station: Texas A&M University Press, pp. 47-8.

¹⁹⁷ For more on this, see Obi-Okoye, Onyekachi (2013) *"International Case Analysis on the Dayton Proximity Talks Leading to the General Framework Agreement for Peace in Bosnia and Herzegovina, November 1 – 21, 1995."* A research paper submitted in partial fulfillment of the requirements for conferment of the Master of Arts degree in Peace and Justice Studies, by the University of San Diego (California) – Kroc School of Peace Studies.

¹⁹⁸ Quoted by Weiss, T.G. (1996) "Collective Spinelessness: U.N. Actions in the former Yugoslavia," in Richard H. Ullman (ed.) *The World and Yugoslavia's Wars.* New York: Council on Foreign Relations, p. 90.

¹⁹⁹ Including delegates from a dozen present-day nations: Italy, Russia, US, Greece, Croatia, the UK, Bosnia, Serbia, Kosovo, Herzegovina, Germany, Montenegro and France; besides 3 intergovernmental organizations, NATO, EU and the UN.

²⁰⁰ Chollet, D. (2005) *The Road to the Dayton Accords: A Study of American Statecraft.* New York: Palgrave Macmillan

²⁰¹ Originally distributed by Paramount Pictures, starring Kevin Costner, Sean Connery, Andy Garcia, Charles Martin Smith, and Robert de Niro (as Al Capone).

²⁰² Paraphrased

Why talks are tied: Abyei in the eyes of locals

Potentially logical explanations for comparative Sudanese intransigence in Abyei negotiations revolve round the value imputed to that territory by its inhabitants or their kith and kin, and by the state. Factors to consider in attempting to determine the value of heritage territory in Africa are manifold:

- i. The plurilateral demand for natural resources like gold (Ghana), diamonds (Sierra Leone, DR Congo), or raw petroleum (the Niger-delta of Nigeria, Abyei Area).
- ii. In many African cultures, acquiring new territory is a sign of virility and generational fertility.
- iii. Expanded territory is an indicator of emerging economic power and influence at the community level, which way of thought has global origins; in recent centuries European imperialists like Britain, France, Portugal, Italy, Spain and Belgium each found themselves contending for control of African territories at the 1885 Berlin Conference as a way to enhance their relative influence internationally, and boost their own traditional standards of living.
- iv. Very importantly, exclusive territory is an essential basis for international recognition of any state; other factors would include a determinate people, effective governance, plus the capacity to enforce legislation and foreign policy.²⁰³
- v. Moreover, territory ownership of territory in sub-Saharan Africa usually provides ethnic nationalities the invaluable benefit of ethno-cultural history and large-group identity. Lands that are material to the maintenance of a communal identity usually can't be sold to non-members of that identity community.
- vi. Similar to the customary practices in other East African indigenous agricultural communities, accumulated land tenure rights actually represent, in the lower Sudan region, a man's coming of age in terms of being able to earn a living and establish/sustain his own family through cropping, natural resources extraction, hunting, and animal husbandry, etc.
- vii. Another essence of territory is its use for transportation and trade exchange routes into, out of, and throughout a given geography or community, e.g. Ethiopia's access to the Red Sea and Gulf of Aden maritime strips is now completely circumscribed by Eritrea and Somalia, possibly not the friendliest of nations for Addis Ababa to work with considering their histories.
- viii. Also, the national security and strategic defense concerns of any nation is crucial to the survival of its peoples. In this light, it should be safe to suggest that promoting national security by monitoring contiguous territory is important to any society.
- ix. Furthermore, in the present dispute environment, territory could be valuable "across issues,"²⁰⁴ assessing the Area's significance to either polity in contradistinction with the other negotiable items mandated by the Security Council via Res. S/RES/2046 (2012).

²⁰³ The Restatement (Third) of Foreign Relations Law of the United States, Section 201 (1987).

²⁰⁴ Wiegand, K.E. (2011) *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, & Settlement*. Athens GA: University of Georgia Press, pp. 23-35.

- x. In this case, the value of territory “within issues” would assume that beyond popular cravings to rehabilitate and reestablish their displaced kinsmen, Abyei ownership is important to South Sudan’s Ngok Dinka on account of other sociologically discernible symbolic values that attach to land tenure.
- xi. Immediate economic value – i.e. the potential to create personal wealth by leasing land for industrial uses, or otherwise alienating lands for a financial consideration is also a powerful reason to not concede valuable territory like Abyei to one’s adversary without adequate compensation. What constitutes “adequate compensation” is of course, a question for the jury (i.e. a question of fact, with or without sentiment).
- xii. Finally, the settlement options available to locals and state officials with which to settle the dispute may vary according to push or pull factors arising from local political demand. Put differently, the decision to attempt settlement of Abyei dispute in any given way could possibly only arise in connection with local leaders’ fear of suffering disapprobation by the general public, electorate, a particular “selectorate”, or influential opposition groups, if such leader would as much as discuss the possibility of conceding anything at all in the dispute over territory. Leaders are socially incentivized to steer clear of unpopular programs and policies that could imperil their popularity ratings or prospects for obtaining economic cum political power in the future.²⁰⁵ The US clearly understands this, or Dayton proximity talks would have been held downtown, not in an isolated air force base with limited media access to the highly visible political figures.
- xiii. West Kordofan State is home to mixed populations, including large numbers of Misseriya Arabs, and in which area the SPLM/North enjoys local patronage.²⁰⁶ Amidst increasingly frequent reports of communal violence among these communities, Misseriya support for the ruling National Congress Party is important to the powers that be. Misseriya clans have been baited for decades, being told that Abyei shall remain theirs, not the Dinkas.²⁰⁷ In light of Abyei Protocol (Article 1.1.2), the AUHIP Proposal, and the Sudan v. SPLM/A arbitration *inter alia*, it is possible Khartoum will feel a need to temper its narratives once again.

The way forward

Abyei status dispute needs power mediators, not genteel elites...

To complete my discourse, it is no doubt desirable to raise a few questions and pitch in ideas to help resolve the impasse. Thus, the first question is whether Abyei has been a bad conflict, inherently bad, considering the countless mishaps that follow it. Unfortunately, the rash rush by individual state disputants to deploy military

²⁰⁵ Bueno de Mesquita B., J.D. Morrow, R.M. Siverson, and A. Smith (1999) “Policy Failure and Political Survival: The Contribution of Political Institutions,” in *Journal of Conflict Resolution*, 43 (2): pp. 147–161.

²⁰⁶ SPLM/North is said to be a completely autonomous splinter of the former Sudan People’s Liberation Movement/Army, the pressure group that successfully campaigned to end Sudan’s second civil war, and which negotiated the Comprehensive Peace Agreement on behalf of South Sudan; then later on, the June 2008 Roadmap Agreement. “/North” was added to demonstrate the group’s separate domicile and autonomy after South Sudan’s independence.

²⁰⁷ Craze, J. (2011) *Creating Facts on Ground: Conflict Dynamics in Abyei*. HSBA Working Paper 26, Geneva: CSmall Arms Survey, Graduate Institute of International and Development Studies, p. 66.

force to suppress misunderstandings with international implications – including such conflicts as haven't been formally reported, or for which settlement procedures are underway, like Sudan's unprovoked shelling of the South's Unity State capital, Bentiu, in April 2012²⁰⁸ – remains a sticky problem in collective security policy.²⁰⁹ According to Schellenberg however,

Conflict is so fully a part of all forms of society that we should appreciate its importance – for stimulating new thoughts, for promoting social change, for defining our group relationships, for helping us form our own senses of personal identity and for many other things we take for granted in our personal lives. Indeed nearly all of us have loyalties to a national state that was forged through bitter conflict.²¹⁰

It shouldn't be difficult to find 'national states' filling this category: South Sudan, East Timor, Eritrea, Western Sahara, Azerbaijan, Armenia, Nagorno-Karabakh, Kosovo, the former Biafra, and United States of America, etc.

In *Groupthink*, Janis opines that paucity of macro conflicts can inhibit social development in areas like public investment and foreign policy.²¹¹ Where conflict is infrequently expressed in a region or polity, it could be –

- That sensitive issues are being suppressed – in which case there might be an unhealthy build-up of tension in the polity, presaging an unpleasant outcome; or
- That the people charged with administration are offering a lackluster experience, with the members not being incentivized to improve the quality of policy options generated for decisions to be made. I should add that having a lot of conflict, and not having enough can be equally deleterious, depending on the leadership's objectives and time value of analyses.²¹²

Judging from the foregoing, it would seem that conflict is indeed a salient aspect of national development; it is able to project necessary discussion among nationalists, shape socio-economic discourse, unearth ulterior agenda (*acta exteriora indicant interiora secreta*),²¹³ promote mutual tolerance eventually, and provoke social innovation in a way that ten thousand speeches cannot. In other words, Abyei conflict has its merits, for how else would unbridled Arabism or Africanism be found deleterious to common national development – or the international framework for settling such disputes be found wanting in essence?

It may no longer be a question for Juba, but when, as noted earlier in a UN report,²¹⁴ an army commander like Colonel Omar al-Bashir seizes Sudan political power through a military coup d'état way back in June 1989, and is allowed to remain there indefinitely, the immediate tendency is for him to personalize the government and declare that he alone deserves to be maximum ruler for life; after all, *rex non potest peccare*.²¹⁵ In 1998, al-Bashir and the Presidential Committee put into effect a new constitution, allowing limited political associations in opposition to al-Bashir's National Congress Party (NCP) and his supporters to be formed. Many Americans would be shocked

²⁰⁸ See "Sudan market bombing a 'declaration of war': South." Reuters (Africa News), April 23, 2012.

²⁰⁹ Karns, M.P. and K.A. Mingst (2010) *International Organizations: The Politics and Processes of Global Governance*. 2nd ed., London: Lynne Rienner Publishers, p. 291

²¹⁰ Schellenberg, J.A. (1996) *Conflict Resolution: Theory, Research and Practice*. Albany NY: State University of New York Press, pp. 8-9.

²¹¹ Janis, I. (1982) *Groupthink: Psychological Studies of Policy Decisions and Fiascoes*. Boston: Houghton-Mifflin.

²¹² Regardless of whether the parameters are set for short, medium or long term analyses.

²¹³ A Latin maxim of law, i.e. External actions show internal secrets, intention may be inferred from a person's actions.

²¹⁴ S/1998/318, *Report of the UN Secretary-General: Causes of conflict and the promotion of durable peace and sustainable development in Africa*.

²¹⁵ A Latin maxim of law, i.e. The King cannot do wrong.

to learn that Col. al-Bashir has already been cleared by the ruling NCP to extend his presidency to 2020, by running again in 2015.²¹⁶

Al-Bashir's smugness towards implementing the litany of peace agreements – eleven of them – executed with South Sudan/SPLM/A smacks of impunity and reckless disregard for civility in international customary law. As noted by Aristotle, the famous Greek philosopher, "Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all."²¹⁷ In this sense, it is not hard to liken him with President Slobodan Milosevic of former Yugoslavia, himself a Serb, who would take a very light opinion of Serb atrocities against Croats (Eastern Slavonia) and Bosnian Muslims throughout the Bosnia war.

Similar to Dayton proximity talks, the African Union Peace and Security Council needs to consider power mediation over Abyei Area for a change. Before the US stepped in, at least four peace proposals by the Contact Group nations and European Union mediators had been rejected by key figures involved in Bosnia:

- The Carrington and Cutileiro Proposal (1992)
- The Vance and Owen Proposal (1993)
- The Owen and Stoltenberg Proposal (1993); and
- The Contact Group Proposal (1994), which contemplated a partition of Bosnia along ethnic lines. None of these peace plans proved satisfactory to both Muslim and Serbian leaders.

In a television documentary aired in 1992, EU Mediator David Owen is said to have lamented, "What we lack is clout", meaning there had been no powerful nation to guarantee or back up his unsuccessful mediation efforts with UN Mediator, Cyril Vance.²¹⁸ It took the Serbian rebels' massacre of thousands of Muslims in Srebrenica mid-1995, and capture of over four hundred UN peacekeepers (UNPROFOR) as hostages for use as human shields in the event NATO deployed airstrikes against the rebels, for the White House to get involved, thereby providing that political and military clout Owen had needed. Kleiboer argues as follows:

Great powers, such as the US, are particularly well suited for a role as mediator because they possess leverage vis-à-vis the parties in conflict. Leverage entails both a mediator's ability to become a relevant player in the conflict as well as to put pressure on one or more of the conflicting parties to accept a proposed settlement. This assumes a mediator has resources (e.g. military, economic, political) that can be brought to bear on the parties [...] Moreover, leverage does not depend on resources alone, but also on the willingness of the power mediator to deploy them, and the skill with which this is done.²¹⁹

Each of the world's G20 nations – plus Nigeria: with a recently rebased GDP of US \$510 billion, Nigeria is actually the largest economy in Africa and 24th largest in the world²²⁰ – ought to qualify as power mediators at least in their regions. Permanent members of the Security Council account for half the number of international mediations since WW II, and except for China, all four were involved directly or otherwise in stopping the Bosnia and Kosovo wars. US alone has actually mediated over thirty-two per cent of interstate disputes since 1945, reflecting the capacity to galvanize her resources to bear on other sovereigns' 'social' behavior, as well as the

²¹⁶ See "NCP confirms Bashir can run for president in 2015," Sudan Tribune, April 23, 2014.

²¹⁷ Aristotle, Book I (1253) at .a31.

²¹⁸ Kleiboer, Marieke (2012) "Great Power Mediation: Using Leverage to Make Peace?" in Jacob Bercovitch (ed.) *Studies in International Mediation*. New York: Palgrave MacMillan, p. 127.

²¹⁹ Ibid.

²²⁰ See "Nigeria almost doubles GDP in recalculation." Financial Times (Economy), April 7, 2014.

diversification of her national interests internationally.²²¹ The phenomenal increase in the number of sovereign states, from sixty-six in 1945, to 155 in 1980, and at least 193 today may have driven up the potential for inter-state disputes, but even more the promise of state-managed power mediation. Powerful states have been much more involved, and consequently way more effective in managing inter-state dispute settlement than intergovernmental organizations.²²² Sometimes a 'big brother state' utilizes its membership of an IGO to project Owen's backup clout or other incentives including sanctions, for disputing elements to behave themselves and settle.

Nigeria, acting through the ECOWAS Commission in 2010, threatened Cote d'Ivoire and its allies with military enforcement measures against the spent regime of President Laurent Gbagbo, if the latter should fail to hand over power to Alassane Ouattara, the candidate who had just won their presidential polls. At Dayton, the United States found it useful as Security Council permanent member and NATO heavyweight, to project a strong image of what could well happen in the Balkans failing the negotiation cooperation of Yugoslav, Serbian, Croatian and Bosnian warring parties. That was power mediation. The African Union should indeed constitute a coalition of the strong and willing, to guarantee inter-Sudan cooperation for a militarily enforceable outcome of Abyei dispute processes, working through the Comprehensive Peace Agreement, through subsequent cooperation agreements, dispute settlement under the Hague Conventions (i.e. award of the Permanent Court of Arbitration regarding Abyei's final status), UN Res. S/RES/2046 (2012) and the AUHIP Proposal, inter alia, as may be appropriate.

Considering the need for regional powers like USA or any of the four other permanent members (global clout), South Africa (for Southern Africa region) or Nigeria (for West Africa region), to provide clout to international mediation efforts, the problem is that power doesn't come cheap, so nations don't use it cheaply. Inasmuch as discord and death tolls can motivate good-natured states to intervene, most countries will look away unless their own national interest is calls for it. Put differently, interventionist concerns of 'good guy' countries are almost always coupled with less altruistic, selfish motives for seeking to originate mediation.²²³ Writers note that mediating states generally possess an underlying interest in the given dispute and its resolution,²²⁴ as where the third country simply gets involved to protect undisclosed benefits or investments it has with at least one of the conflicting parties. Great powers may try to intervene where a conflict might negatively affect their relations with either or both disputants, to try and reduce the possibility of "getting burned" if the conflict should escalate.²²⁵ Ahead of the Falklands War (1982), the United States was diplomatically torn between "family ties" with United Kingdom, and her Cold War alliance cum regional, economic and cultural friendship with Argentina, with both countries claiming sovereignty over Falkland Islands. Unfortunately, the White House tarried and her allies fought each other to the finish. It was a black eye for international peace and cooperation that year.

²²¹ Greig, J.M. and P.F. Diehl (2012) *International Mediation*. Cambridge UK: Polity Press, pp. 64-65.

²²² Ibid, pp. 34-35.

²²³ Hopmann, P.T. (1996) *The Negotiation Process and the Resolution of International Conflicts*. Columbia SC: University of South Carolina Press. See also, Princen, T. (1992) *Intermediaries in International Conflict*. Princeton NJ: Princeton University Press.

²²⁴ Carnevale, P.J.D. and S. Arad (1996) "Bias and Impartiality in International Mediation" in J. Bercovitch (ed.) *Resolving International Conflicts: The Theory and Practice of Mediation*. Boulder Co: Lynne Rienner.

²²⁵ Touval, S. (2003) "International Mediation in the Post-Cold War Era," in C.A. Crocker, F.O. Hampson, and P. Aall (eds.) *Turbulent Peace: The Challenges of Managing International Conflict*. Washington: United States Institute for Peace.

Power-seekers would offer to intermeditate in order to gather security-useful information on a party, or prevent some rival government from gaining access to the same information. Others intervene to develop closer relations and extend their sphere of influence, or else avoid becoming involved themselves in the future.²²⁶

It is thought that motives for intervening vary even further, depending on each intervener's attributes –

Small and medium-sized states are often concerned about preventing a conflict from spilling into their territory, preventing a conflict from drawing in more powerful external actors, refraining from taking sides in a dispute, promoting norms that will enhance their own security, augmenting their own influence and prestige, and increasing their usefulness and independence in relation to their stronger allies. Serving as mediator helps to achieve these goals.²²⁷

The obvious question to ask next is who then will intervene? Which G20 member or powerful country has so much at stake in Sudan or its southern neighbor, to put her own vast economic, military and political resources on the line to underwrite the enforcement of mediated agreements? Certainly not Nigeria, with her own wealth of untapped petroleum and attendant social disputes, including *boko haram* terrorism across the northeast parts. Perhaps not South Africa either, as neither Sudan nor South Sudan belong to the Southern Africa Development Community (or ECOWAS for that matter). It takes eight thousand kilometers or three days non-stop to drive from Pretoria to Khartoum. There could also be culture barriers, including Arabic language. Arguably, neither Abuja nor Pretoria have the resources it will take to guarantee protracted armed sanctions in such a large area of North Africa. Except for individual G8 members, a coalition of powerful governments like the NATO bloc, may be needed to provide sufficient clout.

Another critical step for Sudan, IGAD, South Sudan, AU, UNMISS,²²⁸ and the World Bank is to pool their resources and resolve the national question in the Sudan region as a whole. There is no doubt that Sudan and South Sudan are currently in the maelstrom of agitation for resolution of their national question, which results mainly from perpetual leadership and nationality crises. Writing on social development in the defunct Soviet Union, Fedoseyev describes the national question as –

[...] First and foremost, a question of solving the vital problems of social development, abolishing national oppression and inequality, eliminating obstacles to the formation of nations and assuring freedom for the development of people, including achievement of factual equality.²²⁹

It is fairly obvious that since after the disintegration of USSR, popular concerns on the national question have continued to resonate in Europe and Africa, particularly in the Sudan. The inability of national governments to resolve the question has led to bitter conflicts all over former Czechoslovakia, former Yugoslavia, former Ethiopia, former Indonesia, Rwanda, Guatemala, Liberia, Sierra Leone, Colombia, Nigeria, Mexico and the Sudan. Hence, the problem of nationhood and nationality has proven its potential to bring chaos and virtually devastate whole regions in the security discourse.

During the Cold War years, diplomatic efforts to support or undermine East African governments (including the Sudan) were a hallmark feature of the Soviet Union and United States' mutual struggle for supremacy. With the

²²⁶ Zartman, I.W. and S. Touval (1996) "International Mediation in the Post-Cold War Era," in C.A. Crocker, F.O. Hampson, and P. Aall (eds.) *Managing Global Chaos: Sources of and Responses to International Conflict*. Washington: United States Institute for Peace.

²²⁷ Ibid. p. 448.

²²⁸ UNMISS – The United Nations Mission in South Sudan.

²²⁹ Fedoseyev, P.N. (1997) *Leninism and the National Question* (English Translation ed.), Moscow: Progress Publishers.

end of that era, external interference may be reduced but has by no means disappeared. In the competition for oil and other precious resources in the Sudan and South Sudan, interests external to these countries continue to play a substantial and sometimes divisive role, both in suppressing conflict and in sustaining it. China, for one, has invested billions of dollars in the local petroleum industry including Abyei and Heglig extraction areas.

Parties that have the potential to be affected by other peoples' conflicts may often acquire a special interest in the outcomes thereof, which interest need not be benevolent or even benign. While regional peacemaking and peacekeeping has become fashionable in recent years, the roles some African governments play in supporting, sometimes even instigating, conflicts in neighboring countries must be frankly acknowledged. It is no secret that Uganda and Rwanda, close allies of the US, have been highly complicit in sustaining the façade of intractable conflict in Eastern DRC, not perhaps unconnected with the Congo's rich natural endowment with diamonds and other precious minerals. With America faithfully refraining from interfering with their mining interests, and possibly providing some cover-up services through her powerful propaganda machinery, the conflict in DRC will not end soon.

External involvement will in this case include border countries like Uganda, which has always supported the South presumably on account of their ethnic affinity, and Libya, which could be sympathetic toward Khartoum for quite the same reason. A major basis for international meddlesomeness in the status dispute is inflowing foreign direct investment. Transnational corporations, arms dealers, aid facilitators and other non-state actors have all acquired a significant stake in the prospects and outcome of Abyei dispute. For instance,

South Sudan currently exports about 220,000 bpd of crude from its oilfields via pipelines across Sudan and imports as much as 40mn litres of diesel and gasoline a month from its neighboring countries. The country's government has planned to set up refineries in the Unity and Upper Nile States. The first facility in Bentiu, which would produce 5,000 bpd, is a joint venture between Nile Petroleum and Russia's Safinat Corp. China National Petroleum Corporation (CNPC), Malaysia's Petronas and the Indian Oil and Natural Gas Corporation are some of the international firms who have oil exploration permits in South Sudan.²³⁰

According to Bloomberg News,

Black Rhino Group, a New York-based infrastructure-development company, may build a \$3 billion refinery in South Sudan as Africa's newest nation seeks to become self-sufficient in oil products. Black Rhino signed a "framework agreement" last August with South Sudan's government for the proposed 50,000 barrel-a-day facility, company President Dan O'Shea said. The refinery in the country's northern Upper Nile state would take about three years to build and cost between \$2-3 billion starting from 2014, he said.

Although the country currently imports as much as 40 million liters (10.6 million gallons) of fuel a month from Kenya, South Sudan has sub-Saharan Africa's biggest oil reserves after Nigeria and Angola, according to BP Plc data. Its low-sulfur crude, prized by Japanese buyers as a cleaner-burning fuel for power generation, is pumped mainly by China National Petroleum Corp., Malaysia's Petroliaam Nasional Bhd. and India's Oil & Natural Gas Corp.²³¹

In various cases, the failure of major external actors like Kenya, Nigeria, South Africa or 'Uncle Sam' to maintain a common political approach to an erupting or ongoing crisis is one of the principal impediments to progress towards a solution. The adoption of a common stance by neighboring States is especially critical. In the early

²³⁰ See "Black Rhino plans US \$3 billion oil refinery in South Sudan." Oil Review in Africa Magazine, December 13, 2013.

²³¹ See "Black Rhino Nears Deal for \$3 Billion South Sudan Refinery." Bloomberg (Business) News, December 12, 2013.

stages, “neighbor states” (not implying geographical proximity) are often the first ones to be approached as state protagonists like the ruling National Congress Party of Sudan grope around for material assistance and moral support.

Where conflicts are allowed to escalate as in the instant case, they usually develop a life of their own, but neighbor states and humane interveners can always influence the outcome of a disagreement by first influencing the protagonists.²³² With Abyei, even though things have come to a head, broader international efforts e.g. sanctions, may still succeed given some genuine cooperation from regional stakeholders and international powers.

In African communities like South Kordofan, West Kordofan and Blue Nile States (as well as Abyei) where crude oil is mined, the tendency exists for local conflict over complaints that the community as a whole or a section thereof suffers excessively from the extractors' degradation of their natural environment. It is also alleged that the community is neglected in the distribution of benefits accruing from the continued extraction and trading of such resources. This has been the case in Nigeria, where people of the oil-producing Niger-delta region were for many years economically marginalized and repressed, with their agricultural environment devastated despite a nationalized ‘cash-cow’ petroleum industry that fetched over three-quarters of Nigeria's foreign exchange earnings. Time and space will not permit me to say more in this paper.

Fragile or conflict-ridden states typically have diminished capacity to provide essential infrastructure and security services to their constituents. In fact, such states are least capable of achieving a single MDG.²³³ The Organization for Economic Cooperation and Development's Fragile States Principles (FSPs) provide a basic framework to enhance the quality of international development-oriented engagement in fragile states. Initially conceived at the Forum on Development Effectiveness in Fragile States (held 2005), these Principles were adopted by OECD Ministers in 2007 to help foster cooperation between internal and external stakeholders “in countries with problems of weak governance and conflict, and during episodes of temporary fragility in the stronger performing countries.”²³⁴ To support local stakeholders in developing resilient and effective governance institutions, the FSPs attempt to preserve the aid effectiveness commitments set out in the Paris Declaration by enhancing existing dialogue channels and coordination processes. The Principles for Good International Engagement in Fragile States and Situations are listed as follows:²³⁵

- I. Take context as the starting point
- II. Ensure that all intervention activities do no harm
- III. Focus on state building as the central objective
- IV. Prioritize conflict prevention
- V. Recognize the links between political, security and development objectives

²³² S/1998/318, *Report of the UN Secretary-General: Causes of conflict and the promotion of durable peace and sustainable development in Africa*, para. 21.

²³³ According to Melanie Greenberg, Executive Director of the Washington DC-based *Alliance for Peacebuilding*, whilst speaking at a symposium with the theme “Bolstering Conflict Prevention and Peacebuilding”, organized by Joan B. Kroc School of Peace Studies, the University of San Diego, on March 14, 2013.

²³⁴ *OECD Principles for Fragile States and Situations >> About the Fragile States Principles*. Available at: <<http://www.oecd.org/dacfragilestates/aboutthefragilestatesprinciples.htm>>

²³⁵ *Ibid*

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- VI. Promote non-discrimination as a basis for inclusive and stable societies
- VII. Align with local priorities in different ways and in different contexts
- VIII. Agree on practical co-ordination mechanisms between international actors
- IX. Act fast...but remain engaged long enough to give success a chance
- X. Avoid pockets of exclusion or unwarrantable dependency (i.e. "aid orphans")

Continental political analysts believe there are several main impediments to achieving peace and security in the former Sudan, and in that region generally.²³⁶

- The lack of internal peace in most Horn of Africa countries, e.g. Conflicts in South Kordofan and Blue Nile States in Sudan alongside the irregular warfare featuring Salva Kiir (with his Dinka majority) Vs. Riek Machar (with his Nuer majority) in South Sudan.
- The fact that territory disputes sometimes bear serious implications for international security
- The lack of a stable and consensual regional hegemon
- The disputed legitimacy of municipal governments (and governors) plus the inability of localized democratic processes to provide that legitimacy
- Recurring forms of dependency on foreign aid; and
- Dependence of strategic multilateral institutions like IGAD and East Africa Community on its disputing parties, which essentially impedes the institution's effectiveness as a bloc.²³⁷

De Waal opines that the absence of a regional hegemon is a further obstacle to peace and security in the Horn of Africa, as opposed to other regional communities e.g. Southern African Development Community, and Economic Community of West African States, which have found their regional hegemons in South Africa and Nigeria, respectively. These states can spearhead the development of new regional institutions and support armed interventions to restore local conditions conducive to peace and security. The fact that no nation in East Africa can currently demonstrate effective regional influence, in terms of soft and hard powers, is of itself a disincentive for greater cooperation among IGAD member states.²³⁸

²³⁶ McCandless E. and A.K. Bangura (2007) *Peace Research for Africa: Critical Essays on Methodology*. M.E. King and E. Sall (eds.), Addis Ababa: University for Peace, Africa Program.

²³⁷ Fentaw, A. (2011) *The Emerging Peace and Security Architecture in the Horn of Africa: Prospects and Challenges*. TRANSCEND Media Service.

²³⁸ De Waal, A. (2007) "In Search of a Peace and Security Framework for the Horn of Africa," in *Report of the Conference on the Current Peace and Security Challenges in the Horn of Africa*. The Conference was held March 12-13, 2007, at Addis Sheraton Hotel, Addis Ababa, p. 12

It has also been noted that peace and security problems in East Africa should be viewed in the context of a “regional security complex”, not as a standalone national security concern.²³⁹ Regional security complexes refer to any group of nations whose primary security concerns are so closely intertwined that their national securities cannot meaningfully be understood in isolation from one another or a scenario in which security threats to any one state of the region has serious security repercussions on the rest. This concept can be traced to contemporary patterns of amity and enmity among states. Patterns of amity and enmity are normally shaped by various factors, including territorial disputes, cross-border ethnic distribution, ideological orientations, suspicion and fear and long standing historical links of genuine friendship and expectations of protection or support.²⁴⁰ Hence, national interdependence is the distinguishing attribute of any regional security complex, whether or not it results in further conflict, similar to Sudan and South. The concept of security complex may therefore exist where a pronounced sense of mutual insecurity is felt among proximate regional states.

Looking at the status quo of Abyei talks, it might even be useful in getting Sudan to respect its legal obligations, to expand the constitution of the AUHIP, to include one or two members of Arab ethnicity, especially women. Without a mother's voice to protest the loss of other mothers' children in Abyei warfare, the men's mental appreciation of human value might possibly diminish over time, or be drowned in macho position-taking by elite politicians none of whose children will either fight or be killed for love of Abyei. On the other hand, since racism and ethnic intolerance have been responsible for Sudanese people's physical and psychological hostilities, perhaps it would help if the AUHIP did not consist entirely of black Africans but Arabs too.

Incidentally, neither the Sudan nor South Sudan ever acceded to the New York Convention on Recognition of Foreign Arbitral Awards (1958). As such, there wouldn't be much point for South Sudan to try bringing an action in appropriate Sudan court for enforcement of the arbitral award – especially the PCA ruling on organizing a referendum of permanent Abyei residents to determine their own future status. The only other legal option with guaranteed finality is for both parties to repudiate the award, then refer the Abyei's status question for final determination by the International Court of Justice. Significantly, the Court was not an option for settling the dispute as at the time it was referred to the Permanent Court of Arbitration, because the ICJ's jurisdiction could not have been invoked by Sudan People's Liberation Movement/Army, itself not being a sovereign state as to litigate before that tribunal pursuant to Article 34 (1) of the Statute of the International Court of Justice.

As principal judicial organ of the United Nations, the ICJ's role is simple: To settle in accordance with international law, legal disputes submitted to it by nation states, and provide advisory opinions on juridical questions referred to it either by states, or authorized agencies and international organizations.²⁴¹

If power mediation should not yield a sustainable outcome, then before resorting to international litigation, my recommendation would be for the Security Council to recommend to Juba and Khartoum such terms of settlement as it considers fair, just, and appropriate in the circumstances, pursuant to Article 37 of its Charter:

37 (1) Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

²³⁹ Healy, S. (2008) *Lost Opportunities in the Horn of Africa How Conflicts Connect and Peace Agreements Unravel*. A Horn of Africa Group Report. London: Chatham House, p. 42.

²⁴⁰ Buzan, B. and Ole Waever (2003) *Regions and Powers: The Structure of International Security*. Cambridge: Cambridge University Press.

²⁴¹ Guo, R. (2012) *Territorial Disputes and Conflict Management: The Art of Avoiding War*. New York: Routledge Publishers, p. 146.

(2) If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

If any propositions made under this section should fail, then Council should immediately consider whether to invoke Article 36 (3)²⁴² to make a referral of Abyei legal status dispute to the International Court of Justice to determine all those claims for good.²⁴³

International territory disputes are not peculiar to Africa, and certainly not to the Sudan region. In Asia, China has had border wars with India (1962), the Soviet Union (1969), and Vietnam (1979, 1984, and 1987). In South America, Ecuador and Peru have fought over territory (1941 and 1995), as have Argentina and the United Kingdom (1982). On the whole, "Conflict arises in different contexts, and occurs at the interpersonal, group, organizational and international levels." ²⁴⁴

ADDENDUM

Abyei status dispute needs power mediators, not the genteel elites called AUHIP...

International Case Analysis on the Dayton Proximity Talks Leading to The General Framework Agreement for Peace in Bosnia and Herzegovina, November 1 – 21, 1995.

In February 1992, barely two months after David Owen and Cyril Vance negotiated a partial cease-fire in Croatia on behalf of the EU and UN, Bosnia-Herzegovina proclaimed its independence from what used to be the Socialist Federal Republic of Yugoslavia. However, Bosnian Serbs rebelled against the leadership of President Radovan Karadzic and declared for themselves a separate nation state within Bosnia, to be called Serb Republic. Being an ethnic Serb, President Slobodan Milosevic of Yugoslavia cooperated closely with the Bosnian Serbs, providing them strategic and political support.

One objective of the Bosnian Serbs was to acquire as much of Bosnia's territory as possible, including its most important city, Sarajevo. Their most successful territory gains came early in the conflict when they captured

²⁴² Article 36 (3), Charter of the United Nations, provides: "In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court."

²⁴³ Article 103, Charter of the United Nations, provides: "***In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.***" (Emphasis mine)

²⁴⁴ Byrne, S. and J. Senéhi (2009) "Conflict Analysis and Resolution as a Multi-Discipline: Work in Progress", in D.J.D Sandole, S. Byrne, I. Sandole-Staroste, and J. Senéhi (eds.) *Handbook of Conflict Analysis and Resolution*. Oxford: Routledge Publishers, p. 3.

approximately seventy-five percent of Bosnia.²⁴⁵ The situation of things hardly changed till 1995 because of a weapons embargo imposed on the former Yugoslavia by the UN in September 1991. This embargo inhibited the development of the Bosnian Muslims' army, which was consequently unable to counter the much stronger Bosnian Serb forces.²⁴⁶ Thereafter the hostilities centered round Sarajevo and other "safe areas" established by the UN in April 1993.

It was not long before inter-ethnic communal hostility escalated into a full-blown war courtesy of deep-seated ethno-religious rivalry between Serbs on the one hand, and Bosnian Croats alongside Bosnian Muslims ("Bosniaks") on the other. Though centered on Bosnian soil, the conflict was of international character in that targeted violence and allied humanitarian problems soon spilled into former Yugoslavia and then Croatia – a country with her own ethnic Serbs. The forty-four month bloodletting that followed saw to the destruction of over three hundred thousand lives, rendering some two and a half million others destitute. It was this conflict and its horrifying details that shaped the phrase "ethnic cleansing" into today's vocabulary.²⁴⁷

As at 1992, US was treating the Balkans conflict as an intrastate problem not exactly requiring strategic intervention. Secretary of State James Baker communicated this sentiment by exclaiming that "We [Americans] don't have a dog in this fight."²⁴⁸ During this period, most Western countries defined the conflict as a communal altercation, 'a war without victims and aggressors' in which the parties were nothing but warring factions.²⁴⁹ US diplomats and policy makers seemingly believed (or at least wanted to, so as to account for Washington's inaction) that meaningless hatreds were behind the conflict. In the scramble for Bosnian territory though, Serbs were responsible for more than three-quarters of the violence including ethnic cleansing, executions and systematized rape.²⁵⁰

Competing interests of European nations prevented the EU from acting as a single negotiating entity with clear goals and interests. The Russia-Serb connection, as well as pro-Serb sympathies of British Premier John Major and French President Francois Mitterrand did not encourage the utilization of counter-balancing measures against the Serbs, such as lifting the arms embargo that incapacitated the Muslims' army.²⁵¹ As if plagued by an evil omen, continental diplomats had failed to push through a number of international inter-ethnic proposals to bring peace:

❖ The Karadordevo Initiative (1991)

²⁴⁵ Chollet, D. (2005) *The Road to the Dayton Accords: A Study of American Statecraft*. New York: Palgrave Macmillan.

²⁴⁶ Silber and Little (1996) note that when the war began, the Yugoslav People's Army fought directly on the side of the Bosnian Serbs, but had to withdraw its troops from Bosnia in 1992, owing to pressure from the international community. Thereafter the Yugoslav Army relinquished command of its estimated 100,000 strong forces to ranking Bosnian Serbs, thereby creating a Bosnian Serb army. See Silber, L., and Little, A. (1996) *Yugoslavia: Death of a Nation*. London: Penguin Books, p. 225.

²⁴⁷ Cigar, N. (1995) *Genocide in Bosnia: The Policy of "Ethnic Cleansing."* College Station: Texas A&M University Press, pp. 47-8.

²⁴⁸ Quoted in "Back to Bosnia: Charlemagne" in *The Economist*, 19 March 2005.

²⁴⁹ Conversi, D. "Moral Relativism and Equidistance in British Attitudes to the War in the Former Yugoslavia," in *This Time We Knew: Western Responses to Genocide in Bosnia*. T. Cushman and S.G. Mestrovic (eds.) (1996) New York: New York University Press, p. 245.

²⁵⁰ Holbrooke, R. (1998) *To End a War*. New York: Random House, p. 23.

²⁵¹ Gow, J. (1997) *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War*. London: Hurst and Company, pp.156-183.

- ❖ The Carrington-Cutileiro Plan (1992)²⁵²
- ❖ The Vance and Owen Proposal (1993)
- ❖ The Owen and Stoltenberg Proposal (1993); and
- ❖ The Contact Group Proposal (1994) that contemplated a partition of Bosnia along ethnic lines.

As in the case of Muslim Arabs and pro-Christian Negroes contending across international borders for the soul of Abyei Area, none of these peace plans proved satisfactory to both Muslim and Serbian leaders.²⁵³

Soon enough, “the brutal stupidity of Bosnia Serbs”²⁵⁴ began to change the attitude of Western leaders. One could no longer ignore such crimes as the shelling of Sarajevo city’s marketplace in February 1994, and the Srebrenica massacre of eight thousand Muslims at the UN-designated “safe place” in July 1995. Clear footage of these events were somehow captured by US journalist David Rohde, and broadcast internationally by CNN.²⁵⁵ In May 1995, Bosnian Serb belligerents took 423 UNPROFOR peacekeepers into custody and as hostages presumably to secure themselves against rumored impositions of international sanctions²⁵⁶ under Article 41 of the UN Charter. Their action clearly highlighted the impotence of our international community. Unknown to those Serbs, this would be the proverbial straw that breaks the camel’s back. Surely enough, the UN and EU finally relinquished some ethical conceptions of their impartial peace efforts in Bosnia’s ethnicity and territory crisis, to identify Bosnian Serbs as being trouble mongers and their Muslim “compatriots” as being the troubled.²⁵⁷ Now appalled by the circumstances, the Security Council invoked Article 42 powers to authorize a Rapid Reaction Force comprising 12,500 France and UK troops,²⁵⁸ to go in and secure the “now seriously compromised” UNPROFOR Mission in Bosnia and Herzegovina.²⁵⁹ As their own struggle continues, could there be lessons here for Sudan and South Sudan?

In November 1995, about fifteen interest groups totaling over two hundred officials gathered at Wright-Patterson Air Force Base in Dayton (Ohio, U.S.A) for peace talks aimed at resolving the bitter war in Bosnia. Among them were representatives of United States, the UK, Italy, Russia, Greece, France, Germany, the EU, NATO and the UN. Others represented Croatia, Serbia, Bosnian Muslims, Bosnian Serbs, Bosnian Croats, and Croatian Serbs. Leading their respective delegations were President Alija Izetbegovic of Bosnia and Herzegovina (“Bosnia”), President Franjo Tudjman of Croatia and President Slobodan Milosevic of Yugoslavia. The Dayton proximity talks culminated in the initialing on November 21, 1995, of the *General Framework Agreement for Peace in Bosnia and Herzegovina*. The Agreement, initialed by Bosnia, FRY and Croatia, was witnessed by representatives of the Contact Group nations: the United States, Britain, France, Germany, and Russia – as well as EU Special Representative, Carl Bildt.

²⁵² All three sides had initially signed this Plan in mid-March, 1992; Alija Izetbegović for the Bosniaks, Radovan Karadžić for the Serbs and Mate Boban for the Croats. On March 28 however, President Izetbegović withdrew his signature and declared his opposition to any type of ethnic division of Bosnia.

²⁵³ While the Bosnian Serbs refused to accept the Vance-Owen and the Contact Group plan, Croatian President Izetbegovic was not satisfied with other three proposals because they offered only a small part of the Bosnian territory to the Muslims.

²⁵⁴ Quoted in Holbrooke, R. (1998) *To End a War*. New York: Random House.

²⁵⁵ Silber, L., and Little, A. (1996) *Yugoslavia: Death of a Nation*. London: Penguin Books, p. 345.

²⁵⁶ See S/1995/444, *Report of the UN Secretary-General Pursuant To Security Council Resolutions 982 (1995) and 987 (1995)*, especially paras. 12-14.

²⁵⁷ Holbrooke, R. (1998) *To End a War*. New York: Random House.

²⁵⁸ See S/RES/998 (1995), especially paras. 1, 3 and 10.

²⁵⁹ S/1995/444, *Report of the UN Secretary-General Pursuant To Security Council Resolutions 982 (1995) and 987 (1995)*, para. 15.

Mediation is a non-binding method of dispute resolution which involves a [neutral] third party who tries to help disputing parties arrive at a mutually agreeable solution.²⁶⁰ It often denotes assisted negotiation.²⁶¹ The US Uniform Mediation Act 2003 actually defines mediation in terms of negotiation:

Mediation is a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.²⁶²

On the other hand, mediation strategy refers to the aggregate plans, approaches, or methods a third party negotiator adopts for attempting to resolve a conflict. It includes all tactics employed to manage the issues, the parties and their dispute. International mediation strategies abound, and the use of one or the other largely depends on the nature of the issues in dispute, the parties' relationship with each other and with their intermediary, as well as the latter's creativity. Some of the strategies identified by conflict resolution experts include:

- Deal-making strategies are those with a potentially direct impact on the dispute's outcome by focusing mostly on substantive issues.
- Orchestration strategies, which seek to manage how parties interact with each other during negotiations/peace talks.
- Incremental strategies, which tend towards dividing the dispute into smaller "chewable" segments of issues, to be dealt with progressively.
- Comprehensive strategy, which seeks to address every aspect of each conflict.
- Integrative strategy, which focuses on parties' interests and are used to locate a common ground at all reasonable costs
- Pressing (or compressing) strategy, which aims to reduce the range of options that may be available.
- Compensation strategy, which attempts to build consensus by making options and parties' propositions look attractive by developing a tit-for-tat (or the like) rewards system.
- The inaction strategy attempts to let parties participate in the process their own way.
- Non-directive strategies, by which an intermediary may work behind the scene or ahead of meetings to produce a favourable climate for the process.
- Directive strategies, which are usually employed by intermediaries to promote a particular outcome.²⁶³

During negotiations, Ambassador Holbrooke employed a combination of strategies like:

Orchestration: The Dayton location was actually a U.S. airbase that was chosen in part for its security, its seclusion from a prying media, and thirdly for the ordinariness of its furnishings. Holbrooke needed to insulate the mediation process from press leaks and outside communications so the negotiating leaders would sober up and cooperate fully without needless grandstanding. He made sure the accommodation allotments for each contingent

²⁶⁰ See *Black's Law Dictionary* (1999) 7th ed., St. Paul MN: West Publishing Group, p. 969.

²⁶¹ Menkel-Meadow, C., L.P. Love, and A.K. Schneider (2006) *Mediation: Practice Policy and Ethics*. New York: Aspen Publishers, pp. 100-1.

²⁶² See Section 2 of the Act.

²⁶³ Bercovitch, J. and R. Jackson (2009) *Conflict Resolution in the Twenty-first Century: Principles, Methods and Approaches*. Ann Arbor MI: University of Michigan Press, pp. 43-4.

were basic, contrary to the luxury customarily enjoyed by certain delegates. He also put together a close-knit living arrangement to encourage disputants to visit each other outside of mediation (an integrative strategy).

Incremental strategies helped Holbrooke to break the issues down into subsets so he could extract consensual settlements on the non-contentious issues and use it to build an initial cohesion and sense of confidence between the parties. This was also a non-directive strategy in that it promoted a positive climate for mediation talks.

Pressing strategies: Managing sixteen interest groups (not to mention the heads of state) was not an easy task, so Holbrooke quickly merged delegates into four, according to their interests. This move was necessary to build up a formidable opposition bloc to the outnumbering Serbs. Intergovernmental officials and contact group nations fell in one group, Croats and non-Serb Bosnians into another two, then all Serbs into the fourth, with President Milosevic as assumed spokesperson.

Subtraction strategies enabled Holbrooke remove some highly contentious issues from the negotiation table (i.e. ownership of Brcko town in Kosovo province – which parties agreed to settle by international arbitration at some later date), thus preserving the zone of possible agreement on issues that were crucial to Dayton's stated objectives:

- To end a capricious war in Bosnia;
- To secure the release of UN troopers;
- To oversee the establishment of a multi-ethnic state apparatus; and
- To devise a good solution to territorial disputes that brought the war, including eastern Slavonia region.

At least one **deal making** approach is evident, as Holbrooke used the directive strategy to threaten all the Serbs with overwhelming military airstrikes by NATO if their armies failed to release the hundreds of UNPROFOR soldiers being held hostage, and cease from their armed occupation of Sarajevo, Bosnia's capital territory.

Framing and shaming: By openly and persistently framing the conflict as genocide against other Bosnians, Holbrooke achieved three things:

- a. He shamed the EU, NATO members, and the Contact Group into taking decisive steps in view of their mandatory obligations under public international law, especially Articles 1 and 8 of the Genocide Convention 1948. Art. 1 provides:
The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.
- b. Holbrooke acquired leverage against the conflict's key players, especially Slobodan Milosevic, whom USA had decided was the key to ending Serbian insurgency. By repeatedly hinting at international criminal prosecution for war crimes etc., he succeeded in keeping them committed to the goals.
- c. Finally, Holbrooke turned public opinion against the main political figures by showcasing the kind of atrocities committed in Bosnia on international news television and through reputable dailies like New York Times and the Washington Post, the very same week negotiations began. This must have helped the three presidents find value in the reclusive atmosphere offered by Wright-Patterson Air Force Base.

What may have informed Holbrooke's choice of strategies?

- i. Psychological barriers and mutual trauma among Bosnians, Croats, Bosniaks and Serbs, flowing from their history of bitter conflict.
- ii. Initial lack of a mutually hurting stalemate – the parties still had some bluster in them.
- iii. Structural complexity of the dispute and surrounding issues. The US talks came on the heels of at least four unsuccessful attempts by the international community to resolve the conflicts through mediation.

Important Points:

1. Strategic location
2. Insulation from the press
3. The mediator's ebullient, incisive and dogged personality
4. The mediator's ability to adapt own personality to those of the parties. He focused on their motivations, objectives and goals.
5. Successful compression and simplification of major aspects of the dispute.
6. Getting each party or group to clarify their priorities from the start:
 - Tudjman > focused on regaining the heavily disputed territory of eastern Slavonia;
 - Milosevic > focused on easing the sanctions already imposed on Yugoslavia and relaxing the threat of UN-NATO military enforcement against the Serbs;
 - Christopher > focused on America's foreign policy interests;
 - Izetbegovic > focused on ending the bloodshed and restoring peace to a non-partitioned Sarajevo, in addition to unifying Bosnia and Herzegovina.
 - Clear articulation of goals by the host government, and USA's very credible threat to deploy overwhelming force against perceived perpetrators.
7. A cleverly orchestrated personal appearance by President Bill Clinton, to authenticate the process and validate Holbrooke's promise of unpleasant consequences for uncooperative parties to the talks.

*****End of Case Study*****