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REPUBLIC OF SUDAN: NEGOTIATION SIMULATION

Briefing Packet for Arab Republic of Egypt Delegation

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(April 13, 2004)

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Introduction

Welcome to the Republic of Sudan Negotiation Simulation. The purpose of this negotiation simulation is to surface key issues that real world negotiators will confront in the Sudanese peace talks, as well as potential solutions to the points of impasse which will likely arise. The negotiation simulation has been developed using the methodology employed by the US Department of State's National Foreign Affairs Training Institute which runs similar negotiations to train US diplomats prior to negotiations.

This simulation exercise is not intended to be a comprehensive review of all the issues involved, nor is it intended to endorse one view over the other. The participants in the simulation naturally will have varying levels of substantive or area expertise, as well as professional commitment to the issue. Participants are therefore encouraged to draw upon their individual experiences as they deem appropriate.

The participants in this simulation have been divided into six delegations. Three of these delegations represent the elite networks: the Government of Sudan (GoS), Sudan People's Liberation Movement (SPLM) and the National Democratic Alliance (NDA). The other three teams represent mediators and observers in the international community.

To provide the necessary information to conduct this simulation, this briefing packet contains a brief review of the history of the conflict, the principal interests of the parties and other relevant actors, a discussion of the primary issues which are likely to be discussed during negotiations, and negotiating instructions for the delegations. Each delegation is provided only their instructions. Two appendices are also provided. The first includes links to further sources of information on the main issues of the conflict. The second is a report providing background information on humanitarian issues caused by the conflict in Sudan.

For the purposes of this simulation, the negotiation is occurring pursuant to the Machakos Protocol. This protocol, signed in 2002, allowed for a six-year interim period that would culminate in an internationally monitored referendum to the people of Southern Sudan to "confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession." A cease-fire agreement signed in October of 2002 is also in place, although both the Government of Sudan and the SPLM have violated it on numerous occasions.

Although this simulation does not have any specific rules, there are strict time allotments for group meetings, private negotiations and plenary sessions to address modalities of the process and substantive issues. We are not assuming that all of the issues can be negotiated during the simulation or that agreement can be reached on each of them. Rather, each delegation will need to decide its own priorities and tactics.

The negotiation simulation has been prepared by the Public International Law & Policy Group in cooperation with American University and is made possible by a grant from the Carnegie Corporation of New York. The Public International Law & Policy Group (PILPG) is a 501(c)(3) non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

Agenda

- 9:00–9:30 AM** Coffee and doughnuts available for participants
- 9:30–9:45 AM** Introduction and review of simulation schedule and procedures
- 9:45–10:15 AM** Individual delegation meetings to review positions
- 10:15–10:35 AM** Members of mediating groups (IGAD, Int’l Observers, Egypt) meet with Sudanese delegations
- 10:35–10:45 AM** Coffee break/Shuttle Diplomacy
- 10:45–11:15 AM** Small Group Meetings
- Wealth Sharing / Natural Resources / Humanitarian Issues
 - Self-determination / Power Sharing / Security
- 11:15–11:30 AM** Members of mediating groups meet with Sudanese delegations
- 11:30–12:00 PM** Small Group Meetings (Continued)
- 12:00–12:30 PM** Individual delegation meetings to focus on substantive negotiating issues
(Lunch will be served during this meeting)
- 12:30–1:00 PM** Plenary Session
- 1:00–1:20 PM** Resume Small Group Meetings as necessary
- 1:20–1:45 PM** Final Plenary Session
- 1:45–2:20 PM** Review and Lessons Learned

List of Participants

Government of Sudan (GoS)

(President Omar Hassan Ahmed al-Bashir and Special Envoy on Peace Dr Ghazi Salah al-Din Atabani)

The Government of Sudan (GoS) is made up of member of the National Congress Party, which is a front for the National Islamic Front (NIF), which is an Islamic extremist group who believe that Sudan is an Arab-Muslim country and that the people of the South must be forced to convert to Islam and coerced into Arab cultural assimilation.

Sudan People's Liberation Movement and Sudan People's Liberation Army (SPLM/A)

(Dr. John Garang de Mabior, Chairman and Commander in Chief of the SPLM/A and Special Envoy for Peace is Cdr. Salva Kiir Mayardit)

The SPLM/A is a Southern rebel group that has been fighting since 1983 for self-determination and the governance of secular democratic government.

National Democratic Alliance (NDA)

The NDA is not part of the peace negotiations, but it has insisted on being part of it. The SPLM/A has allowed them to sit in on the peace negotiations, but it is the GoS that does not allow them to participate on its own behalf. The NDA is a Northern umbrella opposition group that advocates for a united secular multi-party government that has democratic underpinnings and protects the human rights of all its citizens.

Internationals:

Inter-Governmental Authority for Development (IGAD)

(The main mediator is the Kenyan Special Envoy for Peace, Lieutenant General Lazarus Sumbeiywo)

IGAD is a regional group made up of representatives from Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and Uganda. IGAD is holding the platform for the Sudanese peace negotiations. Until now, there have been four sets of peace negotiations held in Kenya under IGAD auspices.

International Observers

(The main mediator is the U.S. Special Envoy for Peace, John C. Danforth)

The United States is the key international observer which has pushed the GoS and the SPLM/A into consenting to four agreements. The U.S. is accompanied by the United Kingdom, which had condominium with Egypt over Sudan until January 1, 1956, the Kingdom of Norway, which has provided technical, financial, and humanitarian aid, and the Italian Republic.

Arab Republic of Egypt (Egypt) (along with the Arab League and the African Union)

Though not official observers, these parties have all sent Special Envoys for Peace to the IGAD Peace Talks. Their presence there is important since they are regional groups that will affect and be affected by the peace process. The Arab League and the AU follow Egypt's lead in the negotiations. They emphasize the unity of Sudan.

A Brief History of the Republic of Sudan

The Republic of Sudan, holding the title of the largest country in Africa, has a population of approximately 36 million people mainly of Arab descent in the North and Africans in the South. It is located in the North-Eastern part of Africa, where it borders with nine countries: Central African Republic, Chad, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Libya, and Uganda. Sudan contains nineteen major ethnic groups (with almost 600 subgroups), speaking more than 115 tribal languages. Arabic is the official language, which is one of the reasons that Sudan has been amidst a civil war since August 18, 1955 even though it won its independence from Egypt and the United Kingdom on January 1, 1956. During the period prior to independence, Southern Sudan was administered separately from the North. The British administered the South while Egypt administered the North under the Anglo-Egyptian condominium government, which had ruled Sudan since the beginning of the twentieth century. Thus, while the instructional language in Northern Sudan was Arabic, the language of instruction in Southern schools was English and they used customary law. Since decolonization, Khartoum elite, which have identified with Arabic and Islamic culture, have ruled Sudan.

The first civil war began in the South under the leadership of the Southern separatist forces, the Anya Nya movement. The war lasted for 17 years, ending in 1972 when the World Council of Churches and the former Emperor of Ethiopia, Haile Selassie, brokered a peace agreement called the Addis Ababa agreement. Under the Addis Ababa agreement between the government and the Anya Nya, the South becomes a self-governing region. Anya Nya members were to be integrated into the national army, the local police, the prison service and the wildlife service. However, in 1978, oil was discovered in Bentiu in Southern Sudan. Thus, just ten years after the Addis Ababa agreement, Sudan's President Jaafar Nimeiri breached the agreement. The Arab Muslim North had managed to exclude the Christian and animist South—the Nuba Mountains and Southern Blue Nile—from state affairs. The GoS pursued various racial and religious discriminatory policies and, thus, managed to marginalize the 60 percent of the population that is not Arab and the 40 percent of the population that is not Muslim. Additionally, it divided the South into three regions, enabling the central government to deal separately with each and to play them off against each other on tribal basis. The government also asserted control over the two most valuable natural resources of the South and of all Sudan—the Nile River and oil—while failing to live up to promises to develop and educate the South.

In 1983, Nimeiri announced the application of Islamic law in the South, and the war resumed. In response, the Sudan People's Liberation Army (SPLA) was formed in 1983 in Ethiopia from Anya Nya II groups and Sudan army mutineers from the 105 Battalion stationed in Bor, Upper Nile, who escaped to Ethiopia, where they were joined with others. The SPLM/A experienced political divisions almost immediately. John Garang, a former Anya Nya I guerrilla, emerged as

their leader. He advocated for a united secular Sudan. Many Anya Nya II leaders sought the Anya Nya I objective of secession or self-determination; thus, they split from Garang. The GoS and political parties aligned with the government tried to tribalize the civil war by using local rebels to fight guerrillas in neighboring territories. In the mid-1980s, the remaining Anya Nya II dissident officers and troops, mostly Nuers, formed a government militia also called Anya Nya II. The Anya Nya II rallied Nuers in its native Upper Nile province against the Dinka, who were predominately represented by the SPLM/A. Many Nuers, however, remained with the SPLM/A despite government efforts to portray the war as a tribal clash of the Dinka against everyone else. As for the SPLM/A, they undertook a policy of trying to win over Anya Nya II, with some success. Commander Gordon Kong Cuol of Anya Nya II led his men into an alliance with the SPLA in late 1987, and other Anya Nya II forces followed suit, leaving a few Anya Nya II with the government.

In 1989, there was a military coup overthrowing a democratically elected government and placing the National Congress Party, which is a front for the National Islamic Front (NIF), in power with Lieutenant General Omar Hassan Al-Bashir heading the government. The NIF is an Islamic extremist regime that believes that Sudan should be an Arab-Muslim state and all those who are not Muslim shall be forced or coerced into Islam and Arab cultural assimilation. Proof of such motives is apparent from the National Assembly's adoption and President Bashir's signing of a NIF drafted Islamic constitution.

Although racial and religious issues are causes of the civil war, it is not limited to those. It also encompasses regional, resources (the Nile water and government controlled oil), land, ideology, demands for self-determination and cultural disputes. The main parties to the conflict since 1983 were those supporting the government - including the Sudanese People's Armed Forces (the national army), the paramilitary Popular Defense Forces, and various militia groups known as the *Murahaleen* - and the opposition forces made up of the SPLA and various allied militias. The drive for oil and territorial control over the oil fields was central to the war between the government and the armed opposition forces, as well as to the ongoing conflict between the various militia factions. For example, the 1,600 km oil pipeline, which came into operation in August 1999, continued to be the target of repeated attacks by opposition forces. In addition to the conflict between the regular army and the SPLA, another conflict raged between the various militias allied with the government or the SPLA. These forces frequently changed sides depending on their perceived interests or simply the supply of arms. It was estimated that during the past few years more people had lost their lives as a result of interfactional fighting between militias than in armed encounters with government forces. The GoS pursued a policy of providing support and weapons to the various militia commanders and encouraging interfactional fighting, which resulted in widespread destruction and destitution for the local civilian population.

The Southern division was centered around the different tribes. The South is divided into two major tribes that are at war with each other: the Dinka, the largest tribe, and the Nuer, the second largest tribe in Southern Sudan. Both have been burning homes, villages, community structures, and grain, and killing women and children, which have been the proximate cause of several famines in recent years. Control over oil has played a major role in this war. In the Eastern Upper Nile, the Nuer government militias have been actively attempting to drive opposing forces

out from the areas adjacent to the oilfields. The GoS has also attempted to move about 100,000 civilians and rebels away from oil installations, which triggered the SPLM/A's capture of Torit, which controls a major road to the government-held Juba, the principal city in Southern Sudan.

In attempt to bring peace and stability to the region, in December 1993, the leaders of Eritrea, Ethiopia, Uganda, and Kenya launched a peace initiative under the auspices of the Inter-Governmental Authority for Development (IGAD). Both the GoS and the SPLM/A agreed that the IGAD should assume the task of mediating their differences in an effort to contribute to a lasting peace in Sudan. The IGAD has made some progress, as the negotiating parties have accepted the 1994 Declaration of Principles (DOP) as the basis for negotiations, albeit with some resistance from the GoS. The DOP, in essence, gives the unity of Sudan a chance, while it also allows the people of South Sudan to opt for independence should it become necessary. However, the division in Sudan grew in 1999, when President Bashir dissolved the National Assembly and declared a state of emergency following a power struggle with parliamentary speaker, Hasan al-Turabi. That year, Sudan began exploiting the oil fields from Southern Sudan.

In July 2001, Egypt and Libya attempted to bring peace to Sudan through their Joint Egyptian Libyan Initiative, which established a Declaration of Principles calling for an all-party transitional government, but does not deal with the issue of self-determination for the South. The GoS accepted the DoP without reservation and the SPLM/A accepted it with conditions. Peace seemed very distant until January 2002, when the SPLM/A merged with the SPDF, and the SPLM/A came to agreements with the Sudan Alliance Forces (SAF) in the North, the Umma Party and the Popular National Congress party, which encouraged the Khartoum government to further negotiate. That same month, the GoS and the SPLM/A signed a landmark ceasefire agreement providing for a six-month renewable ceasefire in the Nuba Mountains region of south-central Sudan. Additionally, in July 20, 2002, through IGAD, the GoS and the SPLM/A reached an agreement on the issues of the right to self-determination and the separation of state and religion. This agreement came to be widely known as the Machakos Protocol. However, the Machakos Protocol is not a comprehensive agreement but a framework for negotiations. After the Machakos Protocol, the Joint Egyptian Libyan Initiative was dropped. Various other agreements followed. However, besides obtaining a cease-fire and minor agreements on power and wealth sharing, the IGAD peace negotiations have been slow. No agreements as to the contentious details of this 20-year war have yet been made.

DELEGATION INSTRUCTIONS

1. BACKGROUND

The Arab Republic of Egypt (Egypt) invaded Sudan in 1820 under the Ottoman empire. In 1885, Egyptian rule ended, but it returned in the form of the Anglo-Egyptian condominium from 1898 until Sudan won its independence on January 1, 1956. Unlike the United Kingdom, Egypt continued to exert considerable influence over development in Sudan. Egypt's interest in the Nile waters is what keeps Egypt's focus on Sudanese politics. An estimated 95 percent of all Egyptians depend on the Nile for water. Beyond water, Egypt is interested in Sudan's political arrangement because regional stability would open the doors to investments in the region.

In July 2001, Egypt along with Libya formulated their own peace agreement for Sudan, which Sudan as well as the National Democratic Alliance (NDA) have agreed to. However, the SPLM/A have not agreed to the Egyptian—Libyan peace initiative. The Joint Egyptian-Libyan Initiative provided for a united democratic government that protected the human rights of all Sudanese people. However, it did not provide the South with the right to self-determination, which is why the SPLM/A rejected the peace initiative. Egypt stuck to its peace initiative and did not want to work with the IGAD as an observer. Egypt wanted control over the mediation to assure that whatever the outcome would be, there would be no room for two separate states. Egypt fears the Protocol could lead to Sudan's partition and creation of "an obscure entity" that would reduce Egypt's share of the Nile waters. After refusing to join the IGAD on various occasions, Egypt has decided to place the peace initiative to the side and play a more active role in the present IGAD peace negotiations.

The Arab League and the African Union (AU) have followed suit in obtaining a much stronger role in the peace negotiations in the hopes of bringing peace to a "United Sudan." In fact, the Arab League has agreed to investment money into developing Southern Sudan. Egypt along with the Arab League and the AU want Sudan to remain whole. The Arab League has called for increased aid to Southern Sudan in order to dissuade the Southern Sudanese from breaking away to form a separate state.

The AU seeks to play a part in a successful peace process in order to gain international recognition for itself and stability for Africa. The AU states as two of its main goals that it will promote the cessation of conflict and help build economic prosperity. The AU knows that the conflict in Sudan is an important stumbling block for Africa, both in terms of the instability it brings to the region and because of the water as well as oil wealth of Sudan. The AU sees Sudan as a potential key to attracting private investors to Africa and boosting the economic growth of the continent. The AU also says that it is in favor of building democratic institutions and bringing the rule of law to the African continent. The AU also promotes cohesion among the peoples of Africa, one of the major problems over which this conflict is being fought. The AU no doubt sees that playing a role in the cessation of conflict in Sudan would bring the AU

legitimacy and favor with the international community. It would probably also bring much needed aid to the region.

2. VIEWS OF OTHER PARTICIPANTS

Both the GoS and the SPLM/A remain very cautious about Egypt's intentions. "Egypt and Libya want to see this process fail," insisted one high ranking GoS official. Furthermore, the GoS fears Egypt because of Egypt's past ties with the SPLM/A. Conversely, the SPLM/A fears Egypt's instance that there be a united Sudan.

The NDA, who receives support from Egypt, welcomes the Egyptian's involvement in the peace talks. Egypt believes that the NDA should be involved in the peace negotiations, which is something the GoS has refused.

The IGAD recognizes the importance of having the Egyptians, the Arab League, and the African Union involved in the peace talks even if it is only as unofficial observers. Their participation is vital to regional stability and development. The internationals also welcome the group and have, in fact, included them in technical as well as political issues that have sprung out from the IGAD Peace Process.

3. ISSUES

a. Self-Determination

Egypt along with the Arab League and the AU want Sudan to remain whole. The Arab League has called for increased aid to Southern Sudan in order to dissuade the Southern Sudanese from breaking away to form a separate state. Furthermore, the AU calls on governments to cease their wars and human rights violations with the prospect of gaining a multi-billion-dollar infusion of assistance from the West.

In the Machakos agreement, the SPLM/A and the GoS agreed that Southern Sudan would enjoy autonomy for six years, after which an internationally monitored referendum to the people of Southern Sudan would be held to "confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession." There will also be a six-month pre-interim period during which an independent Assessment and Evaluation Commission will be established, made up of the parties and representatives from relevant regional and international partners. The group will advocate for a more inclusive transitional period that would involve various governmental reforms, which would convince the Southern voters to opt for a decentralized but united government.

As for the contested areas of Abyei, Southern Blue Nile, and the Nuba Mountains, the group advocates, along with the GoS that the referendum only includes the South within its 1956 boundaries. It excludes the Nuba Mountains, the Eastern Southern Blue Nile, and the traditional Dinka area around Abyei. The GoS insists that because the three areas are geographically located in the North according to 1956 colonial boundaries, they will not have the option of self-determination. Furthermore, the GoS argues that the three areas do not fall under the purview of

peace negotiations between the two parties. The GoS sees the problem as one of underdevelopment, and so a Northern problem that is not a legitimate SPLM/A interest or within IGAD's mandate. It holds firmly to the Machakos Protocol as a reason not to discuss self-determination or state and religion in either of these areas. The NDA condones this stand point because in order to having a lasting peace the issues affecting political parties must be discussed.

The SPLM/A want these areas to be given the right to self-determination as well as be considered in the power-sharing process. The presence of SPLM/A leaders from the Nuba Mountains and Southern Blue Nile on its negotiating team in Machakos strengthens the SPLM/A resolve to push for some form of referendum in these areas.

In November 2002, the Nuba people held a convention in which they affirmed their wish to remain within SPLM/A-administered territory, and the people of Southern Blue Nile followed suit in December. The people of Abyei have not held a convention, but are also reported to favor remaining within SPLM/A territory, thereby ensuring their right to opt for self-determination. However, Abyei is uniquely tied with the SPLM/A given its large indigenous Dinka population and traditional ties with the South, in particular with South Kordofan for historical reasons.

Abyei might have a strong case in its inclusion with the South because of its large indigenous Dinka population and traditional ties with the South, in particular with South Kordofan. However, there are strong reasons for the Nuba Mountains and the Southern Blue Nile exclusion from the South. There are two main reasons: First, they are different: different people, different histories, different experiences and aspirations. Second, it is difficult enough to get the idea of self-determination accepted internationally for the South.

In Africa, it raises the specter of revising inherited colonial borders. African countries may be ready to accept self-determination for the South within the colonial border of the South, but revising that border to include other areas such as the Nuba and Southern Blue Nile runs the risk of jeopardizing even the prospects of a deal for the South. However, the SPLM/A will attempt to obtain the right of self-determination to these areas out of loyalty to its units there.

Along with the issue over the three contested areas is the issue over the ultimate status of the South as a federal, confederal, or separate entity. The group as well as the GoS advocate for a unitary state, with assimilation of the Southern peoples. Conversely, the SPLM/A is advocating for a confederal arrangement during the interim period, which would consist of two states: North and South. The Northern confederal state would embrace the Islamic Constitution passed by the National Assembly, and the Southern confederal state would opt for a secular constitution.

b. Wealth Sharing

The parties have agreed on a structure for resource sharing, including taxation, revenue generation, and transparency mechanisms. Despite this, they remain far apart on the actual percentage distribution of oil and other resources between North and South, with the biggest difference being around the management and share of the proposed Southern Blue Nile, but also ownership of land matters and the modalities for banking and currency, especially since, in December 2002, the SPLM/A announced establishment of a bank and intention to issue currency

for use in areas under its control. The GoS denounced this as an attempt to anticipate the Machakos negotiations and an indication that the SPLM/A was not prepared to accept genuine federalism.

c. Oil

The GoS regards oil fields as vulnerable, strategic assets, which it seeks to defend preemptively through attacks upon Southern insurgents and their alleged civilian supporters. With the start of significant oil production and exports, Sudan's oil export revenues now accounts for around 70 percent of Sudan's total export earnings. Exports have grown sharply since 1999, when the oil export pipeline was completed, turning the country's trade balance from negative to positive.

With the exploration that peace would make possible, exploitable reserves could quickly rise to at least three billion barrels. This could result in income to the GoS of between U.S. \$1 billion to U.S. \$1.5 billion per year for twenty years. The GoS has already mortgaged oil revenues for years to buy weapons. Oil revenue was at least 20 percent of GoS income in 2001, and the military budget consumed about 60 percent of oil revenue in that year.

The GoS has invested heavily in setting up the oilfields and attracting international partners. Any agreement must recognize this stake in current revenues. The GoS holds that within the federal framework, oil revenues and other natural resources should be handled nationally, with an agreed percentage then disbursed to the South.

The GoS's debt will be a major factor in the wealth sharing negotiation, which must also involve a burden sharing element. Both parties agreed to set up a Petroleum Commission that, among other things, would oversee revenues coming from the oil fields of Southern Sudan. However, the sharing of oil revenues has not quite been addressed yet although it remains a burning issue.

d. Water

It is not just oil revenues that must be shared, but also revenues from taxes as well as other productive sectors of the economy, such as gold and gum Arabic, that are in North and South. A much larger potential source of revenue is water, if plans are revived to build a canal to increase flow to Egypt. Egypt strongly advocates that the rights over the water remain in the national government's hand. The national government could then distribute it to other areas.

The Nile river originates from two distinct geographical zones, the basins of the White and Blue Niles. The source of the White Nile is in the Great or Equatorial Lakes Region, and is also fed by the Bahr-el-Jebel water system to the North and east of the Nile-Congo Rivers divide. Its catchment area includes the riparian states of Tanzania, Rwanda, Burundi, Uganda, Democratic Republic of Congo, Kenya and Sudan. The Blue Nile originates in the highlands of Ethiopia and Eritrea, as do the other major tributaries of the Nile, the Atbara and the Sobat. About 85 percent of the Nile's waters originate in Ethiopia and Eritrea, while the majority of the river's water is used in the Sudan and Egypt.

Irrigated agriculture is the largest draw on the waters of the Nile, particularly in Egypt and the Sudan. Pressure on Nile resources is likely to increase dramatically in the coming years as a

result of high population growth rates in all riparian states, and increasing development-related water needs in Ethiopia. Thus, because the Blue and White Nile meet at Khartoum, Sudan has additional leverage with the nine other states that make up the Nile basin.

In 1929, the Nile Waters Agreement was concluded through an exchange of notes between the British High Commission in Cairo and the Egyptian government. The agreement heavily favored Egypt's "historic rights" allocating for Egyptian use 48 bcm per year, only 4 bcm for Sudan, and leaving 32 bcm per year unallocated. Tensions increased between Egypt and Sudan in 1956-1958, as Sudan voiced further objections to the Aswan High Dam and continued demanding a renegotiation of the 1929 agreement.

Egypt subsequently withdrew its support for the Sudanese project to build a reservoir at Roseires on the Blue Nile, and Sudan unilaterally declared its non-adherence to the 1929 agreement. In 1959, the two countries re-negotiated the 1929 agreement and developed the 1959 Agreement between Sudan and Egypt. The new agreement set Egypt's share of Nile waters at 55.5 bcm per year and allocated to Sudan's an allotment of 18.5 bcm per year.

At the current time, tensions in the Nile River Basin are contained by a number of factors, including Egypt's political and military dominance, the civil war in the Sudan and negligible use of water by other upstream riparians. Concurrently, however, other factors are working to increase the potential for conflict over water in the basin: high population growth in both upstream and downstream countries, accompanied by subsequent demand for increases in agricultural irrigation; nascent development in Ethiopia; environmental degradation of established Egyptian irrigated land; and the possibility of an eventual end to the Sudanese war, which would spur development in Sudan.

Representatives of the South signed the 1972 Addis Ababa Agreement, which they felt would protect the Southern interests in the waters of the Nile and allow a plebiscite on independence for the South by 1977. But Egypt and the Northern part of Sudan undermined the agreement by a separate plan to dig the Jonglei Canal, which would divert the waters of the Nile around the agricultural and cattle lands of the South and deliver it to the North and to Egypt. The Jonglei canal would reduce water loss through evaporation in the marshes of the Sudd. Southerners are opposed on environmental grounds, saying as evaporation diminishes, rainfall lessens. Grass, forest and fishing grounds could disappear. The construction of the Jonglei canal through the Southern swamps to increase the flow of water in the Nile downstream to Northern Sudan and Egypt threatened the balance of dry and wet season grazing in the Dinka and Nuer areas. The Southerners refused this agreement in 1975.

In 1993, the Nile Basin Initiative (NBI) was formed as a regional partnership that brings together all the Nile basin countries with the aim of achieving sustainable development and management of the Nile waters. Member-countries are Burundi, the Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, and Uganda. In August 2000, the NBI endorsed the project areas included hydro-electric power development, power sharing cooperatives, river regulation, water resources and management, trans-boundary environment action, regional power trade, and efficient water use of agricultural production.

e. Power Sharing

The group promotes a decentralized system within a united Sudan, which guarantees the principle of multi-party democracy, freedom of judiciary, separation of powers and securing the freedom of expression and organization. The powers of the federal government should be limited to national sovereignty, currency, armed forces, planning, and the constitutional judiciary. All other powers should be allocated to the states. The ultimate objective is to dilute the present regime in Khartoum, replacing the ruling party's exclusive authority with a broader government that would create the environment for democracy during the interim period.

At the bare minimum, a broad-based government in which all Sudanese parties have a stake must lead during the interim period, some reduction of the powers of the presidency must be negotiated to give democracy a chance, and specific timetables for elections should be established in the agreement itself. Democratization will ultimately be a key guarantee of full implementation of the agreement and the country's unity.

f. Representation in the National Government

In recognition of the importance of having an open system that represents a wider set of constituencies, the SPLM/A advocates that all political parties should be fully integrated into the national government in order to guarantee the changes needed there and help make national policy. The parties have agreed in principle that the national government should include a bicameral legislature, with a lower house reflective of state populations and an upper house with equal representation from all states. The GoS agrees that an equitable level of Southern participation must be safeguarded, but it disagrees over the actual percentage of Southern representation in the various organs of power. The GoS accepts to have a national census during the interim period to decide on the South's proportion of the national population.

g. The National Capital

The SPLM/A believes that the shared capital should be secular. The GoS is unwilling to compromise on the issue of whether the capital should be secular. In fact, President Bashir stated that the capital "will never be secular." The GoS argues that Khartoum is an integral part of Northern Sudan as well as the capital, and, thus, it will not be secular. Furthermore, the GoS argues that the SPLM/A is trying to renegotiate issues resolved implicitly in the Machakos Protocol while the SPLM/A says that this is a national matter and thus not addressed by the agreement to allow *Shari'a* law in the North.

In the Machakos Protocol, the SPLM/A and the GoS agreed to allow *Shari'a* law in the North. The Machakos Protocol affirmed the right of the South to a secular administration, by providing that the national government can "introduce legislation so as to allow or provide for institutions or practices in that region [that are] consistent with their religion or customs," while confirming the role of *Shari'a* in the North. However, the SPLM/A argues that it agreed to have *Shari'a* as the basis of legislation in the North, but there was no agreement on the status of the capital, Khartoum.

h. Security

Egypt, the Arab League and the AU do not have a prominent position on security. Follow the view of the NDA.

i. Humanitarian Issues

Egypt, the Arab League and the AU do not have a prominent position on human rights. Follow the view of the NDA.

4. MAIN OBJECTIVES

- Egypt disagrees with the referendum and advocates for a united Sudan.
- Egypt believes that the oil revenues should be used to build up Southern Sudan and that the rights of the Nile river should be left up to the national government.
- Egypt prefers a decentralized administrative system that guarantees a multi-party democracy, freedom of judiciary as well as separation of powers.

Appendices

Appendix A – Websites for Further Information on the Conflict

MAPS

Perry-Castaneda Library Map Collection of the University of Texas at Austin
http://www.lib.utexas.edu/Libs/PCL/Map_collection/sudan.html

Save the Children UK maps of Southern Sudan
<http://www.state.gov/www/issues/relief/sudan.html>

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Appendix B - Background Paper on Humanitarian Issues Caused by the Conflict

International law today is changing from being more state-orientated to focusing on the protection of human rights and seeking accountability of those individuals, not merely states, who are responsible for violations of these rights. War and war-like conflicts seem to go hand in hand with brutalities and flagrant violations of the law and human dignity. International humanitarian law is concerned with the protection of civilians, combatants and persons *hors de combat*. Hostilities in armed conflict inevitably have the strongest effect on the most vulnerable people that are present in the area where the conflict is taking place. Three vulnerable groups that have been identified by the international community as in need of extra protection are refugees and internally displaced persons (IDP), women, and children. Many international treaties seek to protect refugees and IDP, United Nations strives to mainstream a gender sensitive policy in all UN institutions, and most recently the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict has entered into force.

Refugees and Internally Displaced Persons (IDP)

I. The international law governing refugees and internally displaced persons

International instruments that govern the rights and protection of refugees and internally displaced persons are the 1951 Convention Relating to the Status of refugees, the 1967 Protocol, the 1967 Convention governing the specific aspects of refugee problems in Africa, and the Guiding Principles on Internal Displacement.

The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee. Furthermore it assesses what their rights are and what legal obligations rest on states in this respect. Amongst many others Burundi, DRC, Rwanda and Uganda are state parties to both the 1951 Convention and the 1967 Protocol. The 1967 Protocol removed geographical and temporal restrictions from the Convention.

Key issues that need to be dealt with are malnutrition, health & epidemic problems (the World Health Organization has recently reported on a cholera outbreak, see WHO website: <http://www.who.int/disasters/emergency.cfm?emergencyID=8&doctypeID=2>), asylum rights, minority rights.

Position of Women

I. Prohibition of rape and sexual violence under international humanitarian law and women's rights

Despite the clear prohibition of rape and sexual assault by international law, no conventional or other international instrument defines this international crime. Rape and other crimes of a sexual nature are explicitly prohibited in the Geneva Conventions of 1949 and the two additional protocols. Article 27 of the Fourth Geneva Convention (Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted 12 August 1949) applicable to international armed conflicts provides: "Women shall be especially protected against any attack

on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.” Similar provisions can be found in Article 76 (1) of Protocol I and in Article 4(2) (e) of Protocol II. (Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, entry into force 7 December 1978 and Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts, entry into force 7 December 1978). The latter applies in situations of non-international armed conflict.

In the Statute of the International Criminal Court rape and outrages upon personal dignity are explicitly listed as separate offences under War Crimes in Article 8 paragraph 2 (b) subparagraphs (xxi) and (xxii). Many interesting reports on this issue can be found on the United Nations website (www.un.org), one of which is: Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflicts, Report of the High Commissioner for Human Rights, 27 June 2000, E/CN.4/Sub.2/2000/20

Another very important document which is often described as an international bill of rights for women is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 (UN General Assembly).

II. Recommendations

Gender mainstreaming through national institutions

It is imperative that any attempt to improve the situation of women in Sudan finds its way through regional systems even though it is based on international law notions. An enforced westernized model that does not succeed in its goals or survives simply because it does not meet the needs and demands of the situation at hand would not be suitable for its purpose. Gender mainstreaming should take place in at all levels and in every aspect, such as equitable treatment under and access to the justice system, access to education, work, and health care. Gender mainstreaming benefits economic development, community development, and creates healthier and more wealth for families.

Adequate protection and legal redress

Victims of sexual crimes in armed conflict rarely have access to adequate legal redress. It is unimaginable for them to simply call the local police to report the crime and expect to have that crime properly investigated. In many cases institutions such as the World Bank finance projects relating to access to justice, empowerment of women, and gender mainstreaming.

Deterrence and Prevention

The foundations of gender-based violence lie in the low status which women and girls have in society. To end the cycle of sexual violence and discrimination, which are aggravated in armed conflicts, the equal rights of women in society must be promoted and protected. Without the full equality and participation of women in the economic, political and cultural life of their societies, any measures taken to prevent the systematic rape and sexual slavery of women during armed conflict, in fact any form of gender-based violence, will fail.

A critical and practical point of consideration in deterrence of future crimes against women is related to the many women that stay in refugee camps. In refugee camps there should be a

separation between different parties and between men and women in order to prevent further attacks within the compound. Women due to their weaker position are often victimized, get less relief than male refugees (or in return for sexual favors), and are subject to nightly retributions. Furthermore, there should be a facility where people can have their story registered. This will facilitate future justice and prevents the disappearance of anonymous victims.

Medical assistance

In a report submitted by the High Commissioner for Human Rights, the Committee on the Elimination of Discrimination against women recommends specific legislative and structural steps to shelter women from attacks and abuse. Further, it is suggested to provide women who are victims of violence with comfort, assistance, advice, guidance and information concerning legal redress. (Report of the High Commissioner for Human rights, on: *Contemporary Forms of Slavery; Systematic rape, sexual slavery and slavery-like practices during armed conflicts*, E/CN.4/Sub.2/2000/20. These recommendations relate to the women suffering under attacks from terrorist groups in Algeria, however, they are equally relevant to the situation in DRC).

Child Soldiers

I. International law governing child soldiers

International humanitarian law gives children special protection and sets a minimum age for participating in hostilities. The international law that deals with the issue of child soldiers consists of the 1949 Geneva Conventions and the 1977 Additional Protocols, the Convention on the Rights of the Child of 20 November 1989, The Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000 (entry into force 12 February 2002), the ILO Convention 182 on the Worst Forms of Child Labour of 1999 (particularly articles 1 and 3), and the African Charter on the Rights and Welfare of the Child of 1990. (For the text of these treaties see www.icrc.org under humanitarian law > children in war).

The Convention on the Rights of the Child (CRC) establishes the definition of a child. When dealing with the applicable legal regime for children and armed conflict the Convention defers to the Geneva Conventions and Additional Protocols. In the CRC all provisions apply to children of the age of 18 and younger. However, the deferral to the Geneva Conventions creates a discrepancy with regard to the age limitation that has been set. Under Geneva law a child is allowed to participate in hostilities from the age of 15 and older. Participation from the age of 15 to 18 it is permissible under certain conditions, such as voluntary participation, no conscription etc. The part of the Geneva Conventions that applies to internal armed conflict is Common Article 3 which offers a more narrow protection than the other provisions of the Geneva Conventions which applies to international armed conflict. Thus, it seems that children between the age of 15 and 18 may participate in hostilities and therefore may be held liable for crimes they commit. However, the most recent Optional Protocol to the CRC on children and armed conflict reiterates a child as a person of the age of 18 and younger. Thus it prohibits the participation of children in hostilities. Pay attention to the language of the protocol: is it an obligation or a recommendation? This is relevant in cases of prosecution under national law.

The ILO Convention qualifies the use of children as soldiers in war and other hostilities as one of the worst forms of forced labor. The Convention also qualifies a person under the age of 18 as a child. With regards to age the ILO Convention uses the CRC definition.

II. Accountability of child soldiers

The case of forced child soldiers has been addressed for the first time in the context of the Special Court for Sierra Leone. The Special Court deals with the issue of child soldiers under specific provisions. It is focused on children between the ages of 15 to 18. The fact that they can be held liable is yet very controversial. However, it has been expressed that the overall goal is to prosecute those with the most responsibility. This is formulated in the introduction and the objective of the Statute of the Special Court. This has been interpreted to mean the leaders, those who forced the children to take part in the hostilities. Definitely the prohibition is clear on the age of 15 and below. Also the way of recruitment is taken into consideration. The persons that can be deemed responsible can be prosecuted for the war crime of forcibly recruiting children. (the prosecutor of the Special Court has stated not to prosecute the children themselves). The International Criminal Court also has jurisdiction to prosecute the conscripting and enlisting of children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities, under the war crimes provision, article 8 (xxvi), of its Statute. (unless the signatory State to the ICC Statute decides to prosecute the offender(s) itself).

III. Recommendations and Rehabilitation

The battle to help the child soldiers is not just limited to preventing recruitment, but extends to rehabilitation. There are many reports issued on the psychological effects on children. The international community gives a strong push for rehabilitation. Even when children were to be prosecuted the punishment should be in the form of rehabilitation. (http://www.hrw.org/press/2001/05/congo_soldiers0529.htm).