

# Regional Security in the post-Cold War Horn of Africa

Edited by Roba Sharamo and Berouk Mesfin

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# Introduction

During the Cold War, the Horn of Africa was constantly affected by unexpected and sudden conflicts, tense ideological confrontations, territorial disputes, cross-border destabilisation and continued militarisation. Accordingly, prominent authors called the Horn of Africa either a *crisis zone* or a mere *battleground between the United States and the Soviet Union*. The two superpowers were not only deeply involved in the regional states' political and security affairs, but also consistently encouraged the escalation of a regional arms race in the Horn of Africa.

Did such an arms race, wider uncertainties, deliberate interventions and bitter conflicts disappear after the end of the Cold War? It can be said that, at least, reasonable hope arose that there would be a new start, especially with the twin demise of the Mengistu and Siad Barre regimes in Ethiopia and Somalia respectively. The hope was that it would be easier to deal effectively with conflicts of a varying nature and scope. Twenty years ago, it was commonplace to hear experts talk about containing conflicts in the Horn of Africa, preventing their further escalation, and even, in the longer run, addressing their root causes.

Yet, in the Post-Cold War period and beyond the dramatic redrawing of its political map, the Horn of Africa still hosts the deadliest cluster of conflicts globally: South Sudan, Somalia, Eritrea-Ethiopia, Darfur and Ogaden. Eight times as many people have died in the region's recent conflicts as have perished in the more publicised Balkan conflicts. Since the Second World War, no other regional zone of conflicts has produced a greater concentration of deaths and destruction than the Horn of Africa, despite abundant diplomatic initiatives and peace processes. Hence, in terms of sheer human life and the highest rate of population displacement in the world, more is at stake in resolving the deeply inter-linked conflicts in the Horn of Africa than anywhere else in the world.

Above all, conflicts divert resources and governments' attention from bringing about sustainable development, rehabilitating vital infrastructure and effectively fighting drought. Conflicts have seriously undermined the regional states' efforts to ensure long-term stability and prosperity for millions of people who are at risk from rising food and energy prices and who are fighting over water, grazing, firewood and other scarce natural resources. Conflicts have resulted in the massive displacement sometimes of whole populations, leaving millions homeless. The social fabric and coping mechanisms of entire societies are affected and the return to normal community life can take years, if not decades, following the destruction of social institutions and ways of life.

All this is compounded by interference from external powers, solidifying the current divisions of the Horn of Africa. The efforts by China, which doubtlessly makes major investments in the region's infrastructure and economic development, to secure supplies of natural resources, the desire of Egypt and Israel to maintain their influence in the region and United States counter-terrorism policies influence politics and security in the Horn of Africa. The US' counter-terrorism policy has recently been particularly significant, deepening political fissures in the region between states aligned with US counter-terrorism initiatives and those at odds with US policy, particularly those believed to support al-Qaeda affiliated groups. Somalia is at the epicenter of this dynamic, as it has become the focus of the US counter-terrorism policy in the region as well as a proxy battleground between Ethiopia and Eritrea.

In response to the deteriorating political and security situation across the region, the Institute for Security Studies has sought to keep researchers and professionals working in and on the Horn of Africa abreast of the most recent and long-lasting developments within the region. It thus organised an Expert Roundtable on *Regional Security in the Post-Cold War Horn of Africa* held on 14–15 April 2010, in Nairobi, Kenya. This monograph contains papers that were presented and extensively discussed at this particular Expert Roundtable.

The monograph primarily attempts to study political decision-making, personalities and historical experiences, and also to identify key issues of intra-state politics and patterns of internal insurgency in the Horn of Africa. It explores the shape of inter-state relations, events, crises, escalatory confrontations, disputes and regional balance of power in the region; and it evaluates the structural foundations, processes, institutions and role of the state in the Horn of Africa. It also provides sufficiently cross-referenced, timely and relevant

information and analysis on aspects of the complex and fast-changing political conflicts in the region, investigate their root causes as well as the possibilities of their prevention, their effective management and their likely impacts.

The monograph also assesses the functioning, successes and failures of the regional organisation, the Inter-Governmental Authority on Development (IGAD), as well as the involvement of the continental organisation, the African Union. It examines the basis for the most significant involvements of external powers in the region and their geopolitical interests. Moreover, it discusses the issues and events related to terrorism in the region. Hence, this monograph critically analyses the forces and factors affecting the structure and evolution of the Horn of Africa as well as its place in world politics.

No monograph or book has to date attempted to study in such an exhaustive manner the political and security dynamics of the Horn of Africa, the contours of which are still obscure. Thus, this monograph will substantially add to the current state of knowledge about issues and events related to this particular region, thereby systematically identifying and projecting future political and security trends. Accordingly, it could serve as a valuable source of information for officials of governmental and inter-governmental organisations, military and security personnel, academics, university students and researchers, as well as civil society organisations and concerned inhabitants of the Horn of Africa. It might also become a catalyst for further studies on the region.

Before the specific analyses are presented, Berouk Mesfin tries to more clearly define the region known as the Horn of Africa and explain in detail the conditioning factors and patterns of regional politics within it. Kidist Mulugeta investigates the numerous and diverse causes of the war between Ethiopia and Eritrea as well as its course, and then analyses the different prospects for this unresolved conflict. Daniel R. Mekonnen and Paulos Tesfagiorgis seek to throw light on a more holistic transitional justice approach that could address the causes and consequences of the conflict between Ethiopia and Eritrea.

Kizito Sabala discusses the role of regional and extra regional players in promoting insecurity in Somali and considers its implications for regional security. Matteo Guglielmo examines the features, evolution and complexity of the Somali Islamist insurgency known as *Harakat Al-Shabab Mujahideen*, including its leadership, ideology and organisation. Aleksis Ylönen explores the political situation in Sudan after the signing of the Comprehensive Peace Agreement and critically evaluates future prospects, including the possibility



of renewed hostilities and the viability of an independent South Sudan. Lesley Anne Warner offers an analysis of the Obama Administration's Sudan strategy and illustrates the ways in which the interests of the United States in the Horn of Africa could be affected by the chain of events in Southern Sudan.

Leanne McKay discusses maritime security with special emphasis on the threat of piracy, which has prompted an unprecedented international response. She argues that fair and effective prosecutions should be conducted in conjunction with international actions at sea and additional security measures on land. Tesfaye Tafesse surveys the advantages and continuous challenges of Nile Basin cooperation and institution-building efforts, including the ongoing Nile Basin Initiative and the Cooperative Framework Agreement. M. Venkataraman and Solomon Mebrie explore the antagonistic relations between Eritrea and Yemen, including its evolution and determinant factors such as the maritime border, domestic socio-political deficits and perceived resources in the Red Sea, as well as the complex interaction between regional and international elements. Markus Virgil Hoehne examines the peculiar political dynamics within relatively stable Somaliland, which, despite the lack of international recognition, fulfils most criteria of the common designation of a *de facto* state. He argues that Somaliland's state formation is a complex process that is influenced by the situation in the rest of Somalia.

Kasaija Phillip Apuuli sums up the different aspects of the peace and security strategy of IGAD and discusses whether this strategy is the panacea to decisively deal with the peace and security issues in the Horn of Africa. Mupenda T. Wakengela puts into perspective the background and circumstances of the establishment of AMISOM and assesses the constraints facing the mission before looking at its prospects. He argues convincingly that, unless major Somali political groups agree to a comprehensive peace framework, AMISOM will not succeed in Somalia. Finally, Krista Nerland seeks to trace and analyse the challenges that the African Union faced throughout its engagement in Sudan, from the beginning of AMIS to UNAMID. She also seeks to determine how the African Union's peace and security architecture can be strengthened for future engagements within and beyond the Horn of Africa.



# 1 The Horn of Africa security complex

BEROUK MESFIN

## INTRODUCTION

This chapter is the product of more than a decade of research conducted by the author on the Horn of Africa, and draws on his numerous discussions with foremost analysts and top-level decision-makers<sup>1</sup> whose policies are increasingly influenced by regional politics. It also derives from the frustration of the author, who has seen particular overblown, trivial issues – such as the irrepressible obsession with piracy – being amplified, whereas more pressing and substantive security challenges, such as the lethal danger of ferocious and irreducible conflicts, are being benignly disregarded. Such a confounding situation has simply made the author fear for the long-term security of the region. As a result, the author has tried to generally summarise and synthesise the conflicts and security dynamics in the Horn of Africa from a regional perspective and for the past five or six decades.

Nonetheless, explaining the environment and dynamics of regional security is necessarily an arbitrary exercise for students of international relations,<sup>2</sup> depending on which elements appear to them as most significant and on the prevalent political and strategic realities. Fortunately, Barry

Buzan offers a strong conceptual framework. From the perspective of this chapter's author, this conceptual framework provides an adequate unit of analysis that facilitates comparison and generalisations to a very high degree. It has also enabled the author to offer, in the simplest way possible, deeper insights into the security trends in the Horn of Africa and to tell the bigger picture without directly applying the conceptual framework to materials of the region. Accordingly, this chapter will first outline, as briefly as possible, the major tenets of Buzan's conceptual framework. It will then proceed to provide a basic definition of the region known as the Horn of Africa and explain, in greater detail, the major elements and patterns of regional politics within it.

## WHAT IS A SECURITY COMPLEX?

First published in 1983 and republished in 1991, Buzan's pioneering study, *People, states and fear*, was the first sustained and serious attempt to put forward guiding ideas pertaining to the concept of regional security.<sup>3</sup> One major benefit of Buzan's conceptual framework is that it enables analysts to challenge prevalent conceptions and 'talk about regional security in terms of the pattern of relations among members of the security complex'.<sup>4</sup> The following is a brief consideration of Buzan's most significant precepts rather than a comprehensive survey of his conceptual framework.

In the first place, and in security<sup>5</sup> terms, Buzan argued that a region means that 'a distinct and significant subsystem of security relations exists among a set of states whose fate is that they have been locked into geographical proximity with each other'.<sup>6</sup> Moreover, military and political threats are more significant, potentially imminent and strongly felt when states are at close range. Buzan stressed that regional security systems such as those of South Asia, for instance, with its military stand-off between India and Pakistan, can be seen in terms of balance of power as well as patterns of *amity*, which are relationships involving genuine friendship as well as expectations of protection or support, and of *enmity*, which are relationships set by suspicion and fear, arising from 'border disputes, interests in ethnically related populations [and] long-standing historical links, whether positive or negative'.<sup>7</sup>

According to Buzan, these patterns are confined in a particular geographical area. Buzan used and popularised the term 'security complex' to designate

‘a group of states whose primary security concerns link together sufficiently closely that their national securities cannot realistically be considered apart from one another’.<sup>8</sup> Such complexes ‘are held together not by the positive influences of shared interest, but by shared rivalries. The dynamics of security contained within these levels operate across a broad spectrum of sectors – military, political, economic, societal and environmental’.<sup>9</sup>

Buzan’s conceptual framework provides meaningful insights both into how different types of conflict suddenly erupt and quickly spread in space and time, and also into the interplay between these different types. Security complexes are exposed to four major types of threats and their interaction: balance of power contests among great powers; lingering conflicts that emerge between neighbouring states; intra-state conflicts, which are usually spillovers of internal politics; and conflicts that arise from transnational threats caused, for instance, by the rise of radical Islam and informal networks, state fragility, demographic explosion, environmental degradation and resource scarcity.

## THE HORN OF AFRICA

### Delineating the Horn of Africa

In a narrow geographic sense, the Horn of Africa is that north-eastern part of the African continent which faces the Red Sea to the east, the Indian Ocean to the south-east and the Nile Basin to the west. The Horn of Africa conventionally comprises the key states of Ethiopia, Somalia and Djibouti, although it embraces geopolitically the adjoining states of Sudan and Kenya.<sup>10</sup> It should also be pointed out that Uganda,<sup>11</sup> which is a member of the Intergovernmental Authority on Development (IGAD), and Yemen, Libya and Egypt are no less involved in the issues and processes of the region and certainly have an impact on power balances and developments. All these states share social and cultural values emanating from a centuries-old tradition of interrelationships, common religious practices and economic linkages. Furthermore, the political fate of each state in the region has always been inextricably intertwined with that of neighbouring states. Indeed, no individual state in the Horn of Africa has been insulated from the other states’ problems, irrespective of their distance and comparative strengths or weaknesses.

The six states which make up the Horn of Africa cover an area of around five million square kilometres and had in 2000 a total population of about 130,1 million, which grew to 170 million in 2008. The region's average population growth rate of not less than 2,9 per cent is one of the highest population growth rates in the world, and nearly half of the population is under 14. In 2000 in the Horn of Africa, which is the meeting point between Muslim, Christian and Animist cultures, Muslims constituted a slight majority, making up some 44 per cent of the total population; 43 per cent were Christians.

The Horn of Africa can be characterised as the most deprived and poorest region in Africa, if not in the world (see Table 7). It is a region where the most basic necessities (clean water, food, healthcare and education) are not available to the majority of the population. In the Horn of Africa, per capita income, life expectancy and literacy are among the lowest in the world, and adult and infant mortality are among the highest. The region is prone to deadly droughts that hamper crop and livestock production. These droughts result in food deficits each year, thereby making the Horn of Africa one of the regions with the greatest food insecurity in the world. In 2008 in the Horn of Africa, an estimated 17 million people were in need of emergency assistance.<sup>13</sup>

Furthermore, the Horn of Africa is the most conflict-ridden region in the world,<sup>14</sup> with conflicts – exacerbated by external interference and accompanied by widespread human rights violations – raging sometimes simultaneously within and between states. In fact, the African continent's longest-running intra-state conflicts – in Eritrea and South Sudan, with an estimated death toll of over two million – took place in the Horn of Africa. It is also generally held that, due to the aforementioned disasters, both natural and artificial, the Horn of Africa has the highest percentage of refugees – estimated to have reached 700 000 in 2003, which is roughly equivalent to Djibouti's population – and internally displaced people in Africa, a trend that reinforces future cycles of conflict. In 2008, the total number of internally displaced people in Kenya, Somalia, Ethiopia and Uganda was estimated at 2,74 million, out of which an estimated 1,3 million were displaced in Somalia, which is one of the world's worst humanitarian disasters.<sup>15</sup> In 2010, in Sudan alone there were more than four million internally displaced people, virtually Eritrea's entire population.<sup>16</sup>

**Table 1** Area, population and religious composition of states in the Horn of Africa

State	Area (km <sup>2</sup> )	Population estimate in 2008 (millions)	Population estimate in 2000 (millions)	Christians in 2000 (millions)	Muslims in 2000 (millions)	Animists in 2000 (millions)
Djibouti	23 000	–	0,7	–	0,7	–
Eritrea	121 000	5	3,8	1,9	1,9	–
Ethiopia	1 098 000	78	60	30,8	22 <sup>2</sup>	7,2
Kenya	583 000	36	28,3	22,1	2,8	3,4
Somalia	637 000	9	8	–	8	–
Sudan	2 506 000	42	29,3	2,4	21,9	5
<b>Total</b>	<b>4 968 000</b>	<b>170</b>	<b>130,1</b>	<b>57,2</b>	<b>57,3</b>	<b>15,6</b>

Source Compiled by author

Table 2 Intra-state conflicts in and around the Horn of Africa

State	Selected rebel movements	Year of origin	Motivation	Active regional backing
Djibouti	Front for the Restoration of Unity and Democracy	1991	Change of régime	Eritrea
Eritrea	Eritrean Islamic Jihad	1989	Change of régime	Sudan
	Afar Red Sea Democratic Front	1998	Autonomy	Ethiopia
	Eritrean Democratic Alliance	2008	Change of régime	Ethiopia
	Eritrean Liberation Front	1961	Secession	Sudan; Somalia; Egypt
	Eritrean People's Liberation Front	1972	Secession	Sudan; Saudi Arabia
Ethiopia	Tigray People's Liberation Front	1975	Autonomy and change of régime	Sudan
	Oromo Liberation Front	1976	Secession	Sudan; Somalia; Eritrea
	Western Somali Liberation Front	1961; 1976	Secession	Somalia
	Ogaden National Liberation Front	1986	Secession	Eritrea
	Ethiopian People's Patriotic Front	1998	Change of régime	Eritrea
Kenya	Shiftya war	1963	Secession	Somalia
Libya	National Front for the Salvation of Libya	1981	Change of régime	Sudan



State	Selected rebel movements	Year of origin	Motivation	Active regional backing
Somalia	Somali Salvation Democratic Front	1979	Change of régime	Ethiopia
	Somali National Movement	1981	Secession	Ethiopia
	Al Itihad Al Islamiya	1983	Islamisation	Sudan; Eritrea
	Somali Patriotic Movement	1989	Change of régime	–
	United Somali Congress	1989	Change of régime	Ethiopia
	Al Shabab Al Mujahedeen	2006	Change of régime	Eritrea
	Beja Congress	1958	Autonomy	Eritrea
	Anyanya	1960	Secession	Ethiopia
Sudan	Sudan People's Liberation Army	1983	Secession	Ethiopia; Libya; Uganda; Eritrea; Kenya
	National Democratic Alliance	1995	Change of régime	Eritrea; Ethiopia
	Justice and Equality Movement	2003	Darfur	Eritrea; Chad
	Sudan Liberation Movement	2003	Darfur	Eritrea
Uganda	National Resistance Army	1981	Change of régime	–
	Lord's Resistance Army	1987	Autonomy	Sudan

Source Compiled by author

**Table 3 Selected inter-state conflicts in and around the Horn of Africa**

Year	Type of inter-state conflict	States involved	Major contentious issue or area	Other issues
1964	Brief armed conflict	Ethiopia and Somalia	Control of Ethiopia's Somali-inhabited territory	–
1960s	Tensions	Kenya and Somalia	Control of Kenya's Northern Frontier District	–
1977–1978	Full-scale war	Ethiopia and Somalia	Control of Ethiopia's Somali-inhabited territory	US-Soviet competition
1979	War of words	Egypt and Ethiopia	Nile River	–
1994–1995	Armed clashes	Sudan and Egypt	Territorial dispute over the oil-rich Halaib Triangle	Islamist threat
1994–1998	Tensions	Sudan and Eritrea	Islamist threat	Regional influence
1995–1998	Tensions	Sudan and Ethiopia	Sudanese link to the Mubarak assassination attempt	Support to rebel movements
1995	Brief armed confrontation	Eritrea and Yemen	Territorial dispute over the strategic Hanish Islands	Control of mineral and fishing resources
1998–2000	Full-scale war	Eritrea and Ethiopia	Territorial dispute	Economic policies; regional hegemony
2006–2008	Intervention	Ethiopia and Somalia	Ethiopia intervened militarily	Global war on terrorism
2008–2010	Brief armed confrontation	Eritrea and Djibouti	Territorial dispute	Ethiopian-Eritrean conflict
2009	Tensions	Kenya and Uganda	Territorial dispute over Migingo Island	–

*Source Compiled by author*

**Table 4** Military balance in the Horn of Africa (1972)

Military asset	Ethiopia	Kenya	Somalia	Sudan
Personnel strength	44 000	6 000	13 000	36 000
Tanks	50	–	150	130
Combat aircraft	46	–	21	40

*Source International Institute for Strategic Studies<sup>17</sup>*

**Table 5** Military balance in the Horn of Africa (1989)

Military asset	Djibouti	Ethiopia	Kenya	Somalia	Sudan
Personnel strength	4 000	315 000	23 000	65 000	72 000
Tanks	–	750	76	290	175
Combat aircraft	–	143	28	63	45

*Source International Institute for Strategic Studies<sup>18</sup>*

**Table 6** Detailed military balance in the Horn of Africa (2007)

Military asset	Djibouti	Eritrea	Ethiopia	Kenya	Somalia	Sudan
Budget (\$ million)	26	65	345	445	–	335
Personnel strength (regular):						
■ Ground force	8 000	200 000	150 000	20 000	–	100 000
■ Air force	250	1 000	2 500	2 500	–	3 000
■ Naval force	200	350	–	1 620	–	1 800
Tanks	–	150	250	78	–	270
Combat aircraft	6	8	48	29	–	36
Helicopters	4	5	37	53	–	23

*Source International Institute for Strategic Studies<sup>19</sup>*

**Table 7** Gross domestic product (GDP), per capita GDP and Human Development Index (HDI) rank in the Horn of Africa

State	GDP (\$ billion)	Per capita GDP (\$)	HDI rank
Djibouti	0,83	1 000	149
Eritrea	1,0	224	157
Ethiopia	15,0	181	169
Kenya	29,8	795	148
Somalia	–	–	–
Sudan	45,7	1 186	147
<b>Total</b>	<b>92,3</b>	<b>677 (average)</b>	<b>–</b>

Source Getachew Mequanent<sup>20</sup>

## The colonial legacy

The seeds of the current conflicts in the Horn of Africa to a large extent go back to the European colonial experience in that region, even though most of the conflicts' root causes pre-date this experience.<sup>21</sup> Indeed, at the end of the 19th century and after the construction of the Suez Canal,<sup>22</sup> the European colonial powers partitioned the previously free constituent parts of the Horn of Africa, joining unrelated areas and peoples into territorial units. The establishment of new states (Sudan got its independence in 1956, British and Italian Somaliland in 1960, Kenya in 1963, and Djibouti in 1977, whereas Eritrea was federated with Ethiopia in 1952 and forcefully gained its independence in 1993, leaving Ethiopia landlocked) was, therefore, based on misdrawn borders which were agreed upon by the colonial powers and basically ignored ethnic, cultural, historical and religious groups' natural lines. As a consequence, this gave rise to intra-state conflicts (in particular, demands for autonomy from ethnic groups) and to the regimes of the newly independent states lodging territorial claims, which, in turn, led to conflict with other states.

The challenge was compounded by the fact that the framework of colonial laws and institutions had been designed to exploit local divisions rather than to overcome them. Colonialism also disrupted the political, social and economic lives of pastoral societies. The emergence of colonial ports as well as the

development of modern transport systems disrupted the ancient trade networks on which pastoralists depended, and coastal markets disappeared in many cases. Moreover, transportation networks and related physical infrastructure were designed to satisfy the needs of the colonial powers rather than support the balanced growth of an indigenous economy. During the same period, by taking advantage of inter-European rivalries, the Ethiopian rulers doubled through conquest the geographic size of their independent state built on the interior highlands. A vast, multi-ethnic state was created there. The need to maintain intact the unity of this fragile and disparate entity led to the excessive centralisation of political and economic power, which, in turn, stimulated widespread infringement upon local cultures and led to religious coercion and political repression.

Conflicts were also triggered by ethno-centrism arising from colonial rule, which favoured certain ethnic groups by according them access to education and economic privileges. This was at the expense of other ethnic groups in the context of the divide and rule tactics employed by the colonial powers, and inflicted deep societal wounds in some states. In the post-colonial era, ill-advised policies have entrenched colonially designed disparities and chronic injustice, thereby worsening ethnic animosities and antagonisms in most states of the region. Such a legacy lives on especially in Sudan, where a pernicious conflict was resuscitated in 1983 as a result of former president Gaafar Nimeiri's imposition of Sharia or Islamic law on all segments of the Sudanese population – Muslims, Christians and Animists alike. The widely perceived racial and religious discrimination against the mainly Christian and Animist black Africans in South Sudan by the mainly Muslim Arabs from Sudan's north and the latter's control of Sudan's governing regimes and economy contributed largely to the commencement of the conflict. This conflict, which provoked an influx of refugees into neighbouring states, including Ethiopia, presented the post-1974 Ethiopian regime with the opportunity to reciprocate Sudan's support for the Ethiopian rebel movements by giving support to the rebel movement emerging in Sudan.

## Political and economic problems

In the Horn of Africa, the nature of state power is a key source of conflict: political victory assumes a winner-takes-all form with respect to wealth and

resources as well as the prestige and prerogatives of office. Irrespective of the official form of government, regimes in the Horn of Africa are, in most cases, autocracies essentially relying on ethnic loyalties. The military and security services, in recent times emerging from a liberation-front background, ensure the hold on power of these militarised regimes.<sup>23</sup> By default, a controlled – not to speak of peaceful – change of power is an exception. And insufficient accountability of leaders, lack of transparency in regimes, non-adherence to the rule of law, and the lack of respect for human and people's rights have made political control excessively important and the stakes dangerously high.

Also, given the highly personalised milieu in which politics operates in the Horn of Africa, 'strong-man benevolent leader[s]'<sup>24</sup> in the likes of Mengistu Haile Mariam, Gaafar Nimeiri or Siad Barre, who were all deeply insecure behind their ruthlessness and vindictive egomanias, were able to shape the political destiny of a state almost single-handedly and enter into either warm or conflictual relations with other states, inducing civilian populations to join in and converting them into military and paramilitary groups.<sup>25</sup> In fact, despite the devastation they brought, such leaders and their behind-the-scenes operators used senseless conflicts to divert popular impatience at their inability to improve conditions. Moreover, these states suffer from a lack of trained personnel who can muster a long-term vision and possess experience in security policy-making and management; such people prefer to go abroad in order to better their lives or escape systematic maltreatment. Leaders exploit the international community's laissez-faire attitude and turn deaf ears to the advice of professional policy advisors and opinion-formers. This automatically leads to what an observer of regional politics described as 'short-term thinking'<sup>26</sup> and clumsy ad hoc decision-making, and eventually to shocks such as the unanticipated Ethiopia-Eritrea war of 1998–2000.

Moreover, political competition in the Horn of Africa is not rooted in viable economic systems. All of the region's states are barely capable of reaching a level of economic development at which even the basic needs of their populations are met. Economic activities are strongly skewed towards primary commodities for export, which are subject to the whims of the fluctuating prices of the international commodity markets. Economic activities are also hampered by external dependence, inadequate infrastructure, shortage of capital, shortage of skilled labour and misguided development policies. Compounding this, the state is unable to provide adequate health and education services or

to remedy mass unemployment, which partly results from unsustainably high population growth.

Furthermore, in order to hold on to power, hold the state together and defend it against the claims and attacks of other states and rebel movements, governing regimes build and maintain military forces of large dimensions (see Tables 4, 5 and 6). They spend a large share of national expenditure on the military in disproportion to their available economic resources and existing security threats. This kind of excessive militarisation eventually entails an increased burden, especially in present times of dwindling resources and economic crises. Excessive military spending is essentially wasteful, resulting in social projects in education or health remaining stagnant or even non-existent. It also heightens the perception of mutual threat, with a wide range of unintended political

**Table 8** Military coups in and around the Horn of Africa

State	Military coups	
	Successful	Failed
Djibouti	–	1991
Egypt	1952	–
Eritrea	–	–
Ethiopia	1916	1960 1989
Kenya	–	1982
Somalia	1969	1951 1978
Sudan	1958 1969 1985 1989	1959 1966 1971 1976 1983
Uganda	1971 1980	1971 1974 1975 1976 1988

*Source Adapted from McGowan<sup>27</sup>*

consequences. On the one hand, external threats will be used, as mentioned earlier, to draw attention from real internal problems; and on the other hand, a politicised, compromised and restless military with its proneness to usurp state power and resources represents a grave danger to inherently fragile regimes as well as their political and security structures.

## Access to shared resources and environmental degradation

Even though the states of the Horn of Africa appear to be independent of each other, 'there may have to be a sharing of resources. An obvious example is the flow of a river ... but shared resources may also be reflected in the cross-border movements of pastoralists'.<sup>28</sup> The most prominent river is the Nile, which has always been an intricate part of the geopolitics of the Horn of Africa. Ethiopia, Sudan and Egypt are geographically partly owners and users of the river, and all three consider it a major security issue.<sup>29</sup> Egypt, in particular, totally depends on the Nile River's waters for its very existence<sup>30</sup> and, therefore, 'the first consideration of any Egyptian government is to guarantee that these waters are not threatened. This means ensuring that no hostile power can control the headwaters of the Nile or interfere with its flow into Egypt'.<sup>31</sup>

Accordingly, Egypt repeatedly made it crystal clear that it would resort to the threat of military action<sup>32</sup> to preserve its portion of the Nile River (the 1959 Egyptian-Sudanese Treaty allocated 55,5 billion cubic metres of the river to Egypt), even though, 'owing to a combination of political and economic conditions and technological limitations in [c]entral and [e]astern Africa, this threat fortunately did not materialise for a long time'.<sup>33</sup> For instance, after signing a peace treaty with Israel in 1979, Egypt's late president Anwar Sadat issued a stern warning which was well noted in Ethiopia and according to which 'the only matter which could take Egypt to war again is water'.

This policy was aimed at preventing upstream states, especially Ethiopia, which contributes more than 80 per cent of the water flowing to Egypt, from claiming their share of the Nile River's total water. Furthermore, being the Arab world's most populous, politically influential and militarily strongest state, Egypt entertained the long-established ambition of projecting its power towards the Red Sea. Ethiopia was exposed to this geopolitical projection, which included overt support for the Eritrean Liberation Front, established



in Cairo in 1961, military support for Somalia during the 1977–1978 Ogaden war, military support for Eritrea during the 1998–2000 Ethiopia-Eritrea war and short-circuiting Ethiopia’s IGAD-mandated mediation in Somalia during the mid-1990s. Indeed, a military pact was signed in 1976 between Egypt and Sudan following which Egypt stationed troops in Sudan, trained its military personnel and undertook joint military planning so that, in the case of aggression against one, the other would come to its rescue. Clearly, Egypt regards Sudanese territory as providing added depth to its geopolitical objectives and is not comfortable with the idea of South Sudan attaining independence, as it ‘might jeopardise Nile security’.<sup>34</sup>

In addition, pastoralists have to be constantly on the move in search for areas that offer better water and grass, which ignites conflicts among pastoralists and with sedentary agricultural communities in the Horn of Africa. However, the creation of artificial borders and states that are interested in controlling all movements and imposing taxes limited the size of available resources and disrupted the traditional movement patterns of pastoral societies.<sup>35</sup> Armed clashes, negative state policies leading to violently expressed grievances and recurrent droughts have led to an environmental crisis and the militarisation of pastoral societies, which, in turn, exacerbates inter-ethnic tensions. What happened in Darfur was partly an environmentally generated antagonism over shared

**Table 9** Armed cattle rustling in and around the Horn of Africa

State	Clusters	Targeted areas of raids
Ethiopia	Koroma Nyangatom	North-eastern Kenya South-eastern Sudan
Kenya	Marakwet Turkana Sabiny	North-eastern Uganda Southern Ethiopia South-eastern Sudan
Sudan	Boya Didinga Toposa Murle	Northern Kenya North-eastern Kenya North-eastern Uganda Southern Ethiopia
Uganda	Karamajong Dodoth Jie	Northern Kenya South-eastern Sudan North-eastern Kenya Kenyan Rift Valley

*Source Wasara*<sup>36</sup>

resources, such as water systems, woodlands and grazing land for livestock. As populations in Darfur and its surrounds increased and access to these resources became more acutely scarce, conflicts among communities erupted and became difficult to resolve.

## The logic of subversion

The states of the Horn of Africa took advantage of every local tension or conflict to support rebel movements in neighbouring states.<sup>37</sup> Sponsoring subversive activities had simply become a customary tool poised to destabilise and endanger the security of another state, in what some observers called the time-honoured principle of ‘my enemy’s enemy is my friend’ extending throughout the Horn of Africa.<sup>38</sup> This enhanced inter-state rivalries, mutual suspicion and the development of an eye-for-an-eye mentality. One example is the long and bloody game of tit-for-tat that bedevilled relations between Ethiopia and Sudan for over four decades.<sup>39</sup> It is ‘impossible to prove who was the original culprit in this long-running proxy war’,<sup>40</sup> as ensuring the secrecy of the support’s details was paramount because a disclosure of its true extent would threaten its effectiveness and risk major embarrassment to the regimes. In any case, Sudan’s support for Ethiopian rebel movements was the reason why the Sudan People’s Liberation Army enjoyed strong and sustained support from the post-1974 Ethiopian regime.

Other examples abound in the Horn of Africa in which ‘pursuing regional foreign policy through proxy forces in neighbouring countries has been the normal pattern of relations for decades. This activity has proved persistent over time and has survived radical political reconfigurations, including changes of regime’.<sup>41</sup> Mengistu engaged Barre in a proxy guerrilla war in which they each supported the other’s insurgent.<sup>42</sup> The Christian fundamentalist Lord’s Resistance Army received support from Islamist Sudan in retaliation for Uganda’s support for the Sudan People’s Liberation Army. Sudan’s support for the Eritrean Islamic Jihad invited Eritrean support for the Sudan People’s Liberation Army and the National Democratic Alliance, which was even allowed to occupy the Sudanese embassy premises in Asmara.<sup>43</sup> It has to be pointed out that Eritrea has become a recklessly belligerent bully especially adept at pursuing a low-cost strategy of supporting rebel movements against Sudan and Ethiopia as well as in Somalia. Many analysts describe Eritrea’s support for the

Somali Islamist movements – despite facing its own Islamist movement – as a proxy war that is largely opportunistic, as it cuts across ideological lines<sup>44</sup> (a case which will be developed in more detail in the following sections).

## The logic of alliances

Alliances are usually assigned to prevent or contain external disruptions of security and to establish a viable equilibrium of forces in a region.<sup>45</sup> The formation of alliances, which is part of the balance of power system, is a strategy devised and implemented in conjunction with regional or external partners. In the Horn of Africa, alliances span a wide range of different configurations. They range from formal military alliances between leaders or regimes to state support for rebel movements in neighbouring states and further afield, or even alliances between rebel movements.<sup>46</sup> However, as in the case of subversion, alliances may not bring together like-minded partners, whose loyalties are by no means fixed, as they may be sometimes working at cross purposes. Every alliance ‘tends to have a logic of its own when once set in motion’<sup>47</sup> and accordingly cannot withstand the test of time (see Table 10). It is plausible to argue that one exceptional alliance that did stand the test of time and the Cold War’s realignments was the one established between Kenya and Ethiopia after they signed a military pact in 1963 aimed at neutralising Somalia.

In the Horn of Africa, opportunistic alliances had a relative restraining influence, but, equally, gave additional momentum for inter-state conflict. One classical alliance behaviour is provided by the vicious spiral of alliances and counter-alliances that emerged in the late 1970s at a time of tensions and violence in the region. US-supported Egypt, which was engaged in conflict with Soviet-supported Libya, helped Sudan and Somalia. Ethiopia, which was drawn into the socialist camp, fought Somalia, confronted Sudan and got associated with Libya by the 1981 Aden Treaty. Somalia was in effect supported by Egypt and Sudan in its claims on Ethiopian territory. Sudan, which was backed especially by Egypt, stood against its neighbours, Libya and Ethiopia. And Libya, which was not directly involved in territorial or other disputes in the Horn of Africa, helped the enemy (Ethiopia) of its enemy’s (Egypt’s) allies, Sudan and Somalia.<sup>48</sup>

The latest regional alliance is the Sana’a Forum for Cooperation, which was established in 2002 and is widely perceived as an ‘alliance of convenience aimed

**Table 10 Half a century of regional alliances (1959–2009)**

Year of origin	Type of alliance	Allied states	Target states	External connection
1959	Nile treaty	Egypt and Sudan	Ethiopia	–
1963	Defence pact	Kenya and Ethiopia	Somalia	–
1976	Defence pact	Egypt and Sudan	Ethiopia and Libya	–
1978	Alliance of convenience	Somalia, Sudan and Egypt	Ethiopia	US supported all three states
1981	Tripartite treaty	Ethiopia, South Yemen and Libya	Egypt, Sudan and Somalia (all US allies)	The Soviet Union armed all three states
1991	Alliance of convenience	Sudan, Ethiopia and Eritrea	–	–
1993	Defence pact	Eritrea and Ethiopia	–	–
1994	Containment front	Ethiopia, Eritrea and Uganda	Sudan	US blessing
1998	Alliance of convenience	Ethiopia and Djibouti	Eritrea	France
2002	Alliance of convenience	Ethiopia, Sudan, Yemen, Somali Transitional Federal Government and Djibouti	Eritrea	–

*Source Compiled by author*

against Eritrea.<sup>49</sup> It was initially a tripartite alliance involving Ethiopia, Sudan and Yemen, all of which had military confrontations with Eritrea and shared a deep-seated antipathy towards its regime. Sudan and Ethiopia especially think that ‘there can never be regional stability as long as Issayas dominates the Eritrean state’.<sup>50</sup> Somalia was also later included as a sideline partner, and Djibouti joined as an observer in 2008 after its bizarre border dispute with Eritrea.

## The Horn of Africa’s strategic importance, and superpower interference

The Horn of Africa has never acquired a strategic importance for its raw materials or for any other continental advantage.<sup>51</sup> However, the region has always been allotted a relatively important strategic value owing to its proximity to the Red Sea, which is an important and expeditious route of international trade and communications between Europe, the Middle East and the Far East, as well as the navigation route through which oil is transported from the Persian Gulf (in which the largest oil deposits of the world are located) to consumers in North America and Europe.<sup>52</sup> Hence, the states of the Horn of Africa were forced into economic, political and military dependence on either one of the two superpowers of the Cold War – the US and the Soviet Union. Competing to establish positions of influence and military advantage in the strategically significant regions of the Persian Gulf and Indian Ocean, the two superpowers supported client states in the adjacent Horn of Africa primarily by injecting military aid, and undermined inimical states by supporting rebel movements and weaving unfriendly alliances and counter-alliances.<sup>53</sup>

The interests of the US can be explained in terms of securing access to oil for the West in the Arabian Peninsula and the Persian Gulf. It was, therefore, in the interests of the US to fend off any expansion of Soviet power and influence, whether through proxies or not, in the Middle East, Indian Ocean and the Horn of Africa. Conversely, the Soviet Union aimed at promoting its credibility as a superpower by influencing and over-arming the largest number of strategically placed client states,<sup>54</sup> imperilling oil tankers bound for the West via the Suez Canal and reducing to nil the influence of the US in the above-mentioned regions. Geopolitical logic also required the Soviet Union, which needed to have maritime staging areas for its rapidly increasing navy, to control the arc running from South Asia to the Horn of Africa.<sup>55</sup>

## Terrorism

Since the mid-1990s, the states in the Horn of Africa have witnessed hundreds of acts of terrorism against foreign as well as local citizens and interests. The region is accordingly considered both as a breeding ground and a safe haven for terrorist organisations, especially after the September 11 terrorist attacks in the US in 2001. Hence, this region has come under increased scrutiny in the war against terrorism. For instance, Kenya, in which approximately 10 per cent of the population is Muslim (see Table 1), experienced the 1998 terrorist attack on the US embassy in Nairobi, the bombing of a Mombasa hotel and the missile attack on an Israeli commercial jetliner in 2002. These acts have accentuated the fear that Kenya's Muslim-dominated coastal areas may fall under fundamentalist influence and affect the state's internal structure and foreign relations, and exacerbate latent social and ethnic conflicts.<sup>56</sup>

In the wake of the terrorist attacks in the US, Somalia came under the watchful eyes of Western intelligence services and military forces. In view of Somalia's lengthy and easily penetrable coastline and the prolonged absence of a functioning administration, the US worried that Al Qaeda might establish training bases or use it as a conduit for money, personnel and material for future terrorist operations beyond the Horn of Africa. Moreover, the increasing flexibility and speed of 20th century transportation and communications means that states could expect no warning ahead of terrorist attacks. Therefore, the US created a Combined Joint Task Force-Horn of Africa (CJTF-HOA) with an area of responsibility covering the Horn of Africa plus Yemen.

The US is bent only on reducing the ability of terrorist organisations to operate and move in the region. The actions of the US clearly show a discrepancy between its own interest of fighting terrorism in the Horn of Africa and that of the regional regimes, which have an utter disdain for US concerns. In fact, the diffusion of modern military technologies and state-of-the-art techniques of organisation, which the US approach entailed, went beyond the modernisation of the military or the transfer of weapons. It led to the institutionalised surveillance of entire populations and the blind, wholesale suppression of all political opponents, leading in effect to the diffusion of ideas, such as Islamist fundamentalism, with resultant security problems, particularly in Somalia. An observer of the Horn of Africa said that:<sup>57</sup>

Outside actors need to respond judiciously to the allegations of terrorism levelled against various parties to conflict in the Horn. The underlying conflicts in the region are older than the contemporary war on terrorism and will probably outlast it. Outsiders need to recognise the tactical value of their support and the interests at stake in representing local adversaries as associates of terrorism. They also need to weigh the possible gains (in terms of international terrorism) from intervention against the risks of greater radicalisation, alienation and conflict generation in the region.

## CONCLUSION AND PROSPECTS

The author tried to treat the Horn of Africa, which is ‘interlinked to an even greater extent than i[s] the case in other regions of Africa’,<sup>58</sup> as a unit of analysis in its own right, a unit that possesses its own internal dynamic process. He also tried to underline the importance of such a regional focus, which links both the internal and external determinants, to provide a better understanding of the dynamics of conflict in the Horn of Africa in which the unknown prevails and power is calculated in terms of available weapons. Only such an understanding can release a ‘this isn’t working’ attitude, leading to a whole new rethinking on several levels, in turn, leading to a ‘something must be done’ reaction, which may perhaps give the next generations of the Horn of Africa a better perspective on their future.

Indeed, ‘how security threats are perceived and articulated in the Horn of Africa could provide better insights into how the region actually works’.<sup>59</sup> For instance, the ‘seemingly irrational stances vis-à-vis neighbours’<sup>60</sup> and the rapidity of the shifts in alliances and subversive support in the Horn of Africa suggest that regional security is intimately linked to the survival and interests of regimes in place as well as of rebel movements, which actually all gain from conflict and are respectively a part and manifestation of the problem rather than part of the solution.<sup>61</sup> They also suggest that ‘interactions between the states of the region support and sustain the conflicts within the states of the region in a systemic way’.<sup>62</sup>

It will be undoubtedly argued that the view which the author presented in this chapter is, apart from being too general and speculative, unnecessarily pessimistic and even apocalyptic. For one, the author could not bring himself to paint a rosy, ahistorical picture of the grim realities of the region. Moreover, his

view arises from the sad fact that the Horn of Africa continues to face a myriad of smothering security challenges. One such challenge is the primal urge of the region's states to secure and extend their geopolitical power in ways that are threatening to other states. The author could point to the politics during the decades preceding the conflicts in Darfur, South Sudan, Somalia and Eritrea, and even the few years preceding the 1977–1978 Ogaden war or the 1998–2000 Ethiopian-Eritrean war.

The turbulent political transitions in all of the region's states and their reciprocal fears and disputes were so durable and interlocked that, in retrospect, the outbreak of all these conflicts seems inevitable. In fact, it should not require much analysis and imagination to understand that, in the Horn of Africa, conditions for conflict were brewing for years, if not decades and centuries. However, and paradoxically enough, it will always be difficult to weave together various contradictory trends as well as realistically assess precedents and multiple indices of a dynamic nature and of many dimensions. And, despite all the dedicated seminars, conferences, presentations, briefings, articles and voluminous books, it will always be difficult to continuously anticipate with a reasonably high degree of accuracy the different conflicts' exact origins, scale, sustenance and implications. Furthermore, the region's conflicts are usually continuations of previous conflicts spanning out of control and they, themselves, can very easily either set off or further complicate other conflicts.<sup>63</sup>

All in all, in the longer term, turmoil and conflict will continue to threaten large portions of the Horn of Africa, which is shackled to its tangled history. All of the region's states will continue to try to survive as cohesive and united entities and to defend their territorial integrity with far greater zeal than expected. But, they will still be unable to control unregulated population movements both within and across unresolved borders and to militarily overcome rebel movements *once and for all*. Making matters worse, the states in the Horn of Africa will continue to be engaged in a cut-throat geopolitical chess game across the region, with leaders unable to fully get into the minds of their counterparts as well as professionally assess their real intentions, while precipitously trying to keep one step ahead of one another in order to avoid being eclipsed. The author would like to emphasise in the strongest possible way and for whoever is interested in the security of the entire Horn of Africa that the coming four years will define the region's geopolitical map for the following twenty or thirty years.



Finally, to the question of whether the Horn of Africa forms, in Buzan's terminology, a security complex, given all the factors mentioned in this chapter, the answer is a definite yes. In fact, the conceptual framework advanced by Buzan fits the Horn of Africa like a glove. Healy accurately noted:<sup>64</sup>

[H]istorical patterns of amity and enmity are deeply etched in the region. Conflicts typically stem from factors indigenous to the region, the most enduring being centre-periphery relations in Ethiopia and Sudan. There is also a tradition of outside powers making alignments with states within the regional security complex.

Nonetheless, the author will leave the readers of this chapter to judge whether this last answer by proxy holds or not.

## NOTES

- 1 It would be difficult to reveal the names and positions of these individuals who, nonetheless, provided vital pieces of information that were integrated in the chapter.
- 2 R Väyrynen, Regional conflict formations: an intractable problem of international relations, *Journal of Peace Research* 21(4) (1984).
- 3 Buzan posits 'the existence of regional subsystems as objects of security analysis and offers an analytical framework for dealing with those systems' (B Buzan, O Wæver and J de Wilde, *Security: a new framework for analysis*, Boulder: Lynne Rienner, 1998, 11). His contribution to international relations theory was mostly to draw 'attention away from the extremes of national and global security and focus it on the region, where these two extremes interplay and where most of the action occurs' (Buzan, Wæver and De Wilde, *Security: a new framework for analysis* 14–15).
- 4 M Ayoob, *The Third World security predicament: state making, regional conflict and the international system*, Boulder: Lynne Rienner, 1995, 58.
- 5 Security refers to a weakly conceptualised but politically loaded concept that provides 'in itself, a more versatile, penetrating and useful way to approach the study of international relations than either power or peace' (B Buzan, *People, states and fear: an agenda for international security studies in the post-Cold War era*, London: Harvester Wheatsheaf, 1991, 3). Generally, it designates the condition, relative and never absolute, under which the state, the principal referent object, strives to safeguard its basic interests and organisational stability from internal vulnerabilities and mostly from external threats in an inescapably competitive international environment where states cannot ignore each other (Buzan, *People, states and fear*, 22–23).

Moreover, security is ‘what actors make of it, and it is for the analyst to map these practices’ (Buzan and O Wæver, *Regions and powers: the structure of international security*, Cambridge: Cambridge University Press, 2003, 48).

- 6 Buzan, *People, states and fear*, 188.
- 7 Buzan, *People, states and fear*, 190.
- 8 Ibid.
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- 10 T Farer, *War clouds on the Horn of Africa: the widening storm*, New York: Carnegie Endowment for International Peace, 1979, 1; S Danfulani, Regional security and conflict resolution in the Horn of Africa: Somalian reconstruction after the Cold War, *International Studies* 36(1) (1999), 37.
- 11 This is one reason why Uganda is included in many of the statistics in this chapter.
- 12 It is difficult to determine the accuracy of these figures, and many observers would say that Ethiopia is evenly divided between Christians and Muslims.
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- 34 J Lefebvre, Middle East conflicts and middle level power intervention in the Horn of Africa, *Middle East Journal* 50(3) (1996), 402; Buzan and Wæver, *Regions and powers*, 243.
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- 42 Lefebvre, Middle East conflicts and middle level power intervention in the Horn of Africa, 397.
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- 44 Eritrea's top foreign-policy objective is to undermine the security of Ethiopia and create political and strategic discomfort for it in its various and delicate balancing acts in the Horn of Africa. In 1999, Eritrea opened a second front in Somalia by supporting rival proxies, with all neighbouring states feeling the fallout, and states such as Egypt and Yemen adding to the generous supply of weapons. Anything that Ethiopia supports, Eritrea goes determinedly against – Ethiopia's support for Somalia's Transitional Federal Government and Eritrea's support for the Union of Islamic Courts and then al-Shabaab being cases in point. Eritrea provides training and weapons to the Somali movements with the objectives of using them as baits to entice Ethiopia and then outflank it, making Ethiopia 'pay the price', and also making Somalia a second front against it. Eritrea has also been supplying weapons and giving training to Ethiopian rebel movements, including the Ogaden National Liberation Front and the Oromo Liberation Front to put additional pressure on Ethiopia, which backs the Eritrean Democratic Alliance, an umbrella organisation of groups opposed to the current Eritrean regime.
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# 2 The Ethiopian-Eritrean War of 1998–2000

An analysis of its causes, course, impacts and prospects

KIDIST MULUGETA

## INTRODUCTION

In May 1998, in an apparently well-prepared manner, Eritrea militarily moved into an area along its ill-demarcated border with Ethiopia. Within a few months, what had begun as a small border dispute degenerated into a full-scale war that would ultimately cost tens of thousands of lives on both sides. This chapter, based on available books, articles and research papers, is designed to investigate the numerous and diverse causes of this war as well as its course and to analyse the different prospects for the unresolved conflict between Eritrea and Ethiopia. It is divided into five parts. It begins by considering the historical background to the Ethiopian-Eritrean conflict. It then looks at the relations between Ethiopia and Eritrea after the latter unofficially attained statehood in 1991. Next, it examines the reasons why the conflict erupted in the first place. It also examines the course of the war, its multiple impacts and the circumstances under which it was only temporarily halted. Finally, it considers the numerous factors that could influence the prospects of the unresolved conflict between Eritrea and Ethiopia.

## HISTORICAL BACKGROUND

Eritrea was an integral part of Ethiopia until the 1880s. After 1882, Italy controlled the Red Sea coastal area of Assab. Then it expanded and managed to control Massawa in 1885 with the support of the British. This was the period when the colonial powers engaged themselves in the partition of Africa in general and the Horn of Africa in particular.<sup>1</sup> Italy used Assab and Massawa as a springboard and began to move into the interior of Ethiopia. However, its expansion encountered strong Ethiopian resistance, which culminated in the defeat of Italy at the battle of Dogali in 1887. Though the defeat temporarily curtailed the Italian expansion, it did not completely restrain Italy's ambition of controlling the totality of Ethiopia. To this end, Italy manipulated Ethiopia into signing the Treaty of Wuchale in 1889. The treaty granted the Italians the right to full control over Eritrea and a protectorate role over Ethiopia. However, the interpretation of the treaty became controversial, which culminated in the battle of Adwa in 1896 and the subsequent defeat of Italy. Nevertheless, Italy had managed to establish Eritrea as a separate colonial entity in 1890.<sup>2</sup>

After this defeat, Italy reluctantly recognised Ethiopia's independence and began to approach Ethiopia diplomatically. Consequently, it agreed to abrogate the Treaty of Wuchale and signed successive agreements with Ethiopia in 1900, 1902 and 1908 to delimit the common borders between Ethiopia and its colony of Eritrea. The 1 000-kilometre border, now disputed by Ethiopia and Eritrea, was delimited in these agreements.<sup>3</sup> Italy administered Eritrea for nearly fifty years after the 1880s. During this period, Italy used Eritrea as a trade and communication centre. It built a number of light industries and schools, and developed commercial agriculture and other infrastructures. This contributed to the creation of the Eritreans' different identity.<sup>4</sup>

After Italy invaded Ethiopia in 1935, it merged Tigray with Eritrea and established a 'Greater Eritrea' as a single province of the Italian East African Empire, which further complicated the issue of the border between Ethiopia and Eritrea. Italy favoured Eritreans over other members of the Italian East African Empire. This contributed to the development of a separate Eritrean identity. Nevertheless, the Italian East African Empire crumbled in 1941. After the defeat of Italy in World War II, Eritrea became a mandate territory of the British from 1941 to 1952. The British military administration continued to

build a number of small-scale industries there with the support of the Italian industrial and commercial community.<sup>5</sup>

As regards the border, the British had a different proposal. The British wanted Tigray to be included in the eastern part of Eritrea to form an independent state. The western part of Eritrea was to be joined with Sudan, and Assab to be given to Ethiopia. This shows that the British were not in favour of Ethiopia's claim over the totality of Eritrea, which was the main reason for the British to support the political parties that were in favour of independence in Eritrea. It follows that the emergence of political parties greatly contributed to the development of Eritrea's national consciousnesses.<sup>6</sup> However, as the world's major powers were not able to agree on the disposition of Eritrea, either to be independent or to be part of Ethiopia, they referred the matter to the UN. After sending three committees to investigate the desires of the Eritreans, it was decided that Eritrea was to be federated with Ethiopia in 1952.<sup>7</sup> During the federation, Eritrea came to play an important role in Ethiopia's economy. The strength of Eritrea's industry continued until the late 1970s. It was argued that more than 35 per cent of Ethiopia's industries were located in Eritrea by the mid-1970s.<sup>8</sup>

However, the federation did not last long, as it was abrogated and Eritrea was fully integrated into Ethiopia in 1962. After the 1960s, 'the boundary between the two entities assumed a character of administrative division rather than an internationally recognized boundary'.<sup>9</sup> The Eritreans were infuriated by the action of the Ethiopian government and began an armed struggle against the two successive Ethiopian governments for three decades. The Eritrean Liberation Front (ELF) was the first liberation movement established in the aftermath of the abrogation of the federation and was active in the Muslim-dominated areas of Eritrea. The ELF failed to get the support of the majority of Eritreans, especially among the highlanders and Christians, as its objective was to liberate Muslims from the 'domination' of Ethiopian 'Christian rulers'. In the early 1970s, a splinter group named the Eritrean People's Liberation Front (EPLF) emerged out of the ELF. The two movements fought each other for years until the EPLF emerged as the strongest movement. The EPLF designed a much broader, inclusive agenda and continued its struggle for independence supported by the Eritrean diaspora and Arab countries.

Further south, the Tigray People's Liberation Front (TPLF) was established in 1975 by students with the objective of liberating Tigray, but later fought for the liberation of the whole of Ethiopia from the post-1974 military government.

The movement was supported by the ELF and later by the EPLF in terms of training and weaponry. In the early 1980s, the EPLF trained over 3 000 TPLF soldiers in its Sahel base. In return, the TPLF supported the EPLF in defending its main military base during the post-1974 military government's military offensives of the early 1980s. It also attacked Ethiopia's military supply line to Eritrea. The close cooperation between the two movements facilitated the disintegration of the military government in 1991. Subsequently, the TPLF, along with other rebel movements, established a transitional government in Ethiopia. Simultaneously, the EPLF established a provisional government in Asmara. Eritrea became officially recognised as an independent state after holding a referendum on 27 April 1993.<sup>10</sup>

## **RELATIONS BETWEEN ERITREA AND ETHIOPIA AFTER 1991**

After Eritrea became independent and the TPLF assumed power in Ethiopia in 1991, the two countries established a close relationship in the economic, security, political and social areas. They formally began a state-to-state interaction after the 1993 referendum by signing a Treaty of Friendship and Cooperation on 13 July 1993. Consequently, a number of agreements and protocols were signed between the two governments to harmonise their economies and seemingly maintain peace and stability in the Horn of Africa.<sup>11</sup>

Economic cooperation, trade liberalisation, investment, port usage and the question of nationality were the dominant issues discussed by the two countries. Through successive joint ministerial meetings, the two countries reached an understanding to trade freely, exempt taxes on each country's products, facilitate Ethiopia's use of the ports of Assab and Massawa and run and maintain the Assab oil refinery, and allow the nationals of both countries to move, work and engage in business freely. They further reached an agreement to use the Ethiopian birr as their common currency and not to re-export the products of each country.<sup>12</sup> To strengthen their relations, the two countries concluded a controversial agreement on defence and security, promising to help one another if it was attacked militarily, as during the Hanish conflict between Eritrea and Yemen. However, the implementation of all these agreements encountered many difficulties, which will be discussed in the next section.<sup>13</sup>

## CAUSES OF THE ETHIO-ERITREAN WAR

### Political causes

#### *Relations between the TPLF and the EPLF*

The two liberation movements, the EPLF and the TPLF, were close partners during the armed struggle against the post-1974 Ethiopian military government and they both hailed from the same ethnic group, thus sharing language and culture.<sup>14</sup> However, the relationship between the two movements has always been tense and hostile rather than completely flawless and cooperative.

During the armed struggle, there were differences in terms of military strategy and there were also ideological contentions, which led to a break-up in relations. Ideologically, the TPLF supported Maoist-style socialism, whereas the Soviet model of socialism was adopted by the EPLF. The TPLF's quest for independence, as stipulated in its manifesto of 1976, was also threatening to the EPLF because the TPLF's projected Greater Tigray included the Tigrinya speakers of highland Eritrea. The two movements resumed their relations in 1979 after the TPLF dropped its quest for secession. The tension over military strategy was also serious, as the EPLF's conventional style was criticised by the TPLF, especially after the Ethiopian military government launched the Red Star campaign, which nearly destroyed the EPLF. The EPLF only avoided total defeat thanks to the support of the TPLF, which favoured a guerrilla military strategy.<sup>15</sup>

These differences, coupled with the military strategy and political disagreements, led to a total break-up of relations between the two movements in 1985. That year, the EPLF closed the Barka route, which connects western Tigray with Sudan and on which the TPLF was dependent for relief and aid. The EPLF's action was regarded as inexplicable and cruel by the TPLF, as it was performed at the height of the famine in Tigray. Nevertheless, the two movements reached an accommodation in the late 1980s in the face of the crumbling Ethiopian government.<sup>16</sup> However, differences between the TPLF and the EPLF re-emerged on the issues of an administrative system and ideology after they seized power in 1991. The adoption of ethnic federalism and the inclusion of the right to secession in the constitution of Ethiopia were highly criticised by the Eritrean government because of its strong desire to create a solid nation state.<sup>17</sup> The EPLF perceived 'ethnic and religious identities as debilitating force[s] whose political expression was congenitally detrimental to nation building'.<sup>18</sup> Thus, the Ethiopian policy

was seen as a threat to Eritrea’s vision, especially given the presence of seven different ethnic groups in Eritrea. According to two prominent authors:

Since many of the ethnic groups in Eritrea are represented in both sides of [the] Eritrea/Ethiopia border (Afar, Saho, Tigrinya, and Kunama), the Ethiopian policy of ethnic federalism may directly jeopardise the Eritrean nation-building process. And this is extremely worrying for the EPLF.<sup>19</sup>

The TPLF and the EPLF, however, tolerated each other until 1997. The EPLF needed the TPLF to secure the economic and financial well-being of Eritrea, and the TPLF needed the EPLF’s support to consolidate its power in Ethiopia, at least in terms of not having the EPLF supporting other competitors, such as the Oromo Liberation Front (OLF). The relationship between the TPLF and the EPLF, both before and after Eritrea’s independence, has, therefore, been one of ‘necessity, not love’. In fact, ‘throughout their history, the TPLF and the EPLF failed to really understand each other and establish a meaningful dialogue on controversial issues. At best, they had maintained tactical and opportunistic alliances lasting only as long as the congruence of interests underlying them.’<sup>20</sup> Hence, small disagreements often turned into big incidents and breaches of relations.

### *Internal political developments*

The political developments in both Ethiopia and Eritrea also contributed to the deterioration of relations. The lack of a multi-party system, a free press and freedom of speech, and the autocratic nature of the EPLF dominated Eritrean politics and government. Power was excessively centralised in the hands of President Isaias Afwerki and foreign policy-making was his exclusive domain. Such excessive centralisation resulted in many erroneous decisions and caused unintended consequences – a sudden incursion into Ethiopian-administered territories in 1998 being a case in point. Due to the inherently autocratic nature of its government, Eritrea also pursued an aggressive foreign policy, which was reflected in its antagonism towards all its neighbours, namely Yemen, Djibouti, Sudan and Ethiopia, only five years after its official independence.<sup>21</sup>

The political development in Ethiopia was relatively better than that of Eritrea. The TPLF partially opened the political space by allowing opposition parties to operate, but ensuring that they remained weak. A free press was

also allowed, but systematically controlled. Moreover, elections were regularly conducted, although critically flawed. Foreign policy-making was also systematically controlled by Prime Minister Meles Zenawi. The prime minister, for instance, denied Eritrea's preparation for the war against Ethiopia in 1998, which resulted in the destruction of properties and lives in the Ethiopian-administered territories until Ethiopian forces were mobilised and deployed. In a situation where democracy is weakened and foreign policy-making is centralised in the hands of one or a few individuals in a particular state, it is very hard to formulate informed policies in the best interests of the people and the state at large. Instead, policies and decisions may be guided by the leaders' best interests, emotions and ambitions, with ultimately unintended consequences.<sup>22</sup>

## Economic causes

As discussed previously, the two countries had signed a number of agreements, including the Treaty of Friendship and Cooperation and various protocols, to coordinate economic activities and harmonise policies as much as possible. In these agreements, the two countries had focused mainly on free trade, investment and the free movement of their citizens. Despite the signing of these multidimensional agreements, there were many problems in the process of their implementation.

The major source of disagreement between Ethiopia and Eritrea in the years between 1993 and 1997 was trade and investment. The tension between the two countries was aggravated after the introduction of a new Eritrean currency, the nakfa, in 1997 and the introduction of a new trade policy by Ethiopia. Until the nakfa was introduced, the two countries had used the Ethiopian birr as their common currency. With the introduction of the nakfa, the Eritrean government proposed that the two currencies should have equal value and should be used in both countries. However, this proposal was rejected by the Ethiopian government, which instead insisted on using hard currency as a medium of exchange. This was one of the most contentious issues between the two countries in 1997.<sup>23</sup>

The introduction of a new trade policy by Ethiopia, which defied the agreements signed with Eritrea on free trade, investment and free movement of their nationals, was also contentious. According to the new trade policy, taxes were

levied on Eritrean products exported to Ethiopia. Furthermore, Eritreans were denied investing in the areas of insurance, transport, communication and banking, and were denied the right to import Ethiopia's exportable products. The policy formally ended the trade agreements signed between the two countries and led to serious tensions between the two countries.<sup>24</sup>

Ethiopia's argument for the introduction of the trade policy was to put an end to the trade irregularities that had been witnessed and, in a way, to minimise illegal trade. One of the major sources of disagreement between Ethiopia and Eritrea in the years between 1993 and 1996 was the involvement of Eritreans and the Eritrean government itself in illegal trade, such as the smuggling of coffee, oil seeds and other products of Ethiopia, and the exchange of foreign currency. In effect, Eritrea became a major coffee exporter without producing an ounce of coffee and was actively engaged in the Ethiopian black market, forgery activities and illegal business transactions, which ended up damaging Ethiopia's economy.<sup>25</sup>

The options the Ethiopian government faced were limited, as it was criticised by most Ethiopians for its failure to protect Ethiopia's own interests in relation to those of Eritrea.<sup>26</sup> However, the Eritrean government perceived the trade policy as having been introduced because of Ethiopia's fear of the important role played by Eritreans in the Ethiopian economy. From the Eritrean perspective, the Ethiopian government used this trade policy to put a barrier on Eritrean products and protect Tigray's emerging industries.<sup>27</sup> The economic disagreement was also the result of 'a rivalry between the two regimes for controlling the economic resources of Ethiopia'.<sup>28</sup>

This economic misunderstanding had an adverse effect on both Eritrea and Ethiopia, to varying degrees. Eritrea suffered most, given its dependence on Ethiopia's economy and markets. Eritrea exported more than 65 per cent of its products to Ethiopia, whereas only 9 per cent of Ethiopia's products were destined for Eritrea. Accordingly, Eritrea enjoyed a favourable trade balance. For example, in 1996 Eritrea earned around 85 million birr from its exports to Ethiopia. Moreover, Eritrea was highly dependent on Ethiopia for its food consumption. Eritrea produced only 200–250 tonnes of grain annually, while its need was around 1 million tonnes a year. Consequently, Eritrea used to import much of its food items from Ethiopia. Importing food items in hard currency from Ethiopia, however, resulted in the increase of the price of teff and other food items. To this end, Eritrea warned the Ethiopian government to review



its near protectionist policy in light of free trade. Ethiopia's reluctance to do so caused their relations to deteriorate.<sup>29</sup>

Ethiopia was also affected as the price of salt and other products imported from Eritrea increased in 1997 and 1998. Eritrea's decision to increase port fees also had an impact on Ethiopia's economy. Therefore, the economic disagreement over trade and investment, partly provoked by Ethiopia's new trade policy, had an adverse effect on the two countries' relations and contributed significantly to the outbreak of the Ethiopian-Eritrean War.<sup>30</sup> Nevertheless, overall, despite accusations and counter-accusations, both countries share a responsibility for the deterioration in their economic relations. These relations were not formalised, but instead were based on personal understandings. Eritrea's failure to diversify its trading partners as opposed to remaining highly dependent on Ethiopia was a result of personal friendship and trust. Ethiopia's failure to restrict and establish rules to regulate the trade and economic relations between the two countries created favourable conditions for the Eritrean government and its nationals to exploit opportunities to a maximum and in a rather reckless way. Once personal relations began to deteriorate, there was no institutional set-up to sustain and manage the bilateral economic relations.<sup>31</sup>

## Social psychological make-up

The Eritrean self-image developed by the EPLF also exacerbated tensions. Eritreans considered themselves unique, exceptional, civilised and superior, especially in comparison with the rest of Africa, Ethiopia included. Eritreans developed this complex of superiority over Ethiopia during the Italian colonisation. Eritreans' exposure to the European colonial way of life and the existence of light industries were motive enough for Eritrea to look down on Ethiopia, which had little exposure to education and technology. This self-conceived image persists in Eritrea in the 21st century, and after independence it prominently manifested itself in Eritrea's economic, political, military and social outlook. Eritreans have a firm belief that they have the strongest, unparalleled unconventional military force on the African continent – especially after it emerged victorious over two Ethiopian military forces, in particular the strong armed forces of the post-1974 Ethiopian military government. The EPLF argued that 'if a people could [beat] a Soviet-backed half-million-man army, what else can it not achieve?'<sup>32</sup>

Though their heroism and sense of sacrifice cannot be denied, the Eritreans have exaggerated their military might and underestimated the key role played by other movements in Ethiopia, including the TPLF, in the armed struggle against Ethiopia's military government. They also overlooked the contributions of other determinant factors, such as the internal weakening of the military government, the disintegration of its main backer the Soviet Union and its declining military support,<sup>33</sup> and 'projected an image that they and they alone won the struggle' and portrayed themselves as an 'exceptionally militarily strong' state in Africa. Based on this premise, the Eritrean government tried to undermine the potential of the country's neighbours and to use force to achieve its foreign policy goals. The issues it faced with Yemen, Djibouti and Sudan are good examples.<sup>34</sup>

Although the TPLF was portrayed as the 'little brother' of the EPLF during the armed struggle, the balance of power shifted considerably after 1991. The TPLF attained a much better position by controlling a much bigger country with more resources, a larger population, and greater diplomatic clout and economic power. The 'EPLF wanted the TPLF to be strong enough to be able to control the Ethiopian government and endorse Eritrean independence, but weak enough to need continued dependence on Eritrean support for its survival'.<sup>35</sup> Therefore, the EPLF, blinded by its military myth and superiority complex, failed to consider the post-1991 reality and tried to impose its will on Ethiopia in general and the TPLF in particular.

Similar to its perceived military might, the Eritrean government's economic policies were highly skewed towards making Eritrea the trade and industrial centre of the Horn of Africa – or better, the 'Singapore of Africa'. After a 30-year armed struggle for independence, it was natural for the EPLF to aspire to build a modern, prosperous Eritrea. The Eritrean government claimed that the plan would be realised in a few years, given the exceptional nature and dedication of Eritreans. This was perhaps the main reason for Eritrea's refusal to accept foreign aid and various financial donations from the international community.<sup>36</sup> However, given how old Eritrea's industrial plants were and the lack of adequate capital, it was highly improbable that this goal, as it was originally conceived, would be achieved.<sup>37</sup> The Eritrean government also devised a plan whereby neighbouring countries, including Ethiopia, could provide raw materials and labour for Eritrea's industries and a market for their products. If this were the case, the development of industrial plants in Tigray after 1991 was

most probably viewed by Eritrea as a serious threat. This could have been one of the reasons for its launching an attack on a pharmaceutical plant operating in Tigray in 1998.<sup>38</sup>

On the Ethiopian side, the image of 'one Ethiopia and Ethiopianess' made it difficult for most Ethiopians to accept the secession of Eritrea and so remain landlocked. The way Eritrea seceded, by a 'victor's peace', was also a major source of dissatisfaction. Eritrean independence was not handled properly by the TPLF, as the process lacked transparency. Ethiopians were not given a chance to discuss more thoroughly the issue of Ethiopia's right to access to the sea and many aspects of the emerging state-to-state relations. The economic agreements reached between the TPLF and the EPLF in 1993 provided another source of dissatisfaction, as they were seen as being unfairly beneficial to Eritrea. While Eritreans were enjoying equal citizenship rights in Ethiopia, the expulsion of 125 000 Ethiopians from Eritrea after independence further antagonised the Ethiopian people. There was, therefore, an invisible social pressure on the TPLF and the government it led to take a stronger position with regard to Eritrea.<sup>39</sup>

## The border issue

As mentioned in the first section of this chapter, Ethiopia and Italy – the latter the colonial power occupying Eritrea – had negotiated and established their common borders by signing successive treaties in 1900 (the central sector), 1902 (the western sector) and 1908 (the eastern sector). However, none of the border treaties were properly demarcated and the colonial maps were highly simplified, unreadable and did not show the precise location of the border.<sup>40</sup> In the western sector of the border, for instance, the treaties drew an imaginary line connecting two rivers and different names were used for the same river, which gave rise to different interpretations.<sup>41</sup> Some argued that this was done deliberately by Italy to alter the existing borders. Indeed, Italy succeeded in unilaterally changing the bilateral treaties and producing a new map that expanded the territories of its colony and included the Badme Plain between 1907 and 1935. Accordingly, there was a series of border disputes between Ethiopia and Italy in the 1920s and 1930s. However, the issue of the border became less important after the invasion by Italy in 1935 and the incorporation of Eritrea into Ethiopia, as the border simply became an administrative division.<sup>42</sup>

There was a series of border contentions between the TPLF and the ELF, and later with the EPLF in the late 1970s and early 1980s, especially around Badme. However, these liberation movements agreed to settle the issue after the completion of the armed struggle. Nevertheless, the issue was not as such raised until 1997.<sup>43</sup> In 1997, the Eritrean government claimed that Ethiopian military forces had invaded Eritrean territories. Both countries at first agreed to resolve the issue peacefully and established a joint border commission in November 1997. Nevertheless, the border dispute escalated in 1998 and before both countries could reach an agreement, Eritrea militarily occupied Badme and other contiguous territories administered by Ethiopia.<sup>44</sup>

## THE COURSE AND IMPACTS OF THE WAR

### Course of the war

Following the sudden Eritrean military incursion into the territories that Ethiopia administered on 6 May 1998, the Ethiopian parliament passed a resolution asking for the unconditional withdrawal of Eritrean forces. However, the reluctance of the Eritrean government to do so led the two countries to mobilise their military forces and frantically acquire weapons. The number of soldiers mobilised by Ethiopia was estimated at around 350 000–400 000, while Eritrea mobilised an estimated 200 000–250 000 soldiers. Both countries spent hundreds of thousands of dollars on weapons that were bought from Russia, Ukraine, Italy, China, Bulgaria and other countries. Between 1998 and 2000, the two belligerent countries each spent an average of \$300 million annually on acquiring weapons.<sup>45</sup>

Attempts were made by the US and Rwanda to mediate between the two countries. However, they failed to end the dispute, mainly because of the reluctance on the part of the Eritrean government to withdraw from the territories it had occupied after 1998. The war continued along the 1 000 kilometre-long border. The two countries fought heavily at the battlefields of Badme, Zalambesa and Bure between 1998 and 2000. Air raids were launched by both sides, despite a US-brokered agreement to ‘halt air strike[s]’.<sup>46</sup>

The second attempt to mediate between the two countries was made by the Organisation of African Unity (OAU) in November 1998. The OAU proposed a peace agreement that required the two countries to maintain the pre-May 1998

status quo. The disagreement on the technical arrangements, however, delayed the peace process from coming into effect.<sup>47</sup> Nonetheless, the acceptance of the proposal by Eritrea after Ethiopia recaptured Badme in February 1999 paved the way for the signing of an interim peace agreement in June 2000.<sup>48</sup> The UN also imposed military and economic sanctions on both countries in January 1999. This action of the UN was, however, criticised for two reasons. Firstly, it only came into effect two weeks before the end of the war, on 17 May 2000. Secondly, the sanctions were imposed after both countries had amassed stocks of weapons. Therefore, both the peaceful proposal and the sanctions failed to end the conflict.<sup>49</sup>

The 13-month military stalemate was broken and the war intensified when Ethiopia launched a massive offensive on 13 May 2000. Ethiopia recaptured all the territories, including Zalambesa and Bure, that were previously occupied by Eritrea. Moreover, it penetrated deep into Eritrea and captured a large swathe of Eritrean territory. Following this success, the Ethiopian government officially announced the end of the war.<sup>50</sup> As a result of this development, Ethiopia and Eritrea signed a ceasefire agreement in June 2000, which was brokered mainly by the OAU. Accordingly, the two countries agreed to establish a 25-kilometre temporary security zone (TSZ) that was to be patrolled by the United Nations Peacekeeping Mission in Ethiopia and Eritrea (UNMEE), which was deployed in September 2000 to monitor the ceasefire and the redeployment of military forces.<sup>51</sup> Subsequently, they signed the Algiers Agreement in December 2000. An agreement was reached to establish a border commission to demarcate the border, based on the existing colonial treaties, and a claims commission to consider war compensation claims and investigate the causes of the war. Moreover, both countries agreed that the decisions of the border commission would be final and binding.<sup>52</sup>

Ethiopia and Eritrea both subsequently presented their cases to the border commission. Ethiopia based its claim on its long-term administration of the border, whereas Eritrea presented colonial treaties as primary evidence. The border commission passed its decision in April 2002.<sup>53</sup> Both sides claimed victory until it was established that Badme had been placed inside Eritrea. There was confusion, as the border commission had failed to locate Badme on the map. However, after clarifications in 2003, Ethiopia rejected the decision. According to the border commission, Ethiopia did not provide sufficient evidence to retain Badme. There are various speculations on the reasons why Ethiopia decided to

settle the issue in court in the first place since it could have dictated the terms and conditions of the border demarcation as a result of its military victory.<sup>54</sup>

Ethiopia's repeated attempts to alter the decision were rejected by the border commission because both countries had agreed that the decision of the commission would be final and binding. Therefore, there seems to be no room to manoeuvre for Ethiopia. Nevertheless, the Ethiopian government proposed a five-point proposal. In the proposal, it accepted the border commission's decision *in principle*, though it claimed that the ruling was both *wrong and unjust* and called for dialogue. The Eritrean government, however, refused to accept the proposal. Instead, it strongly affirmed that it would not consider an alternative to the decision and its implementation as it is.<sup>55</sup>

In February 2006, the witnesses to the Algiers Agreement proposed a new initiative to appoint a neutral facilitator who would facilitate the demarcation process and normalise the relations between the two countries. Nevertheless, the proposal was once again rejected by Eritrea. Due to the lack of progress on border demarcation the border commission announced in 2007 that the virtually demarcated border on electronic maps should be the internationally recognised border between the two countries. Eritrea accepted the virtually demarcated border, while Ethiopia rejected it as 'legal nonsense', leading to a stalemate.<sup>56</sup>

## Impacts of the war

### *Humanitarian impacts*

The war has had huge impacts on the economic, social and political features of both countries. The war cost tens of thousands of lives on both sides, with the estimated number of deaths ranging from 50 000 to 100 000.<sup>57</sup> In addition, the number of people that have been internally displaced by the war has been estimated to have reached around 650 000. Even if only half of the estimated numbers of deaths and people displaced is accurate, it still demonstrates the disastrous effects of the war. Many people displaced by the war are still unable to return due to the ongoing stalemate. The humanitarian situation was aggravated when each country massively deported the nationals of the other. Ethiopia was accused of deporting around 67 000 Eritreans since 1998, without any hearing or appeal, in the name of national security. The Eritrean government also deported more than 125 000 Ethiopians before the war.<sup>58</sup>

### *Economic impacts*

Both Ethiopia and Eritrea spent a huge amount of money on the war, estimated at up to \$1 billion. The mobilisation of hundreds of young soldiers had a serious effect on the economies of both countries, especially on Eritrea. Indeed, Eritrea lost millions of dollars that could have been gained from port service, trade surplus and oil refining.<sup>59</sup> ‘There was a serious labour shortage in factories and development projects in Asmara during the war; foreign investment also came to a virtual halt in Eritrea.’<sup>60</sup> On the other hand, Ethiopia’s shift from the Eritrean ports of Assab and Massawa to the port of Djibouti was to the detriment of Ethiopia’s economy. Dealing with thousands of people displaced by the war has also placed a huge economic burden on both countries.

The stalemate continues to weigh heavily on the two poor countries. Both are draining their scarce resources to maintain a large number of troops of approximately 150 000 to 200 000 along the border. More specifically, Eritrea continues to conscript troops and failed to demobilise its 300 000 troops. Accordingly, 10 per cent of its able-bodied men and women are unable to move out of the military and it is spending over 20 per cent of its GDP on the defence sector; by comparison, the share spent by Eritrea on its health sector is only 3,7 per cent.<sup>61</sup>

### *Political impacts*

The immediate period after the conclusion of the war presented an opportunity for the leaders of Ethiopia and Eritrea alike to excessively centralise political power. Both the EPLF and the TPLF were seriously divided after the war. In fact, in March 2001, a serious split occurred in the central committee of the TPLF. Two factions emerged that were particularly divided over the policies adopted before, during and after the 1998–2000 war with Eritrea; this led to the imprisonment of some of the party’s leading officials. The incident left the prime minister’s powers unchecked.<sup>62</sup> Similarly, the war caused a difference of opinion within the EPLF, to which President Isaias Afwerki responded by arresting 15 influential officials and icons of the armed struggle.<sup>63</sup>

The prolongation of the stalemate further gave President Isaias the perfect opportunity to suspend the constitution, which was drafted in 1997, postpone democratisation and ban opposition and the free press – all in the name of war preparedness and national security. No elections have been held in Eritrea in the past two decades and major government institutions in charge

of checking and balancing the powers of the president are non-existent. Eritrea's human-rights record is said to be one of the worst in Africa, if not the world. According to Human Rights Watch, 40 000 people are detained without trial in Eritrea and the youth are forcefully conscripted into indefinite military service.<sup>64</sup>

Politically, Ethiopia is far better off than Eritrea, especially with the conduct of the 2005 elections, which exhibited the highest voter turnout in the country's political history. The post-2005 electoral violence and subsequent centralisation of power, however, made the political situation gloomier. Laws adopted in the post-2005 period, including a press law, civil-society law, terrorism law and electoral law, directly and indirectly affected the democratisation process. The stalemate between Ethiopia and Eritrea further gave the TPLF an excuse to alienate opposition candidates by accusing them of collaborating with the EPLF.<sup>65</sup> The political survival of both the Ethiopian and Eritrean governments is, therefore, given priority over achieving peace dividends that could benefit both countries and their people at large.

### *Regional impacts*

Finally, the war and the stalemate following it have had a negative impact on the strategically important and unstable region that is the Horn of Africa. Of all the countries in the region, Somalia has suffered the most. Somalia became a second front when Eritrea supported armed opposition groups based in Somalia, and Ethiopia retaliated by sending troops to the country in 2006. Eritrea has been accused of arming and training insurgent groups, namely the Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF), to infiltrate Ethiopia through Somalia and undermine its security. Eritrea's support for Islamist groups in Somalia was also viewed as a security threat by Ethiopia, given their irredentist rhetoric and radicalisation agenda. Although Ethiopia succeeded in expelling the Islamist groups that controlled Mogadishu in 2006, the Transitional Federal Government (TFG) was too weak and fragile to fill the gap and stabilise the country immediately. As a result, Ethiopia paid enormously to sustain the weak and internationally backed TFG in power until it was eventually forced to withdraw its troops in 2009. The conflict in Somalia remains a challenge, as both Ethiopia and Eritrea continue to tacitly support warring parties. Ethiopia is accused of arming and supporting Ahlu Sunna Wal-Jama'a, and Eritrea, despite the UN sanctions, continued to



channel weapons to Islamist groups. Sadly, the ongoing conflict has caused a huge number of civilian deaths and massive displacement in Somalia.<sup>66</sup>

Djibouti is another country destabilised by the ongoing Ethiopian-Eritrean conflict. Eritrea's military occupied Djibouti's northern territories in 2008 with the aim of putting pressure on the US and France, which have military bases in Djibouti. The objective was to force them to pressurise Ethiopia to comply with the border commission's decision. Secondly, Eritrea wanted to put pressure on Ethiopia, which is almost totally dependent on the port of Djibouti for its imports and exports. Indeed, since 1998, 98 per cent of Ethiopia's trade has been channelled through the port of Djibouti. Thirdly, Eritrea wanted to prove that if Ethiopia could by force occupy the territories granted to Eritrea by the border commission and there was no authority to force Ethiopia to cede those territories, then Eritrea could do the same and impose its will on a much smaller country, namely Djibouti.<sup>67</sup>

For Sudan, the war and subsequent stalemate became a blessing in disguise, as it emerged from its isolation and was able to build ties with both Ethiopia and Eritrea. Sudan's relations with Ethiopia deteriorated after the 1995 failed assassination attempt on the Egyptian president, Hosni Mubarak, in Addis Ababa. The then Islamist-dominated government in Sudan was accused of lending its support to the attack. Eritrea did not have good relations with Sudan either, as it repeatedly accused Sudan of supporting the Eritrean Islamic Jihad. Eritrea, in turn, provided training for Sudanese opposition groups and offered a military base to the US and Israel, which were determined to topple the Islamist-dominated government in Sudan, which heavily supported both the TPLF and the EPLF during the pre-1991 armed struggle.<sup>68</sup>

## PROSPECTS

### The pessimistic prospect: another devastating war

There are three possible prospects that can be envisaged. The first is war, with a number of factors that may contribute towards it.

#### *The centrality of Badme*

Badme is where the 1998–2000 war began. The perception is that the country that is awarded Badme will be seen as having fought a just war. This has

given Badme a symbolic importance. For Eritrea, Badme provides an assertion of its sovereignty and the primary justification for its initial aggression. Acknowledging Ethiopian claims to Badme would mean Eritrea's acceptance that it started the war for the wrong reason in the first place. It will not be easy for the Ethiopian government to cede Badme to Eritrea either, despite its legal obligation to accept the decision of the border commission. Ethiopia lost approximately 90 000 soldiers by attacking the formidable series of deeply dug fortifications built by Eritrea, actually 'over 100 kilometers of trenches surrounded by anti-personnel and anti-vehicle mines'.<sup>69</sup> The border commission's decision was also strongly opposed by the regional state of Tigray, which currently administers the town of Badme and which is the political base of the TPLF.<sup>70</sup> The Ethiopian government was also subjected to intense criticism by opposition parties, both in 2004 after the presentation of the five-point proposal and during the run-up to the 2005 elections. In fact, the Ethiopian government argues that if that decision is upheld it would only 'divide homesteads [not fewer than 30 villagers] or separate communities from vital water sources or roads'.<sup>71</sup> Thus, both countries may possibly resort to war to retain this highly symbolic place.

### *The withdrawal of UNMEE*

UNMEE withdrew its forces in 2008, when it was ordered to leave Eritrean territory by the Eritrean government. This started in 2005, when Eritrea imposed a number of restrictions on UNMEE, banning all flights of its helicopters.<sup>72</sup> Eritrea also forced UNMEE to evacuate some its observation posts in the TSZ. Due to these restrictions, UNMEE's monitoring capacity was reduced by 60 per cent (the number of outposts was reduced from 40 to 18). Although a number of attempts were made by the international community to make Eritrea lift the restrictions, the country refused to restore the TSZ posts to UNMEE and to cancel the restriction on UNMEE's freedom of movement. The Eritrean government reportedly took this action in frustration at Ethiopia's failure to accept the border commission's decision and the UN's failure to pressurise Ethiopia to comply with the decision. Currently, the TSZ has been re-occupied by Eritrean troops and there is no military force that prevents the two countries' military forces from engaging in overt as well as covert military operations. In some of the areas, the two militaries are only separated by a few metres and small skirmishes could result in another devastating war, as was the case in 1998.<sup>73</sup>

### *Hostile propaganda and assistance to opposition forces*

The media in both countries have continued with their wartime propaganda.<sup>74</sup> For example, the ‘Voice of the Broad Masses’, Eritrea’s official radio, attacks the government in Addis Ababa as if the war were still going on. It is not uncommon to hear the Eritrean government referred to by the Ethiopian media as *Shabia*, a derogatory term that harks back to the times of the war of independence.<sup>75</sup> Moreover, ‘given the massive anti-Eritrea[n] propaganda campaign waged by the Ethiopian government, Meles may find it difficult to survive the peace without showing any tangible gains’.<sup>76</sup> Furthermore, the two governments provide political and military support for armed opposition groups, including weapons, training and bases.

For instance, Eritrea is aiding the OLF and the ONLF, while Ethiopia retaliated by supporting the Alliance of Eritrean National Forces (AENF). Thus, in the long term, Eritrea seems to pursue a dangerous strategy with the dual aim of bringing the international community to pressurise Ethiopia and at the same time of destabilising Ethiopia by provoking a political crisis. This strategy could backfire, as it may instead lead Ethiopia to resort to military means, from aggressive military deployment to selected air attacks, in order to counter this strategy, thereby provoking a larger war.<sup>77</sup>

### *Detrimental military development*

Dozens of divisions comprising many thousands of troops from the two countries’ militaries remain along the common border. Eritrea is reluctant to demobilise its 300 000-strong military. In fact, all adults from 18 to 50 are being recruited into Eritrea’s army by force. Furthermore, there are reports that Eritrea has obtained fighter planes (SUKHOI 27 planes, together with pilots and technicians) and anti-tank weapons from Russia.<sup>78</sup> According to the International Institute for Strategic Studies, Eritrea is the second most militarised state in the world.<sup>79</sup> This fact could create a dangerous situation. One such situation occurred when Ethiopia deployed seven divisions near the TSZ in December 2004. In response to this deployment, Eritrea prepared itself militarily with air force training and the digging of new trenches.<sup>80</sup> To make matters worse, there are repeated incursions and shootings along the border. And reconnaissance missions seem to be carried out in order to find out as accurately as possible about the enemy’s preparations, strengths and weaknesses, and to identify the location of possible attacks.

**Table 1** The Ethio-Eritrean military balance in 2009

Ethiopia	Eritrea	
Total armed forces	152 500	201 750
Reserves	–	120 000
Ground force	150 000	200 000
Air force personnel	2 500	350
Naval force	–	1 400
Tanks	250	150
Armoured vehicles	400	80
Combat aircraft	48	8
Helicopters	37	5
Budget	\$345 million	\$65 million

Source International Institute for Strategic Studies, *the Military Balance 2009*, 273–274

## The optimistic prospect: sustainable peace

The developments mentioned above could indeed lead the two countries into war. However, a second war would be disastrous because each country could only aim for total victory. Therefore, peace could, by default, be a prospect that can be envisaged. A number of internal and external factors, enumerated below, demonstrate that peace may indeed be considered another prospect.

### *Disillusion among the Eritrean population and soldiers, the fatigue of the Eritrean diaspora and economic stagnation*

Eritrea's population of four million, which lost thousands of young men and women in the armed struggle and then the 1998–2000 war, is now fully aware that the EPLF can no longer react in military terms to all of the challenges that it faces. The recruited Eritrean soldiers, who remain undemobilised, have been deserting in large numbers and seeking refuge in neighbouring countries. The youth are simply demoralised by the indefinite national service. According to the United Nations High Commission for Refugees, there were 67 700 Eritrean

asylum seekers in 2008.<sup>81</sup> The war and continued stalemate has been far more devastating for Eritrea, as it is spending millions of dollars to militarily match Ethiopia and maintain troops along the border. A World Bank estimate maintained that the country spends on average \$60 million per annum for maintenance costs alone, which is twice the total public expenditure on education in 2000.<sup>82</sup> Furthermore, the Eritrean diaspora, which financed Eritrea's war effort, is questioning the government's strategy and has reduced by half its remittances. Therefore, the Eritrean government cannot sustain its current level of mobilisation indefinitely, which may force it to seek normalisation.<sup>83</sup>

### *The threat of regular famine in Ethiopia and increasing oil prices*

There is a regular threat of famine in Ethiopia and the percentage of people affected by famine has been increasing. In 2008, the UN estimated that 10 million people were in need of food assistance in Ethiopia.<sup>84</sup> The prospect of annual food shortages, and especially of a serious food crisis, may draw the same criticism as the one in 2000 if Ethiopia starts or enters another war, namely that 'there has been strong criticism of the Ethiopian government for spending so much of its budget on war material at a time when a significant part of its population faces starvation'.<sup>85</sup> The donor community will probably withhold the major part of its financial assistance to Ethiopia, as it did in 2000 and after the political problems provoked by the 2005 elections.<sup>86</sup> The withdrawal of foreign aid, combined with heavy war expenses, would reduce Ethiopia's already diminished foreign exchange reserves. Therefore, the Ethiopian government will not be able to afford to start a new war, which could damage the country's long-term economic recovery along with the high oil prices and dramatically harm the living standards of its population of 77 million.

### *The Bakassi precedent*

Nigeria agreed in June 2006 to hand over to Cameroon the oil-rich Bakassi Islands, which Nigeria had militarily occupied, in accordance with the ruling of an international tribunal and after successful rounds of negotiations. This very recent event in a quite similar case can be seen as a legal precedent to bring the same conclusion to the stalemate in the Ethio-Eritrean conflict. Since the border commission passed its decision to place Badme inside Eritrea, Ethiopia's position has changed three times – from adamant refusal in 2003, to accepting the decision in principle in 2005 and then accepting the decision without

precondition in 2007, while asking for further talks. Ethiopia has also shown flexibility by allowing Eritreans to enter into its territory.

Although Eritrea consistently refused to take part in additional talks with Ethiopia, the willingness it showed recently to peacefully settle the conflict with Djibouti following the sanctions imposed by the UN gives hope.<sup>87</sup> At the end of 2009, the UN imposed targeted sanctions on Eritrea for supporting Islamist groups in Somalia and forcefully occupying the contested territory with Djibouti. Accordingly, Eritrea cannot officially buy or sell weapons. The sanctions also imposed travel bans and the freezing of the assets of some of the officials of Eritrea. The imposition of the sanctions isolated the country from the international scene. In an attempt to get the sanctions lifted, Eritrea withdrew its troops from the contested territory with Djibouti and reduced its support for the Islamist groups in Somalia. Nevertheless, Eritrea still has a long way to go before the sanctions are lifted, as the UN Monitoring Group reported that it has not totally ceased supporting groups in Somalia.

## Continuation of the no-war, no-peace situation

The last probable scenario is that the status quo will remain. Both countries will maintain thousands of troops along the contested border and will continue to arm, finance and support proxies in an attempt to weaken each other.

### *Political culture*

Ethiopia and Eritrea share a similar political culture that values violence over negotiation and zero-sum calculations over compromise. Negotiations and compromise are viewed as indicating weakness and submission. There is also an apparent lack of trust between the TPLF and the EPLF, manifested in their relations before and after the armed struggle, which makes negotiation and compromise a rather difficult task.<sup>88</sup> Moreover, there is a strong belief on both sides that the other is on the brink of collapse. The media in both countries have been broadcasting propaganda on how the other is internally weakened and could collapse any time soon. Both countries seem to think that peace and normalisation could only come if there is a change of leadership. Accordingly, both are relentlessly working to secure the demise of the other by supporting opposition groups, spreading hostile propaganda and soliciting international support.<sup>89</sup>

### *Internal dynamics*

In Ethiopia, the ruling party won over 99,6 per cent of the votes in the 2010 elections. Although the landslide victory gave leverage for the government to successfully implement its policies, it undoubtedly narrowed the political space. The enactment of laws restricting the activities of NGOs, the press, political parties and parliament further made many writers suggest that the TPLF has no intention of opening up or relinquishing power. In Eritrea, President Isaias continues to be the ultimate power-holder, centralising decisions related to military and foreign policy issues. The Eritrean government has not made tangible efforts to open up the system, hold elections and allow a free press, political opposition and NGOs to operate freely. Furthermore, there is an apparent absence of broad-based, well-organised opposition and external pressure to compel both governments to make changes. Given the current internal political development, there is little prospect of internal reform in both countries. The costly stalemate is more likely to continue in this situation, in which power is consolidated in the hands of one person or a single party, and given the entrenched position of the protagonists.<sup>90</sup>

### *The role of the US*

The War on Terror brought Ethiopia closer to the US, especially after its intervention in Somalia in 2006 to oust Islamist groups. Eritrea, on the other hand, severed its ties with the US by supporting groups allegedly linked with al-Qaeda. Alarmed by the continuous threats emerging from Somalia, the US chose to accept the status quo and has been more sympathetic towards Ethiopia than Eritrea. Ethiopia's demand for negotiations is accepted and usually supported by the US as a way out of the ongoing stalemate. Accordingly, the US has tried to mediate between the two countries through shuttle diplomacy, but this has failed to bear fruit due to Eritrea's reluctance. The US remains the sole superpower involved in the Horn of Africa and its failure to force both countries to give up their die-hard claims could prolong the stalemate.<sup>91</sup>

### *The international community's ambivalence and silence*

The international community has failed to resolve the stalemate between Ethiopia and Eritrea. Compared with Eritrea, which has joined the restricted club of pariah countries,<sup>92</sup> Ethiopia seems to be favoured by the international community due to its relative economic strength and diplomatic capabilities.

Despite its legal advantage, Eritrea has not made it easy for the international community to come out strongly against Ethiopia. The Eritrean government has been starting fires everywhere to get the attention of major powers. Eritrea has been accused of training and channelling weapons to the Islamist groups in Somalia, which worsened its relations not only with the US, but also with many European and African countries.

Eritrea's incursion into Djiboutian territory also alienated it from France and some Arab states. Eritrea's relations with the AU have never been pleasant since President Isaias undiplomatically and repeatedly characterised the organisation as 'useless and dysfunctional'. The UN was bullied by Eritrea and was forced to withdraw its forces in 2008. The EU is unhappy with Eritrea's human-rights record. Moreover, Eritrea suspended its membership of IGAD, the regional organisation, which Eritrea often refers to as Ethiopia's 'Trojan Horse'. The Eritrean government's undiplomatic actions have, therefore, done nothing but alienate the country from the international political scene, all to the advantage of Ethiopia. In general, the international community has done little to stop Eritrea's erratic and aggressive response to perceived threats and Ethiopia's failure to accept the border commission's decision.<sup>93</sup>

## CONCLUSION

It is crystal clear that the two-year war has had devastating effects on the economies of Ethiopia and Eritrea, as well as on the political and humanitarian aspects of their people. Tens of thousands have lost their lives; a large number were displaced; thousands have fled to neighbouring countries; and the two governments spent more than \$1 billion on the war – money that could have been used to accomplish beneficial development activities. Both countries continue to spend enormous amounts of money to sustain large military forces deployed along the border and to weaken each other by supporting opposition groups. It can be concluded that the stalemate in the Ethiopian-Eritrean conflict could continue, given the current political, social and economic developments in Ethiopia and Eritrea.

Ethiopia may seem to be the most interested in the continuing stalemate in the short term, as it continues to control territories 'unjustly' given to Eritrea. In the long run, however, both countries will be affected, as each continues with its attempts to weaken and destabilise the other by supporting rebel movements



and spreading hostile propaganda. If, hypothetically, these two countries make peace, the rebel movements will continue to pose a serious political and military threat to their security and survival in the long term. Although the ongoing stalemate gave the two countries' leaderships a pretext to centralise power and postpone democracy, it could increase internal tensions and lead the two countries to experience a vicious circle of conflict as each tries to manipulate internal weaknesses – in line with the saying 'the enemy of my enemy is my friend'.

Although peace benefits both countries, the two governments have clearly failed to negotiate and resolve their differences amicably. Hence it is time to involve the people who have had no say in the peace processes that have taken place, but who have continued to pay dearly due to the continued stalemate. If the people had been involved in the first place, the issues of the border and economic relations would not have been complicated as much by the rhetoric of their governments. The international community should also engage both countries and deal with the much deeper causes of the war and show long-term commitment to bringing about sustainable peace and stability not only in Ethiopia and Eritrea, but also in the entire Horn of Africa, which has been gravely affected by the Ethiopian-Eritrean conflict.

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# 3 The causes and consequences of the Eritrean-Ethiopian border conflict

The need for a holistic approach towards transitional justice<sup>1</sup>

DANIEL R. MEKONNEN AND PAULOS TESFAGIORGIS

## INTRODUCTION

Ten years after the cessation of active hostilities that caused the obliteration of lives and property and the immense suffering of countless people, and seven years after the decision of the Eritrea-Ethiopia Boundary Commission (the 'Boundary Commission'), a tense stalemate prevails between the two countries, with no end in sight. The repercussions have proven too costly to the entire Horn of Africa, by contributing to other major conflicts in the region, such as the civil war in Somalia. In a real sense, the Eritrea-Ethiopia border conflict is yet to be fully resolved. The primary responsibility for the failure to resolve it falls on the governments of the two countries. The international community can also be blamed for failing to enforce the decision of the Boundary Commission, the result of a binding international agreement between the two countries, and for failing to look into all means available to resolve the conflict between the two countries and put an end to its destabilising effects on the entire Horn of Africa region. This chapter calls for a holistic<sup>1</sup> transitional justice approach that should address the causes and consequences of the border conflict and come up with lasting recommendations for peace and security in the two countries and, by extension, the entire Horn of Africa.

The authors are aware of the concern as to whether the concept of transitional justice is applicable in the context of the Eritrea-Ethiopia impasse. This will be explored in detail in the section that discusses transitional justice issues related to this conflict. Although various of descriptions can be offered to elaborate the concept of transitional justice, this chapter adopts the following broader definition developed by the International Centre for Transitional Justice (ICTJ), one of the leading policy and research institutions on transitional justice:

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.<sup>2</sup>

As a field of study in a constant state of development, transitional justice also includes ‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’.<sup>3</sup> In mainstream transitional justice discourse, the ‘past’ is always seen as a necessary precursor for the application of transitional justice in a given scenario. As will be discussed later, the authors argue that there is a disproportionate emphasis on the ‘past’ attached to the conceptual framework of transitional justice. This has given the term a markedly curative tone, whereas the need for a preventive approach is equally central. By focusing on the 1998–2000 Eritrea-Ethiopia conflict as a typical case study, this chapter supports the call for revisiting the conceptual framework of transitional justice,<sup>4</sup> which should also seek solutions to ongoing conflicts, although in conjunction with other related disciplines, such as peace-making and peace building.

## CONTEXTUAL BACKGROUND

Eritrea and Ethiopia are two of the poorest countries in the world with below average social and development indicators, such as high rates of

infant mortality, maternal morbidity and lower levels of achievement in the Millennium Development Goals. What is most important is that they share a common history of human rights violations and virulent conflicts, particularly perpetrated under two previous Ethiopian regimes, during which time Eritrea was an annexed province of Ethiopia until Eritrea achieved *de facto* independence in 1991 and was officially declared an independent state in 1993.

In both countries egregious violations of international law<sup>5</sup> were perpetrated in the context of a peculiar historical framework that affected both countries detrimentally. From the shared history of the two countries, the year 1974 stands out as the most significant. There are two main reasons for this. Firstly, in both countries, the most atrocious violations of international law were perpetrated following this year with the emergence of one of the most brutal military governments in the post-colonial history of Africa. Secondly, this military regime, which caused immense suffering in both countries, was defeated in 1991 by the combined military operations of two liberation movements, which have been ruling both countries since 1991. These are the Eritrean People's Liberation Front (EPLF) and the Ethiopian People's Revolutionary Democratic Front (EPRDF).

The year 1974 denotes the emergence of the authoritarian regime of Colonel Mengistu Haile Mariam, commonly known as the Derg<sup>6</sup> regime. This particularly repressive regime, which ruled Eritrea and Ethiopia between 1974 and 1991, came to power by ousting 'the long-reigning'<sup>7</sup> aristocratic autocrat, Emperor Haile Selassie I. Yacob Haile-Mariam intertwines the emergence of the Derg with the popular 1974 Ethiopian Revolution, a historic uprising which 'broke the age-old shackles of feudal order and absolute monarchy'.<sup>8</sup>

Several writers agree that the 1974 Ethiopian Revolution<sup>9</sup> was a result of deeply rooted socio-economic and political problems that were not adequately addressed by the Ethiopian monarch, Emperor Haile Selassie I.<sup>10</sup> Girmachew Aneme suggests that the revolution was a popular uprising of the entire society against the rule of the monarch on account of acute economic deprivation and excessive political suppression.<sup>11</sup> However, the outcome of the popular revolution did not meet the expectations of Ethiopians and Eritreans. Instead of installing a democratic system of governance, the revolution initiated a new era for a new breed of dictatorship. Andargachew Tiruneh contends that the revolution simply ousted the old aristocratic autocrat and installed in his place a new tyrannical ruler.<sup>12</sup>

The Derg committed crimes of a kind unknown in the history of the two countries.<sup>13</sup> In spite of popular expectations of democratisation, the Derg swiftly hijacked the revolution and established itself as a provisional military government, which was soon to be replaced by the official party of the same regime, the Working People of Ethiopia (WPE). Reflecting on similar observations, Dadimos Haile notes that the collapse of the Ethiopian monarchy in 1974 and its replacement by a military junta marked the beginning of a reign of terror and lawlessness for the following 17 years.<sup>14</sup>

At that time, the Eritrean people were already engaged in a fully fledged armed struggle, the aim of which was to achieve the liberation of Eritrea as an independent state, initially under the leadership of the Eritrean Liberation Front (ELF), which was ousted from Eritrea by the combined assault of the Eritrean People's Liberation Front (EPLF) and the Tigray People's Liberation Front (TPLF), and later under the leadership of the EPLF. In the northern part of Ethiopia, the TPLF<sup>15</sup> was also preparing to launch an armed struggle to liberate the people of Tigray from the yoke of oppression imposed by successive Ethiopian rulers from Addis Ababa (or Showa). The limited scope of the TPLF was later to be amended to embrace the liberation of the rest of Ethiopia from the shackles of authoritarianism, particularly when the TPLF, in coalition with other Ethiopian political and armed organisations, formed the EPRDF at the end of the 1980s.

The Derg regime was militarily defeated in May 1991 by the combined forces of the EPLF and EPRDF. The former, renamed People's Front for Democracy and Justice (PFDJ) in February 1994, is now the only political party in Eritrea. The EPRDF, although not the sole political party, has been the single dominant political force in Ethiopia since the demise of the Derg in 1991. As noted before, the EPRDF is a coalition of a number of political organisations in which a dominant role is assumed by the TPLF. During the armed struggle against the Derg regime, the EPLF and the TPLF conducted several joint military operations, the most notable of which was the final military offensive that ousted the regime of Colonel Mengistu Haile Mariam in 1991. Nonetheless, it is important to note that the history of these liberation movements was marred by serious disagreement, the repercussions of which are believed to have manifested themselves in the 1998–2000 border conflict. Regrettably, these disagreements have never been fully, officially and transparently addressed – let alone resolved.

In 1991, after militarily defeating the Derg, the EPLF and the EPRDF constituted themselves as the transitional governments in Eritrea and Ethiopia respectively. Although the two governments followed different approaches in leading the transitional period in each country, the countries enjoyed a peaceful coexistence until May 1998, when they engaged in a devastating border conflict that lasted until May 2000. During the brief period of peaceful coexistence and harmonious working relations, the two governments worked together to stabilise the region (particularly regarding the Sudan conflict), re-invigorate the Intergovernmental Authority on Development (IGAD) and give it a new mandate, and bring hope to their peoples and the peoples of the region that stability and cooperation in many fields would be the order of the day, replacing years of conflict, instability and uncertainty.

## THE 1998–2000 BORDER CONFLICT<sup>16</sup>

The flashpoint of the conflict is a border village called Badme, over which both countries claimed ownership, triggering a full-scale war in May 1998. The border conflict came to an official end on 18 June 2000 when the two countries signed the Agreement on Cessation of Hostilities between Ethiopia and Eritrea ('Agreement on Cessation of Hostilities').<sup>17</sup> By signing this agreement, the two countries officially committed themselves to ceasing hostilities. Ever since the ratification of this agreement there has been no major armed conflict between the two countries. However, the situation is very tense.

The Agreement on Cessation of Hostilities paved the way to the comprehensive peace accord, the Algiers Peace Agreement, which was signed by the two countries on 12 December 2000. Prior to that, on 31 June 2000, the UN Security Council, with Resolution 1312 (2000), established the United Nations Mission in Ethiopia and Eritrea (UNMEE). One of the major responsibilities of UNMEE was to operationalise the mechanism for verifying the cessation of hostilities.<sup>18</sup> To ensure this, the entire border between the two countries was supervised by UNMEE's peacekeeping forces, which were stationed in the border area and kept apart the armed forces of the two countries. As is now known, the mandate of UNMEE was terminated on 31 July 2008 by the UN Security Council after repeated obstruction of its tasks and hostilities on the part of Eritrea against UNMEE, which included severe restrictions on the movement of UNMEE personnel and other hostile acts. Jonathan Ewing notes that with the termination

of UNMEE's mandate the risk of a return to war has considerably increased. Whether this is based on facts on the ground or a projection of what might happen, is a different case. Ewing states:

The UN's decision has created a diplomatic vacuum; the international body has all but abandoned its mediation efforts despite the failure to achieve agreement on the highly contentious issue of the precise location of the shared border. Without peacekeepers to monitor the situation locally, any small misunderstanding or misstep could lead to a return to conflict. Indeed, there has been abundant evidence that both sides have been acquiring new weapons, upgrading supply bases, moving large amounts of military equipment and readying troops along their common border.<sup>19</sup>

According to the Algiers Peace Agreement, Eritrea and Ethiopia agreed to submit their disputes to two independent bodies, working independently from each other. The first was the Boundary Commission, whose mandate was 'to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law'.<sup>20</sup> The second was the Eritrea-Ethiopia Claims Commission (the 'Claims Commission'), whose mandate was to decide, through binding arbitration, on all claims for loss, damage or injury that were related to the conflict and were the result of violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.<sup>21</sup>

As regards the issue of ownership over Badme, the Boundary Commission, in its decision of 12 April 2002, decided that the town belongs to Eritrea.<sup>22</sup> Contrary to its declared commitment to honour the decision of the Boundary Commission, Ethiopia stipulated a set of preconditions before it would hand over Badme to Eritrea. In a legal sense, the Ethiopian government's refusal to implement the decision of the Boundary Commission and accordingly hand over Badme to Eritrea reneges on the obligations of Ethiopia provided for in the Algiers Peace Agreement and customary international law. However, tied to this issue is the complicated background of the conflict, which is one of the reasons for the need to adopt a holistic approach towards transitional justice in dealing with the origins and ramifications of the conflict. It is also questionable whether handing over Badme would in itself normalise relations between the two countries.



The failure of the peace process and the ensuing political stalemate between the two governments have now destabilised the entire Horn of Africa. Ethiopia's refusal to accept and implement the ruling has been used by the Eritrean government as a major pretext to maintain Eritrea for more than ten years in an undeclared state of emergency. Although the Boundary Commission and the Claims Commission have resolved several fundamental issues, a multitude of other intricate issues remain unresolved between the two governments. These issues, especially at this stage, can only be resolved by a genuine political commitment, including political dialogue on the part of both governments, which is currently lacking. However, the Ethiopian government has repeatedly declared its willingness to discuss the implementation of the ruling of the Boundary Commission. Several sources have repeatedly reported on the danger of a renewed war between the two countries. In effect, and as will be seen later, the two countries are at war through their active involvement in the ongoing civil war in Somalia.

Important to the current debate are some of the awards of the Claims Commission delivered on 9 December 2005. According to J Romesh Weeramantry, the arbitral awards of the Claims Commission have 'produced a significant body of case law on the subject of international armed conflict'.<sup>23</sup> In one of the awards,<sup>24</sup> the State of Eritrea was found to be in violation of international humanitarian law for unlawfully invading the flashpoint of the conflict, Badme, which, before the war, was peacefully occupied by Ethiopia. Legally speaking, the border conflict escalated into a fully-fledged war, when on 12 May 1998, Eritrean forces invaded some territories under the peaceful control of Ethiopia. According to the Claims Commission:

The evidence showed that, at about 5.30 a.m. on May 12 1998, Eritrean armed forces, comprised of at least two brigades of regular soldiers, supported by tanks and artillery, attacked the town of Badme and several other border areas in Ethiopia's Tahtay Adiabo Wereda, as well as at least two places in its neighbouring Laelay Adiabo Wereda. On that day and in the days immediately following, Eritrean armed forces then pushed across the flat Badme plain to higher ground in the east ... Ethiopian defenders were composed merely of militia and some police, who were quickly forced to retreat by the invading Eritrean forces. Given the absence of an armed attack against Eritrea, the attack that began on May 12 cannot be justified as lawful self-defence under the UN Charter.

The areas initially invaded by Eritrean forces on that day were all either within undisputed Ethiopian territory or within territory that was peacefully administered by Ethiopia and that later would be on the Ethiopian side of the line to which Ethiopian armed forces were obligated to withdraw in 2000 under the Cease-Fire Agreement of June 18 2000.

Consequently, the Commission holds that Eritrea violated Article 2, paragraph 4, of the Charter of the United Nations by resorting to armed force to attack and occupy Badme, then under peaceful administration by Ethiopia, as well as other territory in the Tahtay Adiabo and Laelay Adiabo Weredas of Ethiopia, in an attack that began on May 12 1998, and is liable to compensate Ethiopia for the damages caused by that violation of international law.<sup>25</sup>

Throughout the entire 1998–2000 border conflict, the Eritrean government was repeatedly requested by international mediators to withdraw its troops from the controversial territories and enter into peace dialogue with Ethiopia. The Ethiopian government, on its part, refused to enter into any dialogue before Eritrea withdrew its troops from those territories occupied on or after 12 May 1998, and demanded a strict restoration of the status quo ante. In light of the final verdict of the Claims Commission on *jus ad bellum*, the precondition presented by the Ethiopian government since the start of the conflict seems justifiable.

However, the Eritrean government rejected the precondition, only to accept it after a humiliating defeat in May 2000. The most revealing account of this is given by two of Eritrea's former ministers of foreign affairs, Haile Woldense (alias Drue)<sup>26</sup> and Petros Solomon,<sup>27</sup> who attribute much of the blame to the state president's refusal to try to resolve the conflict at its early stage. The personal character of leaders is a very important factor in determining their leadership skills and their role in the resolution of conflicts. It is more important in a situation in which institutions are in their infancy, lacking or disregarded – as seemed to be the case in Eritrea. Of this unfortunate situation, Woldense laments: 'I know how hard we fought against our President to accept [the peace] proposal. And later ... we have to accept not only [the peace] proposal, [but] even to accept a temporary security zone within our territory.'<sup>28</sup>

Throughout the period of the border conflict with Ethiopia, Woldense was Eritrea's minister of foreign affairs. As such, he was a key negotiator in the

Algiers Peace Agreement. Given his prominent role in the border conflict and its final resolution, his testimony is one of the most authoritative on the issue at hand. As a result of such a daring stand, and after challenging the president's leadership, together with several other high-ranking government officials, he was arrested in September 2001. He is one of 11 senior government officials who all remained in detention without trial for about ten years; some of them reportedly died while in detention.

By the time Eritrea signed the Agreement on Cessation of Hostilities on 18 June 2000, irreparable damage had already been done to the country and its people. Ethiopia had already occupied a substantial part of Eritrea's territory, displacing some 700 000 people from their homes and villages. In addition to the humiliating defeat, according to conservative government figures, 19 000 Eritrean soldiers were killed in the war.<sup>29</sup> Thousands were maimed, families and children displaced, and farms and means of livelihood abandoned. From the start of the war, 77 000 Eritreans and Ethiopians of Eritrean origin were inhumanely and arbitrarily deported from Ethiopia, without any chance to bid a decent farewell to their loved ones or to collect their property and belongings. In the process, families were separated and many were subjected to gross violations of international humanitarian law.<sup>30</sup> The human suffering sustained by Eritreans in the 1998–2000 border conflict was exceedingly harsh.<sup>31</sup> In the same vein, although not as openly and inhumanly as Ethiopia's, similar violations were also perpetrated against Ethiopians living in Eritrea, including their being expelled and prevented from taking their belongings along with them, or selling their property.

Although the excesses of both governments<sup>32</sup> have contributed much to the immense suffering of civilians and non-civilians, the starting point of this misery was the unlawful act of aggression by Eritrean government officials (particularly the state president) and their obstinate refusal to withdraw from territories occupied after 12 May 1998. The determination of the Claims Commission (the award of 9 December 2005 on *jus ad bellum*) on the culpability of the Eritrean government is the most important source of possible accountability mechanisms for the most heinous violations of international law perpetrated in this conflict. In August 2009, the Claims Commission also decided on the amount of damages each government has to pay the other as a result of the violations perpetrated in the two-year border conflict. Accordingly, the Eritrean government has to pay Ethiopia a total of \$174 036 520,<sup>33</sup> and the

Ethiopian government has to pay Eritrea a total of \$163 520 865, including that awarded to individual claimants, which amounts to \$2 065 865.<sup>34</sup> This means Ethiopia was awarded a net payment of \$10 515 655. Nonetheless, the crux of the matter goes beyond this. As Martin Plaut notes, ‘the real tragedy is that the money, like the rest of the internationally supported peace process, will settle very little’.<sup>35</sup> As will be seen in the next sections, this failure to settle is because the root causes of the conflict and the ensuing repercussions are not yet fully addressed.

## OFFICIAL AND UNOFFICIAL ROOT CAUSES OF THE BORDER CONFLICT

What the world knows as the ‘official’ root cause of the conflict is the claim to ownership of Badme, which was finally awarded to Eritrea. In reality, however, the conflict is not only about this particular issue.<sup>36</sup> There are myriad intertwined economic, diplomatic and political issues behind the conflict. Some of these issues may even date back several years to when the two current governments were liberation movements fighting against the authoritarianism of the Derg regime. What the Boundary Commission and the Claims Commission tried to resolve is only the ‘official’ cause of the conflict, as stated by the two parties – the ownership of Badme and issues directly related to this. Nonetheless, the crux of the conflict lies in several economic, diplomatic and political differences that have been brewing clandestinely since Eritrea’s *de facto* independence in 1991 and *de jure* independence in 1993. Consequently, addressing merely the declared cause of the war, i.e. the disagreement of where the border lies and where Badme is geographically located – as important as this may be, since it has become an issue – will not bring a lasting resolution to the conflict or eliminate its destabilising effect on the subregion.

One of the differences between the two governments is related to the issuance of the Eritrean currency, the *nakfa*, in 1997 amid unresolved economic issues between the two governments.<sup>37</sup> From its *de facto* independence in 1991 until 1997, Eritrea used the Ethiopian currency, the *birr*, as the nation’s official medium of exchange. There was no agreement about the implication of using the *birr* in the two economies, how monetary policies adopted by one would affect the other, harmonisation of exchange rates, etc. In addition, by the time Eritrea issued its first national currency, there were several unresolved economic

issues between the two governments. Some pertinent examples are the differences between the two governments on how to regulate cross-border trade in the border towns and villages, such as Senafe, Zalambesa and others; and the use of Eritrean ports by Ethiopia, among many. Efforts to resolve these differences did not result in a fruitful outcome. These and other issues escalated to form a border conflict that seemingly cited Badme as the cause. Officials of the Ethiopian government do acknowledge in several instances how these issues contributed to the escalation of the border conflict. The most authoritative example in this regard is the interview of the Ethiopian prime minister given in August 2009.<sup>38</sup> On the part of Eritrea, there has been little effort to associate the conflict with any issue other than the ownership of Badme. This does not help in finding a lasting solution to the current stalemate.

The problem requires methodical analysis based on two dimensions. In other words, the entire crisis should be assessed in terms of both the officially known root cause of the conflict and the undisclosed root causes, or at least contributing factors, to the conflict. The first dimension is ownership of Badme, the flashpoint of the conflict. The fact that Badme has now been awarded to Eritrea while Ethiopia has refused to simply hand over the town, lies at the centre of the conflict. The international community has not done enough to force Ethiopia to implement the decision of the Boundary Commission, resulting in an excessive delay in the demarcation of the border. This, in turn, has caused immense frustration on the part of the Eritrean government, which has equated the international community's inaction with support for Ethiopia's real or purported intransigent position. Hence Eritrea's prevailing attitude towards the international community.

As a result, Eritrea has followed the undesirable path of entering into any conflict calculated to antagonise Ethiopia and create instability at any cost. One of the most effective strategies, according to Eritrea's declared foreign policy, was arming, financing and training any political group inside or outside of Ethiopia that has radical political differences with the Ethiopian government. Somalia was found to be the most appropriate arena to give effect to this policy. Additionally, Eritrea supports certain armed Ethiopian opposition groups that have military bases in Eritrea. Ethiopia, on its part, also supports any opposition, armed or otherwise, with the declared goal of undermining the Eritrean regime. Therefore, both states are following the adage of my enemy's enemy is my friend. What has proved most controversial and devastating is the involvement of the

two governments in Somalia as a means of settling their own political scores. Unfortunately, this could not have been done without undermining regional security and peace in the Horn of Africa. This and other similar issues require a little more analysis because they form part of the far-reaching repercussions of this unresolved border conflict.

## REPERCUSSIONS OF THE ERITREAN-ETHIOPIAN BORDER CONFLICT

As noted earlier, the unofficial root causes of the conflict are not yet resolved properly, which has far-reaching ramifications for the entire region. With regard to the origins and root causes of the conflict, article 3 of the Algiers Peace Agreement envisages the establishment of an independent and impartial body, in addition to the Boundary Commission and the Claims Commission, that will investigate the background of the conflict. This body was to be set up by the Secretary General of the then Organisation of African Unity (OAU) in consultation with the Secretary General of the UN. This never happened, denying the Eritrean and Ethiopian public the opportunity to know the real causes of the conflict that go beyond the border issue.

According to official Eritrean government accounts,<sup>39</sup> Ethiopia's refusal to hand over the controversial village of Badme, which is counter to the findings of the Boundary Commission, has come about as a result of 'unwarranted' political and diplomatic support provided by the US Government and the international community to Ethiopia. As a result, by arming, training and financing major insurgent groups in Somalia, Eritrea aims to weaken successive transitional governments in Somalia, which are generally seen as close allies of Ethiopia and the US. This is also intended to produce a direct threat to Ethiopia, as instability in Somalia can spill over to Ethiopia by aggravating and steering the restlessness in the Ogaden region of Ethiopia.

In this regard, Eritrea's actions seem to have no bounds, as they include hosting individuals such as Sheikh Hassan Dahir Aweys (a national of Somalia), who is one of several individuals designated by the UN Security Council as a terrorist on its list of suspected terrorists.<sup>40</sup> Formerly a leader of a Somali Islamic group known as al-Ittihad al-Islamiya (AIAI), Aweys is suspected of involvement in the 1998 terrorist attacks against US embassies in Kenya and Tanzania. His involvement in these attacks was allegedly funded by the leader of al-Qaeda,

Osama bin Laden.<sup>41</sup> Between September 2007 and mid-2009, Aweys was offered sanctuary by the Eritrean government and was openly living in Asmara during this time, in contravention of the measures adopted by UN Security Council Resolution 1368 (2001).

In using Somalia as a proxy war, the Eritrean government has violated a UN Security Council sanction that has imposed, among other things, a travel ban and an arms embargo on certain groups in Somalia.<sup>42</sup> The embargo has been violated by several countries, Eritrea being one of the major violators. This has been verified by the periodic reports of a panel of experts and a monitoring group established by the UN Security Council to oversee the sanctions imposed on Somalia.<sup>43</sup>

The Eritrean government has never admitted that it has continuously provided military and financial support to Somali political forces that have been fighting the current and previous transitional governments in Somalia. However, Eritrea claims that it has a moral responsibility to offer political support to the people of Somalia. The problem lies in the fact that the Eritrean government does not recognise the last two transitional governments in Somalia as legitimate governments, claiming that they were imposed on the Somali people by outsiders. This is a concern that should really have mattered most to the Somali people, and, by logic, the Eritrean government does not have any vested interest in this. Nonetheless, since Ethiopia has been a close ally of the last two transitional governments in Somalia, it appears that Eritrea's involvement in the Somali conflict has come about as a reaction to its conflict with Ethiopia. Aside from the old antagonism between Eritrea and Ethiopia, it is also important to identify the real motives behind Eritrea and Ethiopia's interests in Somalia.

One of the most important factors in judging which of the two countries has greater interest in the stability or instability of Somalia is their relative proximity to Somalia, although this may not be taken as a conclusive factor. All three countries belong to the Greater Horn of Africa region. However, Eritrea does not share any common borders with Somalia, whereas Ethiopia shares one of its longest borders with Somalia. Clearly, Ethiopia may be seriously affected by any form of instability that fomented in Somalia, particularly as there are some Somali political forces who have declared a jihad war against Ethiopia. In addition, Ethiopia and Somalia have had several conflicts throughout their history, starting from the period of Emperor Haile Selassie I and the Derg. Somalia has repeatedly claimed ownership of the Ogaden

region of Ethiopia and over this issue alone the two countries have been at war on several occasions.

By contrast, Eritrea does not have any discernible direct interest in the stability or instability of Somalia. The only clear interest to Eritrea may be to destabilise Ethiopia, which it currently carries out by arming, financing and training Somali political forces who are hostile to both the latest transitional governments of Somalia and Ethiopia.<sup>44</sup> At any rate, the direct involvement of the Eritrean government in the ongoing Somali conflict is in the interests of neither the Eritrean people nor the peace and stability of the region. Worst of all, it clashes with the interests of other countries, as well as regional, international and inter-governmental organisations such as IGAD, the AU and the UN. As a result, the AU, for the first time in its history, called on the UN Security Council to impose stringent sanctions against Eritrea after the AU's continued but unsuccessful efforts to convince Eritrea to desist from the destructive role it is currently playing in the Somali conflict. The sanctions were accordingly imposed in December 2009.<sup>45</sup> The US Government has also continually warned Eritrea to desist from fomenting instability in Somalia. US Secretary of State Hilary Clinton reiterated this during her visit to Kenya in August 2009.<sup>46</sup> Previously, the US Government also warned that it would include Eritrea in the list of state sponsors of terrorism, unless the country refrains from supporting al-Shabaab, a designated Somali terrorist group.<sup>47</sup> A combination of all these factors finally led to the imposition of stringent sanctions by the UN Security Council on 23 December 2009. The new regime of sanctions includes the imposition of an arms embargo against Eritrea, travel bans and the freezing of assets of its military and political leadership.<sup>48</sup>

As far as the official root cause of the border conflict (ownership of Badme) is concerned, there are real causes for concern. Some degree of international pressure is required to compel Ethiopia to immediately implement the decision of the Boundary Commission, but the reality is that no meaningful effort has thus far been taken by the international community to do this. At the same time, the refusal on the part of the Eritrean government to initiate or enter into dialogue and normalisation with the Ethiopian government is undeniably harmful. As long as the terms of the Algiers Peace Agreement and the decision of the Boundary Commission remain unaltered, principled dialogue on the basis of these fundamental agreements and arbitral awards stand out as the most effective alternative solution to the border crisis. Eventually, and whatever



the circumstances, the outstanding issues can only be resolved by dialogue. Given this, Eritrea's refusal to enter into dialogue with Ethiopia is costing the newly independent state more than it would have if Eritrea had entered into dialogue with Ethiopia. It is also important to note that as well as causing regional instability, this continued stalemate is widening the rift between the people of Eritrea and Ethiopia.

As argued by Berouk Mesfin, the real causes of conflict, including border problems, are present anywhere.<sup>49</sup> What is lacking is a policy decision and effort to pursue good neighbourliness in the entire Horn of Africa region. Political dialogue, supported by concerted diplomatic efforts, is the most strategic option for addressing this problem. At the same time, stringent measures<sup>50</sup> by the international community may also be required when the actions of governments seem to go beyond control.

## RELEVANT TRANSITIONAL JUSTICE ISSUES

In total, the 1998–2000 border conflict is estimated to have caused the death, on both sides, of between 100 000 and 150 000 combatants, the disablement of 150 000 others, the displacement of more than 1 million people and the destruction of property worth billions of US dollars.<sup>51</sup> This is without taking into account the opportunities the two countries have lost during and after the war. If anything, the border conflict has repeatedly emphasised one bold fact: sustainable democracy is yet to take root in these two countries. Although both governments are accused<sup>52</sup> of exploiting the threat of renewed conflict to justify political repression, the level of repression in both countries cannot be compared. Eritrea, regrettably, is much more repressive, with arbitrary arrests, detentions and disappearances, and has no private media, no constitution, no parliament, no elections and a complete absence of the due process of law.

As argued earlier, the causes and consequences of the 1998–2000 border conflict are yet to be addressed in a holistic manner. Most importantly, prospects for a lasting, peaceful coexistence between the two countries need to be explored in an inclusive manner that should seek the active involvement of grassroots and civil-society actors from both sides. Whether this case can be addressed as a typical transitional justice agenda is open to debate, as others may want to treat this issue as a matter of peace building or peacemaking. Acknowledging the importance of these interdisciplinary overlaps, the authors

argue that the challenge also requires a holistic transitional justice approach, because it involves a recurring surge of mass violence, anchored in a complicated past and seeking a lasting solution now and for the future. Clearly, the tense stalemate between the two countries poses a critical challenge in this regard. Nonetheless, the fact that there has not been any major armed conflict since the adoption of the Agreement on Cessation of Hostilities may be seen as a positive development. In addition to the relevant contribution of peace building and peacemaking initiatives, transitional justice also offers vital tools that can provide a lasting solution to the prevailing stalemate and at the same time an enduring peace in the two countries. Transitional justice is generally conceived to be workable after active hostilities have ended. The current situation between Eritrea and Ethiopia may not strictly fit this definition. It is, however, important to note the growing importance of transitional justice even in the context of ongoing conflicts. This calls for the adoption of both a preventive and remedial paradigm of transitional justice.

When arguing in terms of transitional justice mechanisms, the authors' starting point is the assumption that it is difficult to understand the causes and consequences of the 1998–2000 border conflict and propose a lasting solution if one does not go back to the pre-1998 history of the two countries. As noted earlier, the major political forces in both countries have a long history of rivalry and unsettled differences dating back to the era of the liberation struggle. This seemed to have been resolved with the dawn of a new era in 1991. However, the reality is that grievances of the past were merely buried superficially and not addressed properly, thereby contributing to the 1998–2000 border conflict. This is particularly true in the sense that the general public of both countries still knows very little about the rivalries and differences of the past. These challenges, coupled with the significant ramifications of the 1998–2000 border conflict, provide a sound theoretical basis for the application of transitional justice in this conflict. It is difficult to seek solutions for such a protracted history of conflicts with peace-building or peacemaking approaches alone, as these two methods are mainly associated with ongoing conflicts. Transitional justice, however, through its inquisitive, backward- and forward-looking nature,<sup>53</sup> has the potential of applying to both types of circumstances, conflict and post-conflict alike. However, this requires a revision of the widely accepted conceptual framework of transitional justice, as discussed in the following paragraphs.<sup>54</sup>

Transitional justice has been principally viewed as a field of study offering feasible options for countries in transition from a divisive past to a cohesive future. In this sense, the ‘past’ has always been seen as a necessary precursor in every transitional justice discourse. The problem with this approach is that there is a disproportionate focus on the past. In reality, there is always a blurred boundary between the past, the present and the future in the context of transitions, and it is at times difficult to portray a clear delineation between these time frames. It is these grey areas that require appropriate transitional justice conceptualisation. The Eritrea-Ethiopia conflict is a case study that typically exhibits such a grey area – the outcome of a recurring surge of mass violence dating back several decades. Moreover, as far as Eritrea is concerned, the country is still governed by a ‘transitional government’ whose tenure lapsed in 1997, and ever since its access to power has never been confirmed in a free and fair election. The 1998–2000 border conflict materialised in this context, making it befitting for a transitional justice discourse. Between 1991 and 1998, there was a relatively peaceful post-conflict transition in both countries. This was reversed to a conflict situation in 1998–2000. Due to the absence of major hostilities between the two countries in the post-2000 era, it is not strictly accurate to define this as a period of conflict, but at the same time the stalemate that ensued from the border conflict has also persisted with ramifications not only in the two countries, but also in the entire Horn of Africa. The situation is neither a strictly post-conflict scenario nor a conflict one. As commonly described, it is a no-war-no-peace situation with the likelihood of a recurring conflict.

The exigencies of ongoing or recurring conflicts and controversies about the *past* pose practical and real-life challenges in the *present* that call for a lasting solution in the *future*. This underlines the need for a revision of the conceptual framework of transitional justice in terms of an interlinked time span of the past, present and future. It is, therefore, imperative to transform the widely accepted post-conflict remedial focus of transitional justice into both a preventive and remedial in-conflict focus that can offer solutions not only in a post-conflict scenario, but also in the context of ongoing virulent conflicts and hostilities. Only then can transitional justice become comprehensive. The prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, makes an important observation on the relevance of transitional justice in the context of ongoing conflicts or repression. Reflecting on the ever-growing nature of transitional justice, Moreno-Ocampo contends that the establishment of the ICC

denotes a complex new reality for transitional justice that focuses on ongoing conflicts. Accordingly, it has become increasingly important for transitional justice researchers to deal with conflicts even before they have come to an end.<sup>55</sup> Taking the ICC as an example of best practice in transitional justice, Moreno-Ocampo opines that the ICC is actually part of the transitional justice project aimed at confronting centuries-old behaviours of war and conflict, even when violence is still ongoing.<sup>56</sup> This is another sound theoretical basis for transforming the traditional post-conflict remedial focus of transitional justice into one that also embraces an in-conflict preventive approach.

This issue should also form part of the ongoing debate on the multidisciplinary, or interdisciplinarity, of transitional justice, which, according to Christine Bell, denotes ‘the coming of age’ of the field of transitional justice.<sup>57</sup> Although the vital importance of transitional justice in post-authoritarianism or post-conflict situations is well understood by researchers and practitioners, its importance in ongoing authoritarian, anti-democratic practices as situations of structural violence and conflict should be supplemented with a befitting theorisation and competent solutions for such ongoing centres of human suffering. The fast growth, breadth and trajectory of transitional justice ‘now includes transitions from conflict to peace, the non-transition transitions of [W]estern liberal democracies, post-interstate conflict-imposed justice and pre-transition “transitional justice” mechanisms in countries such as Colombia (often termed a case of “transitional justice without transition”).’<sup>58</sup> This means that the traditional post-conflict remedial focus of transitional justice needs to be revised in the context of in-conflict preventive focus. As noted in the UN Secretary General’s influential report,<sup>59</sup> such a commitment requires ‘a more explicit recognition of transitional justice as a tool for a range of political and social goals beyond accountability’.<sup>60</sup> It goes without saying that in the context of the Eritrea-Ethiopia conflict, achieving a successful transition from conflict to peace is a necessary precondition, or at least an intrinsic element of accountability measures, required by international law.<sup>61</sup>

Equally important to the Eritrean-Ethiopian impasse are the conflict-prevention and peacemaking mechanisms recognised by article 33 of the UN Charter, the UN Agenda for Peace, the AU Protocol Establishing the Peace and Security Council, the AU Post-Conflict Reconstruction and Development (PCRD) Policy Framework and the AU Charter on Democracy, Elections and Governance.<sup>62</sup> These mechanisms are particularly relevant to the full implementation of the

Algiers Peace Agreement and the decision of the Boundary Commission, which is the outcome of the peace agreement. These regional and international commitments may also serve as guiding principles for democratisation efforts in Eritrea and Ethiopia. In the case of Eritrea, however, it is important to note that civil-society initiatives have also been implemented, at least since 2004, to explore the possibility of prosecuting perpetrators of international crimes in international criminal tribunals.<sup>63</sup>

Other mechanisms that facilitate the development of a workable transitional justice paradigm include the initiation of independent people-to-people talks from both countries. Initiatives of this type may also fall under the category of peacemaking or peace building, thus highlighting their overlap with transitional justice. Grass-roots movements and civil-society organisations, including those in the diaspora communities of the two countries, have thus far played very little role in defusing tensions and resolving conflicts. There is a need to empower Eritrean and Ethiopian grassroots and civil-society initiatives independent of government manipulations. For instance, a group of Eritrean activists is currently involved in developing a charter aimed at promoting peaceful coexistence in the Horn of Africa, particularly between Eritrea and Ethiopia.<sup>64</sup> Initiatives such as this require support from other stakeholders in the region. At the same time, the contribution of religious leaders, intellectuals and other non-state actors is vital in promoting peace and seeking a lasting solution to the Eritrean-Ethiopian conflict. The role of non-state actors may also include independent truth-telling and reconciliatory initiatives, both in terms of the 1998–2000 border conflict and other contested aspects of the common history of both countries, even without the formal blessing of governments. Having suffered from countless years of traumatic and exceedingly brutal conflicts, the Eritrean and Ethiopian people need to heal their wounds and start a new chapter of history marked by peaceful coexistence and good neighbourliness. This requires a long process of healing and reconciliation at the national and regional level, which should start as a matter of priority at this critical moment.

Related to the border conflict is the tendency towards vain revisionism on the part of some Ethiopian intellectuals and opposition groups, which gives rise to competing narratives on the official status of the sovereignty of an independent Eritrean state. A decade and half after the formal declaration of Eritrea's independence, which is duly recognised by the international community,<sup>65</sup> tendencies of rejecting this fundamental reality are not

uncommon among some Ethiopian intellectuals and opposition groups who think that the Eritrean independence was not a result of the sweat and blood of the Eritrean people, but ‘granted’ free of charge to the Eritrean people by the current government in Ethiopia. This view will not help the normalisation of relations and can only aggravate hostility, suspicion and lawlessness in the entire subregion. This is a futile intellectual exercise that does not regard as a basic right the self-determination of the Eritrean people and that of the people of Ethiopia. Such revisionist writings of history<sup>66</sup> are also encouraged by the continuing state of hostility between both governments. This is not only a distortion of uncontested facts, but also an untenable claim that would only exacerbate any differences that remain unresolved between the two countries. Reflecting on similar issues of divergence, or perhaps distortion of facts, Wondwossen L Kidane, for example, opines:

Eritrea’s historical status is a subject of immense controversy; while it remained an Italian colony since the 1880s and later under British Trusteeship, it was federated with Ethiopia by the UN in 1952. In 1961, Eritrea became part of Ethiopia; while some would like to call this an annexation others call it unification to the motherland.<sup>67</sup>

A divergence of this kind about the past is not helpful in building a better future between the people of the two neighbouring countries. Such competing narratives, although less controversial in the face of uncontested documentation by the UN and other bodies, may need rectification by a suitable transitional justice paradigm, which should ultimately establish a truth that is untainted and acceptable to all parties. Only by knowing and acknowledging the whole truth can a lasting peace reign between the two countries, and by extension in the entire Horn of Africa region. This can be achieved more effectively by a comprehensive transitional justice approach that should address all unsettled controversies between the countries, the principal being the 1998–2000 border conflict.

## CONCLUSION

The repercussions of the 1998–2000 border conflict have proved very costly to both countries. However, of the two countries, Eritrea suffered the most

damage. Since the outbreak of the conflict in 1998, Eritrea has been governed by an undeclared state of emergency, which has turned the country into a completely militarised state. In spite of the arbitral awards rendered by the Boundary Commission and the Claims Commission, the border conflict has remained largely unresolved. The failure of both governments to resolve the conflict is abhorrent. At the same time, the inaction of the international community to consistently and creatively address the conflict has not helped foster peace or to find a peaceful resolution to the conflict.

The problem requires the adoption of a comprehensive transitional justice approach that addresses the real causes and consequences of the conflict. As a typical interstate conflict, the 1998–2000 Eritrean–Ethiopian border conflict represents violations perpetrated by more than one state actor in more than one country. Only in a small number of instances – such as in the cases of the post-World War II military tribunals of Nuremberg and Tokyo, the international criminal tribunals of the former Yugoslavia and Rwanda and the Special Court of Sierra Leone – has transitional justice so far been applied with the objective of addressing interstate conflicts or violations perpetrated in more than one country. The far-reaching ramifications of this conflict, which are still to be resolved, call for the formulation of a special paradigm of transitional justice that should be purposefully designed for the context of this particular conflict. This requires a revision of the widely accepted conceptual framework of transitional justice, which places a disproportionate focus on the past. In countries that suffer from a long history of political violence, it is difficult to portray a clear delineation between the past, the present and the future. A recurring surge of mass violence creates a grey or blurred area that requires appropriate transitional justice conceptualisation. Although peacekeeping and peacebuilding initiatives are important mechanisms in this particular situation, the long history of political violence that feeds into the 1998–2000 border conflict provides a historic dimension for the interplay of transitional justice.

## NOTES

- i Daniel R. Mekonnen gratefully acknowledges the financial and institutional support of the *Fonds voor Wetenschappelijk Onderzoek – Vlaanderen* (FWO) and the Human Rights Centre in Ghent University, respectively. Opinions expressed in this work are attributable solely to the authors.

- 1 By a holistic approach, the authors mean an integrative approach that gives attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof, as discussed in the influential report of the UN Secretary General. See UN Report of the UN Secretary General on the rule of law and transitional justice in conflict and post-conflict societies, UN Doc S/2004/616, 3 August 2004, para 26.
- 2 ICTJ, What is transitional justice?, <http://ictj.org/en/tj/> (accessed 9 June 2010). R Teitel defines transitional justice as ‘the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes’, R Teitel, *Transitional justice genealogy*, *Harvard Human Rights Journal* 16 (2003), 69–94, 69. R Siegel also defines it as the study of ‘the choices made and quality of justice rendered when new leaders replace authoritarian predecessors presumed responsible for criminal acts in the wake of the “third wave of democratisation”’, R Siegel, *Transitional justice: a decade of debate and experience*, *Human Rights Quarterly* 20(2) (1998), 431–454, 433.
- 3 Report of the UN Secretary General, para 8.
- 4 Such a call was made by one of these authors, see DR Mekonnen, *Revisiting the conceptual framework of transitional justice in the context of ongoing conflicts: a need for a paradigm shift?* In S Parmentier et al (eds), *Transitional justice, rule of law and institutional design*, Antwerp: Intersentia, 2010.
- 5 See, for example, Human Rights Watch, *Evil days: thirty years of war and famine in Ethiopia*, New York: Human Rights Watch, 1991.
- 6 ‘Derg’ is an Amharic word literally meaning ‘committee’. It represents the provisional military administrative council established immediately after Emperor Haile Selassie I was ousted in 1974. Initially, the council constituted some 120 commissioned and non-commissioned military officers. Out of them, Colonel Mengistu Haile Mariam emerged as the most powerful man to rule Eritrea and Ethiopia for 17 years, under one of the most brutal dictatorships of recent history. See A Tiruneh, *The Ethiopian Revolution 1974–1987: a transformation from an aristocratic to a totalitarian autocracy*, Cambridge: Cambridge University Press, 1993, 15.
- 7 Y Haile-Mariam, *The quest for justice and reconciliation: the International Criminal Tribunal for Rwanda and the Ethiopian High Court*, *Hastings International and Comparative Law Review* 22(4) (1999), 668–699, 675. See also H Marcus, *A history of Ethiopia*, Berkeley: University of California Press, 1994, 166, 181 and further.
- 8 Haile-Mariam, *The quest for justice and reconciliation*, 675.
- 9 For a detailed account of the Ethiopian Revolution, see generally A Tiruneh, *The Ethiopian Revolution* and B Tola, *To kill a generation: the Red Terror in Ethiopia*, Washington, DC: Free Ethiopia Press, 1989.
- 10 D Haile, *Accountability for crimes of the past and the challenges of criminal prosecution: the case of Ethiopia*, Leuven: K.U.Leuven, 2000, 11.



- 11 Girmachew Aneme A, Apology and trials: the case of the Red Terror trials in Ethiopia, *African Human Rights Law Journal* 6(1) (2006), 64–84, 65.
- 12 See generally Tiruneh, *The Ethiopian Revolution*.
- 13 Haile-Mariam, The quest for justice and reconciliation, 676, citing generally Tola, *To kill a generation*. Marcus also writes: ‘Unspeakable horrors were perpetrated on a largely defenceless civilian population for the sake of dogmatic purity, the broad masses, democracy, national integrity and civilian rule.’ Marcus, *A history of Ethiopia*, 193–194.
- 14 Haile, *Accountability for crimes of the past*, 7. The statement of Haile holds true generally with regard to the situation in Ethiopia. However, in the case of Eritrea, a reign of terror and lawlessness had already been unleashed when the Eritrea-Ethiopia federal arrangement was unilaterally abrogated by Emperor Haile Selassie I in 1962.
- 15 The TPLF is the dominant political organisation within the ruling party, the EPRDF, a coalition of four political organisations formed in the late 1980s. John Young describes the EPRDF as the extension of the TPLF, see J Young, The Tigray and Eritrean People’s Liberation Fronts: a history of tensions and pragmatism, *Journal of Modern African Studies* 34(1) (1996), 105–120, 105. See also J Abbink, Discomfiture of democracy? The 2005 election crisis in Ethiopia and its aftermath, *African Affairs* 115(419) (2006), 173–199, 174.
- 16 This section heavily relies on DR Mekonnen, *Transitional justice: framing a model for Eritrea*, Saarbrücken: VDM Publishing, 2009, 106–110.
- 17 UNMEE, The conflict and its aftermath, August 2006, [http://www.unmeeonline.org/index.php?option=com\\_content&task=view&id=16&Itemid=47](http://www.unmeeonline.org/index.php?option=com_content&task=view&id=16&Itemid=47) (accessed 17 August 2006).
- 18 See UNMEE, press briefing, August 2006, [http://www.unmeeonline.org/index.php?option=com\\_content&task=view&id=413&Itemid=53](http://www.unmeeonline.org/index.php?option=com_content&task=view&id=413&Itemid=53) (accessed 17 August 2006).
- 19 J Ewing, Ethiopia and Eritrea in turmoil: implications for peace and security in a troubled region, Institute for Security Studies, Situation Report, 1 December 2008, [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/SITREPETHERIT301108.PDF?](http://www.iss.co.za/dynamic/administration/file_manager/file_links/SITREPETHERIT301108.PDF?) (accessed 10 January 2009).
- 20 Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, signed on 12 December 2000 in Algiers (Algiers Peace Agreement), article 4(2). The Algiers Peace Agreement and the award of the Boundary Commission are obtainable from [www.pca-cpa.org](http://www.pca-cpa.org).
- 21 Article 5(1) of the Algiers Peace Agreement. The awards of the Claims Commission are obtainable from [www.pca-cpa.org](http://www.pca-cpa.org).
- 22 Boundary Commission, Decision on the delimitation of the border between Eritrea and Ethiopia, 12 April 2002, Chapter 8.
- 23 For a succinct summary of the awards of the Claims Commission, see JR Weeramantry, Eritrea Ethiopia Claims Commission awards, *Hague Justice Journal* 1(1) (2006), 41–43; JR

- Weeramantry, International decisions, *American Journal of International Law* 99(2) (2005), 465–471.
- 24 Claims Commission, Partial award, *jus ad bellum*, Ethiopia's claim 1–8 (*'jus ad bellum'*), award of 19 December 2005.
- 25 Claims Commission, Partial award, paras 14–16. See also the operative part of the same award. For a critical appraisal of the decision of the Claims Commission on *jus ad bellum* claims, see generally C Gray, The Eritrea/Ethiopia Claims Commission oversteps its boundaries: a partial award? *European Journal of International Law* 17(4) (2006), 699–721.
- 26 D Connell, *Conversations with Eritrean political prisoners*, New Jersey: Africa World Press, 2005, 103–124.
- 27 Connell, *Conversations with Eritrean political prisoners*, 125–135.
- 28 Connell, *Conversations with Eritrean political prisoners*, 109. Similarly, Solomon also said that, had the president and his cohorts accepted the peace proposal beforehand without being pushed, they would have been in a better position. He then adds (at 136), 'So to cover up all these things, [the President] says a lot of things ... Now, he says that Eritrea is less than the President. The President is more than Eritrea.' Solomon, who also once served as a foreign minister, was arrested in September 2001 and his whereabouts is unknown.
- 29 Others indicate that this number is too conservative. See, for example, Awate Team, Statistical report of Eritrea's casualties in the Eritrea-Ethiopia border war (1998–2000), January 2005, [http://www.awate.com/martyralbum/statistics\\_files/statistics.htm](http://www.awate.com/martyralbum/statistics_files/statistics.htm) (accessed 16 January 2005). Independent reports indicate that a total of between 100 000 and 150 000 soldiers from both sides died during the war. See Mekonnen, *Transitional justice*, 106–110.
- 30 Mekonnen, *Transitional justice*, 106–110.
- 31 In terms of military expenditure and economic deprivation, Eritrea has lost a great deal. Woldu Mikael, for example, states that the two-year war cost Eritrea \$0,5–1 billion. See W Mikael, Why Eritrea is threat to peace, January 2008, <http://blackstarnews.com/?c=122&a=4434> (accessed 13 April 2008); Awate Team, 2003: defending indefensible, indulging incompetence, January 2004, <portal/content/view/2748/2/> (accessed 11 January 2004).
- 32 For violations committed by both governments, see Claims Commission, Partial award, prisoners of war, Ethiopia's claim 4, award of 1 July 2003; Partial award, diplomatic claim, Ethiopia's claim 8, award of 19 December 2005; Partial award, western and eastern fronts, Ethiopia's claims 1 and 3, award of 19 December 2005; Partial award, diplomatic claim, Eritrea's claim 20, award of 19 December 2005; Partial award, loss of property in Ethiopia owned by non-residents, Eritrea's claim 24, award of 19 December 2005; Partial award, western front, aerial bombardment and related claims, Eritrea's claims 1, 3, 5, 9–13, 14, 21, 25 and 26, award of 19 December 2005; Partial award, economic loss throughout Ethiopia, Ethiopia's claim 7, award of 19 December 2005.
- 33 See Claims Commission, Final award, Ethiopia's damages claims, award of 17 August 2009.

- 34 See Claims Commission, Final award, Eritrea's damages claims, award of 17 August 2009.
- 35 Eritrea to pay Ethiopia millions, BBC News, August 2009, <http://news.bbc.co.uk/2/hi/africa/8208285.stm> (accessed 18 August 2009).
- 36 See Asmarino.com, Interview with the Ethiopian Prime Minister, Mr Meles Zenawi, August 2009, <http://tig.delina.org/tig/documents/171audio> (accessed 12 August 2009).
- 37 Asmarino.com, Interview with the Ethiopian Prime Minister.
- 38 Asmarino.com, Interview with the Ethiopian Prime Minister.
- 39 See, for example, Shabait.com, Commentary, US policy in Eritrea: a pattern of unprovoked hostility, September 2009, <http://www.shabait.com/cgi-bin/staging/exec/view.cgi?archive=15&num=7139> (accessed 5 September 2007). An important observation on the Somali issue is that of the former Nigerian President, Olusegun Obasanjo, who noted that Eritrea and Ethiopia 'have taken their enmity and exported it to Somalia. Anybody who is the enemy of Eritrea is a friend of Ethiopia. Anyone who is a friend of Eritrea is an enemy of Somalia.' See Africa unscrambled: retired African presidents, the *Independent*, April 2008, <http://blogs.independent.co.uk/independent/2008/04/africa-unscra-3.html> (accessed 11 April 2008).
- 40 See the Consolidated list of targeted individuals and entities associated with al-Qaeda, Osama bin Laden, and the Taliban, compiled by the al-Qaeda and Taliban Sanctions Committee, last updated on 9 October 2007. See also US Department of State, Office of the Coordinator for Counterterrorism, Comprehensive list of terrorists and groups identified under Executive Order 13224, 31 December 2001. On 20 November 2008, the Office of Foreign Assets Control (OFAC) in the US Department of the Treasury added a person named Mukhtar Abdullahi Ali to the list of Specially Designated Nationals (SDNs), which are generally referred to as 'terrorists'. The person carries an Eritrean passport and is also born in Eritrea. See OFAC, The terrorism sanctions, December 2008, <http://www.treas.gov/offices/enforcement/ofac/programs/terror/terror.pdf> (accessed 7 December 2008).
- 41 Profile: Sheikh Hassan Dahir Aweys, Somalia's Islamist leader, BBC News, June 2006, <http://news.bbc.co.uk/2/hi/africa/5120242.stm> (accessed 30 June 2006).
- 42 The UN Security Council, by Resolution 733 (1992), urged all states to implement a general and complete arms embargo on all deliveries of weapons and military equipment to Somalia until the Council decides otherwise.
- 43 See, for example, Report of the Monitoring Group on Somalia, submitted in accordance with Resolution 1724 (2006), UN Doc S/2007/436, 17 July 2007; Report of the Team of Experts, submitted in accordance with Resolution 1407 (2002), UN Doc S/2002/722, 3 July 2002, Annex 4. In one of the reports, Eritrean Colonel Yusuf Negash Warque is mentioned as a person involved in violation of the arms embargo. See Report of the Monitoring Group on Somalia, para 5.
- 44 See, for example, Report of the Monitoring Group on Somalia, submitted in accordance with UN Security Council Resolution 1724 (2006), UN Doc S/2007/436, 17 July 2007.

- 45 AU calls for sanctions on Eritrea, BBC News, May 2009, <http://news.bbc.co.uk/2/hi/africa/8064939.stm> (accessed 23 May 2009).
- 46 Clinton threatens Eritrea action, BBC News, August 2009, <http://news.bbc.co.uk/1/hi/world/africa/8186781.stm> (accessed 6 August 2009). See also US's UN envoy warns Eritrea over Somalia rebels, Reuters, July 2009, <http://www.reuters.com/article/africaCrisis/id-USN29287781> (accessed 29 July 2009).
- 47 JE Frazer, Four ways to help Africa: the US African Command should move from Germany to Liberia, *Wall Street Journal*, August 2009, <http://online.wsj.com/article/SB10001424052970203706604574372711948607526.html> (accessed 25 August 2009). See also Executive Order 13536 (12 April 2010) of the President of the United States of America, <http://www.treas.gov/offices/enforcement/ofac/legal/eo/13536.pdf>, which freezes the assets of persons contributing to the conflict in Somalia. One of the individuals is Yemane Gebreab, who is a senior advisor of the Eritrean President and the Head of the Department of Political Affairs of the People's Front for Democracy and Justice (PFDJ), the sole and ruling party in Eritrea.
- 48 UN Security Council Resolution 1907, UN Doc S/R/1907, 23 December 2009.
- 49 B Mesfin, The Eritrea-Djibouti border dispute, Institute for Security Studies, Situation Report, 15 September 2008, [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/SITREP150908.PDF?](http://www.iss.co.za/dynamic/administration/file_manager/file_links/SITREP150908.PDF?) (accessed 10 January 2009), citing W Zartman, *Ripe for resolution: conflict and intervention in Africa*, Oxford: Oxford University Press, 1989, 15.
- 50 See, for example, DR Mekonnen and JL Pretorius, Prosecuting the main perpetrators of international crimes in Eritrea: possibilities under international law, *Journal for Juridical Science* 33(2) (2008), 76–108.
- 51 See Mekonnen, *Transitional justice*, 109–110.
- 52 See, for example, Ewing, Ethiopia and Eritrea in turmoil.
- 53 On the backward- and forward-looking nature of transitional justice, see R Teitel, *Transitional justice*, Oxford: Oxford University Press, 2002, 7.
- 54 The arguments in the following paragraphs rely on Mekonnen, Revisiting the conceptual framework of transitional justice.
- 55 L Moreno-Ocampo, Transitional justice in on-going conflicts, *International Journal of Transitional Justice* 1(1) (2007), 8–9, 8.
- 56 Moreno-Ocampo, Transitional justice in on-going conflicts, 8–9. Moreno-Ocampo adds that transitional justice during ongoing conflict is 'a new and rapidly evolving field that academics and practitioners are in the daily process of defining and developing'.
- 57 C Bell, Transitional justice, interdisciplinarity and the state of the 'field' or 'non-field', *International Journal of Transitional Justice* 3(1) (2009), 5–27, 13, 17.
- 58 Bell, Transitional justice, 23–24.

- 59 Report of the UN Secretary General, para 5.
- 60 Bell, *Transitional justice*, 9.
- 61 *Ibid.*
- 62 For further discussion on this, see generally SM Weldehaimanot, African law of coups and the situation in Eritrea: a test for the African Union's commitment to democracy, *Journal of African Law* 54(2) (2010), 232–257.
- 63 See Rights for Eritrean citizens. Marketing justice, [http://news.asmarino.com/Information/2003/5/RIGHTS\\_for\\_ERITREAN\\_CITIZENS\\_30.asp](http://news.asmarino.com/Information/2003/5/RIGHTS_for_ERITREAN_CITIZENS_30.asp) (accessed 24 October 2004); Letter from the Office of the Prosecutor of the ICC to Rights for Eritrean citizens, 18 June 2004, OTP-CR-265/03, <http://news.asmarino.com/Information/2004/07/Images/icc2.gif> (accessed 24 October 2004); Rights for Eritrean citizens, reply to the ICC Prosecutor, [http://news.asmarino.com/Information/2004/07/RIGHTS\\_for\\_ERITREAN\\_CITIZENS\\_14.asp](http://news.asmarino.com/Information/2004/07/RIGHTS_for_ERITREAN_CITIZENS_14.asp) (accessed 24 October 2004).
- 64 Eritreans for Peace, people's movement for peace in Eritrea and the Horn of Africa, March 2010, <http://www.asmarino.com/press-releases/596-peoples-movement-for-peace-in-eritrea-and-the-horn-of-africa> (accessed 12 March 2010). The draft Peace Charter initiated by Eritreans for Peace calls, among other things, for the reconciliation and peaceful resolution of existing differences among the peoples of the Horn of Africa.
- 65 See, for example, UN Department of Public Information, *The United Nations and the independence of Eritrea*, New York: United Nations, 1997.
- 66 One of the most radical views on this is unequivocally depicted in the mission statement of a prominent Ethiopian opposition website, Ethiomedia. In furtherance of its controversial mission statement, Ethiomedia exhibits a distorted map of Eritrea and Ethiopia, which portrays some parts of the southern Red Sea province of Eritrea, including the Port of Aseb, as Ethiopian territories. See Ethiomedia's mission statement, May 2009, [http://www.ethiomedia.com/mission\\_statement.html](http://www.ethiomedia.com/mission_statement.html) (accessed 11 May 2009).
- 67 WL Kidane, The Ethiopian 'Red Terror' trials, in MC Bassiouni (ed), *Post-conflict justice*, New York: Transnational Publishers, 2002, 669.

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# 4 Regional and extra-regional inputs in promoting (in)security in Somalia

KIZITO SABALA

## INTRODUCTION

When all seemed promising following the election of Sheikh Sharif as the President of Somalia, which took place on 30–31 January 2009, the country swiftly slid back into further anarchy and desperation.<sup>1</sup> The intensity and ferocity of the violence and the resulting humanitarian catastrophe left the international community with limited options. Concerns that some regional as well as extra-regional players<sup>2</sup> are supporting different groups on both sides of the Somali political landscape raise critical questions around vested interests and pose serious challenges to the current efforts in Somalia led by the United Nations (UN) and African Union (AU). Unfortunately, the negative behaviour of some of the actors inflaming conflict in Somalia seems to have escaped academic scrutiny. This chapter is precisely about this issue – to discuss the role of regional and extra-regional players in promoting ‘(in)security’ in Somalia and the implications for the region. The chapter deliberately omits the various national and clan-based drivers of conflict (de)escalation in Somalia, but asserts that there is an alliance of convenience between them and the external actors, with implications for security.

The chapter is divided into four sections. The first section introduces the subject matter. Section two puts the Somali crisis into context by revisiting the critical issues at the heart of the ongoing conflict. It situates the failure of the previous peace and reconciliation attempts in Somalia partly in the broader regional and extra-territorial interests, which, in turn, undermined the mediation process and hence the final agreements. The third section discusses selected actors/interests in the current state of affairs in Somalia and how they are affecting the search for peace. Section four makes suggestions for some ways forward for Somalia with modest recommendations before the chapter's conclusion is reached.

## ISSUES IN THE SOMALIA CRISIS

The main problem afflicting the Republic of Somalia is that it is at war with itself, with the region and with the international community. Furthermore, the various peace initiatives over the past 19 years have not succeeded in stabilising the country and setting it back on the path to reconstruction.<sup>3</sup> Instead, the country continues to slide into chaos. Whenever there is the semblance of a government, armed opposition groups emerge to dislodge it and in the process create an environment in which criminal gangs and militias thrive, making the country ungovernable. To illustrate, the current problems in Somalia stem partly from the fact that armed opposition groups opposed to the UN-led Djibouti process are fighting to topple the present Transitional Federal Government (TFG) from power.

The current fighting is mainly between the militarily weak TFG forces and their supporters on the one hand and al-Shabaab, Hizbul Islam and other fundamentalist groups on the other. Another group, Ahlu Sunna Wal-Jama'a, was part of the opposition until it signed an agreement with the TFG on 15 March 2010 in Addis Ababa, Ethiopia. The two parties agreed among other things to work in unison to make the Transitional Federal Institutions (TFIs) effective at the national and regional levels. However, this deal collapsed in September 2010.<sup>4</sup> Whereas the TFG, which was expanded in early 2009 following the Djibouti Peace Agreement between the TFG and the ARS-Djibouti,<sup>5</sup> enjoys international legitimacy and the support of some players, such as the UN, the Intergovernmental Authority on Development (IGAD), the League of Arab States (LAS), the EU and the US, the opposition forces, particularly al-Shabaab,

reportedly receive support from some countries in the region, as well as from the Middle East.<sup>6</sup> Each of these groups – i.e. the TFG and the insurgents – have further widened the splits within the Somali community along clan and sectarian interests, dividing the country between pro- and anti-TFG groups. However, it is important to note that Somali society is organised according to segmentary lineage principles that divide it into patrilineal clans. Islam is the strongest horizontal identity that cuts across these clan lines.<sup>7</sup>

Furthermore, internal wrangles among the political leadership have been the hallmark of various individuals in power. This is true in the case of the Arta, Eldoret-Mbagath and Djibouti processes, and of the current leadership.<sup>8</sup> For instance, during President Abdullahi Yusuf's regime, members of parliament, the presidency and the premier were always in disagreement on important issues. This, together with a lack of effective governance institutions and capacity, makes it difficult for any government to establish an effective dominant presence acceptable to the Somalis. Instead, the regimes spend valuable time dealing with armed opponents and settling internal squabbles at the expense of governing. This lays credence to the assertion by Abdikarim Buh,<sup>9</sup> when he says that 'Sheikh Sharif has not been able to assert the TFG's authority in Somalia, with all [the] international aid and manpower, the TFG has failed to reclaim an inch of territory from the Islamists or an iota of legitimacy from the [n]ation'.

Since President Siad Barre was forced out in 1991, the Somali conflict has been about political leadership and clans jostling for control. Clanism<sup>10</sup> has been a major feature in Somali politics since time immemorial. For instance, it is said that the Darood clan, to which Siad Barre belonged, benefited the most from widespread corruption fuelled by a large influx of foreign aid and, therefore, aroused the envy of other clans during Siad Barre's days.<sup>11</sup> However, following the failure of the US Operation Restore Hope in 1994,<sup>12</sup> and the 9/11 terror attacks, the US has led its allies to brand groups in Somalia as Islamists, fundamentalists and moderates – tags that have largely defined, shaped and influenced interventions by the regional and international actors. For example, the current president, Sheikh Sharif, was one of the Union of Islamic Courts (UIC) leaders that were disposed by the Ethiopian troops in 2007. He is considered a moderate, whereas Hassan Dahir Aweys was regarded as a 'hardliner'. The UIC was a new force that emerged in Somalia after defeating the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT), which is sponsored by the Central Intelligence Agency (CIA).<sup>13</sup> By June 2006, the UIC had managed to

take over power in Mogadishu and rapidly extended its influence to the south and central parts of the country, while the TFG influence was limited to Baidoa, a town about 250 kilometres north-west of Mogadishu.

The forceful removal of the former despotic Somali leader, Siad Barre, by combined forces of various armed opposition groups intensified the state of lawlessness, anarchy and violence in Somalia that still obtains today.<sup>14</sup> The breakdown of law and order created a favourable environment for various groups to actively engage in activities that undermine peace. The collapse also provided an opportunity for the official withdrawal of the former Somaliland protectorate from the 1960 Union with Somalia to become a self-declared republic.<sup>15</sup> It also witnessed the declaration of Puntland as an autonomous region in 1998.<sup>16</sup> Puntland was initially established within the context of the outcome of the March 1993 Addis Ababa Peace Conference and the 1997 Sodere Process, where it was agreed that a 'building-block' approach would be adopted to reconstitute the Somali state. However, to date, the question of Somaliland and Puntland has been swept under the carpet, ostensibly to provide the chance for Somalia to stabilise. Nevertheless, the Somalis, the region and the international community must be prepared to address the issues of Somaliland and Puntland, irrespective of how long it will take to stabilise Somalia.

Since 1991 the search for peace in Somalia has been ravaged with difficulties. There is even a genuine fear among the population that the violence will continue with a much greater frequency. Several statements and writings have discussed and/or alluded to the failure of the attempts to bring peace to Somalia. For instance, Menkhaus,<sup>17</sup> the former UN special political advisor to the UN Humanitarian Operation in Somalia (UNOSOM), attributed the failure of Djibouti I and II to structural issues and disputes over representation and leadership. Menkhaus attributes the failure of the previous processes to four basic factors, namely the limited control of the delegates to deal with the powerful forces on the ground, the participants being based in only certain regions of the country, the vague procedures for enforcing the ceasefire and the fact that the problem of how to deal with the ex-president and his clan was ignored because it was still perceived as a military issue. Cornwell<sup>18</sup> notes that the agreements were fragile and concluded by people without the will or means to forcefully defend the peace.

Writing on the UN-led Djibouti Process of 2008, Menkhaus noted that 'it seems that the efforts of the UN [are] largely underpinned by the desire to

organize and placate the “warlords” to take leadership rather than the extreme fundamentalists’, and that ‘[t]he hope in international diplomatic circles was that the moderate wing of the Islamists would be brought into dialogue with the TFG, with the aim of negotiating a more inclusive government’.<sup>19</sup> Several rounds of talks were arranged in Khartoum, Sudan, but in vain. The hardliners in the UIC made provocative moves to undercut the talks.<sup>20</sup>

## ACTORS AND INTERESTS IN SOMALIA

Somalia, the epicentre of the Horn of Africa conflict system, is a theatre for regional and international actors with varied interests in complete alliance with internal actors. Since the first attempts to resolve the Somalia conflict in the early 1990s, various regional and international actors in collaboration with national and local players have accompanied the different processes.<sup>21</sup> Although some of them have genuinely tried to search for peace and resolve the fighting and humanitarian suffering that continue to engulf Somalia, others have meddled and fought proxy wars on the Somali soil, thereby undermining every attempt to bring peace.<sup>22</sup> The following subsection focuses on a few selected actors promoting (in)security in Somalia.

### Regional actors

#### *The AU and AMISOM*

The presence of the AU in Somalia occurs through the African Union Mission in Somalia, or AMISOM. It is a peacekeeping mission operated by the AU with the approval of the United Nations under Resolution 1744. In September 2006, the AU decided to send a peacekeeping mission to Somalia. AMISOM was deployed on 21 February 2007 for six months, with the mandate to provide support to the TFIs in their efforts towards the stabilisation of the situation in Somalia and the furtherance of dialogue and reconciliation; to facilitate the provision of humanitarian assistance; and create conducive conditions for long-term stabilisation, reconstruction and development in Somalia. AMISOM only deploys troops from Uganda and Burundi, and until 2010 had a combined force of 5 250 in Mogadishu (2 700 from Uganda and 2 550 Burundians), which is 3 000 fewer troops than the minimum required number. Other countries that offered troops were Nigeria, Ghana, Malawi, Djibouti and Guinea, but due to

insufficient resources, the question of equipment, insecurity facing troops in Somalia and internal politics within these countries, the AU has not been able to deploy them. Other countries offered to train some of the troops, and training has taken place in Brazil, Djibouti, France, Sudan, Kenya, Uganda and Turkey.

Since its deployment, AMISOM has managed at least to protect the Abdullahi Yusuf administration and that of Sheikh Sharif. However, these accomplishments have not been without losses. Since its deployment, AMISOM has lost 65 soldiers – 29 from Burundi and 36 from Uganda.<sup>23</sup> The forces continue to be threatened by the opposition armed groups, and this is without even mentioning the enormous logistical and financial challenges.

In terms of sustaining a peacekeeping mission in Somalia, the hope lies in the request to the UN Secretary General to explore the option of replacing AMISOM with a UN peacekeeping operation in Somalia. Until AMISOM is replaced by a UN-operated peace mission it seems the mandate of AMISOM will continue to be a subject of renewal for some time. The likelihood of other African countries contributing troops to join AMISOM continues to diminish, as the AU has not been able to marshal sufficient resources and equipment to support them.<sup>24</sup>

### *The Intergovernmental Authority on Development (IGAD)*

IGAD's prominent role in Somalia is through the Eldoret-Mbagath Peace Process, which started on 15 October 2002. The IGAD-sponsored negotiations under Hon. Elijah Mwangale resulted in the signing of the Cessation of Hostilities Agreement on 27 October 2002. The negotiations, which witnessed numerous violations of the agreement and frequent suspensions over disagreements on representation and especially the number of delegates, threatened to derail the whole process. Approximately 700 delegates attended the process, even though only 400 were required. The number of delegates was finally reduced and the venue of the conference moved to Mbagath, Nairobi. Former Kenyan Ambassador Kiplagat was appointed as the new mediator in January 2003.

The most important outcome of this round of talks was the development and adoption of the Federal Charter, which eventually gave way to the formation of the TFG. The transitional parliament was inaugurated in August 2004, following the formation of a 275-member parliament on a clan basis, following the so-called 4,5 formula, whereby the four major clans (the Dir, Darood, Isaaq and Hawiye) were accorded 61 seats each, and the alliance of minority clans was

accorded 31 seats.<sup>25</sup> This formula was important in order to deal with the clan and sub-clan interests that lie at the core of Somali politics.

Since then, IGAD has remained strongly focused on Somalia. It established the office of an IGAD facilitator on peace and reconciliation in Somalia in Addis Ababa, Ethiopia.<sup>26</sup> Before this, IGAD had been criticised for mediating an agreement and then disengaging itself from the process. IGAD led a call to the AU and the UN that resulted in the imposition of sanctions on Eritrea for supporting insurgents in Somalia. During the 15th Extraordinary Session of the IGAD Assembly of Heads of State and Government on 5 July 2010, the regional leaders called upon the chairman of the African Union Commission (AUC) to appoint an eminent person to lead the campaign for peace in Somalia. Jerry Rawlings, the former Ghanaian president, was appointed and is expected to coordinate efforts towards reconstitution and rebuilding the state of Somalia, including raising the profile of the country internationally.

### *Eritrea*

After the defeat and scattering of the UIC, its leaders regrouped in Eritrea and Yemen.<sup>27</sup> The reconstituted UIC finally transformed itself into what came to be called the Alliance for the Re-liberation of Somalia (ARS) in September 2007.<sup>28</sup> Eritrea, therefore, sheltered the then two leaders of the former UIC, namely Sheikh Sharif (who was the executive committee chairman of the UIC) and Sheikh Hassan Dahir Aweys (who was the head of the *Shura*, or consultative council of the UIC). The ARS was a broad coalition of Islamists, disaffected TFG parliamentarians and some Somalis in the diaspora.<sup>29</sup> Since then, the link between Eritrea and some key players in the Somalia conflict seems to have flourished.

A number of regional and international players, such as IGAD, the UN, the EU and the US, have accused Eritrea of supporting insurgent groups fighting the TFG, and called on regional and international players to take action against Eritrea. Thus, the IGAD Council of Ministers meeting of 8 December 2009 in Djibouti<sup>30</sup> called for the imposition of a no-fly zone and the blockading of identified airports and seaports in Somalia, as well as targeted sanctions against all those who continue to pose obstacles to peace and stability in Somalia through the provision of assistance to the extremists, including foreigners who continue to cause mayhem in Somalia. Consequently, under Resolution 1907 (2009),<sup>31</sup> the UN Security Council imposed arms and travel sanctions on Eritrea in

December 2009 for supporting insurgents trying to topple the government in Somalia. Resolution 1907 places an arms embargo on Eritrea, imposes travel bans on the nation's top political and military officials and freezes the assets of some of the country's senior political and military officials.

However, there are divergent views on whether the sanctions will have any effect on the Eritrean leadership and all those that have been targeted. Pessimists argue that sanctions will be less effective because Eritrea prides itself on self-reliance. For instance, Clarke and Kimball<sup>32</sup> note that decades of war against successive Ethiopian governments which were backed by the US and Russia have hardened the rebels-turned-leaders against outside aid. There is less than a handful of foreign relief groups working in Eritrea. In addition, the Eritrean capital, Asmara, receives little development aid from foreign nations. Remittances from the diaspora in Europe, the US, the Middle East and other African nations are the biggest source of foreign exchange for the nation. Revenue from mining, which is expected to begin in the next few years, will also boost Eritrea's balance of payments.

### *Ethiopia*

Ethiopia's involvement in Somalia has its roots in several territorial and political disputes that bred animosity between the two countries in the past. These include the 1960–1964 border dispute, the 1977–1978 Ogaden War, the August 1982 border clash and the 1998–2000 cross-border warfare during the chaotic warlord-led era. Since the overthrow of Siad Barre and the subsequent fall of the central Somali government, the Ethiopian military have entered Somalia several times.<sup>33</sup> The first incursion took place in August 1996, and in March 1999 Ethiopian troops reportedly raided the Somali border town of Balanballe in pursuit of members of the al-Ittihad al-Islamiya<sup>34</sup> group, which has been fighting to unite Ethiopia's eastern Ogaden region with Somalia.<sup>35</sup> In April 1999, two Somali leaders, Ali Mahdi and Hussein Aideed, said in an official protest to the UN Security Council that heavily armed Ethiopian troops entered the towns of Belethawo and Doolow in 1999. They further claimed that the Ethiopian troops had taken over the local administration and detained officials in the towns.<sup>36</sup> In May 1999, Ethiopian soldiers, with the help of a pro-Ethiopian Somali faction, occupied the town of Luuq in south-western Somalia, close to the borders with Ethiopia and Kenya. In June 1999, Ethiopian soldiers, supported by armoured vehicles, launched an attack from Luuq that resulted in the capture of Garba



Harre in the Gedo region, which was previously controlled by the Somali National Front (SNF) of Hussein Aideed. The attack was apparently aimed at flushing out Ethiopian rebels based in Somalia.<sup>37</sup>

The most recent incursion was in December 2006 when Ethiopia unilaterally entered Somalia to protect the TFG and drive out the UIC. The Ethiopian government, with the backing of the US, aimed to counter the expanding influence of the Islamists for fear that they would support insurgency groups in the Ogaden region of Ethiopia and spread fundamentalist ideology across the region. This controversial decision, which was later endorsed by IGAD, partly contributed to the withdrawal of Eritrea from the regional body on 22 April 2007, following a rift with Ethiopia at an IGAD meeting.<sup>38</sup> After confinement of the TFG to Baidoa by the UIC, Ethiopian troops arrived in Somalia to bolster government defences against the Islamist militias. Moreover, the TFG under the leadership of Abdullahi Yusuf enjoyed great support from the Ethiopian government. President Yusuf had the support of Ethiopia because, firstly, Ethiopia had helped in the creation of the Somali Salvation Democratic Front (SSDF), secondly, Yusuf had been released from Mengistu Prison by the Zenawi government and, thirdly, Ethiopia had been partly responsible for the collapse of President Salat's government.

The withdrawal of the Ethiopian troops was as controversial as their arrival. During the consultations with several stakeholders in preparation for the first round of UN-led Djibouti negotiations in 2008 by Nur Adde Hassan, the former Somali premier, it was agreed that the Ethiopian troops should withdraw. The same issue was tabled by the ARS-D as a precondition for negotiation. At the same time, the TFG argued that the Ethiopian pull-out was contingent on a political settlement and the deployment of a multinational force (a position that was later relaxed), and that the opposition must lay down its arms and renounce all forms of violence. An Ethiopian pull-out plan with a clear timetable and an international guarantee was agreed upon in the subsequent rounds of negotiations.

Even after its withdrawal, Ethiopia has remained a key player in Somalia's conflicts. On numerous occasions, Ethiopia has hosted reconciliation meetings between members of the TFG government – of note was the one between Nur Adde and President Yusuf. In March 2010, Ethiopia hosted the meeting that led to the signing of an agreement between the TFG and Ahlu Sunna Wal-Jama'a. However, these initiatives bore little fruit, as President Yusuf resigned because

he could no longer work with Nur Adde, whom he accused of negotiating with terrorists in Djibouti. Ethiopia, which is said to maintain a significant military presence along its border and train anti-al-Shabaab groups on its soil,<sup>39</sup> will keep a close eye on Somalia because territorial integrity and national interests dominate and define Ethiopia's domestic, foreign and security policies.

### *The Eritrean-Ethiopian nexus in Somalia*

The critical question is why Eritrea supports, or is thought to support, insurgents in Somalia, which clearly goes against the volition of the region and the international community. There are a number of postulations to this important question. But first it must be noted that within its short history as a state Eritrea has had tense relations with most of its neighbours. Currently, Eritrea is embroiled in border disputes with Ethiopia and Djibouti. In 1996, Eritrea attacked Yemeni troops on Greater Hanish Island in the Red Sea, which both countries claimed as theirs. After deaths on both sides, the two countries referred the dispute to the Permanent Court of Arbitration. In 1998 the court awarded Yemen ownership of the larger islands, including Greater Hanish, and recognised Eritrea's sovereignty over islets to the south of the main Hanish group.<sup>40</sup> Second, Eritrea rejected the 2008 UN-facilitated Djibouti Agreement, a peace accord between the TFG and the ARS. Third, when Ethiopian troops defeated the UIC, its top leadership found refuge in Asmara.

Since the bloody border war between Eritrea and Ethiopia in 1998, tension has characterised relations between the two countries. Unfortunately, both countries have exported their disputes into proxy wars elsewhere, including Somalia and Sudan. Ethiopia is reported to be supporting Eritrean opposition groups – albeit weak and fractured ones – against the government.<sup>41</sup> Furthermore, when the TFG changed and President Sheikh Sharif Ahmed came to power in January 2009, it is claimed that Ethiopia changed its strategic support for the TFG in Mogadishu and has resumed tacit support for independent militias, most notably the ASWJ militia faction (ostensibly, to counter Eritrean support to groups such as al-Shabaab), which has emerged as a military power in central Somalia, particularly the Galgaduud region. Ethiopia is threatened by the outward expansion of Islamist hardliners, especially al-Shabaab guerrillas, and support for groups such as the ASWJ is a way of neutralising them.

In retaliation, Eritrea – which regards the TFG as a Western plot with Ethiopian endorsement to take charge of Somalia and install a pro-West

regime – is said to support and harbour a variety of long-standing Ethiopian armed opposition groups, such as the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF), against the Ethiopian government, and generally seeks to undermine Ethiopian influence wherever it can in the region. The Ogaden region is inhabited mostly by Somalis and has been a persistent problem for Ethiopia for decades. With the Ethiopian incursion into Somalia, the ONLF escalated its attacks. An example is when it attacked an oil exploration facility in April 2007, killing nine Chinese oil workers. Eritrea is also accused of sending arms and providing other support to Ethiopian rebel groups and various guerrilla movements in western Sudan's unstable Darfur region. Some Darfuri rebels and Ethiopian opposition groups have offices in Asmara.

In Somalia, Eritrea is said to have trained, armed and financed militias opposed to the Ethiopian-allied TFG.<sup>42</sup> This claim has credence from the UN arms monitoring body on Somalia, which has noted that Eritrea sends money and weapons by plane and boat, and provides training and logistical support to insurgent groups in Somalia. The report accuses Asmara of acting as a middleman for other countries helping the rebels. Before the break-up of the ARS into Djibouti and Asmara factions, the UN said Eritrea was supporting the ARS, a group set up at a Somali opposition conference in Eritrea. The UN arms body, citing an ARS source, said Asmara was providing between \$200 000 and \$500 000 a month to support the rebels. For Eritrea, supporting the Somali insurgents is part of a wider war to keep its Ethiopian enemy out of control of a small border town. Publicly, the Eritrean government's message of aiming to 'liberate' rallies Somalis who are opposed to or disappointed with the current Mogadishu political leadership's inability to stabilise the country. This argument fits into the discourse that perceives al-Shabaab as a nationalist rather than a terrorist group, as advanced by the US and its allies.

In response to these claims, the Eritrean President, Isaias Afwerki, has repeatedly said that the CIA was masterminding the accusations against Asmara. He said Eritrea was 'sick' of the allegations, which were completely unfounded. Afwerki's government says it supports a peaceful resolution to the Somali conflict and blames foreign powers for meddling in the region's internal affairs, citing Washington's weapons deliveries to Somalia's transitional government as a case in point.<sup>43</sup> In the same vein, the leader of the Islamic militia, Hassan Dahir Aweys, has repeatedly denied receiving support from

any quarters, despite having stayed in Asmara following the UIC's defeat by Ethiopia in 2007.

Therefore, it seems that the current frosty relations between Ethiopia and Eritrea are mainly based on their strategic national and regional interests, as well as those of external actors, egoism and their desire to divert national interest away from their domestic issues. Indeed, Ethiopia and Eritrea have serious domestic issues relating to governance and democratisation. The leadership in both countries has been accused of cross-violation of human rights, passing draconian rules to suppress the media and civil society. In Ethiopia, the flawed election of 2010 witnessed a heavy clampdown on real and perceived opposition figures. Some of them were detained, but are now released. In Eritrea, opposition parties have been banned and anybody perceived to be opposition is arrested and detained.

### *Djibouti*

Djibouti was one of the first countries in the region to try to resolve the Somalia crisis through dialogue. It facilitated a conference in Arta, Djibouti, that brought together several stakeholders in the Somalia conflict. After several protracted discussions among various Somali groupings, the first Somali government since the removal of Siad Barre was installed in August 2000 when Abdikassim Salat Hassan was elected as transitional president by various clan leaders in Arta.<sup>44</sup> However, violence orchestrated by mainly armed groups which are clan-based persisted because they felt left out of the Arta process. Furthermore, Salat was accused of being an Islamist. The armed militias effectively blockaded and confined the activities of the Transitional National Government (TNG) to a section of Mogadishu. Unabated violence continued until 2002, when 21 factions and Salat's government signed a ceasefire agreement at the 14th set of peace talks, facilitated by IGAD.

## **International actors**

### *The UN*

The early presence of the UN in Somalia after the overthrow of Siad Barre dates back to 1992 through the United Nations Security Council Resolution 751, which established the United Nations Operation in Somalia (UNOSOM I) to ensure a ceasefire between the warring factions. UNOSOM II was established in March

1993 to take appropriate action, including enforcement measures to establish a secure environment throughout Somalia for humanitarian assistance. To that end, UNOSOM was to complete through disarmament and reconciliation the task begun by the Unified Task Force for the restoration of peace, stability, law and order. UNOSOM II was withdrawn in 1995.

Since then, the UN was conspicuously absent until 2008, when it re-engaged through the United Nations Political Office for Somalia (UNPOS) to spearhead the Djibouti Process, with the TFG and the ARS as the principal parties.<sup>45</sup> The process consisted of four rounds<sup>46</sup> of negotiations with Abdirahman A. Warsame and Ahmed Abdisalaan Adan as chief negotiators for the ARS-D and the TFG, respectively. During the negotiations, the parties agreed to cease all armed confrontation and terminate all acts of armed confrontation by the ARS and its allies, and the TFG and its allies. Consequently, the parties agreed to the Modalities for the Implementation of the Cessation of Armed Confrontation. Furthermore, the parties agreed to search for a political settlement for a durable peace; promote a peaceful environment; avoid a security vacuum; facilitate the protection of the population and the unhindered delivery of humanitarian assistance; and call for the convening of a reconstruction and development conference.<sup>47</sup>

The parties requested the UN to authorise and deploy an international stabilisation force from countries that are friends of Somalia, which should exclude neighbouring states and which should be followed by the withdrawal of the Ethiopian troops.<sup>48</sup> In this regard, they agreed on the time for the withdrawal of Ethiopian troops. The final two rounds of discussions saw the parties agree on some principles on the question of impunity through the unity government and the establishment of mechanisms to ensure political, financial and moral accountability of the unity government.<sup>49</sup>

The 25 November agreement envisaged the enlargement of the parliament by an extra 275 seats, with 200 allocated to the ARS-D and 75 to members of civil society, including women, the business community and the diaspora; that the new all-inclusive parliament would elect the new leadership; and an extension of the transitional period by two years.<sup>50</sup> The parties agreed that all agreements reached at the Djibouti negotiations would be embedded as amendments in the TFC. The Djibouti Agreement paved the way for presidential elections that saw Sheikh Sharif win by 215 votes against his closest rival's 60 votes.

## *The US*

Attempts by the US, in cooperation with the UN mission, to protect food convoys for famine victims, which were manipulated by warlords, and which eventually turned into an abortive attempt to oust Mohamed Farah Aideed in December 1992, were just a hiatus in the ongoing journey towards instability in Somalia. A US-led humanitarian and nation-building intervention under the auspices of the UNITAF was initiated in 1993, but withdrawn in 1995 after a firefight in Mogadishu resulted in the killing of 18 US soldiers in 1993.<sup>51</sup>

The current involvement of the US in Somalia is mainly driven by the desire to stem what it believes is increasingly becoming a safe haven for al-Qaeda-related operatives. In this regard, the US launched attacks in southern Somalia that killed Al Fazul Abdullah Mohammed in January 2007, who is believed to have been one the masterminds of the Nairobi and Dar-es-Salaam bombings in 1998, and it still keeps a close intelligence on Somalia.<sup>52</sup> Until now, the US has been seen as a reluctant partner that has not fully supported and empowered the TFG, but whose interest is focused on its campaign against Islamist militias operating in the country for fear that failed states harbour terrorists, as they provide safe havens. US fears increased after the 9/11 bombings and the bombings of US embassies in Kenya and Tanzania – attacks that were said to be masterminded by al-Qaeda, and some of the suspects were said to have entered Kenya via that country's porous border with Somalia.

US efforts to constructively re-engage with Somalia after the 1993 fiasco have been largely lukewarm and counter-productive. At best, these efforts alienate, polarise and divide parts of the Somali population and diverse Muslim community into 'moderate' and 'extremist' camps. Indeed, the open blessing of the TFG by the US and other Western countries has perversely served to isolate and divide the Somali population along these lines.<sup>53</sup> As a result, several indigenous militant Islamist groups have emerged and grown stronger in recent years because they are viewed as nationalist movements fighting against foreign invasions. The Obama administration, like that of his predecessor, has opted for the policy of providing limited, indirect diplomatic and military support to the TFG in the hope that it will provide a bulwark against militant Islamist forces in Somalia.

US involvement in the Horn of Africa is determined by its own strategic interests rather than a genuine desire for peace in Somalia. In particular, its involvement is driven by the global war on terror (if there is such a thing). The

relationship that the US has with Addis Ababa is premised on this – and it is not difficult to see. Firstly, the US has serious problems with Sudan, and its relations with Asmara are not good either. Moreover, Eritrea firmly believes that the US is responsible for Ethiopia's failure to implement the peace agreement that awards the border town of Badme to Eritrea. Ethiopia has been reluctant to implement the agreement, and Eritrea rightly thinks that the US, as a guarantor of this agreement, should compel Ethiopia to adhere to it. Secondly, the US cannot have reliable relations with Somalia in its current status, and although it has good relations with Djibouti, where it has built a military base, Djibouti's influence in the region is limited and, therefore, fails to provide sufficient ground for the US to build the Horn of African strategy that will influence relations in the region. In addition, the French have a long-standing history of military cooperation with Djibouti by virtue of being a former colonial master and, therefore, Djibouti tends to have closer relations with the French than with the Americans.

## Internal actors

### *The Transitional Federal Government*

IGAD's two years of protracted mediation led to the establishment of the TFG, succeeded by the Transitional National Government (TNG), whose mandate was to last for three years up to August 2003. However, President Salat invoked sections of the 1960 Somalia Constitution to extend his tenure of office.<sup>54</sup> This was important in order to avoid a power vacuum in the fragile state, which would have led to more bloodshed. Negotiations leading to the establishment of the TFG involved the enactment of a Transitional Federal Charter (TFC) as a transitional constitution. Different Somali factions elected a 275-member parliament that was sworn in in August 2004 in Nairobi.<sup>55</sup> It was not until June 2006 that it met in Somalia for the first time, in Baidoa. This was due to security concerns occasioned by fighting between the UIC and the ARPCT, which kept the legislature from entering Mogadishu. Even with Baidoa as the designated seat of the Transitional Federal Parliament (TFP), it was only possible to operate under the protection of Ethiopian soldiers.<sup>56</sup>

Even when the TFG relocated to Somalia in 2006 it could not exercise effective control over the country, as the warlords had consolidated their control over large parts of Mogadishu and southern and central regions of the country.

Even when it did convene, the TFG was fraught with internal divisions and lacked cohesion, which undermined its power. Wrangling continued to plague President Yusuf's leadership until circumstances forced him to resign in 2008. President Sheikh Sharif replaced Yusuf under a new political arrangement within the framework of the Djibouti Agreement.

Now the TFG with the support of the AU/AMISOM, IGAD, some Somalis, the UN and the LAS, among others, controls only a small part of the capital, Mogadishu. Large parts of southern and central Somalia, and most of the capital, are in the hands of al-Shabaab and other opposition forces, such as Hizb al-Islam. As a consequence, the TFG has failed to attract a critical mass of support.

Realistically, the TFG's prospects are dismal and, therefore, the regional and international actors should concurrently review their interventions in Somalia in the expectation that the TFG will either collapse or, equally unfortunately, remain a marginal presence that is fundamentally incapable of stabilising the country and dealing with extremist groups and piracy.

### *Al-Shabaab*

Al-Shabaab<sup>57</sup> (meaning 'the youth' in Arabic) is one of the main actors in today's Somalia. Others include the Hizb al-Islam, Ahlu Sunna Wal-Jama'a, the UIC and al-Ittihad al-Islamiya.<sup>58</sup> The al-Shabaab group gained prominence and increased its strength in the wake of the Ethiopian intervention, and is currently controlling larger parts of southern Somalia. Al-Shabaab grew to prominence during the rise of the UIC.<sup>59</sup> Al-Shabaab is reported to have close ties with al-Qaeda, and its former leader, Adan Hashi Ayro, is suspected to have trained with the Taliban in Afghanistan.<sup>60</sup> It follows a strict interpretation of sharia law, which may include beheading, amputations or stoning to death those who violate what is seen as God's law.<sup>61</sup> According to the *New York Times*, experts place al-Shabaab numbers around 3 000 with an additional 2 000 allied gunmen.

Al-Shabaab is composed mainly of Somali youths who have been in the diaspora. Also among its ranks is a large population of foreign guerrillas, such as the Afghan group al-Fitnam, the Rank and File and the Takfir wa Hijra.<sup>62</sup> These people are said to be from places such as the Persian Gulf and Afghanistan; some lived in Toronto and have become radicalised in the last decade or so and have returned to Somalia. However, it is difficult to substantiate such claims, which are often dismissed as propaganda in some quarters.



After the Ethiopian invasion that toppled the UIC in 2007, al-Shabaab successfully conducted an extensive military, political and propaganda mobilisation and campaign aimed at recapturing southern Somalia. It largely recruited among young jobless men and ‘marketed’ the struggle with its adversaries as essentially ideological. Initially a loose network of Islamist groups opposed to the Ethiopian occupation, over the last couple of years al-Shabaab has become more centralised and increasingly extremist, for political as well as ideological reasons.

The relationship between al-Shabaab and certain other key groups, such as Hizb al-Islam, is violent – with repeated clashes in recent times. The two groups have recently been facing internal problems, evidenced by growing rifts in the Hizb al-Islam coalition and by emerging schisms within the al-Shabaab leadership.<sup>63</sup>

## RECOMMENDATIONS

Without a doubt, regional and international players are now paying for decades of neglect and their lukewarm response to Somalia, which has created millions of displacements, a humanitarian crisis, countless deaths and utter deprivation and despair. Any actions to support the peace and stability in Somalia should be driven by a genuine desire to restore governance and stability – but should not be motivated by the war on terror, piracy, hatred, narrow political national interests or proxy wars, which seem to have defined and shaped the policies of the major players in Somalia in the past decade.

Although the fight against piracy and terrorism is important, it will not resolve the Somali crisis. Instead, in the pursuit of peace and stability in Somalia, these two issues should not be the priorities because they only serve to divert attention and resources from the real issues and the search for a political solution to a political problem. Piracy and terrorism are outcomes of the governance malaise and institutional breakdown that have plagued Somalia since the days of Siad Barre. In the words of Jean Ping, chairperson of the AU Commission on Peace, pirates were not born in the ocean and they don’t live there. They come from Somalia. If you want sustainable peace you have to go to where they come from, which is on the land. Indeed, some analysts claim that when Sharif Ahmed’s Islamic Courts Union swept to power in 2006, they were routed immediately in a proxy ‘war on terror’ pursued by the US. Limited efforts

have been made to place non-warlords in positions of leadership, but instead, unfortunately, those very warlords who are responsible for the war crimes and anarchy that have characterised Somalia since 1991 have been rewarded with such positions in order to help the fight against the ‘terrorists’.

The flames from a burning house affect all the neighbours, and the regional countries have a genuine stake in Somali affairs. However, their role must be a positive one for the overall political stability of the Horn of Africa region. The existing animosity between Eritrea and Ethiopia continues to contribute to the further destabilisation of the region by undermining peace and reconciliation efforts in Somalia through the extension of support to different groups involved in the conflict. This underscores the IGAD/EU position, namely that the normalisation of relations between Ethiopia and Eritrea would contribute significantly to stability and development in the Horn of Africa.<sup>64</sup> It is, therefore, imperative that relations between the countries in the region, and in particular Ethiopia and Eritrea and their roles in Somalia, be positive for the country in order to make progress towards stability. Serious efforts need to gain momentum in the region to fully implement the Ethiopia-Eritrea peace deal, which includes honouring the demarcated Ethiopian-Eritrean border, in the spirit of the Algiers Agreement – in particular Article 4 – and normalise relations between the two countries. This should be in line with the outcome of the IGAD summit of 14 June 2008 and the content of UN Security Council Resolution 1862. The IGAD summit called for a constructive dialogue between Ethiopia and Eritrea to resolve the persistent border dispute between them and noted that the dispute was a serious threat to security in the region. On the other hand, UN Security Council Resolution 1862 calls on Eritrea to ‘abide’ by its international obligations as a member of the United Nations, ‘respect’ the principles mentioned in Article 2, paragraphs 3, 4 and 5, and Article 33 of the TFC, and ‘cooperate’ fully with the UN Secretary General, in particular through his proposal of good offices, mentioned in paragraph 3. Without a resolution of the Ethiopian-Eritrean impasse, Somalia is likely to remain a site of the ongoing proxy war between the two states.

The Security Council has already authorised sanctions against individuals and groups that obstruct the peace process. Although the international community should send strong signals to countries and actors whose actions undermine progress and foment war in Somalia, it is also important to acknowledge that such sanctions also serve to isolate certain key groups from the talks

because they cannot engage with the TFG, despite its open policy to invite every group to join discussion.

Internally, the various pro-TFG factional and clan leaders must demonstrate vision and determination to stand in unison and provide leadership to a movement that is militarily very weak and faces opposition from all fronts. This would deprive the insurgents of the opportunity to effectively and brutally exploit the TFG's lack of cohesiveness, organisation, decisiveness and commitment. In short, in order for the struggle to continue and to deliver a final blow to the negative forces in Somalia, the TFG supporters must work towards a coherent strategy to deal with the opposition in pursuit of their goal.

The regional and international dimension of the problem is one of the issues that have sucked many actors into the Somalia crisis. States must exercise maximum restraint and stop interfering in Somalia, but instead genuinely support the current UN-led process, even if it has its weaknesses, for the sake of Somalia. The country has been in a state of war since 1991 and the current TFG provides at least some structure around which to start constructing peace.

## CONCLUSION

It is evident that the TFG and the opposition have invited foreign help in their effort to defeat their adversaries. As stated by John Prendergast in 2006, a senior advisor with the International Crisis Group, the frequent interventions in Somalia have contributed to double standards among political factions, which secretly look for outside support but publicly decry 'foreign influence'. The Islamic militias have rallied their supporters by condemning Sheikh Sharif's government and saying that he is a Western stooge out to fight Islam. The US accuses the insurgents of harbouring al-Qaeda leaders responsible for the twin suicide bombings at the US embassies in Nairobi and Dar-es-Salaam in 1998.

There are a number of issues that colour and punctuate the Somali crisis. These include political leadership and control; the tagging of the internal players as warlords; forms of Islam – i.e. fundamentalists versus moderates; clan-based politics; and national, regional and international interests, which in certain cases lead to proxy wars. Whereas in the past, clan politics and rivalry among the various warlords fuelled and entrenched the conflict, in recent times the crisis has increasingly taken the shape of a conflict among groups that allegedly advance different forms of Islam. This is particularly due to the steady gain in

power and influence of the so-called hardliners, which has raised fears of an emerging Taliban-style regime in Somalia.

There is a set of linked conflicts and problems within the Horn of Africa that attract greater international attention and are connected to the local conflicts. But what seems to be driving the current situation in Somalia is local rivalries and regional- and international-based interests. Ethiopia and Eritrea fought a border war from 1998 to 2000, which has left significant wounds and reminders because the subsequent peace agreements meant to end that conflict have not been implemented. This has led to frustration and the desire to start another round of war of revenge on both sides. These frustrations are largely manifested in Eritrea's support for and cultivation of anti-Ethiopian groups in Somalia and within Ethiopia. Similarly, the Ethiopian troops sent to Somalia in 2006 should be recognised within the context of Ethiopia's broader strategy and tactics because Somalia is viewed as a link to the Eritrean threat. Either way, each country perceives the other as a threat and will use every opportunity to hit at its real or imagined enemy.

It seems that the proxy wars between Eritrea and Ethiopia provide opportunities for external players to get involved in Somalia in any way they choose. There are those who use Eritrea to support the insurgents and other opposition groups, and there are others who use Ethiopia to extend assistance to the TFG. It seems that the two countries are playing a negative role, keeping Somalia embroiled in a devastating war so as to fight each other indirectly. In the words of Terrence Lyons,<sup>65</sup> the US sees the global war on terrorism as a cause for concern in the Horn of Africa. But what is fundamentally driving events in Somalia are local rivalries and more regionally based conflict dynamics, primarily the continued bitter animosity between Ethiopia and Eritrea.

War on terror, piracy and inter-state disputes seem to define and shape the negative interventions in Somalia that continue to fuel despondency and desperation in that country. It is important that the main effort to resolve Somalia's conflicts genuinely addresses the fundamental issues at the core of the conflict. Indeed, a stabilised Somalia with a government with capacity and effective institutional structures will address piracy and Islamic fundamentalism if it has to be a member of a community of nations.

There are many other national, regional and international actors that play a part in promoting (in)security in Somalia, which have not been discussed in this chapter, but which are equally important. Therefore, it is crucial that

that they are given attention in future studies. These include the EU, Kenya, Egypt, Libya, Qatar, Syria and Iran. Others internal actors include the warlords, Ahlu Sunna Wal-Jama'a and the business community. It is important that the UN, the AU and IGAD, among others, design an effective diplomatic strategy to erode the support received by actors who play such a negative role. In this regard, they should rethink the basis of their cooperation with the other actors, especially those seen as strategic partners. Somalia's priorities and interests should be placed ahead of these actors' roles in Somalia, irrespective of their impact.

## NOTES

- 1 For a detailed exposé of the UN-led Djibouti Process, see P Kasaija, The UN-led Djibouti peace process for Somalia 2008–2009: results and problems, *Journal of Contemporary African Studies* 28(3), 261–282.
- 2 Regional actors refer to the region covered by the Intergovernmental Authority on Development (IGAD) as consisting of Djibouti, Eritrea, Ethiopia, Kenya, Sudan, Somalia and Uganda. It also includes the AU and the immediate neighbours Egypt and Libya, which have been key actors in the Somali conflict. The extra-regional players include the UN, the US, the EU, Iran, the League of Arab States (LAS), Yemen and others.
- 3 The UN-led Djibouti talks, from which the current TFG draws its mandate, is the 15th round of talks. See R Cornwell, Fourteenth time lucky? Institute for Security Studies Paper 87, April 2004; Kasaija, The UN-led Djibouti peace process for Somalia, 261–282 and K Sabala, A Ahmad and E Ruto, The Somali peace process from Arta to Mbagathi: opportunities and challenges, in A Nhema and P Tiyambe Zeleza (eds), *The resolution of African conflicts: the management of conflict resolution and post-conflict reconstruction*, Oxford: James Currey, 2008, 134–58.
- 4 For more details, see the Djibouti Agreement between the TFG and the ARS-Djibouti, signed on 19 August 2008.
- 5 ARS-Djibouti refers to the Alliance for the Re-liberation of Somalia (ARS) faction that relocated to Djibouti and later joined the TFG under the Djibouti Agreement.
- 6 Somalia PM accuses Libya, Iran, Egypt of supporting militants, Associated Press, 29 July 2006. See also SA Dersso, The Somalia conflict: implications for peacemaking and peacekeeping efforts, ISS Paper 198, September 2009; M Seifert, The Ethiopian intervention in Somalia: theoretical perspectives, in E Bruchhaus and M Sommer (eds), *Hot spot Horn of Africa revisited: approaches to make sense of conflict*, Berlin: Lit Verlag, 2008, 36.
- 7 This information was contributed by an anonymous reviewer of this chapter.

- 8 The Arta Process was led by Djibouti and resulted in the first TNG in Somalia; the Eldoret-Mbagathi Process was led by IGAD and resulted in the TFG and the Transitional Charter; the Djibouti Process was spearheaded by the UN.
- 9 A Buh, Somalia: the TFG that never was: resuscitating the corpus, <http://www.raxanreeb.com/?p=50043> (accessed 14 May 2010).
- 10 The clan groupings of the Somali people are important social units, and clan membership plays a central part in Somali culture and politics. Clans are patrilineal and often divided into sub-clans, sometimes with many subdivisions. The main clans in Somali are the Darood, Dir, Hawiye, Isaaq, Rahanweyn (Digil and Mirifle) and Meheri.
- 11 Interview with Mohammed Abdulraham Hussein, an independent consultant on Somali issues, 25 July 2010, Nairobi, Kenya.
- 12 Operation Restore Hope was the name given to the US-led military and humanitarian intervention in Somalia in December 1993 to halt a famine that had claimed more than 500 000 Somali lives.
- 13 The UIC started to become a functioning and operational force in 2005, and was mainly supported and financed by the business community in Somalia, who were tired of losing profits to the many roadblocks manned by clan militias. The UIC was a very broad, loose coalition, ranging from traditional Sufi figures, like Sheikh Sharif, to hardline Salafists (a term connoting identification with the Wahhabi branch of Islam), like Aweys, to committed jihadists in the al-Shabaab militia). The ARPCT was a grouping of Somali warlords sponsored by the US to counter the threat of Somalia's takeover by Islamic – and by inference, al-Qaeda – elements.
- 14 The removal of Siad Barre intensified anarchy because since his takeover in 1969 armed opposition began to fight him as a reaction to his brutal, oppressive, corrupt and dictatorial regime that used heavy-handedness against any opposition. Barre's tactics included detention, torture and summary executions, and the collective punishment of clans such as the Isaaq, Majerteen and Hawiye.
- 15 Somaliland was established in 1991, the year the Somali state collapsed. Somaliland declared secession from the rest of the country on the basis that historically, it was a British colony, whereas the rest of the former Somali state was an Italian colony. From 1981, The Somali National Movement (SNM) fought Siad Barre for succession.
- 16 Puntland State was established in 1998, and consists of five of the 18 regions that formed the Somali Republic. Puntland has the stated policy that it 'does not believe in any form of secession or break-up of the Somali nation' and that the 'unity, integrity and sovereignty of Somalia [are] inviolable'. This statement is contained in Puntland's Position on Somali Peace Process in Arta (Djibouti), sent to HE Ismail Omar Guelleh, President of the Republic of Djibouti, the IGAD Heads of State and Government, the UN Secretary General, the League of Arab States, the Organization of Islamic Conference (OIC) and the European Union Heads of State and Government in June 2000. See [http://warsidaha.puntland.8k.com/PR/President\\_letter\\_25Jun.html](http://warsidaha.puntland.8k.com/PR/President_letter_25Jun.html) (accessed 10 December, 2010).

- 17 K Menkhaus, International peace building and the dynamics of local and national reconciliation in Somalia, in C Water and H Jaffrey (eds), *Learning from Somalia: the lessons of armed humanitarian intervention*, Boulder: Westview Press, 1997, 42–63.
- 18 Cornwell, Somalia: fourteenth time lucky?
- 19 K Menkhaus, The crisis in Somalia: tragedy in five acts, *African Affairs* 204, 371.
- 20 Menkhaus, The crisis in Somalia: tragedy in five acts, 376.
- 21 Somalia PM accuses Libya, Iran, and Egypt of supporting militants; Dersso, The Somalia conflict: implications for peacemaking and peacekeeping efforts; Seifert, The Ethiopian intervention in Somalia: theoretical perspectives, 36.
- 22 The IGAD communiqué of the 14th Extraordinary IGAD Summit of 2 July 2009 mentions the influx of foreign armed aggressors who appear to be determined to prevent Somalia from being stabilised and the TFG from achieving its objectives of national reconciliation and peace.
- 23 See [http://en.wikipedia.org/wiki/African\\_Union\\_Mission\\_to\\_Somalia#Casualties](http://en.wikipedia.org/wiki/African_Union_Mission_to_Somalia#Casualties) (accessed 12 October 2010).
- 24 See [http://en.wikipedia.org/wiki/African\\_Union\\_Mission\\_to\\_Somalia#cite\\_note-UN\\_SRES\\_17722007-3](http://en.wikipedia.org/wiki/African_Union_Mission_to_Somalia#cite_note-UN_SRES_17722007-3) (accessed 12 October 2010).
- 25 K Ochieng, The Somali peace process, in M Mwangiru (ed), *African regional security in the age of globalization*, Nairobi: Heinrich Boll Foundation, 2004.
- 26 This followed a decision by the IGAD Assembly of Heads of State and Government on 29 October 2008 in Nairobi. The terms of reference for the IGAD office of the facilitator are to assist the TFG in its endeavour to build peace, security and stability through a process of national reconciliation; coordinate the effort by the IGAD member states and the international partners in the area of institutional and capacity building for Somalia; assist the TFG to fulfil the tasks entrusted to it as envisaged in the Transitional Federal Charter (TFC) and the Djibouti Agreement; assist in the mobilisation of financial and technical resources to enable the TFG to fulfil its mandate; and facilitate the implementation of the provisions of the TFC with respect to the establishment of institutions and commissions as envisaged for the transitional period and beyond.
- 27 A Weber, State building in Somalia – challenges in a zone of crisis, in E Bruchhaus and M Sommer (eds), *Hot spot Horn of Africa revisited: approaches to make sense of conflict*, Berlin: Lit Verlag, 2008, 28–41.
- 28 The ARS was formed in the aftermath of the TFG's National Reconciliation Conference in Mogadishu with the stated aim of 'fighting the Ethiopian and TFG forces'.
- 29 In addition, there was the former speaker of parliament of the TFG, Sharif Hassan Sheikh Aden, and the former TFG deputy prime minister, Hussein Mohamed Farrah.
- 30 IGAD communiqué during the 33rd Council of Ministers meeting in Djibouti, 8 December 2009.

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# 5 Unravelling the Islamist insurgency in Somalia

The case of Harakat al-Shabaab Mujahideen

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## INTRODUCTION

Civil war in Somalia began some 18 years ago, and involves players and dimensions that change continuously. The historical tendency of armed factions in the country to align themselves with the global agenda, for both ideological and strategic purposes, has shaped what on the surface could be framed a ‘new’ insurgency. Since 9/11 this has tended to be considered as terrorism. However, as the case of al-Shabaab (which in Arabic means ‘the youth’) shows, the insurgents’ behaviour is affected by both internal and global factors. Therefore, the key features of such groups, for example their internal structure and relationship with the people around them, are deeply connected to long-standing features of the Somali conflict. This chapter explores the complexity of the Somali Islamist insurgency, attempting first to underline its complex structure and application within the Somali context. In so doing, it examines the case of Harakat al-Shabaab Mujahideen, and explores its leadership, ideology and organisation. Finally, the chapter focuses on al-Shabaab’s evolution, distinguishing between its short- and long-term objectives.

## BACKGROUND

The Somali crisis has lasted almost 20 years with differing degrees of intensity.<sup>1</sup> Since 1991, when civil war broke out, any analysis of the armed factions involved has been interpreted by media and policy-makers largely on the basis of global patterns. This has tended to produce, and reproduce, a singularly Western view of the dynamics of the conflict. The international community has dealt with the Somali crisis through a ‘regime of truth’. This has had the effect of postponing interpretation, particularly in cases where conflict has arisen from political or military intervention.<sup>2</sup>

Such a ‘functional’ approach to the crisis and its armed players has not only influenced – often negatively – the peace process in Somalia since 2004, but has also forced the Somali factions to align their own political goals with international and/or regional agendas in order to attract economic and political support. This has made any local analysis of the armed conflict and its protagonists very difficult. It has also focused international attention solely on the global dimension of the crisis.<sup>3</sup> To fully understand a process that has led in recent years to the growth of various insurgency groups in the country, it is crucial to look briefly at the rise and fall of the Islamic Courts Union (ICU) and the Somali political landscape within which it appears. In addition, examining the two-year Ethiopian military presence in south-central Somalia, which ended in January 2009, is useful for analysing the growth of new jihadist movements on the one hand, and how these groups differ in dynamics from Somali political Islam on the other.<sup>4</sup>

This chapter focuses on the shaping and character of the Somali Islamist insurgency front, which took place during the Ethiopian intervention in Somalia between December 2006 and January 2009, and takes as a case study the group called al-Shabaab.<sup>5</sup> It aims to provide an analysis of the genesis, structure (membership, leadership, etc.), governance and objectives of this movement, focusing on two key areas. Firstly, an attempt is made to understand the formation process of the movement in relation to the local dynamics of the Somali context; and, secondly, to speculate on how global and regional patterns, such as the post-9/11 Global War on Terror and the Ethiopian military intervention, have shaped its political and ideological position.

It is widely believed that radical Islam in Somalia is not something new. The globalisation process and civil war made the country more impervious to

Wahhabi and Salafi influences, which started to affect the Somali territory by the end of the 1970s. Since the 9/11 attacks, the international media and several intelligence agencies have tended to depict al-Shabaab and other Islamist groups as local expressions of al-Qaeda influence in the Horn of Africa.

In February 2008, through its Public Notice No. 6137, the US State Department officially put al-Shabaab on the terror blacklist. The movement reacted strongly, consequently shifting its attacks in Somalia to foreign targets perceived as ‘Western’. However, the aim of these pages is not to illustrate al-Shabaab’s affiliation with al-Qaeda, but to discuss and contextualise some of the movement’s operations within the global network of terror as used in other settings, for example in Afghanistan and Iraq.

## THE RISE OF THE ISLAMIST INSURGENCY

Between June and December 2006, the ICU’s takeover of Mogadishu, and the subsequent Ethiopian intervention in support of the Transitional Federal Government (TFG) led by President Abdullahi Yusuf and Prime Minister Mohamed Ali Ghedi, were phases of important changes in Somali politics. This period saw the rise of new types of armed groups, which, by taking advantage of both the weakness of the TFG security forces and the military vacuum left after the Ethiopian withdrawal in January 2009, ended up controlling a large part of the south-central region.<sup>6</sup>

As several studies have pointed out, the formation of the Islamic Courts in Somalia should be considered more as a process led by interest groups and strongmen based in Mogadishu, committed to re-establishing a degree of security in the capital, rather than as the outcome of a real ‘bottom-up’ political process. It is widely believed that the ICU’s financial framework came from the Mogadishu-based business community in an effort to support the stabilisation and normalisation policies introduced by the courts’ leadership.<sup>7</sup>

Although originally the courts were created by and served specific local sub-clans in districts of Mogadishu, late in 2005 they raised a very high degree of mobilisation among the major clans and sub-clans of the capital, especially from the Hawiye. The courts’ authority extended beyond Mogadishu and the Lower Shabelle region thanks to both recruitment from the capital’s drifting youth population and strategic support from the Mogadishu-based business community in exchange for security.<sup>8</sup>

At this point it should be underlined that the ICU experiment succeeded in curbing lawlessness in Mogadishu and the south-central regions. This process was also helped by the strategic compromise between two of the capital's major clans: Abgal and Haber Gedir (both from the Hawiye clan family), which since the outbreak of civil war in 1991 have constituted the majority of the capital's population.<sup>9</sup>

However, the configuration of the ICU never achieved any official institutionalisation, its structure remaining deeply divided between a 'moderate' wing led by the chairman of the Islamic Courts' 'executive council', Sheikh Sharif Sheikh Ahmed (Abgal),<sup>10</sup> and, owing mainly to his political position, the 'radical' wing led by the chairman of the courts' *shura* (legislative council), ex-Colonel Sheikh Hassan Dahir Aweys (Haber Gedir).<sup>11</sup>

The rise of the courts system in south-central Somalia occurred at a very particular political moment, at both local and international level. In 2005, Mogadishu was hit by an unprecedented sequence of killings and abductions, which targeted some of the Islamic elite and prominent politicians. These abductions and killings were carried out by a new armed movement that appeared officially in late 2006 under the name Alliance for Restoration of Peace and Counter-Terrorism (ARPCT).<sup>12</sup> The ARPCT was a loose coalition of warlords and militiamen with strong ties to the Transitional Federal Institutions (TFIs) and financially backed by the US, in accordance with the new War on Terror strategies in the Horn of Africa.<sup>13</sup> Despite the ideological discrepancy between the ARPCT and the Islamic Courts, the decisive battle marking the ICU's takeover in Mogadishu came out of the struggle for control of the strategic port of El-Maan (40 kilometres north of the capital) between two businessmen of the same sub-clan, Abukar Omar Addani (who was close to the courts) and Bashir Raghe (the leader of the ARPCT). The final clash between these strongmen was in June 2006, marking a triumph for the ICU and its territorial expansion and control over the strategic towns of Jowhar and Kismayu.<sup>14</sup>

Apart from the battle, which pitched the warlords' militias against those of the Islamic Courts, the expansion of the ICU in the south-central regions happened peacefully, through a massive absorption of both administrations and militias. In late 2006, several militiamen opportunistically shifted their support from the Alliance (ARPCT) to the ICU, placing weapons at the courts' disposal, making them stronger than ever. With the notable exception of some hardliners like Yusuf 'Indhadde' from the Ayr sub-clan (Haber Gedir/Hawiye), who

was the courts' chief of defence, the wide range of personalities supporting the movement included many officials from the Somali Army with an impressive military background.<sup>15</sup>

Furthermore, the leadership of the ICU was composed of moderates, who announced their commitment to peace talks with the TFG on several occasions. Notable among these are the ICU's former foreign affairs chief, Ibrahim Adow, and the chairman of the Islamic Courts' 'executive council', Sheikh Sharif Sheikh Ahmed.

The ICU's takeover marked a period of relative stability and security in a large part of south-central Somalia after years of conflict and lawlessness. However, the rise of the ICU not only threatened the TFG, provisionally based in the town of Baidoa (250 kilometres from Mogadishu), but also worried its principal backer, Ethiopia. Given its alliance with the president of the TFIs, Abdullahi Yusuf, the Ethiopian attitude towards the Islamic Courts would harden further when the Eritrean government entered the crisis. Eritrea was accused by both the Ethiopian government and the UN Security Council of giving military aid to the Islamist militias.<sup>16</sup> In December 2006, upon official invitation from the Transitional Federal Parliament, Ethiopia intervened in Somalia.<sup>17</sup> As well as forcing the ICU leaders to seek refuge outside the country, the Ethiopian military intervention initiated a period of intense insurgency, especially in Mogadishu. The insurgents were led by a movement known as *muqaawama*, which brought together various groups opposed to the Ethiopian presence in Somalia.<sup>18</sup> However, the collapse of the courts' system did not signal a decisive defeat of the Islamist faction. In fact, the negative outcome of the Mogadishu occupation only became clear in the months following the fall of the ICU government. Following the Ethiopian Army's entry into the Somali capital and US air force-led bombing raids on villages on the Somali-Kenyan border, most of the courts' leaders moved first to Yemen, then to Asmara. Here, in September 2007, the political branch of the anti-Ethiopian front was formed under the name of the Alliance for the Re-liberation of Somalia (ARS).<sup>19</sup>

The escalation of the Somali conflict, with the Ethiopian Army fighting the *muqaawama* militias, destroyed the systems of local government established under the ICU in the capital and the main south-central towns. From early 2007 to late 2008, a significant deterioration in security in south-central Somalia created a humanitarian crisis. Residents of the capital were gripped by a terrifying campaign of violence that killed and injured hundreds of civilians, creating

the largest displacement of a civilian population for many years, and shattering the lives, homes and livelihoods of thousands of people. The insurgents routinely deployed their forces in densely populated civilian areas, launching deadly 'hit-and-run' attacks that placed civilians at unnecessary risk. Some important markets, like Bakaaraha and Hamarweyne, were also targeted and frequently hit by Ethiopian counter-insurgency actions against the *muqaawama* fighters.<sup>20</sup>

At that time, the anti-Ethiopian armed front was mainly a loose, heterogeneous coalition. Throughout all of this, the group that emerged as the most important within the insurgency – especially from a military point of view – was Harakat al-Shabaab Mujahideen. This group claimed most of the attacks against the Ethiopian contingent and the TFG's loyal militias. Al-Shabaab's best-known leader, until his death in May 2008, was Aden Hashi Farah Ayro, from the Ayr sub-clan (Haber Gedir/Hawiye). As we will see in the next section in which the Shabaab's leadership is analysed, Ayro began his political career in Somalia under Hassan Dahir Aweys's wing (from the same sub-clan). In July 2005, Ayro was appointed militia chief commander of the Ifka Halane Court in west Mogadishu, one of the powerful and influential courts in the capital. The appointment was made with Dahir Aweys's approval. According to local sources, Ayro was one of the al-Shabaab leaders who travelled to Afghanistan in the late 1990s. The experience helped shape his jihadist character and hard-line political stance.<sup>21</sup> However, owing to his young age and limited religious credentials, Ayro never reached a high leadership position within the ICU government. Though he was originally very close to Aweys, their relationship deteriorated when the ex-colonel moved to Asmara to join the ARS.<sup>22</sup>

In late 2008, al-Shabaab's political and ideological position grew increasingly radical, especially after the US decision in March 2008 to put the organisation on the 'terror blacklist'.<sup>23</sup> The refusal by the US and the TFG to deal with the insurgency, which was continually depicted as the actions of a local offshoot of al-Qaeda, helped create a 'regime of conditionality'. This hampered international aid and development agencies in Somalia, particularly in those areas under Shabaab control. The Washington-led War on Terror strategy unleashed numerous bombing raids between 2007 and 2008. In one of these air strikes, in the town of Dhusomareb, Commander Aden Hashi Ayro was killed. The Shabaab reaction was fierce, targeting mainly the Western presence in the country, such as international development agencies and NGOs. As a result of the Shabaab offensive the UN Security Council placed south-central Somalia at

danger level IV, while Mogadishu and the Bay and Bakool regions were placed at level V.<sup>24</sup> The American-Ethiopian intervention in Somalia served indirectly as a starting point for the rise of al-Shabaab, which from late 2007 became the leading group in the anti-Ethiopian movement. Even if the official formation of al-Shabaab goes back to the early 2000s, as explained in the following sections, the Ethiopian intervention is indirectly a key factor in al-Shabaab's political and ideological development. Moreover, as the only opposition group to keep its leadership inside the country during the Ethiopian presence, al-Shabaab received support not only from people opposed to Ethiopia, but also from communities of the Somali diaspora living in Western countries.

## **AL-SHABAAB: HISTORY AND IDEOLOGY**

The name 'al-Shabaab' has often been linked to al-Qaeda's global network. In a contemporary global context, dominated by the War on Terror and the fight against regional terrorism with a Qaedist root, a critical analysis of this organisation is not without obstacles. The biggest danger with any reconstruction of al-Shabaab's political trajectories is to consider this movement as a mere reflection of global confrontation, disconnected from the local dynamics of the Somali conflict. Although it is true that the political strategies of international and regional players undoubtedly influenced the movement's development, it is crucial not to make the error of considering al-Shabaab as just an emanation of wider global or Qaedist strategies. Even if we correctly identify the development of al-Shabaab's jihadist core as linked to the War on Terror, we need to reflect on the meaning the movement gives at a local level to 'jihad'. Al-Shabaab should, therefore, be more correctly defined as a militant group, and not just an Islamist one. Confusing al-Shabaab with the most aggressive side of political Islam is, in fact, not just an error in terms of definition, but a generalisation that obscures the peculiarities of this movement in comparison with other Somali groups, such as al-Islah or al-Ittihad.<sup>25</sup>

The decline of these movements in the second half of the 1990s corresponds with a general failure of political Islam, which reached its zenith in that period, particularly in the Middle East. As Oliver Roy wrote in 1994, the most important Islamic political movements, such as the Muslim Brothers in Egypt, the Islamic Salvation Front in Algeria and Jama'at Islami in Pakistan, had been incapable

up until then of transforming through legal channels those same states they planned to reform.<sup>26</sup> Seen from this point of view, political Islam had somehow betrayed its revolutionary and reformatory aims. It was either frozen, thanks to the official make-up of the state and its borders (inherited from the colonial system), or replaced by the search for some global recomposition of community – or, *Ummah* – ultimately to be rendered impractical and politically inadequate owing to its universalistic character.<sup>27</sup>

The transnationalisation of Islamic teaching, and of Islam itself, has often allowed Somalis to take part in a globalising process when state control, under Siad Barre's regime, had strictly limited any contact with the outside world.<sup>28</sup> Somalia's vicinity to the Arabian Peninsula and the growing influence of Wahhabism on religious teaching also had an impact on the very foundation of Somali society, especially following the collapse of the state in 1991. Secularisation and globalisation increasingly contributed to the disconnect of religion from its local expression, locating it in de-territorialised spaces, yet at the same time divorcing it from local political realities.<sup>29</sup> This trend found its expression particularly among the more charismatic and fundamentalist religious practices, such as Salafism, Neo-Sufism and Tablighi, whose spread may be compared with the explosion of Pentecostal churches in the Christian world.<sup>30</sup>

In order to understand al-Shabaab, it is important to emphasise that these forms of apparently de-territorialised militancy, as in the case of Salafism, tend to be used as an ideological foundation to oppose global enemies, and are often coupled with a rhetorical expression of the jihad concept. In Shabaab ideology, however, references to jihad do not seem to relate in any way to a general religious transformation on the part of the players in the conflict. On the contrary, al-Shabaab mostly takes the form of an entirely political attitude, similar to the definition of 'neo-fundamentalism'. This is a concept usually applied to movements that are highly mobilised against the westernisation of Muslim society.<sup>31</sup> For al-Shabaab, the West is a vital point of reference, if only in terms of helping to define its own contrary position. Seen in this way, jihad is no longer a transcendental and individual concept, but a true insurgency programme, often used as a means to reinforce local insurrection, or as an element of national mobilisation and resistance against oppressive regimes or invasions. Al-Shabaab's jihad can be defined as a real political agenda in opposition to local or regional outcomes of the US-led Global War on Terror. It



provides a strong ideological foundation, while at the same time secularising its content.

To contextualise the political events that led to the ascendancy of al-Shabaab in Somalia, one further premise is necessary. Like other armed groups operating since the outbreak of civil war, al-Shabaab is a product not only of the conflict itself, but also of 21st century Somalia. The international media, and, in many cases, much of the Somali diaspora, generally see al-Shabaab as a ‘non-Somali’ movement, or at least as something quite alien to the country, since it entails a different kind of Islam. However, any purely theological analysis risks overlooking the numerous and varied trajectories that formed al-Shabaab. Such analysis can only provide a blurred and static picture of what is, in reality, the end point in both medium- and long-term processes that are essentially political rather than religious. Al-Shabaab’s activities have always been characterised by being locally centred and inspired by public demand – i.e. dictated by the need for consensus within the country, rather than by simple anti-Western resentment.

## LEADERSHIP AND STRUCTURE OF AL-SHABAAB

The international media have reported at length how al-Shabaab’s leaders trained extensively in Afghanistan in the second half of the 1990s. To date, there is no conclusive evidence of any direct contact between al-Shabaab fighters and the Qaedist leadership in Kabul, though some Shabaab leaders claim long periods of militancy spent within other Somali Islamist organisations, such as al-Ittihad al-Islamiya and al-I’tsiam Kitab wal Sunna.<sup>32</sup> Numerous testimonies date the official formation of the movement to 2003, though it really took off during the Ethiopian military intervention. Between 2006 and 2009, the presence of foreign armies in Mogadishu and the south-central regions of the country helped to swell the ranks of the movement, giving it more political depth, wider public support and a degree of moral superiority in the struggle. As the only armed group to keep the majority of its leadership in Somalia throughout the Ethiopian occupation (unlike the courts), al-Shabaab was seen as the country’s lone defender. Furthermore, the cross-clan structure of the movement allowed it to operate with greater security and diffusion across south-central Somalia, giving it access to several sources of recruitment and supplies.<sup>33</sup> Al-Shabaab was able to negotiate the social specifics of the Somali context, penetrating clan

feuds and often acting as the defender of those sub-clans regarded as secondary from a military point of view. It would support their political objectives or directly provide them with arms, as in the case of Somalis with Bantu origins, or Jareer, who were traditionally subjugated by stronger clans.<sup>34</sup>

Al-Shabaab's inter-clan element has played a key role since its foundation. Its original members, in fact, include Sheikh Mohamed Mukhtar Abdirahman 'Abu Zubeyr', an Isaaq born in Hargeisa and responsible for some of al-Shabaab's activities in Somaliland;<sup>35</sup> Sheikh Mukhtar 'Robow', former spokesman and member of the clanic family of Rahanweyn/Leysan; Aden Hashi Farah Ayro, born in Dhusamareb, a Hawiye/Haber Gedir/Ayr; and Fuad Mahamed Khalaf Shongole, a Darood/Awartable. Completing the picture of al-Shabaab's leadership framework is another veteran of the anti-Ethiopian insurgency, Hassan Abdullah Hersi al-Turki. Member of the Ogadeni clan (Darood) and veteran of the Ogaden War of 1977–1978, Hassan Turki is the undisputed leader of a group called the Ras Kamboni Brigade, which is largely based in the Upper and Lower Juba regions near the Somali-Kenyan border. After the Ethiopian military intervention, Turki's political position oscillated between the Asmara-based ARS and the more radical views of al-Shabaab.<sup>36</sup>

Despite the lack of detailed information regarding its apparatus, al-Shabaab clearly began organising itself into governing structures immediately before having to administer the territories it occupied following the Ethiopian withdrawal in January 2009. It should be emphasised that, initially, al-Shabaab had no intention of direct administration in these territories, but sought instead to appoint local figures for this task. However, the difficulties of maintaining even indirect control over those territories prompted the movement to establish some kind of structure to secure and preserve them. Although opinions differ as to the nature of al-Shabaab's governing structure, the most widely accepted and convincing hypothesis would identify at least four areas.<sup>37</sup> The first is the *shura*, which resembles – in terms of function and responsibility – the same organism set up by the Islamic Courts Union when it governed in Mogadishu. The head of the *shura* is the movement's emir, Sheikh Mohamed 'Abu Zubeyr', who appears not to have total control over al-Shabaab, since all important decisions are made along collective and/or local lines. Second is the *al-Da'wa*, meaning 'propaganda' or, according to the local definition, 'proclamation'.<sup>38</sup> According to Islamic doctrine, although *da'wa* refers to the message of Islam, or of an Islamist group, and its diffusion, under al-Shabaab, this section of the

movement would be fundamentally devoted to the recruitment of new militiamen. The third area, which seems to have no single superintendent, but instead is locally controlled by representatives of the administered territory, is the al-Hesbah, a sort of religious police whose role is to watch over and maintain respect for Islamic customs. The Hesbah would have been responsible for the destruction of Sufi mosques and sanctuaries in the south-central area of the country.<sup>39</sup> These activities differ from one area to another. For example, attacks in the city of Kismayu have certainly been more frequent than those in cities like Merka or Brava. Between spring and autumn 2009 several demolitions were planned of mosques and tombs of important figures from the Sufi movement. Though the cult of saints is vehemently opposed by the Wahhabi doctrine, not all elements of al-Shabaab agreed with the demolition of these places. Among the sanctuaries demolished in that period was the one erected in Kismayu in honour of Sharif Shaanyale. Its destruction was ordered by Khalid Mohamed Adan, head of the Hesbah, who was an Ogaden affiliated with the armed group of the Ras Kamboni Brigade, which by then was allied with al-Shabaab. By contrast, almost all the Sufi mosques and sanctuaries in Merka and Brava have been preserved, as a direct consequence of the close relationship between the local council of elders and Migiurtinian Sheikh Abdurhaman Ahmed Siiro, at that time governor of al-Shabaab, who was born in the area.<sup>40</sup> This would seem to indicate that al-Hesbah is not automatically synonymous with radicalism or extremism, but may also act as an organism that is respectful towards local cultural and religious dynamics.

The fourth governing area, completing the movement's political-military structure, is known as al-Usra, al-Shabaab's armed wing. Even though the military organisation of the movement remains collective, decentralised and somewhat fluid, following the death of Aden Hashi Ayro, Abu Mansur 'Robow' is believed to have become a key figure in the *Usra*.<sup>41</sup> The importance of Abu Mansur within the military apparatus of al-Shabaab derives from his clan affiliation. Being a Leysan/Rahanweyn, Abu Mansur gained a certain importance given that a large number of al-Shabaab came from the same clan or from other clans traditionally less important, on a political and economic level. Furthermore, he comes from Baidoa, and has been strongly linked with the regions of Bay and Bakool, which are believed to be the most important Shabaab training camps. One of the first Shabaab training camps was in Iidaale, a village situated between these two regions. Within the overall al-Shabaab framework, Iidaale's

importance is second only to el-Buur, the movement's historic stronghold in the region of Gulguduud. It was from here that Ayro and Abu Mansur planned their attacks against the Ethiopian contingent during the first two years of the Ethiopian Army's occupation. As a consequence, el-Buur was repeatedly hit by the Ethiopian forces, which never managed to completely eradicate Shabaab militiamen from the area.

## **FROM JIHAD TO GOVERNMENT: THE CASES OF KISMAYU, MERKA AND BAIDOA**

To fully grasp the context in which al-Shabaab's structures of territorial control were established, reference must be made to a precise moment in the history of the Somali crisis. Al-Shabaab's shift from insurgent movement to insurgent government reflects the degree of involvement of certain key regional and international figures within the Somali crisis itself. To complete an analysis of al-Shabaab, the dynamics of the movement's expansion cannot be ignored. To this end, three specific cases of Shabaab administration will be considered in order to shed light not only on the processes of control and power exerted in these territories, but also on the strategy and political propaganda deployed by the movement in a local context. The first of these three cases is the city of Kismayu and the areas of Lower and Upper Juba, taken by a coalition of groups in armed opposition to the TFG in November 2008. The second case is the area of Lower Shabelle, and in particular the city of Merka. The third is the formation of the Bay and Bakool administration, which includes the town of Baidoa, which fell into the hands of al-Shabaab immediately after the withdrawal of Ethiopian troops in January 2009. A different analysis will be applied to Mogadishu, which differs from other Shabaab settlements since it is still a battlefield in the clash between the TFG and the green helmets of the African Union. Here, the activities of the movement can be effectively defined as guerrilla tactics.<sup>42</sup>

As already stated, the establishment of the movement's first administration was not an exclusively Shabaab operation, but the outcome of a political compromise and of a purely military alliance involving two other armed groups. The taking of Kismayu revealed how the transition from insurgent movement to government was not an easy one, and how the group was often forced to compromise heavily in order to gain ground. Al-Shabaab took control of Kismayu on

22 August 2008, after requesting Abdirissak Tani's assistance in the task. Tani was a Marehan (Darood) of Dutch citizenship who controlled the city hospital. He had explicitly invited al-Shabaab to intervene in a conflict with the militias headed by former Colonel Barre Hirale, the then TFG's minister of defence (and from the same clan as Tani), who took over the city following the defeat of the ICU. In the fight to reconquer Kismayu, the movement was supported by the Anoole and Ras Kamboni brigades, two groups whose military support came directly from Eritrea, and whose leaders, Sheikh Muktar 'Abu Aisha' and the former colonel Hassan Turki, were very close to Sheikh Hassan Dahir Aweys. Following the takeover of Kismayu, the three movements set up a tripartite administration: Hassan Turki's men were entrusted with control of the judiciary system, that is, of the Islamic Courts in the area, while Sheikh Abubakar al-Zeylici, a representative of the Isaaq clan of al-Shabaab, was designated governor.<sup>43</sup> It should be noted that from a clan perspective, al-Zeylici's group cannot claim any influence in Kismayu, so the choice to designate an Isaaq as the head of local administration was probably made to project a super-clan image of al-Shabaab. This choice is not representative within other contexts, as, for example, the case of Merka. Before the arrival of al-Shabaab forces, the region of Lower Shabelle was controlled by Sheikh Yusuf 'Indhadde', who in 2006 had been appointed minister of defence in the ICU. His administration was the exclusive expression of a sub-clan, the Ayr. Al-Shabaab's takeovers in Merka and Baidoa, in November 2008 and January 2009 respectively, are a useful guide to understanding both the localised dynamics of the crisis, where there was a more static relationship between clan and territory compared with the pre-crisis period, and one of the strategies deployed at that time by al-Shabaab to penetrate existing local power balances in the south-central areas of the country. Although al-Shabaab's militias definitively took control of Merka on 12 November 2008, some of the movement's fighters had entered the town a few days earlier, taking advantage of ties between some families in the area with the upper level of the movement. In fact, the takeover was preceded by two attacks aimed at Yusuf Indhadde's militias, and in particular at two of his lieutenants, both members of the Ayr sub-clan. Eliminating the leading members of the Indhadde administration allowed al-Shabaab to enter Merka without resistance. This followed an agreement reached with local clan leaders (known in Somali as *odayaasha dhaqanka*), who prepared the population for the movement's settlement in the city. There was yet another reason for Indhadde's refusal to fight against

al-Shabaab. At that time the Ayr governor was also in charge of coordinating ARS guerrilla operations in Somalia. With support from Eritrea, the ARS was keen to avoid an open clash against al-Shabaab. During that period, in fact, Eritrea was trying to mediate between al-Shabaab and the ARS to build a single anti-Ethiopian front. The attempt did not succeed, however, owing to the local dynamics of the conflict and because it would have created a split between the two anti-Ethiopian guerrilla fronts.<sup>44</sup>

The takeover of Baidoa and the subsequent control of the Bay and Bakool regions resembled that of Merka. Baidoa officially came under the movement's control on 26 January 2009, a few days after the withdrawal of the Ethiopian contingent. As already stated, Baidoa was the former seat of the transitional parliament and government before both institutions relocated to Mogadishu after Ethiopian troops arrived in the capital in December 2006. It was Abu Mansur 'Robow' who personally led al-Shabaab in the Baidoa takeover, his Leysan militias, a Rahanweyn clan coming from the same region, taking advantage upon entering the city of the power void left by the Ethiopian contingent. After taking control of Baidoa, the local elders negotiated with Abu Mansur the almost unconditional release of two members of parliament and of Mohamed Ibrahim Habsade, at that time naval minister for the TFG. These three men, who belonged to the same clan as Abu Mansur, were disarmed and escorted from the city. This caused problems for Abu Mansur, at that time spokesman for al-Shabaab. He was accused by the movement's emir of evacuating the government representatives because of clan ties. This was the most probable cause of Abu Mansur Robow's substitution by Sheikh Ali Dhere as al-Shabaab spokesman, and confirmed the following June in a press conference given by the movement's leaders, including Abu Mansur himself.<sup>45</sup> The case of Baidoa demonstrates how al-Shabaab's rise was influenced by clan factors, and how the leaders of the movement progressively exploited the situation, along decentralised and autonomous lines, both politically and militarily. Clearly, pragmatism and knowledge of local political balances are the key factors in explaining the success of al-Shabaab in that period.

As previously stated, Mogadishu and part of the Banadir region occupy a different position in al-Shabaab's expansionist strategies. Although the Islamist movement controls a large portion of the Banadir region, which includes Mogadishu, this region is not ruled by any structured administration. Banadir, and in particular the capital city, were at the heart of the anti-Ethiopian

insurgency and are still today the main battlegrounds in al-Shabaab's fight against the African Union's green berets. Shabaab brigades operate in the region under the command of two leaders. The first is Sheikh Ali Fidow (Abgal), a young commander from Afgoye. He leads al-Shabaab's political representation in the region, as well as commanding the propaganda branch of the movement (*da'wa*). The second is Sheikh Ali Hassan Hussein (Abgal), a sort of 'shadow' governor of the region in the event of Shabaab establishing an administration in the future. However, since Mogadishu is a place of permanent conflict with foreign troops, the capital city may also be considered a strategic front where the jihadist identity of the movement is kept 'functionally' alive.

Shabaab's guerrilla experience is a paradigm for a movement reshaping itself to outside influences within the conflict over the last decade. Its main lines of evolution can be traced to three fundamental stages. The first, from 2004 to 2006, was a sort of gestation period, representing the movement's military phase, when it was essentially the ICU's military vanguard. The second phase, roughly between 2007 and 2009, corresponds to the Ethiopian presence in Somalia and is marked by the movement's reformulation as an anti-occupational force, when al-Shabaab turned into an insurgent and mainly clandestine organisation. The third and final phase began with the withdrawal of the Ethiopian contingent and the subsequent withdrawal of Eritrean support for the armed groups. This phase saw al-Shabaab's emergence as a real 'hybrid' movement, with the diffused control of liberated territories in the periphery (Kismayu, Baidoa and Merka) and a deeply insurgent character in the centre (Mogadishu).

## **BRINGING JIHAD TO SOMALIA: LOCAL EMULATION OR AL-QAEDA AFFILIATION?**

When al-Shabaab's militias claimed responsibility for the terrorist attacks of 11 July 2010 in Kampala during the final of the FIFA World Cup, the international media were quick to ascribe this major terrorist action to planning by al-Qaeda, with its execution by al-Shabaab.<sup>46</sup> Even acknowledging the possibility of contact between al-Shabaab and the Qaedaist network, viewing the Somali movement as the mere executor of the terrorist network's global strategy led by Osama bin Laden seems excessive. And though this view is a little forced and imprudent, it nonetheless tells us much about the difficulties of analysing

Somali events if interpreted solely in the light of the paradigm imposed by the War on Terror. To date there is no conclusive evidence of al-Shabaab taking direct orders from the Qaedist establishment. Indeed, this would be strange, considering the new forms assumed by the global terror network after 11 September 2001.<sup>47</sup>

Al-Shabaab militiamen exhibit, in their behaviour in the battles for and management of conquered territories, attitudes that suggest a more ‘ideological’ stance in support of, rather than any strict adherence to, Osama bin Laden’s organisation. The only element to be carefully considered in evaluating the complexities of the movement’s military and political actions is the objective it seeks to accomplish. From this point of view, the conflict should be seen as one that places al-Shabaab in opposition to the African Union mission, perceived as the last vestige of Western interference in the country. In taking responsibility for attacks, both in Somali territory and outside it – like those in Kampala – al-Shabaab has claimed no adherence to global jihad, implying the Kampala attacks were more a reaction to Uganda’s involvement in the Somali theatre, since the AMISOM mission comprises mainly Ugandan green berets.

The present incapability of government forces to operate in the country also happens to correspond to a weakening of al-Shabaab’s credibility. Its expansionist period, from late 2009 to early 2010, has made the movement highly unpopular. Even though al-Shabaab has played a key role in the deployment of highly brutal tactics, it nevertheless seems simplistic to interpret the enforcement of an excessively rigid form of sharia as evidence of fundamentalist or ‘non-Somali’ groups’ infiltration of the movement. It is perhaps just as imprudent to consider decisions like the prohibition of watching football matches or banning the use of car horns in urban areas as evidence of a Qaedist network connection without taking into account the young age of Shabaab leaders and their poor religious credentials. The restrictive and radical measures often taken by the movement to control a territory, even at their most ruthless, could, therefore, be interpreted as emulation of, as opposed to any substantial adherence to, the more conservative doctrines of Islam, such as Wahhabism.

One further cause of the fresh outbreak in the Islamist movement’s actions is the current stalemate in the Somali conflict, particularly in Mogadishu. Despite the attacks launched routinely by Islamist guerrillas, al-Shabaab does not appear able, at present, to definitively win its war against government forces, which are well protected by the AMISOM contingent. The only goal achieved so far by



the movement, which is rather weak and under-equipped from a military point of view, is to have prevented the transitory institutions from taking office in Somali territory. Furthermore, the composition of the group is still somewhat heterogeneous, made up as it is of well-trained, motivated fighters and military leaders together with improvised militias more closely resembling criminal gangs, which are often involved in kidnappings for ransom.

The need to export its guerrilla actions beyond Somali territory or to carry out suicide missions seems to respond to a limitation rather than a position of strength in the Islamist movement.<sup>48</sup> This could partially explain al-Shabaab's exploitable adherence to a Qaedist global agenda. Al-Shabaab's strategy of constantly instigating head-on clashes with the international community through terrorist actions or declarations of allegiance to Osama bin Laden's movement, like those given in February 2010 in Baidoa, appears to be part of a process of 'jihadisation' of the Somali conflict, the aim of which is to attract resources and support from pro-Islamist networks. On the other hand, inverting the roles, Shabaab's pursuit of international support is similar to that undertaken by the TFIs, which also tend to play the Qaedist card in order to attract greater support from the international community.

The difficulties of reading the movement and its often incomprehensible proclamations are further complicated by the fact that the group now perceives itself as an outsider to the international community, which since 2004 has supported the TFIs, in spite of their serious problems and fragmentation. The constituted international order's lack of recognition leads al-Shabaab to look, from a programmatic and ideological point of view, at an alternative order, comparable to that of al-Qaeda. Even though the Shabaab ranks include several jihad-indoctrinated exponents and are thus particularly inclined to clash with all Western influences, the movement's leaders are nevertheless Somali and have always had a rather pragmatic and loosely ideological approach, keeping the guerrillas focused on the pursuit of internal goals. Al-Shabaab actually managed to exploit clan rivalries to gain strategic positions and forge vital alliances, as well as to establish a wide network of economic support from the Somali business community.

Given its localised character, it is increasingly difficult to interpret the Somali conflict as a simple struggle between jihadists and moderates. Moreover, it has been confirmed that military aid to the movement came from Eritrea and not the Qaedist network (which, like the Americans, continues to consider

the Somali theatre as secondary in its global strategies). A strongly secularised country, Eritrea supported the Islamic Courts and some members of al-Shabaab merely to demonstrate its anti-Ethiopian stance. On the other hand, most of the financial support that the movement receives appears to come not from any individual state or from the major funders of global jihad, but instead from the Somali diaspora, often from communities resident in the West.<sup>49</sup> Although it is hard to gather concrete information regarding al-Shabaab's funding strategies, it is possible to affirm that the Somali diaspora plays a fundamental role, sustaining the al-Shabaab cause through donations. This is true for at least two reasons, the first being that al-Shabaab has shown some 'populist' features. For example, its activities include operations to prevent businessmen selling expired food or dangerous products, and actions to remove illegal checkpoints, enabling Somalis to travel freely in the south-central region.<sup>50</sup> The second reason for the diaspora's support of al-Shabaab concerns the political agenda of the movement, which has marked differences to that of other armed groups – even in a 'national' context. Al-Shabaab's emergence as an inter-clan movement has increased its attraction for various Somali communities living in Western countries, especially among 'youths'.<sup>51</sup>

It is nevertheless important to consider that funding, direct or indirect, from Somali diasporic networks is not a sign of the Somali ex-pat community's commitment to international jihad, any more than it is a symptom of some radicalisation process within Muslim communities based in Western cities. The flow of international aid is better explained by the dynamics of family, clan or simply economic ties between individuals or parental groups, and is made possible by informal money-transfer companies active in the country.<sup>52</sup> The workings of the Somali money transfer system, known as *xawilaad*, are quite simple and essentially trust-based. Cash is paid directly from abroad, often to a single person, who, in turn, contacts an agent for the same *xawilaad* in Somalia, who becomes responsible for delivering the money to the recipient. This system is obviously taxed. Even though this is at a lower rate than that of major operators, like Western Union, the revenue can still indirectly fuel the economy of the conflict, especially if the *xawilaad* is directly controlled by the armed militias. Because it is impossible to know for certain where the tax revenues end up, it often happens that some of the money flowing into Somalia turns into 'political transfers', thus transforming the role of aid from positive and defensive into potentially offensive.

## CONCLUSION

Since its beginnings, when the movement served as a military arm of the Islamic Courts, al-Shabaab has evolved into a well-organised and autonomous group, developing a more complex and multi-faceted membership. The changes in its structure and decision-making bodies have been influenced – if not completely produced – by the dynamics of the Somali conflict. As we have seen, in order to stabilise the process of military and political expansion in the south-central regions, al-Shabaab had to instigate important systems of inclusion, involving different commanders-in-chief and clan leaders of different groups or factions.<sup>53</sup> It is probable that the expansionist nature of al-Shabaab and the arrival of many new faces altered its political power base, making the internal hierarchies of the movement a little more difficult to track. The leadership issue seems particularly complex if we consider that the corresponding clan structure in Somali society lacks by definition any structured leadership, often assuming, especially from the political and military point of view, a headless form which is particularly vulnerable to fragmentation. However, al-Shabaab has demonstrated a special ability to negotiate the Somali social landscape, taking advantage of clan disputes and supporting the ambitions or grievances of some sub-clans.

In conclusion, if we consider al-Shabaab as a movement totally alien from the Somali social context we risk obscuring its real substance. The organisation has been able to adapt itself to the dynamics of the Somali conflict, either benefiting from them or, in some cases, becoming a victim of the country's instability. Therefore, analysing al-Shabaab only within a global perspective, or holding it up as evidence of al-Qaeda penetration in the Horn of Africa, automatically excludes other significant factors that make the movement more Somali than is commonly thought.

## NOTES

- 1 For a selection of academic literature on the history of the Somali conflict, see AM Abdullah, *State collapse and post-conflict development in Africa: the case of Somalia (1960–2001)*, Indiana: Purdue University Press, 2006; IM Lewis, *A modern history of the Somali: nation and state in the Horn of Africa*, Oxford, OH: Ohio University Press, 2002; AI Samatar, *Somalia: state collapse, multilateral intervention, and struggles for political reconstruction*, Washington: Brookings Occasional Papers, 1995.

- 2 To understand the substantial effectiveness of the conflict's players and for a detailed analysis of the terminology commonly used, from 'warlords' to 'terrorists', see R Marchal, Warlordism and terrorism: how to obscure an already confusing crisis? The case of Somalia, *International Affairs* 83(6) (2007), 1091–1106.
- 3 Despite widely prevailing local dynamics in the Somali conflict, armed groups, especially during certain significant phases, have shown a deep awareness and capacity to align their own political agenda opportunistically with the predominant global 'discourses' in order to gain a degree of political legitimacy and financial support. See MV Hoehne, Counter-terrorism in Somalia: how external interference helped to produce militant Islamism, <http://hornofafrica.ssrc.org/somalia>, 2009 (accessed 28 August 2010).
- 4 See IM Lewis, *Saints and Somalis: popular Islam in a clan-based society*, London: Haan Associates Publishing, 1998; R Marchal, Islamic political dynamics in the Somali civil war, in A De Waal (ed), *Islamism and its enemies in the Horn of Africa*, Indianapolis: Indiana University Press, 2004; K Menkhaus, Political Islam in Somalia, *Middle East Policy* 9(1) (2002), 109–123.
- 5 The group is known by various different names, including Harakat al-Shabaab Mujahideen, Harakat al-Shabaab, or simply al-Shabaab. In this text, all variations should be taken to mean the same group.
- 6 The Transitional Federal Institutions were inaugurated in Kenya in early 2004. According to the Federal Charter, approved in Nairobi, a 275-member parliament was formed on a clan basis, following a special criterion called the '4.5 Formula'. According to the 4.5 Formula, the four major clans (i.e. Hawiye, Darood, Dir and Digil-Mirifleh) received the majority of seats in the Transitional Parliament, while a residual category of 'minority groups' received half of the seats accorded to each of the major clan-families – hence the 0.5 designation. In January 2009, as a consequence of the Djibouti peace talks between the TFG and the Asmara-based opposition of the Alliance of the Re-liberation of Somalia (ARS), the Transitional Federal Parliament was increased from 275 seats to 550. On this issue, see K Menkhaus, Somalia after the Ethiopian occupation: first steps to end the conflict and combat extremism, Enough strategy paper, 2009, <http://www.enoughproject.org/publications/somalia-after-ethiopian-occupation-first-steps-end-conflict-and-combat-extremism> (accessed 11 September 2010).
- 7 For background on the ICU, see C Barnes and H Harun, *The rise and fall of Mogadishu's Islamic Courts*, London: Chatham House, 2007, <http://www.chathamhouse.org.uk> (accessed 11 September 2010); Marchal, Islamic political dynamics in the Somali civil war, 114–145; and International Crisis Group, Somalia's Islamists, *Africa Report* No. 100, 12 December 2005, <http://www.crisisgroup.org/home/index.cfm?id=3830> (accessed 12 September 2009).
- 8 International Crisis Group, Somalia's Islamists, 11.
- 9 K Menkhaus, Governance without government in Somalia: spoilers, state building, and the politics of coping, *International Security* 31(3) (2006), 74–106.

- 10 Sheikh Sharif Sheikh Ahmed was appointed chairman of the Islamic Courts' 'executive council' during the courts' six-month government of Mogadishu. He represented the most moderate wing of the courts. After the Ethiopian intervention in December 2006, Sheikh Sharif moved first to Kenya, where he was detained briefly by the Kenyan authorities, and then to Eritrea, where he was appointed president of the ARS Central Committee. In January 2009 Sheikh Sharif became the new president of the Transitional Federal Institutions.
- 11 Sheikh Hassan Dahir Aweys remains a controversial figure. He is from the Galguduud region in central Somalia and served as colonel in the Somali Army during the Ogaden War (1977–78). Aweys initially became an important leader with the General Aidid-led movement United Somali Congress-Somali National Alliance (USC-SNA) during the battle of Mogadishu against Siad Barre's troops. However, he left the organisation to join the Islamist organisation al-Ittihad al-Islamiya, taking an active role both in its formation and during the conflict, not only against Aidid (1991), but also in opposition to the Abdullahi Yusuf organisation, the Somali Salvation Democratic Front (SSDF). Today Aweys is leader of Hizbul Islam (Islamic party), an umbrella organisation which opposes the Transitional Federal Government.
- 12 R Marchal, Somalia: a new front in the War on Terror? Social Sciences Research Council, February 2007, <http://hornofafrica.ssrc.org/marchal/> (accessed 27 September 2009).
- 13 M Mazzetti, Efforts by CIA fail in Somalia, officials charge, *New York Times*, 8 June 2006, <http://www.nytimes.com/2006/06/08/world/africa/08intel.html> (accessed 18 September 2009).
- 14 Barnes and Harun, The rise and fall of Mogadishu's Islamic Courts.
- 15 Among the ex-colonels who joined the movement were Omar Hashi, Jama Ali Jama, Nur Ahmed, Sheikh Hassan e Abdu Nassir. There were also some ex-generals, such as Mohamed Sheikh e Jama Mohamed Qaleb.
- 16 See letter dated 24 April 2008 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia, addressed to the President of the Security Council, <http://www.fas.org/programs/ssp/asmp/issueareas/manpads/S2008274.pdf> (accessed 20 September 2009).
- 17 According to Ethiopian official sources, representatives of the Islamic Courts and Ethiopian officials met several times before the military intervention. According to the same sources, to prevent its military involvement Ethiopia stipulated that the courts reject Eritrean support. Such meetings flowed into the Khartoum peace talks of August 2006. These were attended by TFG delegates and the courts' leaders, but they failed to reach agreement on power sharing. (Interview by the author, November 2008, Addis Ababa, Ethiopia.)
- 18 *Muqaawama* is intended to refer to the anti-Ethiopian resistance. The group comprised various armed factions with differing backgrounds and ideologies, such as al-Shabaab, ICU and the Hawiye militias. Al-Shabaab never accepted becoming a part of the ICU militia, and retained a significant degree of independence for the two years of Ethiopia's presence in Somalia.

- 19 The ARS, which united three main political factions (the Islamic Courts, some parliamentarians who resigned after the Ethiopian intervention and diaspora representatives) had a 195-member central committee, which included ICU president *Shura* Sheikh Hassan Dahir Aweys, the chairman of the Islamic Courts' 'executive council', Sheikh Sharif Sheikh Ahmed and the former president of the Transitional Federal Parliament, Sharif Hassan Sheikh Aden.
- 20 For more details on the insurgency and counter-insurgency, see Human Rights Watch, *Shell-shocked: civilians under siege in Mogadishu*, 19(12A) (August 2007), <http://www.hrw.org/en/node/10783/section/6> (accessed 20 September 2009) and Internal Displacement Monitoring Centre, *Somalia: massive displacement and humanitarian need*, July 2008, [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/93488846F38EB450C1257495002D7E7C/\\$file/Somalia\\_Overview\\_Jul08.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/93488846F38EB450C1257495002D7E7C/$file/Somalia_Overview_Jul08.pdf) (accessed 20 September 2009).
- 21 SJ Hansen, *Misspent youth: Somalia's Shabaab insurgent*, *Jane's Intelligence Review* 20(10) (2008), 16–21, 17.
- 22 It is important to keep in mind that the relationship between the ARS and al-Shabaab, as we will see in the sections to follow, was very difficult. However, their common anti-Ethiopian feeling meant that they avoided a complete breakdown in relations.
- 23 K Menkhaus, *Somalia: a country in peril, a policy nightmare*, Enough strategy paper, 2008, <http://www.enoughproject.org/publications/somalia-country-peril-policy-nightmare> (accessed 15 September 2009).
- 24 The official definition of UN security phases is: Phase IV (programme suspension): a designated official can recommend to the Secretary General, through the United Nations Security Coordinator, the relocation outside the country of all remaining internationally recruited staff members except those directly concerned with emergency or humanitarian relief operations or security matters; Phase V (evacuation): the decision to initiate phase V (evacuation) signifies that the situation has deteriorated to such a point that all remaining internationally recruited staff members are required to leave. Correspondence with the author, January 2009, Nairobi, Kenya.
- 25 For an exhaustive study on political Islam, see GE Fuller, *The Future of Political Islam*, New York: Palgrave Macmillan, 2003. On al-Ittihad and political Islam in Somalia, see, for example, A Le Sage, *Prospects for al-Ittihad and Islamist radicalism in Somalia*, *Review of African Political Economy* 27(89) (September 2001), 472–477 and Menkhaus, *Political Islam in Somalia*, 109–123.
- 26 O Roy, *The failure of political Islam*, Cambridge, MA: Harvard University Press, 1995.
- 27 S Akbarzadeh and F Mansouri, *Contextualising Neo-Islamism*, in S Akbarzadeh and F Mansouri (eds), *Islam and political violence: Muslim diaspora and radicalism in the West*, London: I.B. Tauris, 2010, 1–12, 4.
- 28 R Marchal and J Mubarak, *Globalisation and its impact on Somalia*, UNDP/UNDOS report, January 2000.

- 29 R Marchal, A tentative assessment of the Somali Harakat al-Shabaab, *Journal of Eastern African Studies* 3(3) (2009), 382.
- 30 Tabligh is an Islamic missionary movement founded in 1927 in India by Muhammad Ilyas Kandhalawi. Tabligh declares itself apolitical and non-violent, and targets Muslims with the explicit aim of reawakening their faith.
- 31 O Roy, *Globalized Islam: the search for a new Ummah*, London: Hurst, 2004, 26; A de Waal, Introduction, in A de Waal (ed), *Islamism and its enemies in the Horn of Africa*, Indianapolis: Indiana University Press, 2004, 6.
- 32 Marchal, A tentative assessment of the Somali Harakat al-Shabaab, 383.
- 33 On al-Shabaab's structure, read, for example, M Bryden et al, Report to UN Security Council by the Somali Monitoring Group, December 2008, 19–20.
- 34 Populations that speak Bantu languages are also referred to as 'minorities'. They live mostly in south-central Somalia and their presence in the country dates back to the 19th century. Since 1991, however, the term 'minority' generally refers also to the weaker clans and non-militarised groups. Among these, for example, are the Rahanweyn clans, who inhabit the land between the Juba and Shabelle Rivers. See Lewis, *A modern history of the Somali*.
- 35 According the UN Monitoring Group, this name could be an alias for Ahmed Abdi aw Mohamud 'Godane'. See Bryden et al, Report to the UN Security Council by the Somali Monitoring Group, 19.
- 36 In February 2010, the Ras Kamboni Brigade split into two wings. The first, led by Hassan Turki, joined al-Shabaab, while the second, led by Sheikh Ahmed Mohamed Islam 'Ahmed Madobe' (another member of the Ogaden clan), refused to join, continuing on several occasions to fight against it for control of the strategic sea town of Kismayu. See B Roggio, Shabaab absorbs southern Islamist group, splits Hizbul Islam, *The Long War Journal*, February 1, 2010, [http://www.longwarjournal.org/archives/2010/02/shabaab\\_absorbs\\_sout.php](http://www.longwarjournal.org/archives/2010/02/shabaab_absorbs_sout.php) (accessed 10 September 2010).
- 37 Bryden, et al, Report to UN Security Council by the Somali Monitoring Group, 19–20.
- 38 G Kepel, *Le prophète et pharaon: aux sources des mouvements islamistes*, Paris: Le Seuil, 1984.
- 39 Sufism may be defined as the mystical dimension of Islam. The most important Sufi orders include the Qaadiiriyya, the Ahmediyya and the Saalihiyya. See Lewis, *Saints and Somalis*.
- 40 Of all the demolitions in Merka the most significant was that of the Sheikh Ali Maye Sanctuary, which was carried out when Abdurhaman Ahmed Siiro was out of the city owing to the attempt to take over the city by Khalif Adale (from the Ayr sub-clan).
- 41 Bryden et al, Report to the UN Security Council by the Somali Monitoring Group.
- 42 In February 2007, the UN Security Council, through Resolution 1744, authorised the African Union to establish a mission of 'peace support' in Somalia. AMISOM (African Union Mission to Somalia) was supposed to assist the security apparatus of the transitional government.

However, the AU force has long complained of undermanning. Out of a planned 8 000 troops, there are about 7 000 from Uganda and Burundi. See C Hull and E Svensson, *African Union Mission in Somalia (AMISOM): exemplifying African Union peacekeeping challenges*, Swedish Defence Research Agency, 2008.

- 43 The three-party administration of Kismayu revealed different problems, especially in decisions concerning religious affairs. Moreover, Kismayu is the place under Shabaab control where most demolitions of Sufi sanctuaries had occurred. Most infamous of these was the destruction of Sharif Shaanyale's sanctuary, which was carried out by the local head of Islamic protocol, Khalid Mohamed Adan, an Ogaden from the Ras Kamboni group.
- 44 Marchal, A tentative assessment of the Somali Harakat al-Shabaab, 396.
- 45 M Ahmed, Hardline Islamist insurgents captured the central town of Baidoa on Monday, an important stronghold of Somalia's fragile government and seat of the national parliament, witnesses said, Reuters, 29 January 2009, <http://www.reuters.com/article/idUSTRE50P5RC20090126> (accessed 6 September 2010).
- 46 D Smith, Kampala bomb attack heightens fear of expanding Islamist violence in East Africa, *The Guardian*, 18 July 2010, <http://www.guardian.co.uk/world/2010/jul/18/shabab-qaida-uganda-somalia> (accessed 25 August 2010).
- 47 According to Jason Burke, one of the best experts on this issue, the Qaedaist network's present structure is not oligarchic, but reflects a horizontal order. In time, al-Qaeda has assumed various meanings, shifting from being the vanguard of a global movement in the early years, to a real 'foundation' in the Afghan period, between 1996 and 2001, until today's form, whereby it appears more like a 'package', a norm or a methodology. See J Burke, *Al-Qaeda: casting a shadow of terror*, London: I.B. Tauris, 2003, 286.
- 48 Until the attacks in Kampala, 'young' mujahideen had used the technique of martyrdom only inside Somali territory. Examples include the presidential offices and the UNDP compound in Hargeisa, Somaliland, which were attacked in 2008, and when Omar Hashi, the then minister of security in the transitory government, died in a suicide attack in Beledweyne, 300 kilometres north of Mogadishu, in June 2009.
- 49 As reported by the FBI, in just a year and half at least 20 young Americans of Somali origins left their homes and mysteriously disappeared from Somali communities in Minneapolis and Minnesota to travel to Somalia and join al-Shabaab. See D Ephron, Recruited for Jihad? *Newsweek*, 24 January 2009, <http://www.newsweek.com/2009/01/23/recruited-for-jihad.html> (accessed 8 September 2010); D Shinn, Somalia's new government and the challenge of al-Shabaab, *CTC Sentinel* 2(3) (2009), 2.
- 50 See, for example, Harakat al-Shabaab Mujahideen forces conduct operations in Bakara Market, Shabelle Media Network, 29 July 2009, <http://www.shabelle.net/news/viewnews.asp?newsid=7149> (accessed 17 September 2009).



- 51 All English-speaking units of young Somali men recruited from diaspora communities are commanded by Abu Mansoor al-Amriki. He is a 25-year-old Caucasian American named Omar Hammami, a former University of Alabama student, who spent years in Toronto as a businessman with the Somali community there, and was once married to a Somali-Canadian. See AA Ali, *The anatomy of al-Shabaab*, *Horn of Africa Journal*, March 2010, 39.
- 52 In Somalia there are several money-transfer companies, the most popular being Al-Barakaat, Dahabshijl and Amal. According to a World Bank estimate, the total annual cash flow into Somalia is close to \$2 billion. See A Lindley, *Between 'dirty money' and 'development capital': Somali money transfer infrastructure under global scrutiny*, *African Affairs* 108/433, 524.
- 53 A clear example of this inclusion was the alliance between Hassan Turki, ex-leader of the Ras Kamboni Brigade, and Hassan Mhadi, spokesman for Hizbul Islam. This movement is still allied with al-Shabaab in opposition to the TFG and AMISOM forces, but in recent months has lost much of its power and military capacity.

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# 6 The failure of ‘making unity attractive’

The uncertain future of the Comprehensive Peace Agreement implementation in Sudan

ALEKSI YLÖNEN

## INTRODUCTION<sup>i</sup>

In January 2005 the signing of a final draft of the Comprehensive Peace Agreement (CPA) formally ended the second insurgency in southern Sudan after over 20 years of war between the Government of Sudan (GoS) and the main rebel movement, the Sudan People’s Liberation Movement/Army (SPLM/A). The major stipulations of the agreement concerned political power-sharing, wealth-sharing and security arrangements.<sup>1</sup> Its adoption led to the formation of the Government of National Unity (GNU), and the SPLM/A established the semi-autonomous Government of Southern Sudan (GoSS) in office during the interim period until general national parliamentary and presidential elections were convoked in 2009. These would be followed by a referendum for self-determination in southern Sudan and Abyei in 2011.<sup>2</sup> According to the wealth-sharing protocol included in the CPA, the GoSS would be allocated half of the oil revenues from southern Sudan, while important security arrangements included the respective removal of the SPLA units from northern Sudan and GoS troops from southern Sudan, the formation of joint integrated units and the absorption of militias widely used during the war into either the Sudanese army or the SPLA.

The CPA was largely a product of pressure and mediation by the international stakeholders, principally the US, and a number of neighbouring states. Some of these actors endorsed the peace process under the umbrella of the Intergovernmental Authority for Development (IGAD) as the main avenue for peace in Sudan. However, the narrow spectrum of international and regional players actively supporting the process is largely why it produced essentially a narrowly based power-sharing agreement between the two protagonists, the National Congress Party (the NCP – until 1998 the National Islamic Front, NIF) regime and the SPLM/A, which dominated the political scene during the war.<sup>3</sup>

Since the signing of the CPA, its implementation has dragged chronically behind schedule. Although there are a number of reasons for this, including mistrust between the parties, political manoeuvring to consolidate support in contested areas or attempts to gain or maintain political influence in other regions, what is apparent is the NCP's intransigence to adhere to its stipulations. This is because implementation of the agreement undermines its sole political and economic hegemony in Sudan. Yet, the major power centres in the NCP leadership have disagreed about the approach towards the agreement and the amount of political and economic concessions, which has generated fissures within the NCP and contributed to the destabilisation of the political situation, particularly in a number of peripheral regions in Sudan.

By contrast, the SPLM/A has embraced the agreement and pushed its implementation because it is the main beneficiary of the NCP's political and economic concessions. Although the SPLM/A has also suffered from divisions within its leadership, its major problems have included a lack of political and administrative capacity and corruption, albeit less institutionalised in comparison with the largely institutionalised form in Khartoum.<sup>4</sup> These factors – primarily the concentration of power exclusively in the dominant NCP and SPLM/A political-military organisations – have affected the CPA's implementation process and weakened expectations that the agreement can provide a framework for inclusive governance, more extensive political and economic participation and enduring peace. Although the protagonists, the NCP and the SPLM/A, have overcome most impassés related to the CPA's implementation, in the current situation of the approaching referendum of self-determination for southern Sudan and Abyei the return to large-scale hostilities is a possibility.

This chapter deals with the political situation in Sudan, highlighting the context of CPA implementation. It outlines the origins of the agreement and its

role in the Sudanese political scene, emphasising the dynamics and challenges of its implementation. The chapter also highlights strategic calculations of the dominant parties and concludes by exploring some possible future scenarios.

## THE ORIGINS AND ROLE OF THE CPA

### Origins of the CPA

The signing of the CPA was a culmination of an attempt to find a solution to Sudan's most intractable rebellion in the southern part of the country. It was a crystallisation of the momentum for peace after a number of unsuccessful peace initiatives since the 1980s,<sup>5</sup> followed by a process conducted by a sub-regional organisation in the Horn of Africa, the Intergovernmental Authority on Drought and Development (IGADD – since 1996 the Intergovernmental Authority for Development, IGAD).<sup>6</sup>

Prior to the IGADD process peace negotiations had taken place in Nairobi and Abuja. The Nairobi talks, mediated by former US President Carter in November–December 1989, did not result in significant advances since the NIF regime was uninterested in political and economic concessions for peace with the SPLM/A.<sup>7</sup> Consequently, the Organisation of African Unity (OAU) staged an attempt for peace, relying on the Nigerian government, which culminated in the Abuja negotiations. However, Abuja I in May/June 1992 and Abuja II in April/May 1993 failed largely because of the NIF's continued lack of interest in peace due to its dominant position in the war at the time, and its insistence that the SPLA Nasir (later SPLA-United)<sup>8</sup> secessionist faction that had split from the SPLM/A-mainstream should be included in the talks.<sup>9</sup> The main result of Abuja II was that the parties stated their commitment to mediated talks in search for proposals for an interim period in the future that was '... to create a suitable atmosphere for confidence building by devolution of certain powers to the component parts of the Sudan'.<sup>10</sup>

The IGADD peace process began in the early 1990s. The idea of a possible IGADD initiative was first discussed at a meeting in Addis Ababa, 6–8 September 1993, when the presidents of the member states of IGADD stated their desire to end the conflict in southern Sudan,<sup>11</sup> as it was perceived as one of the main destabilising forces creating regional tension and instability in the Horn of Africa. In July 1994, an IGADD meeting in Addis Ababa was essential

for establishing the direct negotiation links between the NIF regime and the SPLM/A<sup>12</sup> and it produced the first Declaration of Principles (DoPs) between the GoS and the SPLM/A, proposing democracy and wealth-sharing as the cornerstones for resolving the war, and allowing a self-determination referendum if power and wealth-sharing failed, imitating the model applied in 1993 in Eritrea.<sup>13</sup>

Nevertheless, the peace process remained stagnant until the late 1990s. It was not reinitiated until October 1997, when Khartoum finally abandoned its hopes for military victory after SPLA advances and agreed to negotiate on the basis of the DoP.<sup>14</sup> As a result, the IGADD initiative gained prominence over other simultaneous peace efforts by neighbouring powers<sup>15</sup> as an inherently regional effort for peace endorsed increasingly by a number of African states. Prominent international actors then supported it as 'an African solution to an African problem'.

A significant force propelling the peace process was the effort to overcome problematic relations among Sudan, its neighbours and international protagonists. In the 1990s Sudan had emphasised its revolutionary Islamist orientation, seeking to become the beacon spreading Islamic resurgence, hosting Osama bin Laden between 1990 and 1996, engineering the assassination attempt of the Egyptian president, Hosni Mubarak, with Egyptian Islamists in 1995 and drawing counter-insurgency support from states such as Iran. While this had generated a stagnating effect on the peace process, the 11 September attacks in New York and Washington DC in 2001 reversed the situation, giving renewed impetus for a negotiated settlement as the US and other international actors intensified their efforts for peace in Sudan. The US in particular pressed for increased GoS commitment, in part because it sought to remove the Islamist NCP regime that was known to have harboured terrorists and supported their operations from the list of its enemies. The US was motivated to engage the NCP and seek its cooperation in its global war against terror.

A coalition of European states, included in the 'Friends of IGAD' or 'IGAD Partners' Forum',<sup>16</sup> consisting of Italy, the Netherlands, Norway and the UK also participated in overseeing the IGAD peace process. In this situation, Kenyan Lieutenant General Lazaro Sumbeiywo was assigned as the main IGAD special envoy. It has been internationally recognised that Sumbeiywo's personal commitment and ability overcame a number of obstacles and were instrumental in ensuring the successful progress of the process.<sup>17</sup>



The intensified external pressure coincided with internal divisions at the highest level of the NCP leadership. This, along with the increasing willingness to end the war in southern Sudan, swung the balance of interests within the NCP towards seeking rapprochement with the West. Consequently, after almost ten years since the first steps had been taken a breakthrough was achieved, first through the signing of a ceasefire agreement in January 2002 in Switzerland, overseen by the US, for the Nuba Mountains conflict in Southern Kordofan,<sup>18</sup> followed by negotiations in Kenya that led to the signing of the Machakos Protocol on 20 July 2002, an agreement recognising the right of self-determination and the separation of state and religion.

The signing of the Machakos Protocol was followed by a Memorandum of Understanding on Cessation of Hostilities in October 2002. However, direct talks between the SPLM/A leader, John Garang, and the first vice president of the GoS, Ali Osman Muhammad Taha, were required to reach further accords in the period 2002–2004,<sup>19</sup> laying the foundation for the final signing of the CPA on 9 January 2005.<sup>20</sup> In the final agreement, the SPLM/A, which monopolised the representation of southern Sudan as the most powerful party, reflecting in this sense the NCP's position in northern Sudan, secured a referendum of self-determination for the southern states (Equatoria, Bahr al-Ghazal and Upper Nile) and Abyei,<sup>21</sup> irrespective of 'attractiveness of unity', or a successful redistribution of political and economic power through the restructuring of the state and wealth-sharing it had fought for. It was agreed that the referendum would follow a prior interim period of autonomous SPLM-dominated administration in southern Sudan, during which general and presidential elections would be convened and the NCP could demonstrate its commitment to maintain Sudan's unity.

## Role of the CPA

Concluding the CPA had several important implications for the Sudanese political scene. First, the SPLM/A's uncompromising stance on a self-determination referendum for the southern states and Abyei was included as a 'southern' safeguard in the agreement, while other so called 'liberated areas' in places such as South Kordofan and Blue Nile states were deprived of the same right. This focus on southern Sudan alienated some of the SPLM/A's allies in the National Democratic Alliance (NDA), which also encompasses

a number of political opposition factions in northern Sudan.<sup>22</sup> For instance, Darfurian, eastern Sudanese and SPLA-Nuba armed opposition organisations were excluded – or gained very little, in the case of the Nuba Mountains – from the agreement to which many felt they had contributed. In this context, the exclusive nature of the CPA as a two-way power-sharing deal should be highlighted.

Second, the CPA converted the SPLM/A rebel movement into a national protagonist as it became its former enemy's, the NCP's, junior partner in the GNU.<sup>23</sup> This had an adverse effect on the CPA's implementation because it pushed the NCP to secure its political and economic hegemony in northern Sudan and limit the SPLM/A's influence whenever necessary. As a result, the opposition participation in the GNU remained marginalised in practice as the NCP maintained power within the state structures, including the ministries headed by other parties.

Third, the CPA recognised, and to an extent legitimised, the power of the SPLM/A in southern Sudan. It stipulated the formation of a semi-autonomous GoSS dominated by the SPLM, with minority participation by other parties.<sup>24</sup> This, together with the NCP's attempts to purge the SPLM/A in northern Sudan, encouraged it to focus more on the southern region. However, the GoSS rule in southern Sudan also attracted NCP effort to prevent possible secession in the 2011 referendum.

Fourth, the CPA cemented the constructed image of north-south incompatibilities, encouraging this logic that has been particularly popular since decolonisation.<sup>25</sup> Although fomenting this sentiment has served the political interests of elites in both northern and southern Sudan, it has maintained an antagonistic and conflictual political environment that continues to threaten peace. While the CPA signatories, the SPLM/A military-political leadership and sections of the NCP security/commercial elite<sup>26</sup> remain the most powerful parties in Sudanese politics, these protagonists have assumed the role of representatives of 'the north' and 'the south' without allocating rival factions space to function in their respective regions. The fact that other rebel movements of Sudan's marginalised periphery have been incorporated in the general framework for peace in Sudan through separate agreements since the CPA<sup>27</sup> demonstrates that neither party has been sufficiently at ease about the full inclusion of other actors in the agreement,<sup>28</sup> largely because this could undermine their exclusive protagonism.

Instead, the CPA's key provisions have been designed to incorporate other political factions at a later stage of the process. In this, the national and regional parliamentary and presidential elections, originally timetabled for July 2009, were to be a key element pushed by external actors, whereas the two protagonists showed less interest in them. However, the elections,<sup>29</sup> finally conducted in April 2010, were used to legitimise president al-Bashir and the NCP's rule after the International Criminal Court's (ICC) indictment of the former, and consolidate the SPLM/A hold over the GoSS. Nevertheless, they were unsatisfactory for the marginalised opposition because the NCP and the SPLM/A used their power and resources in the electoral process to strengthen their position. Given the distribution of political and economic power post-CPA, the election results were predictable and considerably hinder prospects for political transition, as the current situation denies other political actors effective participation in national politics.

Overall, the CPA, a complex and exclusive treaty, the implementation of which is expected to culminate in the 2011 referendum, remains poorly prepared to promote comprehensive peace in the heterogeneous periphery of the Sudanese state and address the overall chronic political instability from which Sudan has suffered since colonialism.

## CHALLENGES TO THE IMPLEMENTATION OF THE CPA

### General considerations

Initially the CPA was celebrated because it marked the formal end to the war in southern Sudan. The signing of the agreement raised high expectations for the subsequent period of its implementation. It brought relative peace to many areas of southern Sudan and the transitional zone, permitting resettlement to begin.

However, by July 2005 the CPA's implementation experienced a significant blow owing to the unexpected death of the SPLM/A leader and first vice president of the GNU, John Garang.<sup>30</sup> His replacement with an SPLM/A senior commander, Salva Kiir, known as a secessionist, marked the loss of momentum for the CPA to be promoted as a national project. Decreasing support elsewhere in Sudan's marginalised periphery after Garang's death further reduced the CPA to an NCP-SPLM/A power-sharing arrangement.

Moreover, although the CPA has been endorsed as the comprehensive framework for peace in Sudan, it is debilitated by its exclusive nature and dependence on international pressure. This is largely because the agreement relies on the goodwill and concrete concessions of the NCP, and the transformation of the SPLM/A from a rebel movement into the GoSS, a professional army and a major national political actor.

This has slowed down the CPA implementation, which showed only minimal timely success, particularly in the first year. During this time the constitutional stipulations of the CPA were passed, new structures were set up to divide political power and the monitoring and implementation of the agreement were agreed upon. For instance, the United Nations Mission in Sudan (UNMIS) and the international Assessment and Evaluation Commission (AEC) were instituted, and by February 2006 the GNU had allegedly made the first lump sum of oil revenue transfers, worth nearly \$800 million to the GoSS.<sup>31</sup>

## The petroleum sector

From 2006, implementation delays increased and control of the strategic oil sector became disputed. In 2006 the NCP insisted on holding the Ministry of Energy and Mining (MEM), which produced a crisis that nearly foiled the CPA because the SPLM/A was reluctant to accept its continued exclusive control over the oil sector. Currently, the lack of transparency is the result of the NCP's exclusive control of the MEM, which has marginalised the joint National Petroleum Commission stipulated by the CPA to oversee the sector. This has allowed the NCP obscure oil production and sales figures and retain revenue from the GoSS, which has not been allowed to monitor the process at least until 2010.<sup>32</sup> In fact, the GoSS has received transfer payments considered to be far inferior to the 50 per cent revenue share stipulated by the CPA. As a result, in September 2009, the GNU minister of finance, Lual Acuek Deng, affiliated with the SPLM, stated that the presidency had ordered an investigation of oil revenues that had recently suffered an unexpected 10 per cent fall.<sup>33</sup> This SPLM/A initiative is related to rumours that the GNU may owe the GoSS several millions of dollars in oil revenue.<sup>34</sup>

It should be noted that in 2008 the petroleum sector was of overwhelming importance nationally. The sector represented 95 per cent of national exports, 60 per cent of the GNU revenues, and the GoSS had over 95 per cent budget

reliance on oil returns from the GNU.<sup>35</sup> This dependency undermines the autonomy of the GoSS. Although it received some of the much needed arrears of oil revenue by 2007, and payments for the first part of 2009 were made in 2008,<sup>36</sup> according to the MEM calculations, its position remains precarious relative to the NCP, which has more economic leverage due to its overwhelming control of the oil-based and non-oil-based national economy. Therefore, it was difficult for part of the SPLM leadership to accept the International Permanent Court of Arbitration (PCA) award of 22 July 2009 relating to the borders of the much disputed Abyei region in the north-south transitional zone because some understood the decision to remove the much disputed Heglig oilfields from 'the south'.<sup>37</sup> Nonetheless, largely because of its commitment to the CPA the SPLM/A accepted the decision, which was welcomed by the NCP.

Currently, the petroleum sector remains under the complete control of the NCP. However, this could change as the GoSS has envisaged alternative routes to export southern oil through East Africa instead of northern Sudan. Although this may cause increasing confrontation, guarantees on continued collaboration on oil exportation may diminish NCP opposition to the referendum and possibly facilitate southern independence. By contrast, dependence on oil exports through northern Sudan and export revenue from the GNU may hinder the sentiments for secession within the SPLM leadership, particularly if southern Sudan becomes increasingly ungovernable in the near future. This way, the petroleum sector could serve as a basis for increasing NCP-SPLM/A collaboration as opposed to confrontation.

## Pending implementation issues

None of the key CPA provisions have been implemented on time. The preparations for national elections were severely delayed. For instance, the National Election Law and the appointment of the National Elections Commission were stipulated for 2006, but the law was decreed in July 2008 and the commission appointed in November 2008. Similarly, the national census was to be conducted in July 2007, but its highly disputed results were not published until April 2009. This delayed the elections that should have occurred in July 2009 to April 2010, allowing more time for their manipulation, and meaning they were suspended in South Kordofan state owing to a census disagreement.<sup>38</sup>

Although the elections went off successfully and with surprisingly little electoral violence, other key issues remain unsettled. One of these is the north-south border demarcation, pending since 2005, of which approximately 20 per cent remains incomplete. This can be considered an important issue as regards the local legitimacy and understanding of voting constituencies for the southern and Abyei self-determination referendum, although the NCP and the SPLM agreed in August 2010 to undertake the referendum despite the full demarcation of the border. Prior to this decision, the NCP had delayed the demarcation process, as it was perceived that an incomplete border would prevent secession and preserve Sudan's unity.

Yet another issue is the self-determination referendum itself, which the SPLM initially demanded should take place in December 2010 to allow results to be out in January 2011. Although the protagonists have since agreed upon organising the referendum on 7 January 2011, and confirmed that a simple majority is required for secession,<sup>39</sup> the referendum lacks preparation and is capable of creating tensions and outright violence that may threaten the remaining implementation process. The referendum preparations were initially delayed by the formation of the new central government after the April 2010 elections, with the SPLM leadership pointing out the NCP's lack of interest in establishing a referendum commission, resolving the contentious north-south border or Heglig issues, the need for timely 'popular consultation' in South Kordofan and Blue Nile and dealing with post-referendum issues.<sup>40</sup>

The major determinants in the future implementation of the agreement revolve around the agendas and internal dynamics of its two main signatories. In the case of the NCP, the constituency under President Omar al-Bashir that contains hard-line elements has gained prominence since the decline of Taha's constituency, which engineered the CPA, and recently the regime has sought rapprochement with the opposition parties. On the other hand, the SPLM continues to suffer from internal complications and divisions between pro-unity leaders and separatists, and lacks support in certain sectors of the population in southern Sudan, which shapes its agendas and continues to problematise the situation. Until early 2010, however, it sought to boost its national image by reaffirming its alliances against the NCP with some of its NDA partners,<sup>41</sup> but abandoned this approach in the hope of securing the referendum by agreeing not to challenge al-Bashir or the NCP's hegemony in the northern states.<sup>42</sup>

## Evolution of the NCP's agendas

The CPA has never been an appealing political arrangement for the NCP. This is because it entails political and economic concessions that are bound to weaken the NCP's exclusive power as the main political force in the country. As a result, powerful sectors within the movement are against the agreement, which, in turn, has undermined its implementation.<sup>43</sup>

However, the NCP agreed to the CPA largely because of regional and international pressure, and in part because it was unlikely to win the war in southern Sudan despite the ability to amass resources, mainly through oil exports since 1999. An ongoing NCP leadership struggle that culminated in 1999–2001 also contributed to its willingness to conclude the CPA process to allow time to reorganise the regime. Thus, the NCP faction led by Taha, Khartoum's main CPA negotiator, agreed to the CPA with guarantees for the continuation of NCP rule through the majority in the GNU, parliament and Sudan's Council of States during the interim period until the elections. It was also assured of the unity of Sudan until 2011 when the referendum of self-determination of the southern states and Abyei would take place.

This resulted in a change in power configuration within the NCP. The party's upper cadres consist almost exclusively of representatives of the Nile central riverine tribes, mostly Shaigiyya, Jaaliyyin, Danagla or other intimately related groups,<sup>44</sup> which have held political and economic power in Sudan since independence. Major figureheads who have led their respective constituencies within the Islamist NCP include its founder, and later the marginalised Hassan al-Turabi, and his former protégés currently in power. Of these, the most influential power centre revolves around al-Bashir, a popular military official with a broad following in the army, while another major one is centred on the figure of Taha, the second vice president<sup>45</sup> and secretary general of the NCP, who manages the government in practice and enjoys the support of the National Intelligence and Security Services (NISS) and a limited constituency of high-level army officers.

In the process of the CPA negotiations in the late 1990s and early 2000s, Taha and his constituency gained prominence. This was in part through a good working relationship with Garang that culminated in the signing of the main protocols later included in the CPA in 2002. Taha's camp, which has been supported by a number of commercially motivated NCP army generals, sought to

gain economic benefit from the peace to keep the NCP in power, while allowing unprecedented political concessions to the SPLM/A, including the right to vote for self-determination for southern Sudan and Abyei in 2011.

Perhaps, however, Taha's most influential moment until now coincided with a bitter contest over the NCP presidency. This unfolded between al-Turabi and al-Bashir, the former being an internationally renowned Islamist who has followers around the country, in part through marriage to the former Prime Minister Sadig al-Mahdi's<sup>46</sup> sister, and the latter the main figurehead of the regime. Al-Bashir prevailed in the power struggle largely because of his wide support in the military, whereas al-Turabi had less connection with the state's security apparatus. This, in turn, encouraged rebellion in Darfur, where the local rebels were increasingly inspired to follow the SPLA's example to gain political and economic concessions from the regime through arms, largely because al-Turabi, who draws a large part of his constituency from the region, helped to instigate the armed struggle against the regime's repressive use of 'Arab' militias.<sup>47</sup>

As a result, with the expulsion of al-Turabi the NCP lost part of its wider appeal, and its power became increasingly limited to the Nile River Valley, where al-Bashir, Taha and a number of other NCP strongmen have their main constituencies. However, the NCP has continued to use its vast economic resources to consolidate its patronage in key areas, and enforce systems of regional and local government in which it had used token federalism and NCP emirs to replace traditional leaders during the 1990s as part of its bottom-up ideological approach to build an exemplary Islamic state.

After the sidelining of al-Turabi, more hard-line elements within the movement under al-Bashir gained the upper hand, and Taha's power centre was pushed increasingly aside. This process peaked after Garang's death in July 2005, which undermined Taha's leverage gained through his personal relationship with the rebel leader, whose personal influence and commitment to the CPA and the country's unity through the SPLM/A's 'New Sudan' agenda were hailed even within NCP-dominated regions. This process resulted in renewed militantism in the NCP strategy to minimise challenges to its exclusive political power and control over resources. One of the most apparent manifestations of this has been the use of the security apparatus and militias in Darfur.

Since the strengthening of al-Bashir's position, his constituency, which bases its power on high-level army officers, has been the principal force dictating the NCP's policy. Al-Bashir's major backers – the defence minister, Lieutenant



General Abdel Rahim Hussein; the presidential affairs minister, General Bakri Hassan Salih; and the military intelligence commander, Ibn Awf – have become major players in securing senior army officers' (most of them NCP members or Islamists) interests, founded on political supremacy and personal economic benefits but also intimately linked to favouritism, corruption and Islamic banking and businesses, including the NCP's military commercial enterprises.<sup>48</sup> Practically all of these economic institutions and ventures, many of which were created in the early 1990s during the NCP hard-line Islamist period, remain in the hands of the highest NCP leadership, lack transparency and continue to be used largely for extending political influence.

Sudan's oil business, mentioned above, is at the centre of the NCP's economic calculations due to its high returns, part of which are used to finance the movement. This is why the NCP insisted on controlling the sector by retaining the MEM run by prominent NCP individuals, Awad al-Jaz (1995–2008) and al-Zubeir Ahmed al-Hassan (since 2008),<sup>49</sup> which has allowed the NCP to impose secrecy on the sector. It has delegated all main aspects of the oil business to Sudan Petroleum Company (SPC), which functions under the MEM and is directed by a handful of NCP individuals. This way, public and private sectors are deliberately blurred to elevate secrecy, to which the army and the NISS contribute further by operating the security for the oil business.<sup>50</sup> Like the non-oil economy, the petroleum sector is concentrated in the hands of the leading NCP members or sympathisers. It blends into a network of local and foreign, public and private banks, Islamic financial institutions and construction companies, in most of which a small group of NCP individuals hold the major stakes.<sup>51</sup> Consequently, as in the case with most of the non-petroleum economy, the recruitment to the sector is highly politicised and favours NCP members and constituencies.<sup>52</sup>

The commercialisation of the interests of some of the leading NCP army officers has in some cases pushed their Islamist agendas to the background. However, it has also ensured the longevity of the regime through continued control of the domestic economy, diversion of resources from the exterior (extraversion), and shifting power from formal institutions to the security apparatus and informal economic channels of the NCP. This system has allowed space for the accommodation and co-optation of adversaries, such as offshoots of northern traditional sectarian political forces, the Umma and the DUP, along with Darfurian and SPLM individuals.<sup>53</sup> This, in turn, helps to promote

NCP agendas and maintain political unity. Such a strategy is likely to continue and, if resources remain available, can be expected to be expanded further as a strategy to buttress the NCP dominance.<sup>54</sup>

The al-Bashir camp's prominence also meant that Taha's constituency was purged. This has taken place particularly during the months since al-Bashir's ICC arrest warrant, as Taha criticised the regime's approach to the situation in Darfur, and the regime reshuffled the NCP members in prominent posts, in part aimed at providing a more low-key role for those wanted by the ICC.<sup>55</sup> Provoked by the international pressure through the ICC, and the fissures between al-Bashir and Taha, the movement's hard-line leadership linked to al-Bashir's survival embarked on emergency measures to secure power. It mobilised tribal militias and NCP riverain paramilitaries, while deploying army units to safeguard Khartoum and the core regions where most of the economic activity dominated by the NCP is concentrated.<sup>56</sup> This was accompanied by strengthening the army presence in Darfur and South Kordofan, as there are fears that the former SPLM/A areas in the Nuba Mountains can become operational areas for Darfur rebels.<sup>57</sup>

Meanwhile, al-Bashir's constituency has sought to reaffirm itself. In September 2009, Taha co-chaired a Joint Executive Political Committee meeting with the vice president of the GoSS, Riek Machar, during which he stated the NCP's commitment to the referendum in southern Sudan and Abyei.<sup>58</sup> Taha's retaking the role as the figurehead of the CPA negotiations was likely to have been prompted by al-Bashir's attempt to secure his personal position, which has been weakened by the ICC warrant. In addition, al-Bashir's offer for 'radical concessions' on the CPA and referendum if the SPLM endorses him as the main candidate for the presidency in the April 2010 general elections provides further evidence for this.<sup>59</sup> The April 2010 elections helped to secure al-Bashir's position in the short term, as the NCP manipulated them heavily<sup>60</sup> and achieved an overwhelming victory for its leadership in the northern states, with al-Bashir gaining 68 per cent of the vote to maintain the presidency. The election victory was due in part to al-Bashir's constituency's ability to convince the other power centres in the NCP to endorse limited post-election concessions to the SPLM if it helped to maintain him in power, while also embarking on a campaign to gain regional and international support against the ICC prosecution.<sup>61</sup> As envisaged by the NCP leadership, this has provided initial international legitimacy for the

presidency among a number of states, which may undermine the ICC's plans to prosecute al-Bashir.

Al-Bashir's constituency has also sought consolidation by reaching to the marginalised northern opposition parties periodically and reshuffling the leading forces of the NCP. For instance, al-Bashir demonstrated his interest in rebuilding relations with al-Turabi's Popular Congress Party (PCP) and released him from house arrest, under which he had been placed after criticising the regime. However, this attempt failed, as al-Turabi was re-imprisoned after the April 2010 elections for allegedly conspiring against the government. Taha is also an obstacle in this reconciliation, given that he is deemed the main architect of Turabi's expulsion from the NCP.<sup>62</sup>

Moreover, due to the ICC decision and related pressure from Arab states to remove individuals suspected of war crimes, in May 2009 al-Bashir appointed Ahmed Haroun as governor of South Kordofan. Haroun, an NCP official from North Kordofan, is wanted by the ICC for war crimes in Darfur where he served as the acting state minister for humanitarian affairs. To consolidate his position further, in August 2009 al-Bashir replaced the long-serving influential chief of the NISS, Salah Gosh, a Jaaliyyin, with his second in charge, Mohamed Atta Al-Moula Abbas, a Shaigiyya.<sup>63</sup> This could be viewed as a tribally inspired manoeuvre against Taha's constituency by replacing Gosh, who has become one of the main figures behind the security services' repression, and working with Taha for a number of years, with Abbas, who is deemed more loyal to the al-Bashir camp.

Furthermore, the context of CPA implementation has promoted the NCP's strategic militarisation and destabilisation of state peripheries.<sup>64</sup> It has pursued this strategy particularly in the areas where it has faced armed opposition. Such a policy of fragmentation and replacing the links of the northern periphery with the central state with its own patronage systems has been a consistent part of its tactics since the 1990s, undermining opposition in the periphery. Consequently, the NCP has instigated violence in southern Sudan, the north-south transitional areas around Abyei and South Kordofan, and Darfur. Whereas in southern Sudan it has sought to destabilise the local situation, particularly in the SPLM/A administered areas,<sup>65</sup> in Darfur it has used military and militia tactics, together with manipulating the April 2010 elections, to promote the influence of its 'Arab' constituents in order to control the region's politics against opposition organisations.

The NCP strategy in southern Sudan, Abyei and South Kordofan has involved arming ethnic militias and is accompanied by a security apparatus build-up. In southern Sudan the NCP has been accused of supporting sections among the Murle and Lou Nuer and among other groups in Jonglei Province, instigating violence in Lakes Province and endorsing the remnants of the resurging Lord's Resistance Army (LRA), while in the transitional north-south zone it has been thought to arm sections of the Misiria and Hawazma.<sup>66</sup> As well as ostensibly instigating localised violence in these key areas, the NCP is alleged to be obstructing GoSS financing from the GNU to undermine the SPLM/A's ability to govern and safeguard the self-determination referendum and possible secession of southern Sudan. This has caused the SPLM/A to concentrate its resources on securing its main objective, the referendum, which has resulted in its reduced capacity to deal with divisions and enforce security in more remote areas of 'the south'.<sup>67</sup> This lack of capability has lowered the SPLM's political appeal, particularly in insecure areas in southern Sudan, but lately the movement has attempted to remedy insecurity by sending reinforcements to Jonglei.<sup>68</sup>

The NCP also continues to instigate divisions within the SPLM/A and prepare for a possible armed confrontation with its main adversary. In the first half of 2009, this strategy propelled the GNU's foreign minister Lam Akol's split from the SPLM/A and his founding of the SPLM-Democratic Change, accusing the SPLM/A of corruption and lack of democracy in 'the south'. However, this move by Akol, who has a history of political opportunism, defections from the movement and links with the NCP, and who has been on the verge of being expelled from the SPLM/A previously, has not had a substantial effect in terms of undermining the SPLM/A position in southern Sudan because the SPLM/A has purged the SPLM-Democratic Change. Nevertheless, this shows the propensity for internal leadership problems within the SPLM/A, which the NCP and its state media have exploited in an attempt to portray deepening divisions between the movement's main separatist and unionist power centres. This also forms part of the NCP's attempt to team up with some of the SPLM/A separatists, some of whom, such as Akol, it has shared a history of cooperation since the 1990s.

Finally, the NCP strategies dealt with above seek to project an image that the NCP is committed to the CPA implementation process. The fact that it has delayed the carrying out of the agreement's key features points to the attempt to gain as much benefit as possible from the current situation in which it holds

exclusive power. At the moment, the NCP obscurely exploits petroleum reserves to maximise its own resources and to weaken the GoSS economically and politically in any upcoming scenario. There is a deliberate attempt to extract as much oil as possible before the SPLM can get more control over the exploitation process, which may deplete some areas of this strategic resource. Such a strategy can be seen as an outgrowth of the common agenda pursued by the country's central governments and regimes since independence to keep southern Sudan poor and as dependent as possible on Khartoum, while at the same time minimising the SPLM/A's ability to finance a renewed military challenge to the NCP hegemony. This continues to place the NCP at odds with the SPLM/A, which is seeking to safeguard the self-determination referendum.

To summarise, the NCP continues to be the most potent political force in Sudan and it is in charge of the current situation, attempting to use its political and economic leverage to dictate the political trajectory and minimising the impact of the CPA on the current status quo.<sup>69</sup> It is likely that the NCP will continue its strategy of delaying the CPA implementation by undermining the 2011 referendum, propping up its manipulative and coercive powers, orchestrating instability in the periphery and attempting to sway southern leaders and their constituencies away from supporting the SPLM, the GoSS and secession.<sup>70</sup> While part of its leadership is inclined to let go of southern Sudan, its mainstream power centres seek to maintain Sudan's unity without making it attractive.

## SPLM/A strategies

The signing of the CPA had important implications for the SPLM/A that have affected its strategic calculations. In the aftermath of the agreement, the SPLM/A became one of the two main protagonists of the Sudanese political scene and the chief guardian of the CPA by being the party that would benefit the most from its successful implementation. Regionally, it became the main political force in southern Sudan and chiefly responsible for its reconstruction and development through its majority representation in the GoSS. This also necessitated the consolidation of an increasingly capable political base apart from the SPLM/A's main military constituency, which it has sought to do by hand-picking individuals from other ethnic groups in an attempt to portray a more ethnically inclusive image to counter the arguments of its being Dinka-

dominated.<sup>71</sup> It has also sought a transformation from soldiers to civilians and from rebels to conventional army.

However, two differing views within the SPLM/A leadership have dictated the movement's general objectives. The former leader of the movement, Garang, developed his 'New Sudan' vision as the paramount objective during the war from the SPLM/A's initial socialist orientation dictated by its main supporter, Mengistu Haile Mariam's socialist regime in Ethiopia. The 'New Sudan' approach is founded upon a vision of a united democratic country free from the exclusive rule of the Arab-Muslim governing clique, in which justice, equal opportunities and human rights prevail for all citizens. Since Garang's death this constituency has concentrated around the SPLM Secretary General, Pagan Amum, and other senior members of the movement, such as Nhial Deng Nhial, Deng Alor Kuol, Yasir Arman, Malik Agar and Abdel Aziz al-Hilu,<sup>72</sup> who continue to promote Sudan's unity – and the CPA as the main means of implementing it.<sup>73</sup> However, many in this group do not support unity unconditionally if the NCP does not 'make it attractive'.<sup>74</sup> In fact, in reaction to the NCP's intransigence during the CPA implementation, an increasing number of SPLM/A leaders have become unconditional about the self-determination referendum and willing to endorse a possible secession.

The other prominent view within the SPLM/A leadership cadres stresses the importance of self-determination for southern Sudan. The prime objective of this power centre is secession from the rest of the country on the grounds of the inability to overcome historically founded differences and the subjugation of the region and its peoples by the northern ruling clique. Garang's successor, Salva Kiir, and other prominent politicians, such as Akol and the GoSS vice president, Riek Machar, have been known for their separatist tendencies. Their position has included a strategy of not challenging the NCP's hegemony in the northern states, which would in return generate sufficient goodwill within the NCP to allow the referendum to take place.<sup>75</sup>

Under Garang, the SPLM/A struggled to accommodate both views, but the differences were of such magnitude that they produced splinter groups and severe infighting within the movement during the war. Although in the course of the CPA negotiations the SPLM/A was able to accommodate both stands – granting the 'New Sudan' an opportunity through the 2009 elections and the secession a chance through the 2011 referendum, also seen as a tool to pressure the NCP – divisions within the movement's leadership have persisted.

Initially, after the signing of the CPA the views of the supporters of the 'New Sudan' vision were prominent, which along with the unity-minded southerners included leaders from transitional areas and other parts of the marginalised periphery.<sup>76</sup> But after Garang's death, Kiir surrounded himself with secessionists whom he identified with and could exert control over, and concentrated the movement's efforts principally on southern Sudan.<sup>77</sup> He appointed senior members known for their secessionist tendencies to the main posts in the GNU and the GoSS largely to ensure his own position by relying on trusted individuals from the secessionist faction in the movement. This undermined further the SPLM/A's fledgling support in the northern states and in the transitional zone, and generated grievances among the respective constituencies. Meanwhile, the movement built infrastructure and new political structures, principally in Juba,<sup>78</sup> but since development and services provision were largely constrained by irregular GNU financing, it was to a large extent destined to remain chronically reliant on external development, relief agencies and non-governmental organisations (NGOs) for basic service provision and to address recurring food shortages.

Moreover, political stability has been conditioned by a number of factors that undermine the southern unity that Kiir has sought to promote. For instance, corruption, personal power struggles, and rent-seeking within the newly formed southern political institutions and within the SPLM party structures have become increasingly visible since 2005, hindering, for example, the Southern Legislative Assembly's attempt to pass key laws.<sup>79</sup> In addition, inter-ethnic quarrelling, allegedly at times fomented by the NCP, has led to disillusionment among some southerners about prospects for a functioning independent southern Sudan after the 2011 referendum.<sup>80</sup> While certain elements of militias left out of the CPA have propelled insecurity,<sup>81</sup> anti-corruption measures, mainly targeting part of the SPLA military leadership, have been fairly ineffective. Although Kiir's efforts have also resulted in reconciliation between the various SPLM/A factions and a number of other southern groups,<sup>82</sup> divisions remain and continue to subject the region to political instability.

However, the two leading SPLM factions have continued to close ranks in the face of the NCP's intransigence towards the CPA implementation. For example, the SPLM staged a collective boycott of the GNU in October-December 2007 until persuaded to return by the international stakeholders, only to be alarmed again by the May 2008 violence in Abyei, which gave new impetus for both the

NCP and the SPLM/A to strengthen their positions in the transitional zone.<sup>83</sup> The SPLM/A also staged demonstrations with other opposition parties before the elections to denounce the NCP's manipulation of the elections' preparation, and sought to regain national appeal through increasing collaboration with northern opposition parties. These manoeuvres, however, have done little to undermine the NCP, which continues to enjoy its hegemony in the northern states.

This refocus in the SPLM/A strategy has allowed the 'New Sudan' advocates to regain ground. However, this has not undermined the SPLM/A leadership. For instance, Kiir seems to be comfortable with Amum's popularity despite rumoured mistrust between the two in the past. The reconciliation between the two camps has been necessitated by the continued vulnerability of the movement to the NCP's manipulation and co-optation, exemplified by Akol's defection to contest the SPLM/A, and opposition to the SPLM/A in parts of southern Sudan where it lacks legitimacy and authority.<sup>84</sup>

This has led the SPLM/A to attempt to shift pressure from southern Sudan to the northern states. It has sought to re-establish its alliances with other opposition organisations of Sudan's marginalised periphery, according to the 'New Sudan' agenda, and has, for instance, reached towards Darfur rebel factions, Nubian leaders from the far north, prominent individuals from Kordofan and the Beja.<sup>85</sup> It also convoked a meeting in September 2009 in Juba that led to the Juba Declaration on Dialogue and National Consensus.<sup>86</sup>

In addition, the SPLM/A has remained committed to the CPA implementation. This is demonstrated by its endorsement of the PCA award on Abyei, in which southern Sudan lost the contested and strategic Heglig oilfields. At least in terms of official rhetoric, the recovery of the nine contested Ngok Dinka areas with significant SPLM constituency seems important for the movement in its political calculations.<sup>87</sup> Although it has pushed for the completion of the north-south border demarcation, the NCP has stalled the process because it is viewed that an incomplete border inextricably links southern Sudan to the northern states and makes secession difficult. A large part of the area not only holds considerable oil wealth, which attracts the protagonists, but also has deeply divided populations, such as the Misiria and Ngok, who claim rights to the land and most of whom supported either the GoS or the SPLM/A during the war. The demarcation of, and mutual agreement on, the north-south border are considered important in case the southerners choose secession.



In any future scenario for the SPLM/A, strategic calculations regarding the upcoming referendum are paramount. In fact, Amum's statement on the unilateral declaration of independence if the preparations for the southern self-determination referendum are not accelerated promptly<sup>88</sup> can be taken as an indication of the SPLM/A's increasing emphasis on securing secession as a strategic option, triggered by a waning belief in true power- and wealth-sharing. Meanwhile, the SPLM/A continues to consider successful implementation of the CPA as its best option, while preparing itself militarily to ensure unilateral secession, if necessary through resumed violent struggle.

Therefore, the momentum appears to be with the secessionists within the SPLM/A. In the post-election scenario, the SPLM/A seeks to stabilise southern Sudan and strengthen its control of areas in which its dominance could be questioned.<sup>89</sup> This also continues to allow NCP influence within the region at times through its own political representation or via collaboration with southern minority parties. The SPLM/A sought to eliminate such influence in preparation for the 2010 elections<sup>90</sup> and has continuously rejected the national census results, which it claims did not count all southerners in Sudan.<sup>91</sup>

The GoSS has also embarked on a nation-building process to prepare for possible independence. The SPLM/A has used its leverage as the mouthpiece of common southern grievances and sought to encourage assimilation and combat fragmentation of southern Sudan through the promotion of 'southernness', having also found an ally in the representatives of the Christian religion, which has historically been embraced as a backlash to the coercive Islamisation and Arabisation policies in the region. However, heavy dependence on the GNU's petroleum financing, international organisations and NGOs for development and services undermines autonomy and self-determination. These concerns, along with corruption<sup>92</sup> and the grievances of those southerners who challenge the GoSS authority, should be addressed urgently in order to consolidate the state after a possible secession.

Finally, despite doubts among northern intellectuals of southern Sudan's viability as a political entity, an image the NCP seeks to promote, the southern leadership has been able to build political structures and encourage some degree of development during the first four years of the GoSS. In fact, during this time southern Sudan has opened up increasingly to the outside world<sup>93</sup> and trade has increased, particularly with its southern neighbours Uganda and Kenya. Although violent incidents have generally increased, particularly in areas such

as Jonglei,<sup>94</sup> including the recent crises with General George Athor Deng and other officers who either reject election defeat or voice other grievances challenging the SPLA authority, the GoSS has remained hopeful that such violence will subside with the help of peace conferences, disarmament, tighter arms control and law enforcement.

## CHALLENGES TO THE CPA AND THE ROLE OF EXTERNAL INVOLVEMENT

### Domestic challenges

Given Sudan's history of failed peace initiatives, initial reactions to the signing of the CPA were enthusiastic that the political power relations within Sudan were finally going to change. However, the hope of equally shared political and economic power has since waned as a result of the slow CPA implementation.

Key impediments to the CPA success continue to be power- and wealth-sharing and non-confidence among the key players. The NCP's control of the Sudanese economy is unquestionable and any wide sharing of economic resources in the near future is unlikely because such resources sustain the NCP's structures and provide the foundation for its power. Secondly, a long history of mistrust between northern and southern political elites, in which the 'Arab'/Muslim-dominated social hierarchy that impedes equal standing between those from the centre and those from the peripheries plays a role, continues to generate animosity and grievances. This is particularly the case in times of political uncertainty, during which governing elites heighten rhetoric aimed at enforcing divisions to support their political discourses, inclinations and interests.

Currently, the peace process in Darfur has stagnated and grievances among the Beja in the east are accumulating. This poses a threat to the CPA despite respective peace agreements having been signed in both regions in 2006. In Darfur, the Darfur Peace Agreement was signed initially only by one SPLM/A faction under Minni Minnawi, making it too limited to address the diverse causes of violence in the region. It excluded other rebel factions and organisations, including the Justice and Equality Movement (JEM), which is politically linked to the Islamist movement, but ethnically tied to groups in Chad. The NCP continues to perceive the situation in Darfur as a threat, and it has the

potential to derail the CPA, especially if international attention is not refocused on the implementation of the agreement.

Meanwhile, the Eastern Sudan Peace Agreement has not been implemented in a satisfactory manner for the Eastern Front (mainly Beja and Rashaida). Token concessions based on promises made in the agreement have not improved the situation, and Eritrea, which brokered the peace deal, has not followed up by pressing for its implementation because it has sought to repair its own relationship with the NCP. This also amounts to a potential danger to prospects for enduring peace because renewed rebel activity in eastern Sudan would require the attention of at least the unity-minded SPLM/A leadership faction, since the movement is in principle allied with the eastern opposition in the NDA. This, together with a likely increase in JEM activity in eastern Sudan in such a scenario, would increase political instability.

However, the current insecurity in the north-south transitional zone poses possibly the most immediate menace to the CPA. This is because its unsatisfactory implementation has a direct impact in Abyei, South Kordofan and Blue Nile. While the unfinished border demarcation remains contentious, the PCA decision on Abyei has raised new hope regarding peace building between local Ngok Dinka and parts of the Misiria. But the Nuba, Misiria and Hawazma remain fragmented in South Kordofan and divided by the NCP and SPLM/A agendas and distinct local administrations. Violent incidents persist and there has been little tangible progress in terms of defusing the inter-ethnic tensions. The NCP in particular has armed its constituents in the area and used its resources to build patronage systems to gain support, whereas, in response, the SPLM/A has co-opted disgruntled elements of the Misiria and concentrated forces around Lake Abyad.<sup>95</sup> Alarming, some groups, including former SPLA-Nuba soldiers, have re-armed in the Nuba Mountains threatening to re-initiate the rebellion if southern Sudan secedes and South Kordofan is left in northern Sudan. This situation remains a threat to a successful CPA implementation and is reflected by the north-south frontier area becoming increasingly militarised.

## The role of external involvement

The NCP and SPLM/A strategies remain conditioned by the political developments related to the CPA implementation. Continued regional and international interest is significant to enforce a successful execution of the agreement, since

the CPA is to a large extent being called for internationally. As in the case of the initial forging of the agreement, maintaining pressure on the protagonists should improve the prospects of its successful implementation, particularly whenever the NCP shows signs of weakness.

However, at the moment, the international community remains divided in terms of strategic and commercial interests. For instance, among the main actors, China's role is important, as it continues to support the NCP.<sup>96</sup> The NCP also benefits from military and commercial arrangements with Iran, Russia, France, Germany, other European states and a number of other Asian actors.<sup>97</sup> Regionally, it collaborates most closely with Egypt, but also with Libya, which work actively to prevent southern Sudan's secession. However, Sudan also has good commercial relations with Ethiopia and improving relations with Eritrea, which considers Khartoum as a necessary ally in regional politics. These relations provide resources and support, which help maintain the NCP's hegemony and hinder successful implementation of the CPA.

On the other hand, the SPLM/A continues to rely largely on its diaspora and regional support. It has particularly good relations with Kenya and Uganda, but Ethiopia and South Africa, among other states, also continue to be sympathetic to the movement. But above all, the SPLM/A counts on US support despite the latter's increasing interest in accommodating the NCP, particularly after the Iraq experience. The regional relations with Kenya and Uganda allow a degree of security for the referendum and a possible secession because both are likely to support it. Although for Uganda secession would distance Khartoum even further, a weak South Sudan would provide a likely opportunity for persisting regional military involvement and justify the continued militarisation of the state. In the case of Kenya, commercial opportunities would be more important, particularly because the country could increase its investments in South Sudan, while offering seaports for increasing South Sudanese exports and imports.<sup>98</sup>

The protagonists remain sensitive to external pressure. After all, the CPA is a culmination of initiatives endorsed by external actors, such as neighbouring and other influential states, and regional and international organisations. Whereas in the case of the SPLM/A its response to external pressure has been apparent since the beginning of peace implementation, the recent ICC decision and internal fissures in the NCP have shown that the NCP also remains responsive to such pressures. Persisting external pressure on the NCP leadership has contributed to concessions, and remains necessary for its adherence

to the CPA implementation. This is because the NCP's political and economic hegemony continues largely uncontested, and external pressure, which exploits its internal fissures, is one major avenue to force concessions in the context of the CPA implementation.

In summary, the international state and non-state actors can play an important role in pressing for a successful implementation of the CPA. The active role of the UN and international NGOs is significant because of their international and local leverage as security, development and service providers, but it also requires the active participation of influential individual states such as the US and China. In the process, issues such as security during the elections and after, wealth-sharing and land (re)distribution should be highlighted.

## **CONCLUSION: SOME FUTURE PROSPECTS**

Since its beginning, the CPA implementation has been a process marked by uncertainties. Its dynamics and challenges have produced insecurity, which, in turn, remains a powerful force for the mobilisation of violence, particularly because of the high prevalence of small arms in many parts of the Sudanese periphery.<sup>99</sup> However, it has to be recognised that the CPA brought a negotiated end to the more than two decades-long rebellion in southern Sudan and provides a framework that has been capable of preventing renewed war in the region for at least five years. Despite the shortcomings of the agreement and conflicting agendas of its main signatories, the protagonists recognise the CPA as the main avenue to avoid another major war.

The next key stage of the agreement is the referendum for self-determination for southern Sudan and Abyei and 'popular consultation' in South Kordofan and Blue Nile. Although the April 2010 elections have demonstrated the extent of the NCP's domination, the referendum and 'popular consultation' are only possible through sufficient NCP goodwill. In the process, sustained external pressure on the protagonists in support of the CPA implementation is paramount. This pressure should mostly focus on the NCP as the dominant party, which has demonstrated its interest to sway southerners away from endorsing unity through a number of strategies, including last-minute concessions to the SPLM leadership. These actions have been complemented by the increasing rhetoric about the impossibility of secession due to internal problems

within southern Sudan and the lack of regional and international support for separation.

Moreover, it should be remembered that a successful completion of the CPA may itself be destabilising. For instance, the post-referendum scenario in the three contested transitional areas looks likely to be volatile. It is understood that the 'popular consultation' for South Kordofan and Blue Nile is restricted to their newly elected state governments, which are expected to reconfigure the local adherence to the CPA. If forces loyal to the NCP dominate these state governments in the near future, it can be expected that they will ignore the voices of those who fought against the GoS in the war. This, in turn, is likely to produce instability in the SPLM/A-dominated areas in these states. In the case of Abyei, however, the referendum for self-determination will be contingent on the outcome of the vote in southern Sudan and the extent of the NCP's influence to neutralise the Ngok Dinka vote, expected to support separation. Such internal instability may ignite a wider conflict in Sudan and resonate to the neighbouring states, as has often historically been the case.

Although at the moment it appears that, provided there is a fair referendum, southern Sudan is expected to secede, the NCP's response to this is difficult to predict. Whereas strategies within its mainstream power centres indicate that the NCP seeks to retain unity through political manipulation, increasingly powerful voices have emerged suggesting that some factions would allow southern secession. In either case, conducting a referendum requires the NCP's acceptance, and while southern secession is considered desirable by some major stakeholders, such as the US and neighbouring Kenya and Uganda, it is deemed unattractive by others, such as China and Egypt. It remains to be seen if external actors are prepared to put pressure on the NCP and the SPLM/A, resolve the remaining CPA impasses and allow the possible secession of southern Sudan and Abyei to take place.

Finally, securing the self-determination referendum and post-referendum environment requires prompt action. Arrangements that include both scenarios – secession and a united Sudan – should be clarified and agreed upon, including thorny issues such as the future of the oil industry and the north-south border, the incomplete demarcation of which ties southern Sudan physically to the northern states. It is possible that the currently conflicting role of petroleum will be transformed into a collaborative resource propelling close relations, even if southern secession occurs. However, what remains clear is that in both

scenarios the GoSS requires increased capacity in order to advance educative socialisation and law enforcement and to be able to meet the future challenge of governing an autonomous or independent southern Sudan. It needs continued external support, at least in the short term, and to refocus on internal security through soft measures, such as accommodation, inclusion, grass-roots peace building and mediation and development, instead of forced disarmament and coercive confrontation with local opposition individuals and armed groups.

## NOTES

- i This chapter was written towards the end of 2010, before the South Sudan referendum of 9 January 2011.
- 1 The CPA is a complex document that consists of six protocols signed during the negotiation period in 2002–2004 and finally signed as one document in January 2005. See, for example, the United Nations Mission in Sudan (UNMIS) website, <http://unmis.unmissions.org/Default.aspx?tabid=515> (accessed 4 November 2010).
- 2 In the referendum for self-determination in southern Sudan and Abyei, the local population would decide between Sudan's continuation as one state and a possible secession, of which the latter would entail a formation of a state of South Sudan. The decision in Abyei would depend on what is decided in southern Sudan, and in the contested transitional areas of Blue Nile and South Kordofan it is believed either that the state executives elected in the general elections or the population would be consulted on their wish to be part of either northern or southern Sudan. However, the extent, definition and future conduct of this 'popular consultation' are not clearly stipulated. The CPA states that '[p]opular consultation is a democratic right and mechanism to ascertain the views of people of Southern Kordofan/Nuba Mountains and Blue Nile States on the comprehensive agreement reached by the Government of Sudan and the Sudan People's Liberation Movement' (CPA, 2005, 74).
- 3 The CPA was intended to include other factions mainly through token positions in the GNU and the GoSS, and through the 2009 general elections, but it was well understood that the NCP and the SPLM/A will dominate the political dynamics at least until the referendum for self-determination in 2011.
- 4 Due to its experience in power, the NCP has institutionalised corruption in a manner that limits its undermining effect on the movement and allows it to conduct predictable economic policy, but this has arguably been less apparent within the SPLM/A, which has less experience in formal governance. However, the SPLM/A leadership has sought to curb corruption and its official position is that it will diminish over time within the GoSS.
- 5 According to the president of the GoS delegation to the August 1989 talks in Addis Ababa, Colonel Mohammed al Amin Khalifa, these had been '... simply repeated attempts bearing

the conditions of the people's movement [the SPLM] to sit at the table for talks with the government. Although the movement was able to agree to those ventures, the agreements would not find their way to implementation because they did not include a solution for the vital problems' (M El-Amin Khalifa, *Ten years of peace making in Sudan, 1989–1999*, Khartoum: COFPA, 2003, 3). Many of these rounds of negotiations had coincided with the split within the SPLA that weakened the movement and undermined its ability to present a uniform negotiating position.

- 6 The IGAD members include Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda.
- 7 El-Amin Khalifa, *Ten years of peace making in Sudan*, 73.
- 8 This faction was headed by Lam Akol, a Shilluk, and at the time SPLA zonal commander of northern Upper Nile, and Riek Machar, a Dok Nuer from Adok in Abyei, and at the time an SPLA field commander at Nasir. See, for example, D Johnson, *The root causes of Sudan's civil wars*, Oxford: James Currey, 2003, 94.
- 9 Ø Rolandsen, *Guerrilla government: political changes in the southern Sudan during the 1990s*, Uppsala: Nordic Africa Institute, 2005, 42–3.
- 10 El-Amin Khalifa, *Ten years of peace making in Sudan*, 123.
- 11 El-Amin Khalifa, *Ten years of peace making in Sudan*, 168.
- 12 El-Amin Khalifa, *Ten years of peace making in Sudan*, 38.
- 13 E Thomas, Against the gathering storm: securing Sudan's comprehensive peace agreement, report, Chatham House, 2009, 12. However, in particular the wealth-sharing provision was not detailed at this point. See A Wennmann, Wealth sharing beyond 2011: economic issues in Sudan's north-south peace process, Geneva Graduate Institute of International and Development Studies, CCDP Working Paper, 2009, 14.
- 14 Johnson, *The root causes of Sudan's civil wars*, 102.
- 15 Perhaps the most prominent competing peace initiative in the late 1990s was launched jointly by Egypt and Libya in July 1999, which the opposition and some observers claimed to support the GoS because it was uncompromising on the issue of the unity of Sudan. While Egypt's interests were largely related to the Nile water that it seeks to secure, Libya's endorsement of a separate peace initiative could have been related to attempted expansion of its influence through Islamisation.
- 16 The IGAD Partners' Forum includes Austria, Belgium, Canada, Denmark, France, Greece, Germany, Ireland, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, the UK, the US, the European Commission, the International Organization for Migration, the United Nations Development Programme and the World Bank.
- 17 W Waithaka, *The Mediator. Gen. Lazaro Sumbeiywo and the Southern Sudan Peace Process*. Nairobi: East African Educational Publishers, 2006.



- 18 War in Nuba Mountains, as well as in Abyei and southern Blue Nile, were intimately linked to the GoS-SPLM/A conflict in southern Sudan, and the ceasefire agreements reached in these areas were later incorporated into the CPA as the 'Protocol between the Government of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) on the resolution of conflict in Southern Kordofan/Nuba Mountains and Blue Nile States'.
- 19 Among these were the interim period arrangements on security, in which the forming of joint integrated units (JIUs) became important, as did wealth-sharing, particularly with regard to oil revenue, according to a 50/50 formula, parallel banking systems and development.
- 20 The final settlement was made possible largely by external pressure of international actors, the troika (i.e. the US, the UK and Norway), the friends of IGAD, and IGAD member states.
- 21 Abyei was part of the southern provinces until 1905 when it was annexed to Southern Kordofan, which was also subject to the Anglo-Egyptian Condominium's Southern Policy.
- 22 This contributed to the escalation of violence in Darfur. The NDA includes traditionally prominent but marginalised political forces from northern Sudan, such as the mainstream factions of the Democratic Unionist Party (DUP), the Umma Party (which remains committed to NDA objectives despite suspending its membership in March 2000), the Communist Party of Sudan (CPS), along with national organisations and those representing specific groups in peripheral Sudan, such as the General Council of the Trade Unions Federation (GCTUF), the Legitimate Command of the Sudanese Armed Forces (LCSAF), the SPLM/A, the Union of Sudan African Parties (USAP), the Beja Congress and the Rashaida Free Lions Association (merged as the Eastern Front, EF), the Sudan Allied Forces (SAF), the Federal Democratic Alliance (FDA), the Arab Baath Socialist Party, independent national figures, representatives of the liberated areas and the Sudanese National Party (SNP). The main objective of the NDA is to overthrow the NCP through armed and non-armed opposition in order to restore democratic political order, equitable distribution of wealth and development and respect for the religious and cultural diversity of Sudan.
- 23 The CPA dictated that the leader of the SPLM/A, Garang, would become the first vice president of Sudan, and the current first vice president, Taha, would become the second vice president. This was celebrated in southern Sudan as an unprecedented achievement. It was also stipulated that the GNU would be composed of 52 per cent NCP, 28 per cent SPLM, 14 per cent northern Sudanese opposition and 6 per cent southern non-SPLM opposition representation.
- 24 The CPA stipulated that the GoSS during the interim period would consist of 70 per cent SPLM, 15 per cent NCP and 15 per cent other southern party representation.
- 25 This constructed incompatibility has often been cited as one of the main reasons for the two prolonged wars (1955–1972 and 1983–2005) in southern Sudan.
- 26 Thomas, *Against the gathering storm*, 14.
- 27 The Darfur Peace Agreement (DPA) and Eastern Peace Agreement (EPA) between the government and local rebel factions were signed in 2006.

- 28 Although other parties have been nominally included in the agreement through separate arrangements after 2005, their absence in the CPA negotiation process resulted in the failure to recognise their agendas in its final stipulations.
- 29 Widespread manipulation took place prior to elections and during voting to ensure the continuity of the NCP hegemony in Sudan and the SPLM/A regional domination in the south. On Sudan's prior track record of conducting elections, see J Willis, A el-Battahani and P Woodward, *Elections in Sudan: learning from experience*, report, Rift Valley Institute, May 2009.
- 30 His personal role had been paramount in concluding the agreement, as his personal charisma had won wide popularity in northern Sudan, which was unprecedented for a southern leader.
- 31 ICG, *Sudan's Comprehensive Peace Agreement: the long road ahead*, International Crisis Group, *Africa Report* 106, 31 March, 2006, 8; Thomas, *Against the gathering storm*, 16.
- 32 *Fuelling mistrust: the need for transparency in Sudan's oil industry*, Global Witness report, September 2009. After the April 2010 elections there are some indications that the NCP may be opening the oil sector increasingly to SPLM monitoring.
- 33 Reuters, *Sudan orders probe into oil revenue 'discrepancies'*, 15 September 2009, <http://in.reuters.com/article/idINHEA53236820090915> (accessed 4 November 2010).
- 34 International Energy, *Sudan could owe south millions in oil revenue*, report, 8 September 2009. Available at: <http://en.in-en.com/article/News/Oil/html/2009090814266.html> (accessed 4 November 2010); *Fuelling mistrust*, 2009.
- 35 A Heavens, *Sudan orders probe into oil revenue 'discrepancies'*, Mail and Guardian online, 15 September 2009, <http://www.mg.co.za/article/2009-09-15-sudan-orders-probe-into-oil-revenue-discrepancies> (accessed 4 November 2010); Thomas, *Against the gathering storm*, 19.
- 36 United Nations Security Council, *Report of the Secretary General on Sudan*, United Nations Security Council Document S/2008/662, 20 October 2008, 5; Wennmann, *Wealth sharing beyond 2011*, 20.
- 37 Approximately 15 per cent of Sudan's petroleum is extracted in the Abyei-Heglig region, which adds to the strategic significance of the area. However, some in the SPLM cadres claim that eventual north-south border demarcation would maintain Heglig as part of the unity state and thus part of the southern states, *Abyei ruling doesn't demarcate North-South Sudan border – lawmaker*, Sudan Tribune, 26 July 2009, <http://www.sudantribune.com/spip.php?article31928> (accessed 4 November 2010).
- 38 The census was not accepted by the SPLM/A-Nuba constituencies and a recount will be made, after which elections in Southern Kordofan are to take place.
- 39 Several impasses emerged in these negotiations, mainly about who are considered southerners in the northern states and allowed to vote in the referendum, and the percentage required for secession, which the NCP demands to be 75 per cent and the SPLM 51 per cent. See South

Sudanese in the North to vote in the referendum – Machar, Sudan Tribune, 21 September 2009, <http://www.sudantribune.com/spip.php?article32527> (accessed 4 November 2010). Later a simple majority was agreed upon, with a 60 per cent required voter turnout, see Sudan referendum law endorsed in cabinet, 51% ‘Yes’ vote & 60% turnout required, Sudan Tribune, 14 December 2009, <http://www.sudantribune.com/spip.php?article33451> (accessed 4 November 2010).

- 40 According to the SPLM/A leadership, if southern Sudan separates, such issues include the future of the oil sector, assets, debts, currency, water, nationality, joint integrated units (i.e. joint army-SPLA units stipulated in the CPA), international agreements and the situation of southerners in the army and northern civil service. If southerners do vote for unity the issue would be how the state would be reconstructed. See South Sudan wants quick resumption of referendum talks, *Sudan Tribune*, 10 May 2010, <http://www.sudantribune.com/spip.php?article35032> (accessed 4 November 2010).
- 41 It convoked leaders of other opposition parties and armed groups to Juba to negotiate a coherent strategy to face the NCP, which led to the Juba declaration, and forged an electoral alliance with the Umma Party. See Sudan referendum law endorsed in cabinet, 51% ‘Yes’ vote & 60% turnout required. However, the SPLM’s northern sector boycotted the elections, along with a number of northern opposition parties.
- 42 It is suspected that a deal with the NCP involved more parliamentary seats allocated for the southern Sudanese. Partly because of this, the SPLM/A withdrew its candidate for the national presidency, Yasir Arman.
- 43 For example, a number of the NCP’s leading individuals, including the presidential advisor, Ghazi Salah el-Din, belong to this group.
- 44 For instance, al-Bashir is Bedairiyya, related to Shaigiyya; Taha is Shaigiyya; the defence minister, Lieutenant General Abdel Rahim Hussein, is Mahass, related to Danagla; the outgoing chief of national security, Salah Gosh is Shaigiyya; and his replacement, Mohamed Atta Al-Moula Abbas, is Shaigiyya.
- 45 Taha became the second vice president after the leader of the SPLM/A was granted the position of first vice president, according to the CPA.
- 46 Sadig al-Mahdi is the leader of the neo-Mahdist movement and a related northern opposition party, the Umma.
- 47 Al-Turabi has maintained personal links with the Justice and Equality Movement (JEM) rebel organisation in Darfur and is allegedly linked to the ‘Black Book’, which denounces the exclusive political and economic power of the central riverine tribes since independence, and was significant in mobilisation against the regime in the region. By contrast, the NCP has used ‘Arab’ militias to terrorise the local sedentary population 2004 (see Darfur documents confirm government policy of militia support, Human Rights Watch Briefing Paper, 19 July 2004), which has been used to justify the ICC indictment of a number of senior NCP officials, including al-Bashir.

- 48 ICG, Sudan: justice, peace and the ICC, *Africa Report* 152, 17 July 2009, 9; Thomas, Against the gathering storm, 24.
- 49 The reshuffle in 2008 was likely to have been a token move to silence accusations of lack of transparency in the sector, but also to change the leadership of the strategic ministry, possibly to limit al-Jaz's personal power. This could be because leading NCP individuals also manage their personal constituencies in the state's security apparatus and al-Jaz's influence might have been perceived as threatening to al-Bashir's leading political constituency.
- 50 E Ahmed, The implementation of the CPA Wealth Sharing Agreement: the oil issue and transition process in Sudan, Netherlands Institute of International Relations, Clingendael, April 2006, 6–7.
- 51 For instance, two large private oil companies, Hi Tech Group (HTG) and Heglig Petroleum Services and Investment Company (HPSIC), are both habitually in joint ventures with national Sudapet, SPC and foreign companies, such as the China National Petroleum Corporation (CNPC) and Swiss Cliveden Petroleum, or perform as subsidiaries, as in the case of HPSIC for Kuwaiti AREF Energy Holding Company. HTC is headed by Ahmed H. Omer al-Bashir, brother of President al-Bashir, and HPSIC by Yousif M. Yousif, NISS officer (see Ahmed, The implementation of the CPA Wealth Sharing Agreement, 8), which demonstrates how the oil sector is controlled by a narrow base of NCP individuals. Oil exploration and extraction has taken place continuously since 1999 and significant stakes are located in southern Sudan, transitional areas and South Darfur, where oil activity continues despite the conflict.
- 52 This has also been the case in other NCP-dominated sectors, such as telecommunications, banking and agriculture.
- 53 Offshoots of the Umma and DUP participate in the GoNU, while their mainstream organisations have remained in opposition. Some former rebel leaders and their constituencies side now with the NCP. These include Darfuri rebel group Sudan Liberation Movement/Army (SLM/A) leader, Minni Minnawi and, more recently, Lam Akol, who is a former southern secessionist closely related to the NCP and whose recently founded SPLM-Democratic Change could be viewed as an expression of his personal and the NCP's coinciding interests in southern Sudan to undermine the mainstream SPLM/A.
- 54 Thomas, Against the gathering storm, 25–6.
- 55 ICG, Sudan: justice, peace and the ICC, 10.
- 56 ICG, Sudan: justice, peace and the ICC, 9–10.
- 57 ICG, Sudan: justice, peace and the ICC, 10. Allegedly, the JEM is active in South Kordofan, but its influence is likely to be limited. It has also reportedly launched four training camps in southern Sudan, see SPLA trains JEM elements in southern Sudan, *Sudan Vision Daily*, 1 June 2009, <http://www.sudanvisiondaily.com/modules.php?name=News&file=article&sid=45646> (accessed 4 November 2010).

- 58 Sudan ruling party says committed to self-determination, Sudan Tribune, 7 September 2009, <http://www.sudantribune.com/spip.php?article32373> (accessed 4 November 2010).
- 59 Sudan's Bashir offered concessions to South on referendum, Sudan Tribune, 7 September 2009, <http://www.sudantribune.com/spip.php?article32371> (accessed 4 November 2010).
- 60 First, the NCP manipulated the national census conducted in 2008 by minimising the numbers of its likely opponents, such as southerners in the northern states, and maximising its own constituencies, including nomadic 'Arab' tribes in Darfur. This aimed to weaken the constituencies of its main rivals and allegedly threatens to drive the SPLM representation in the parliament below 25 per cent so that it cannot affect constitutional amendments, which the NCP would use to undermine the CPA and particularly its self-determination provision (Thomas, *Against the gathering storm*, 17). The NCP has also sought further support among riverain 'Arabs' through provision of services and development schemes, while attempting to persuade many Darfuri and South Kordofan 'Arabs' to continue to support the movement (ICG, *Sudan's Comprehensive Peace Agreement: beyond the crisis*, Africa Briefing No. 50, 13 March 2008, 7-8), and has shown interest in collaborating with some of the sidelined traditional parties after the elections. Second, the NCP exploited the administrative, logistical and technical difficulties related to the upcoming elections. It stalled timely implementation of the elections schedule by withholding and manipulating the required key features, such as the national census, north-south border demarcation, technical issues, such as electoral law, the electoral system, organisation of voter registration, and strategically ignored logistical matters to facilitate elections in remote areas and avoid scheduling the vote during the rainy season in southern Sudan. Third, the NCP increased censorship and limited its opponents' campaigning in the northern states, while using its resources, patronage structures, coercion and manipulation to win the elections. The censorship and repression have been conducted by the Press Council, tightly controlled by the NCP personnel and the NISS, according to the 1999 National Security Forces Law, with accelerated intensity. Reflective of such efforts was the stalling of the establishment of the Human Rights Commission, which was to be formed in July 2005, according to the CPA (Thomas, *Against the gathering storm*, 17). This has prompted the leaders of some of the major northern opposition parties, al-Turabi (PCP), Sadig al-Mahdi (Umma mainstream) and Ibrahim Nugud (Sudan Communist Party, SCP) to threaten to boycott the elections, in which they suspect NCP fraud, and collectively demand the revision of security and criminal procedure laws to prevent the security services' repression of public gatherings and rallies; the end of violence in Darfur so that elections could be conducted fairly; the scaling back of press censorship; and finding a just procedure to resolve the disputed census results. See Sudanese opposition forces threaten to boycott 2010 elections, *Sudan Tribune*, 16 August 2009, <http://www.sudantribune.com/spip.php?article32143> (accessed 4 November 2010). During the elections the opposition reported that ballots arrived late and were insufficient; polling stations opened later than scheduled; names of candidates were misspelled or assigned with the wrong symbol; there were names missing; monitoring was obstructed; some were registered at the polling stations and allowed to vote; children were allowed to vote; electoral officials persuaded voters to choose the NCP; the NCP had tents near

the polling stations; and some polling stations used removable finger ink allowing multiple votes, see Factbox: list of irregularities reported by opposition in Sudan's first day of elections, *Sudan Tribune*, 12 April 2010, <http://www.sudantribune.com/spip.php?article34731> (accessed 4 November 2010). See also ICG, Rigged elections in Darfur and the consequences of a probable NCP victory in Sudan, International Crisis Group, Africa Briefing No. 72, 30 March 2010, about electoral manipulation. The Carter Center's elections observation mission was highly critical about irregularities and lack of transparency. See <http://www.cartercenter.org/news/pr/sudan-051010.html> (accessed 4 November 2010).

- 61 The SPLM withdrew its candidate, Yasir Arman, who is popular in northern Sudan, before elections after a deal with the NCP. The concessions to the SPLM can be seen in the large number of positions granted for the SPLM in the central political institutions and in the agreement to the referendum of self-determination without full north-south border demarcation. The NCP's international campaign in defence of al-Bashir has yielded support, particularly in a number of African and Arab countries.
- 62 Sudan's dominant party hopes to reunite with Turabi party, *Sudan Tribune*, 11 August 2009, <http://www.sudantribune.com/spip.php?article32097> (accessed 4 November 2010).
- 63 Sudan's Bashir removes powerful intelligence chief, *Sudan Tribune*, 14 August 2009, <http://www.sudantribune.com/spip.php?article32130> (accessed 4 November 2010).
- 64 The NCP has military contracts with Iran and continues to purchase arms from its main providers, China and Russia. It has also set up a Military Industry Corporation located in Khartoum, which produces tanks and armoured vehicles, and heavy and light guns, see Russia sells 12 fighter jets to Sudan: reports, Al Arabiya, 14 November 2008, <http://www.alarabiya.net/articles/2008/11/14/60130.html> (accessed 4 November 2010); C Wachira, Sudan: love thy neighbour, *All Africa*, 18 November 2008, <http://allafrica.com/stories/printable/200811190002.html> (accessed 4 November 2010).
- 65 The NCP vehemently denies this, accusing the SPLM/A of an inability to provide security to the southerners and of undermining the NCP-SPLM/A relations, see Sudanese parties trade accusations over Jonglei attacks, *Sudan Tribune*, 23 September 2009, <http://www.sudantribune.com/spip.php?article32550> (accessed 4 November 2010).
- 66 ICG, Sudan: justice, peace and the ICC, 11. These incidents are perpetrated by small groups and are at times clearly politically charged, but do not represent 'tribal' ethnic clashes per se. According to the UN, over 2 000 people died and 250 000 were displaced in violence across southern Sudan in 2009. For instance, violent cattle rustling incidents and other violent events are continual, particularly in Jonglei, lately involving sections of distinct Dinka clans in the Warrap state or groups of the Twic Dinka, Lou Nuer and Murle. In November 2006 and February 2009 clashes between the GoSS security forces and militias resulted in heavy clashes in Malakal, where '[a] key figure in Khartoum's instability agenda is Major General Gabriel Tang Yangi, a Nuer from the Fanjak area of Central Upper Nile, who was central to ... Malakal clashes. Gabriel's militia came under the umbrella group South Sudan Defence Forces

(SSDF)' (Sudan: the southern front reopens, Africa Confidential 47(25), 15 December 2006.) Meanwhile, militia attacks on the JIUs in South Kordofan, likely inspired by the NCP, along with clashes involving Misiria, Rizaigat, Hawazma and the Nuba take place. For example, in May 2009, near the village of Meiram near the South Kordofan-Darfur border the police attempted to break up a dispute between small groups of Misiria and Rizaigat, and were attacked by approximately 3 000 armed horsemen, resulting in 244 deaths (89 Misiria, 80 Rizaigat and 75 police). On these and other incidents, see, for example, Militiamen kill 76 people in South Sudan's Jonglei, Sudan Tribune, 22 September 2009; Xinhua, 30 killed, 15 abducted in S Sudan clashes, 12 August 2009; Bloody day in Sudan's Jonglei, UN chief condemns violence, Sudan Tribune, 4 August 2009; Jonglei mark Martyrs' Day as 5 people die in 'suspected militia' attack, Sudan Tribune, 31 July 2009; Militia clash with south Sudan army in Malakal, Reuters, 24 February 2009; Clashes leave up to 244 dead in Sudan's South Kordofan region, The Daily Star, 23 June 2009; Sudan says 244 have died in clashes this week, Agence France-Press, 28 May 2009; Miraya, Tribal clashes kill 23 people in S. Kordofan, 24 March 2009; and Sudan: Southern Kordofan clashes blamed on militias, Integrated Regional Information Networks, 16 January 2009.

- 67 Conflicting priorities: GOSS security challenges and recent responses, Small Arms Survey, *Sudan Issue Brief* No. 14, May 2009, 7.
- 68 South Sudan dispatches additional troops in Jonglei, Sudan Tribune, 23 September 2009, <http://www.sudantribune.com/spip.php?article32553> (accessed 4 November 2010).
- 69 Sudan's Comprehensive Peace Agreement: beyond the crisis, 8.
- 70 Ibid.
- 71 The SPLM/A has often been described as being a Dinka-dominated movement, which created the opportunity for external manipulation of ethnic divisions in southern Sudan during the war and after. Mistrust remains between other ethnic groups and the movement, although a limited amount of Equatorians, Nuer and Shilluk, among others, have been incorporated, both in its political and military structures. Deep antagonism towards the SPLM/A remains, for example, among sections of groups (mostly townspeople) who remained under government administration during the war and other groups that despise its Dinka majority.
- 72 Many in the SPLM Political Bureau and Executive Committee are Dinka, which reflects important Dinka involvement in the movement during its founding and the insurgency. The Dinka are also the largest ethnic agglomeration in southern Sudan. For instance, Salva Kiir and Nhial Deng Nhial are Dinka from Bahr al-Ghazal, and of the leaders listed above Deng Alor Kuol is a Dinka from Abyei, Malik Agar is a Dinka from southern Blue Nile, Pagan Amum is a Shilluk from Malakal in Blue Nile, Yasir Arman is a northerner and Abdel Aziz al-Hilu is a Masalit, but from the Nuba Mountains. A perceived Dinka dominance in the SPLM/A has generated grievances among smaller ethnic groups in southern Sudan, including sections of the Nuer and Equatorians.
- 73 Sudan's Comprehensive Peace Agreement: beyond the crisis, 3.

- 74 Whereas, for instance, Agar has recently stated his commitment to a united Sudan, Amum has pointed out repeatedly that unity has not been made attractive. He has claimed that Sudan continues to be 'a failed state', and that in the absence of a fair referendum in 2011 the SPLM and the Parliament of Southern Sudan will declare unilateral independence. See Sudan is a corrupt and failed state, *The Citizen*, 29 September–2 October 2008, 1, 2; Why Sudan is a failed state – Amum, *Southern Eye*, 29 September–4 October 2008, 1, 2; South Sudan in independence threat, BBC News, 11 August 2009, <http://news.bbc.co.uk/2/hi/africa/8195973.stm> (accessed 4 November 2010).
- 75 Sudan's Comprehensive Peace Agreement: beyond the crisis, 4.
- 76 This was largely because of Garang's personal appeal to the SPLM/A's partners in the NDA umbrella opposition organisation. At the time, the SPLM/A attracted leaders and followers from all parts of the country.
- 77 This was also in part because Kiir did not have the popularity and charisma of Garang, who had captivated many people – also in the northern states where southern leaders have failed to gain wide support historically.
- 78 Similar to the historical processes and 'growth pole' strategy that concentrated development in 'the north' on the central riverine regions around Khartoum and the Blue Nile agricultural areas, the development in 'the South' has centred on the GoSS capital, Juba, where similar practices to those in Khartoum, including the demolition of shanty towns and displacing the poor, have taken place. This has generated resentment elsewhere in 'the south' and within sectors of Juba's Equatorial population because it is allegedly related to the SPLM/A Dinka leadership's speculation over land.
- 79 Some of these laws have been passed by GoSS presidential decree or orders by ministers of local administrations, see S Wassara, *The Comprehensive Peace Agreement in the Sudan: institutional developments and political trends in focus areas*, Christian Michelsen Institute, Sudan Working Paper 1, 2009.
- 80 Sudan's Comprehensive Peace Agreement: beyond the crisis, 80.
- 81 According to SPLM sources, this insecurity tends to be politically motivated and supported by Khartoum.
- 82 For instance, most southern militias under the SSDF joined the SPLA in 2006. A notable exception is Tang's faction, active around Malakal, which remains with the NCP and is potentially a destabilising force. There are also other militias and armed groups, which has made parts southern Sudan volatile.
- 83 Many southerners believe that the violence in May 2008 was instigated by the NCP. While reportedly in 2008 the NCP continued acquiring arms, largely from China and Russia, and, alarmed by reports of Darfur rebel activity in South Kordofan, occupied former SPLA zones in the Nuba Mountains, the SPLA acquired weapons through East Africa and strengthened its positions in the vicinity of Lake Abyad, South Kordofan and Blue Nile.



- 84 These are mainly those regions, such as parts of Equatoria and Upper Nile, which suffered most from inter-ethnic violence and/or SPLA misconduct during the war.
- 85 Sudan's Comprehensive Peace Agreement: beyond the crisis, 85.
- 86 Sudan's ruling NCP planning multi-parties convention in Juba, *Sudan Tribune*, 20 September 2009, <http://www.sudantribune.com/spip.php?article32520> (accessed 4 November 2010); Juba Declaration on Dialogue and National Consensus, *Sudan Tribune*, 2 October 2009, <http://www.sudantribune.com/spip.php?article32640> (accessed 4 November 2010). This more national approach has, for instance, yielded SPLM/A support and recruits among sections of those 'Arab' tribes in South Kordofan that have been largely disappointed by unfulfilled NCP promises.
- 87 Al-Bashir insisted upon including not only the Ngok Dinka, but all local tribes in the area in the Abyei referendum, and that the vote limit for secession of southern Sudan should be 75 per cent, see Sudan president says Abyei referendum to include all tribes, *Sudan Tribune*, 24 July 2009, <http://www.sudantribune.com/spip.php?article31915> (accessed 4 November 2010); South Sudan in independence threat, BBC News, 11 August 2009, <http://news.bbc.co.uk/2/hi/africa/8195973.stm> (accessed 4 November 2010). However, 51 per cent with a 60 per cent voter turnout was later agreed upon in bilateral negotiations and endorsed in the cabinet.
- 88 Sudan's SPLM threatens unilateral declaration of independence, *Sudan Tribune*, 11 August 2009, <http://www.sudantribune.com/spip.php?article32091> (accessed 4 November 2010).
- 89 Such regions are parts of Eastern and Western Equatoria and Jonglei, in which small arms are prevalent and which in recent years have experienced continuous violent incidents.
- 90 The SPLM has sought to re-establish its prominent position in Jonglei where it has experienced an exodus of young followers to the NCP, see SPLM tells Jonglei youth to stop swapping parties, *Sudan Tribune*, 17 August 2009, <http://www.sudantribune.com/spip.php?article32151> (accessed 4 November 2010). In mid-August the Chairperson of the Women's Desk in the NCP, Mariam Biringi, was murdered in her residence, in an assault that some sources have attributed to the SPLM/A and described as politically motivated, see Political assassination in Yambio, *Sudan Tribune*, 16 August 2009, <http://www.sudantribune.com/spip.php?article32146> (accessed 4 November 2010); Eastern Equatoria arrest 3 people suspected of killing NCP official, *Sudan Tribune*, 22 August 2009, <http://www.sudantribune.com/spip.php?article32206> (accessed 4 November 2010). Also, the SPLM/A has allegedly harassed and arrested leading members of the SPLM-Democratic Change, see SPLM-DC accuses Blue Nile state of arresting its members, *Sudan Tribune*, 21 August 2009, <http://www.sudantribune.com/spip.php?article32196> (accessed 4 November 2010).
- 91 Sudan's NCP & SPLM fail to agree on census, referendum law, *Sudan Tribune*, 20 August 2009, <http://www.sudantribune.com/spip.php?article32187> (accessed 4 November 2010).
- 92 South Sudan upgrades Anti-Corruption Commission, dismisses deputy chairperson, *Sudan Tribune*, 23 August 2009, <http://www.sudantribune.com/spip.php?article32217> (accessed 4 November 2010).

- 93 An increasing amount of foreign investment is reaching southern Sudan, and the GoSS has opened consulates in a number of countries, which has propelled southern Sudan's international recognition.
- 94 Armed men attack administrative centre in Jonglei, Sudan Tribune, 21 September 2009, <http://www.sudantribune.com/spip.php?article32526> (accessed 4 November 2010); ICG, Jonglei's tribal conflicts: countering insecurity in south Sudan, International Crisis Group, *Africa Report* 154, 23 December 2009.
- 95 A Ylönen, Marginalisation and violence: considering origins of insurgency and peace implementation in the Nuba Mountains of Sudan, ISS Paper 201, 2009.
- 96 China is Sudan's main trade partner and has interests particularly in petroleum, but also in other sectors, such as construction, arms, consumer merchandise and agriculture. China maintains paramilitary troops and private security forces in Sudan to secure its interests.
- 97 Among the most prominent of these are India, Indonesia and Malaysia.
- 98 One such export item could be petroleum.
- 99 Small arms trafficking corridors as part of networks involving northern DRC and Uganda continue to channel weapons to southern Sudan and elsewhere in the Sudanese periphery, see Security seizes arms in West Nile, *Sudan Vision Daily*, 15 March 2008, <http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=123&newsId=616851> (accessed 4 November 2010).

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# 7 Southern Sudan

Understanding US interests and equities at the end of the Comprehensive Peace Agreement

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## INTRODUCTION

In accordance with the terms of the 2005 Comprehensive Peace Agreement (CPA) that ended Sudan's second civil war, there will be an internationally monitored referendum in January 2011 that will allow the people of Southern Sudan to either confirm the unity of the country or vote for secession. It is anticipated that the people of Southern Sudan will vote overwhelmingly to secede from Sudan.<sup>1</sup> From 1955 to 1972, and again from 1983 to 2005, Sudan's north and south fought two civil wars over issues of ethnicity, religion and socio-economic disparities.<sup>2</sup> The peace processes that ended these conflicts largely failed to address their root causes or remedy the suspicion, mistrust and anger about past injustices. The scenarios that unfold may put Sudan's territorial integrity in conflict with promises made in the CPA that might pave the way to allow the oil-rich region to become the world's newest state. Given the stakes associated with the possible creation of this new state, there are speculations as to whether Southern Sudan would be permitted to secede peacefully and whether the new country could avoid its own internal strife. Renewed violence in Sudan – now or in the future – threatens to have far-reaching regional and international

implications, given that the country is located in a conflict-ridden region awash with weaponry from conflicts past and present.

The US is a guarantor to the CPA,<sup>3</sup> having played an instrumental role in the peace process that led to the signing of the agreement. With the clock ticking towards the referendum, the US is concerned that Southern Sudan might be a failed state upon birth and could become a vector of regional or global instability. One of the assumptions that guide US strategists and policy-makers is that the contemporary strategic environment is complex, uncertain and globalised.<sup>4</sup> In such an environment, the US benefits from having strong and capable partners to tackle transnational challenges, and yet simultaneously remains susceptible to the types of challenges that confront weaker states. These challenges can often render states incapable of maintaining sufficient control over their territories, which opens the door to threats to the US or its international partners. In the case of Southern Sudan, renewed violence may further destabilise fragile states in the region and compromise the ability of stronger regional partners, such as Egypt, Ethiopia, Kenya and Uganda, to work with the US on issues such as economic growth and development, public health, counter-terrorism and peace support operations.

This chapter gives an overview of the CPA and some of its benchmarks; offers an analysis of the Obama administration's Sudan strategy; and illustrates the ways in which US interests in the region could be affected by the ongoing situation in Southern Sudan.

## THE COMPREHENSIVE PEACE AGREEMENT

After several unsuccessful attempts by the international community to end Sudan's second civil war, the Intergovernmental Authority on Drought and Development (IGADD)<sup>5</sup> initiated a peace process in 1993 between the National Islamic Front (NIF) – the predecessor to the National Congress Party (NCP) – and the Southern People's Liberation Movement/Army (SPLM/A). This process eventually led to the signing of the Machakos Protocol in July 2002, which provided the framework for future negotiations, including setting forth principles of governance, the transition process and the structures of government. In addition, the Machakos Protocol granted the south the right to hold a referendum on self-determination after a six-year interim period. In subsequent years, five more protocols were signed: the Agreement on Security Arrangements (September



2003), the Agreement on Wealth-Sharing (January 2004), the Protocol on Power Sharing (May 2004), the Protocol on the Resolution of Conflict in Abyei (May 2004) and the Protocol on the Resolution of Conflict in Southern Kordofan/Nuba Mountains and Blue Nile State (May 2004).

On 9 January 2005, the internationally supported CPA<sup>6</sup> was signed in Naivasha, Kenya, encompassing the six protocols that had been signed over the course of the preceding two and a half years, and ending the war that had been raging between the north and south of Sudan for 22 years. The CPA has a six-year interim period, during which a census and national, regional and local elections would take place. At the end of the interim period, the south would hold a referendum to either confirm the unity of Sudan or secede and become a separate and independent country. The so-called Three Areas – Abyei,<sup>7</sup> Nuba Mountains/Southern Kordofan and Blue Nile State – have separate arrangements. Abyei will vote in a referendum as to whether to remain in the north or join the south; Nuba Mountains/Southern Kordofan and Blue Nile State will have a popular consultation.<sup>8</sup> During the interim period, which ends in July 2011, the goal for Khartoum is to make unity look attractive to Southern Sudan through the implementation of the protocols embedded in the CPA.

Under the Government of National Unity (GoNU) that was formed in accordance with the CPA, Omar al-Bashir was to remain President of Sudan, while John Garang simultaneously became the President of Southern Sudan and the First Vice President of Sudan. Salva Kiir Mayardit assumed Garang's positions upon the latter's death in a helicopter crash just six months after the signing of the CPA. Garang's death had a substantial impact on the implementation of the CPA, as he had not only personally negotiated most of it on behalf of the SPLM, but also had a unique stature among northerners as a national politician.<sup>9</sup> Garang had been a strong proponent of a united, secular and democratic Sudan – 'New Sudan' – which had begun to resonate among the northern political elite. This vision contrasted sharply with the prevalent demand for independence in the south, possibly making it more likely in the aftermath of his death that separation rather than unity would be Southern Sudan's desired end state in 2011.

The elections and the referendum are two of the milestones during the interim period that play an integral role in ensuring that the CPA is fully implemented. As stipulated by the CPA, Sudan was to hold elections for the presidency of Sudan, National Assembly, state governors, state legislatures, presidency

of Southern Sudan and Southern Sudan Legislative Assembly by July 2009. As Sudan had not held a democratic election since 1986, these elections were intended to provide an opportunity to increase the accountability and effectiveness of the government, as well as redefine centre-periphery relations, which have been at the root of many of the country's conflicts. After being

delayed twice, the elections were held from 11 to 15 April 2010, and were plagued with irregularities, such as ballot-box tampering, cases of intimidation and allegations of an unfair campaign environment.<sup>10</sup> When the results were announced, al-Bashir (NCP) had won the presidency of Sudan, with 68 per cent of the vote, while Yasir Arman (SPLM) came in second with 22 per cent, which mostly came from the southern states. For the presidency of Southern Sudan, Salva Kiir (SPLM) won 93 per cent of the vote, while Lam Akol (SPLM-DC) won 7 per cent. Although the elections fell short of international standards, the international community has shifted its focus towards preparations for the referendum.

According to Article 222,1 of the 2005 interim constitution, no later than six months before the end of the interim period Southern Sudan is to hold an internationally monitored referendum that will allow southerners to vote either to confirm the unity of Sudan or for independence.<sup>11</sup> The referendum is to be held in January 2011, and the NCP and SPLM have agreed that 60 per cent of registered voters must participate and 51 per cent of those casting ballots must vote for independence in order for Southern Sudan to declare its independence.<sup>12</sup> With a plethora of pre- and post-referendum issues to be settled before January 2011, there have been calls within the region and abroad to postpone the referendum in order to avoid any conflict that may arise from a botched voting process or lack of a clear plan to transition from unity to separation.<sup>13</sup> However, Southern Sudan sees the referendum as a red line; thus any delay, obstruction, manipulation or denial of results could easily spark a return to war and/or a unilateral declaration of independence. As the referendum draws closer, Kiir has publicly advocated for southern independence, characterising a vote for unity as a vote for second-class citizenship and a vote for independence as a vote for freedom.<sup>14</sup>

## POST-REFERENDUM CONSIDERATIONS

The process whereby Southern Sudan would become independent, should it vote accordingly, is one that is extremely important – especially if the goal is an

orderly transition to two separate and viable states at peace with each other and at peace with their neighbours. Left unresolved, however, this process will leave Khartoum and Juba on the brink of renewed conflict for many years to come. The issues that should be negotiated prior to the referendum are:

- Demarcation of the 1956 north-south border, including demarcation of the boundaries of Abyei in accordance with the arbitration of the Abyei Arbitration Tribunal (AAT)<sup>15</sup>
- Land, water and grazing, and migratory rights for populations residing along the north-south border
- Citizenship, including the fate of southerners in the north and northerners in the south
- Wealth-sharing agreements concerning the oil industry, such as the fate of current oil concessions, issuing future concessions and revenue-sharing mechanisms
- Wealth-sharing agreements related to assets and liabilities
- Use of Sudan's allocation of Nile water between Khartoum and Juba in accordance with the 1959 agreement that reserves 18,5 billion m<sup>3</sup> per year for the whole of Sudan
- Status of treaties and agreements to which Sudan is a signatory
- Security arrangements
- Currency

The fate of Sudan's oil wealth is among the most contentious of these post-referendum issues, as both governments rely on revenues from the oil industry to function. For the whole of Sudan, oil represented 95 per cent of export revenues and 60 per cent of government revenues in 2008.<sup>16</sup> For Southern Sudan, oil represents 98 per cent of total government revenues, making the Government of Southern Sudan the most oil-dependent government in the world.<sup>17</sup>

As of January 2010, Sudan had an estimated 5 billion barrels of proven oil reserves.<sup>18</sup> Should Southern Sudan secede in 2011, it would take with it about 80 per cent of Sudan's known oil deposits, making the allocation of revenues gained from the oil industry a potential conflict flashpoint. Furthermore, although most of Sudan's oil is drilled in the south, all of Sudan's oil infrastructure is located in the north.<sup>19</sup> If Southern Sudan were to become independent in 2011, it would be landlocked and would either have to continue to

rely on the existing oil-export infrastructure to export the oil north to Port Sudan to reach the global market or build a new pipeline to export the oil via ports on the Indian Ocean. Plans are in the works for a refinery at Lamu with a capacity of 120 000 barrels per day (bpd). In addition, a proposed 1 300 km pipeline from Juba to Lamu would lessen Southern Sudan's dependence on oil infrastructure in the north.<sup>20</sup> That said, it may be impractical to build a pipeline from Southern Sudan to ports in Kenya because the current price of oil (between \$75 and \$80 per barrel at the time of writing) and the amount of oil estimated to be in Southern Sudan do not justify the cost of such an enterprise. In addition, the threat of renewed violence makes such an investment high risk. However, if war were to break out or the north were to simply refuse to allow the south to use the pipeline before an alternative export route was established, it will be increasingly difficult for *either* side to profit from oil revenues, as many of the oilfields straddle what could be a volatile border region.

In order to continue to sustain their governments, patronage networks, or even a future conflict with any adversary, both parties would need to continue to rely heavily on their oil industries for funding in the near future. Any alternatives to current oil infrastructure arrangements will take time and money to come to fruition, so the only feasible short-term option for exporting oil from Southern Sudan is still through the north. So long as Sudan's oil is exported via its current infrastructure towards the north by pipeline, the north could still receive income from pipeline fees from oil exported via Port Sudan.<sup>21</sup> Therefore, although oil may be a cause for war in 2011 and beyond, the present locations of oil deposits and the necessary transport infrastructure provide a compelling incentive for both sides to cooperate – at least until Southern Sudan finds a financially viable alternative export route. Once an alternative route is found, the north may lose the financial incentive it may have had to cooperate with the south, and it may again consider military action to gain control of the oilfields.

## WHITHER THE CPA?

Although the CPA ended two decades of north-south fighting in Sudan, the agreement has been criticised for several shortcomings. Firstly, the CPA was comprehensive in name only, as it failed to include a variety of stakeholders

external to the NCP and the SPLM, such as other political parties in the north, the eastern Beja Congress and Rashaida dissidents, non-SPLM southern-based political parties and ethnic militias backed by Khartoum, and rebel groups in Darfur.<sup>22</sup> In fact, the lack of inclusiveness in CPA negotiations between the NCP and the SPLM may have been one of the motivations for armed groups in Darfur to rebel in 2003. Secondly, one of the many criticisms of the CPA implementation process has been that the NCP has attempted to renegotiate elements of the peace agreement, being selective about those parts it wishes to implement and those it wishes to ignore, making the concept of a peace agreement worthless in principle. By employing ‘delay-and-distract’ tactics against domestic opponents and concerned members of the international community, the NCP has obstructed the CPA implementation in very subtle ways that make it appear as if they were not deliberate attempts to sabotage the peace agreement.<sup>23</sup> Lastly, there are concerns that the CPA is regarded by both sides as an ‘extended ceasefire’ rather than the basis for a sustained peace for Sudan as a whole.<sup>24</sup> The south, in particular, has been questioned over its true commitment to CPA implementation, and for biding its time to declare independence after a majority ‘yes’ vote in the referendum.

As a result of these shortcomings, there are many factors that may derail full implementation of the CPA before the end of the interim period, or sow the seeds of future conflict:

- Failure to address the root causes of the north-south conflict, such as the broader questions of identity, ethnicity and religion – as well as suspicion, mistrust, and anger about past injustices
- Doubts about the political will or institutional capacity of either party to implement the remaining provisions of the CPA
- Lack of accountability of parties to the CPA for failure to implement key provisions of the agreement
- Lack of transparency in governance, wealth-sharing and preparations for the referendum
- Legal and logistical obstacles to the referendum
- Delays to border demarcation and the referendum
- Communal violence in the south
- Uncertainty and fear about the future of Sudan and relations between the north and the south after 2011

Successful completion of the remaining benchmarks in a manner that is amenable to both the NCP and the SPLM will be instrumental in seeing the CPA through to its full implementation.

## THE OBAMA ADMINISTRATION'S SUDAN STRATEGY

In order to revive US engagement with regard to full implementation of the CPA, US President Barack Obama appointed Major General (ret.) J. Scott Gration as US Special Envoy to Sudan in March 2009. With his appointment, Gration became the principal diplomat charged with executing US policy in Sudan, which included working in concert with stakeholders in Sudan and the international community towards ending the conflict in Darfur and reinvigorating the process of CPA implementation. In the hope of facilitating dialogue between the NCP and the SPLM, and eliciting a constructive attitude from Khartoum, Gration has crafted an approach that is a balance of carrots and sticks, or 'incentives and pressures'. Cognisant of the shortfalls of CPA implementation and the dearth of time remaining in the interim period, it is possible that Gration believes that opting not to pursue a hard line towards Khartoum may eventually create the conditions that will see the CPA through to the end of the interim period.

Nonetheless, during the summer of 2009, fissures within the administration became evident as allegations emerged that some officials had articulated contradictory views on key issues in Sudan.<sup>25</sup> Several policy-makers and activists opposed Gration's moderate position, accusing him of being naive and falling into the same trap as previous US diplomats to Sudan by accepting the NCP's pledges of cooperation at face value, only to be subsequently outmanoeuvred.<sup>26</sup> In particular, Gration's critics were at odds with his seemingly conciliatory approach to Khartoum. Several of Gration's critics were outraged when he characterised the situation in Darfur as 'remnants of genocide', in essence downplaying the human-rights violations that may still be ongoing.<sup>27</sup> Critics were also irritated by the special envoy's suggestion that, because there was no evidence that Sudan was still a state sponsor of terrorism, the US should consider removing Sudan from the State Department's State Sponsors of Terrorism list and unwinding some of the sanctions that accompany that designation.<sup>28</sup> To defend himself, Gration argued that although Darfur and Southern Sudan were among the areas exempt from these sanctions, a more nuanced approach

was needed in order to ensure that US sanctions on Sudan did not harm development in these areas as an unintended consequence.<sup>29</sup> Critics were also concerned that, as Gration met with stakeholders in Sudan and in the international community, he might also consider meeting with President Omar al-Bashir, who had been indicted by the International Criminal Court in March 2009 for war crimes and crimes against humanity for his role in overseeing acts of violence against civilians in Darfur, and again in July 2010 for genocide committed in Darfur.

After several months of delay and speculation, the Obama Administration's Sudan strategy was announced in October 2009. This strategy recognises the need to reinvigorate international engagement with the CPA, address the north-south conflict and Darfur simultaneously, and be proactive in addressing both emerging crises and long-term stability. Additionally, this strategy is based on engagement rather than isolation, and hinges on providing incentives and pressures to induce cooperative behaviour from Khartoum. Incentives would be predicated upon verifiable improvements in conditions, whereas pressures would be based on evidence of maintenance of the status quo or backsliding. The particular details of these incentives and pressures were not publicly released— and likely to create ambiguity about where the administration draws the line so as to induce Khartoum to proceed with caution.

As articulated in the strategy, the US will work with its international partners to achieve the following strategic objectives in Sudan:

- **A definitive end to conflict, gross human-rights abuses and genocide in Darfur.** The US will achieve this objective by enhancing civilian protection, promoting a negotiated solution to the conflict, encouraging and strengthening initiatives for ending violent conflict, supporting accountability and improving the humanitarian situation.
- **Implementation of the CPA that results in a peaceful post-2011 Sudan or an orderly transition to two separate and viable states at peace with one another.** The US will achieve this objective by addressing unimplemented elements of the CPA, reinvigorating and strengthening international engagement on CPA implementation, defusing tension in the Three Areas, promoting the development of post-2011 wealth-sharing mechanisms and promoting improved governing capacity and greater transparency in Southern Sudan.

- **Ensure that Sudan does not serve as a safe haven for terrorists.** The US will achieve this objective by preventing terrorists from developing a stronghold in Sudan.<sup>30</sup>

With the clock ticking towards uncertainty in Sudan, the US foreign policy establishment finds itself struggling to balance the attention devoted to implementation of the CPA to prevent another north-south conflict with that devoted to resolving instability in Darfur. The flood of criticism aimed at the principal diplomat charged with executing US policy in Sudan may also reduce the degree to which the US is able to focus on these crises. However, there may be method in the special envoy's madness. Both as presidential candidate and as president, Obama expressed a willingness to approach foreign policy with a relatively open and nuanced mind. To date, the president's approach to foreign affairs has generally appeared to be a rather bold departure from that of his predecessors, who would probably have taken a more guarded and pragmatic stance.<sup>31</sup> Special Envoy Gration appears to see the merit in emulating this quality as a means by which to achieve constructive engagement with Khartoum and work towards resolving Sudan's crises. Should events in Sudan unfold unfavourably, the administration's critics could use this as an example of how failing to adopt a hard-line stance towards uncooperative adversaries decreases US credibility in the world and compromises its ability to secure US interests abroad.

## US INTERESTS AND EQUITIES IN SOUTHERN SUDAN

Although Southern Sudan is thousands of miles from North America, the US' understanding of the contemporary security environment implies that what transpires in Southern Sudan could have negative implications for US interests and those of its key partners in the region, such as Egypt, Ethiopia, Kenya and Uganda. A detailed analysis of US interests and equities in Southern Sudan follows.

### US constituencies have long-standing humanitarian interests in Sudan

For several years, various religious, ethnic and human-rights activist communities in the US have asserted pressure on the US Government to resolve Sudan's



various conflicts – first the north-south conflict and subsequently the Darfur conflict. Evangelical Christians were a significant element of this group, having originally become interested in Sudan not only through their overseas missionary work, but also because they wanted to halt human-rights violations, including slavery. Viewing the north-south conflict as a ‘biblical conflict’ in which the African Christians of the south were suffering persecution at the hands of the Arab Muslims of the north, these evangelicals began to collaborate with Jewish organisations and African-American groups such as the Congressional Black Caucus and the National Association for the Advancement of Colored People.<sup>32</sup> It was largely this network of liberal and conservative evangelicals,<sup>33</sup> Jews and African-Americans that pressured then President George W. Bush to use the US’ clout as a global power to drive forward the negotiations that led to the signing of the CPA.<sup>34</sup> Moreover, it is this network that in 2004 also began to pressure Bush to end the genocide in Darfur on religious principles – even though both the victims and the perpetrators were Muslim.<sup>35</sup> This network of religious, ethnic and human rights activists continues to keep Darfur and Southern Sudan on the current administration’s radar.

## **Instability could make Southern Sudan ungovernable**

Almost all states in Southern Sudan have been afflicted by inter- and intra-ethnic clashes. In 2009, 2 500 people were killed and 350 000 displaced as a result of such violence, compared with death tolls of about 20 people from similar clashes in previous years.<sup>36</sup> The continuing escalation of violence has raised fears that ethnic tensions may threaten the stability of a potentially new state in 2011.<sup>37</sup> Low-intensity conflict in Southern Sudan is not unusual, although there are suspicions that the recent escalation in the intensity and frequency of violence indicates that this brand of violence is different. Tribal violence in Southern Sudan has traditionally had both systemic and societal causes. These include the absence of state capacity to provide security for the population; the lack of fully functioning institutions such as a police force, prisons and a justice system; the absence of the rule of law; the abundance of arms generated by conflicts in the region and the fact that civilians feel compelled to acquire small arms for self-protection because of pervasive insecurity; child trade, theft or abduction; conflicts over land rights for pasture or grazing; perceptions of uneven disarmament; revenge killings and retaliatory attacks; and cattle rustling.<sup>38</sup> Cattle

rustling is a common seasonal occurrence in Southern Sudan because cattle are important to pastoral communities as a source of income and a symbol of wealth and prestige. However, there are suspicions that recent attacks have used cattle rustling as a pretext to target civilians for violence – particularly women and children – since some of these attacks have left cattle unharmed.<sup>39</sup>

The SPLM has repeatedly alleged that tribal violence in Southern Sudan is being instigated by the NCP, whom they refer to as ‘enemies of peace’. Southern Sudan asserts that Khartoum seeks to furtively destabilise Southern Sudan to obstruct the elections and the referendum without being vulnerable to accusations of subterfuge. Khartoum could also wish to provide empirical evidence that points towards the inability of an independent Southern Sudan to govern itself or provide security for its citizens.<sup>40</sup> Although it has a history of infiltrating and arming rival ethnic groups as proxy militias in order to divide and destabilise Southern Sudan during wartime, Khartoum rebuffs claims that it has a hand in current communal violence. Whether or not Khartoum is currently arming militias as proxies in the south, the very perception that it does breeds mistrust and threatens stability.<sup>41</sup> Furthermore, it is possible that Juba’s anticipation of a future conflict with Khartoum continues to compromise the government’s ability to address many of the emerging security threats within the south.<sup>42</sup>

## Spillover could have negative implications for neighbouring countries

At the crossroads of East and Central Africa, Southern Sudan lies in a particularly conflict-prone neighbourhood where conflicts often have negative implications for other countries in the region. Accordingly, there is the potential that instability in Southern Sudan or renewed violence between Khartoum and Juba could spill over into neighbouring countries, expanding the conflict by igniting local tensions, drawing in foreign combatants and instigating a sudden exodus of refugees. Conflict spillover could increase the pressure on the fragile states that border Sudan, such as the Democratic Republic of Congo (DRC), Central African Republic and Chad, which hardly have the capacity to manage the security threats they already face. For key US partners such as Egypt, Ethiopia, Kenya and Uganda, instability could compromise the ability of these states to continue to be key partners in counter-terrorism, peacekeeping and regional

economic growth. Conflict spillover could compromise political and economic development in all of these countries, as well as the distribution of humanitarian assistance and disaster relief by their governments, local/international non-governmental organisations (NGOs) and foreign government aid agencies.

Egypt in particular fears any instability that may arise along its lifeline, the Nile, from which it receives 90 per cent of its water needs.<sup>43</sup> Egypt depends on the Nile for irrigation and hydropower, and is projected to exceed its current water supply by 2017.<sup>44</sup> Twenty per cent of the Nile's waters are carried by the White Nile, which flows through Southern Sudan north towards Egypt. If Southern Sudan were to become independent, this would leave Egypt at the mercy of a potentially unstable neighbour upstream in terms of whether it would respect the agreements that have historically governed Nile water usage.

Approximately 160 million people in ten countries (Burundi, DRC, Egypt, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Uganda and Tanzania) live in the Nile River Basin. This number is expected to double within a few decades.<sup>45</sup> In recent years, there have been efforts initiated by countries upstream to amend the 1929 and 1959 agreements that grant Egypt the greatest share of water from the Nile. These agreements were signed by Egypt, Sudan and the British – the latter signing on behalf of its East African colonies – and grant 55,5 billion m<sup>3</sup> of water to Egypt and 18,5 billion m<sup>3</sup> to Sudan. This is equivalent to 87 per cent of the Nile flow, leaving only 13 per cent for the other riparians. Additionally, Egypt has veto power on projects upstream that could reduce the flow of the river, such as dams, pumping stations and irrigation works. The reason downstream countries wield a significant amount of power in this water-sharing relationship is that upstream riparians have ample rainfall, whereas Egypt and Sudan have relied on the Nile for their water needs.

In the spring of 2010, Ethiopia, Kenya, Rwanda, Tanzania and Uganda signed a Nile Basin Cooperative Framework Agreement (CFA), which is a new legal framework that aims to redistribute water among the riparians more equitably and allow for more irrigation and power projects. The countries that have not yet signed (Burundi, DRC, Egypt and Sudan) have been given one year to join the pact. However, Egypt and Sudan are not expected to sign.<sup>46</sup> Meanwhile, Egypt is concerned that a newly independent Southern Sudan might join the other countries in rallying for a redistribution of the Nile waters, although Juba has assured Cairo that it will work with Khartoum so as not to exceed Sudan's existing allocation.<sup>47</sup>

Uganda's security considerations vis-à-vis Southern Sudan are dominated by the Lord's Resistance Army (LRA). Kampala fears that instability in Southern Sudan either as a result of conflict with Khartoum or among southern ethnic groups may create a permissive environment for insurgent groups. Moreover, Uganda seeks a stable buffer state on its northern border to ensure that the LRA does not return to northern Uganda. With the signing of the CPA in 2005, the LRA lost its safe haven in the south, and as a result has been operating increasingly in the north-eastern DRC and the Central African Republic. Since 2006, Riek Machar, Vice President of Southern Sudan, has been mediating peace talks between the LRA and the Ugandan government. Although a ceasefire was declared in September 2006, to this date LRA leader Joseph Kony has stalled on signing a peace agreement. Since the end of 2008, the LRA has attacked parts of Western and Central Equatoria states in Southern Sudan in the aftermath of joint Ugandan and Congolese operations to push the LRA out of its bases in the DRC. These attacks have displaced 70 000 people in Southern Sudan and have led to an influx of 18 000 refugees from the DRC.<sup>48</sup> There are suspicions that Khartoum is still supporting the LRA, but there is no evidence directly linking the upsurge in LRA attacks to support from the Sudanese government.

## **Instability could create safe havens for terrorist organisations**

Given Sudan's role as a state sponsor of terrorism in the 1990s, the US is concerned that foreign terrorist organisations may seize upon instability in Sudan to re-establish a safe haven in the country. Egypt shares this concern, as Khartoum supported Egyptian Islamic Jihad al-Gama'a al-Islamiya in their June 1995 assassination attempt on President Hosni Mubarak while he was in Addis Ababa for a meeting of the Organisation of African Unity. These groups had close ties to Osama bin Laden's terrorist network, and Bin Laden resided in Sudan between 1992 and 1996. Groups such as Palestinian Islamic Jihad and Hamas also used Sudan as a safe haven in the 1990s.

Shortly before the terrorist attacks of 9/11, Sudan became a valued partner in the Global War on Terror despite remaining a designated state sponsor of terrorism by the US State Department. As part of its counter-terrorism cooperation with the US, Sudan agreed not to openly support the presence of extremist elements in Sudan (with the exception of Hamas, whom Sudan views

as freedom fighters rather than terrorists); worked to disrupt foreign fighters from using Sudan as a logistics base and transit point for extremists going to Iraq; and aggressively pursued terrorist operations directly involving threats to US interests and personnel in Sudan. The US is concerned that instability in the region could again make either the north or the south a safe haven for terrorist organisations, and compromise the progress made over the past decade.

## Countries in the region have interfered in the north-south conflict

Many of the region's conflicts are highly interconnected – largely as a consequence of reciprocal meddling, proxy wars and competing ideologies, among other factors.<sup>49</sup> Consequently, it is likely that countries in the region will continue to interfere in Southern Sudan for reasons related to their past relationship with the south, in addition to their current security perceptions and political and economic interests. For the US, it will remain important to account for the inclinations of its key regional partners and their stances on the CPA and the future of Southern Sudan.

Following an agreement between the British Government and the Khedive of Egypt, Sudan was jointly administered by Egypt and the United Kingdom as an Anglo-Egyptian Condominium between 1899 and 1956. Since Sudan's independence, Egypt has continued to perceive the country to be within its sphere of influence and consequently keeps a keen eye on what goes on in this region. In the 1990s, Egypt supported the National Democratic Alliance (NDA), which was the umbrella northern opposition group of which the SPLA was a member. This opened up a new front in the war in eastern Sudan along the Eritrean border, which was likely to have been a course of action to counter Khartoum's international Islamist agenda at that time. Since Egypt feared that a new state could create instability and threaten its supply of Nile water, it opposed IGAD's inclusion of self-determination in the peace process and launched an alternative regional peace initiative with Libya premised on unity in 1999.

Since the signing of the CPA, Egypt has criticised Khartoum for lacking the will to preserve the unity of Sudan, and has arguably done more to make unity attractive to Southern Sudan.<sup>50</sup> In addition to fearing instability along its riverine lifeline, Egypt fears that Khartoum will become increasingly more radical without the moderating influence of Southern Sudan.<sup>51</sup> In Cairo's view, an overly

Islamic government in Khartoum could offer support to like-minded groups in Egypt. As a result, Egypt has not abandoned its preference for unity, and has recently asked Sudan to consider having a north-south confederation in lieu of separation.<sup>52</sup> Concurrently, Cairo has perceived the inevitability of the break-up of Sudan, and has been building relationships with the leadership in Southern Sudan by opening a consulate in Juba and initiating development projects in the region. Cairo also maintains a working relationship with the government in Khartoum due to its concerns over regional security and water security.

Sudan and Ethiopia have a history of actively or passively fuelling each other's internal conflicts. From the mid-1970s, Mengistu Haile Mariam's Derg regime was a key supporter of the SPLA, offering political direction, bases, training and weapons.<sup>53</sup> Khartoum reciprocated by supporting Ethiopian and Eritrean separatist groups, such as the Eritrean People's Liberation Front (EPLF) and the Tigray People's Liberation Front (TPLF). By the time the Derg fell in 1991, Ethiopia had been the *matériel* and logistical backbone of the SPLA for 15 years. Following Mengistu's fall, the SPLA was expelled from Ethiopia, thus compromising its military capabilities and ability to seek a safe haven in western Ethiopia. Nonetheless, Ethiopia renewed its support of the SPLA in 1993 in order to counterbalance Khartoum's burgeoning international Islamist agenda, which was perceived to pose a threat to Ethiopian and regional security. In response, Khartoum again directed support to Ethiopian and Eritrean separatist groups. The Ethiopian military presently trains SPLA officers, pilots, technical experts and engineers, and sells them ammunition, refurbished tanks and equipment.<sup>54</sup>

As the seat of the AU, Ethiopia must be careful not to alienate member states on southern Sudanese secession – an issue that could be not only divisive, but is also one that several African countries may fear facing in the future. Although Article 39 (The Right of Nations, Nationalities and Peoples) of the Ethiopian constitution affirms the right of self-determination for every nation, nationality and people in Ethiopia, the country also worries about renewed calls for secession in light of what is going on in its neighbour to the west.<sup>55</sup> Furthermore, Ethiopia is at a stalemate along its border with Eritrea and possesses a lengthy border with a persistently anarchic Somalia, so it fears alienating Khartoum and creating yet another hostile neighbour. For these reasons, Ethiopia maintains good ties with both Khartoum and Juba, but has stronger ties with the latter. Ethiopia and Southern Sudan have signed new agreements on security,

telecommunications, trade and transportation, including a road network that could connect Southern Sudan to the Red Sea and the Gulf of Aden through Ethiopia and Djibouti.<sup>56</sup>

In addition to maintaining an open border with Southern Sudan, Kenya provided discrete diplomatic, logistical and humanitarian assistance to the SPLA during the second Sudanese civil war, which proved critical in sustaining the movement. When Mengistu Haile Mariam's regime fell in 1991, the SPLA was expelled from Ethiopia and essentially pushed out of Sudan, with the exception of small, scattered garrisons in the south, and key outposts along the border with Kenya and Uganda.<sup>57</sup> Kenya subsequently allowed the SPLA to set up political headquarters in Nairobi. The Kenyan military presently provides officer training and technical support to the SPLA, and has been complicit in facilitating arms transfers to Southern Sudan, as exemplified by the *MV Faina* incident in the autumn of 2008.<sup>58</sup> As Kenya is perceived to favour the south, its relations with Khartoum are somewhat strained.

Kenya hosted and led the IGAD peace process that led to the signing of the CPA, and, therefore, has an interest in seeing it implemented. In early 2010, UN Secretary General Ban Ki-Moon and AU Commission Chairman Jean Ping made separate comments articulating the need to preserve Sudan's unity. Kenyan Prime Minister Raila Odinga responded by accusing the AU and UN of undermining the principle of peaceful conflict resolution and urging the international community to support the referendum.<sup>59</sup> In addition, the SPLM anticipates that it is headed for independence and expects Kenya to be the first to accord recognition.<sup>60</sup> As the largest economy in East Africa and the only country that can provide landlocked Southern Sudan with direct access to the sea, Kenya stands to benefit as a conduit for the south's oil exports via ports on the Indian Ocean, as well as the demand for goods as the south's economy develops. Kenya also anticipates that it may be able to access new markets in the Central African Republic and the northern DRC.<sup>61</sup>

When Yoweri Museveni came to power in the mid-1980s, Uganda began supporting Southern Sudan by offering financial and military support and was directly involved in combat operations alongside the SPLA.<sup>62</sup> After Mengistu fell and Ethiopian support dried up in 1991, Uganda became the SPLA's most important sponsor. In retribution for this support, Khartoum provided arms, training and military intelligence to the LRA to fight the Ugandan government in northern Uganda and a proxy war against the SPLA in Southern Sudan,

starting in the mid-1990s.<sup>63</sup> In addition to having bases in Southern Sudan during the civil war, the LRA joined the Sudanese Armed Forces and pro-Khartoum southern ethnic militias in attacking SPLA positions in the south.<sup>64</sup> At present, the Ugandan military is said to facilitate arms transfers to Southern Sudan and maintains a large number of soldiers in the states of Western Bahr el Ghazal and Western Equatoria.<sup>65</sup> It also provides officer training to the SPLA.

Uganda has historical, cultural and ethnic ties with the south, and strongly supports Southern Sudan's right to vote for independence. Furthermore, the SPLM has informed Uganda that when Southern Sudan votes for independence, it expects Uganda to be among the first to accord recognition.<sup>66</sup> Since the signing of the CPA, trade between Uganda and Southern Sudan has increased exponentially, and there are plans in the works to build or improve the road and railway infrastructure between the two countries.<sup>67</sup> By contrast, the relationship between Kampala and Khartoum is characterised by mutual animosity, as Museveni opposes Arab and Islamic expansion in the region.<sup>68</sup>

## **US CREDIBILITY AS MEDIATOR AND GUARANTOR IS AT STAKE**

The US played a key role in securing the CPA by sustaining high-level diplomatic engagement and offering financial support and technical assistance during the peace talks.<sup>69</sup> Therefore, this agreement is a test case for the US to prove its commitment to conflict prevention in Sudan and other parts of Africa. As one of the guarantors of the CPA, the US has a responsibility to ensure that the agreement plays a constructive role in transforming the region to one that is peaceful and stable. Should the south explode into its own civil war or should a third iteration of the north-south conflict transpire, it would come at a cost to the US' reputation in conflict mediation and resolution. The absence of sustained peace in the region could demonstrate that the US lacks the clout and regional leverage to facilitate a lasting peace process and mitigate the re-emergence of conflict. One of the implications of failure in this respect is that warring parties in Sudan and other parts of the world might be less inclined to place their trust in the US as one of the mediators and guarantors of their peace processes. In the long term, future combatants may calculate that they should not have faith in a peace process mediated and endorsed by the US, which could possibly prolong conflicts as local grievances are borne out.



US credibility is also at stake in the way that it handles the potential creation of the world's newest state. As a guarantor to the CPA, the US would be likely to respect Southern Sudan's right to secede, should its citizens vote accordingly. The rationale behind this support is not that the US favours Southern Sudan for any particular reason, but that the internationally recognised CPA granted it the right to secede. Should the CPA prematurely fall apart and Southern Sudan unilaterally declare independence, it is likely that the US' calculations regarding recognition would change, as it cannot afford to support an irredentist movement that declares independence in a manner that is not in line with some element of international consensus. Otherwise, it will be extremely difficult for the US to justify why it does not support other African irredentist movements that some Africa-watchers are determined will abound if Sudan breaks apart in 2011.

IGAD and the AU will face similar debates regarding recognition. In the early 1990s, IGAD initiated the peace process that eventually led to the signing of the CPA, and consequently maintains an interest in seeing it through to full implementation and preventing any conflict that may arise during the referendum or in its aftermath. In light of the regional sensitivities that would be involved with recognition, IGAD may be the first to take a stand on Southern Sudan's post-referendum status.<sup>70</sup> The AU is an inherently pro-unity organisation that, according to the African Union Constitutive Act, expresses 'respect of borders existing on achievement of independence'.<sup>71</sup> Naturally, the organisation fears that a north-south divorce in Sudan may lead to the complete disintegration of the country and spur similar movements across the continent. AU Commission Chairman Jean Ping has made somewhat controversial public statements to this effect.<sup>72</sup> Nonetheless, the AU as a signatory to the CPA is legally bound to recognise Southern Sudan if independence is the outcome of the referendum. If either the AU or IGAD were to renege on their commitment to the CPA, their reputation as credible regional organisations that seek a greater role in resolving African conflicts would be in peril.

## CONCLUSION

Based on the US' perception of the contemporary security environment, instability in Southern Sudan could render it a vector of regional or international violence, thus compromising US efforts to stabilise weaker states in the region

and strengthen key regional partners. Regardless, it is unlikely that its interests would drive the US to make a unilateral military commitment to Southern Sudan outside of continuing to train the SPLA. This is especially true in light of its ongoing military commitments in Iraq and Afghanistan and concerns about nuclear proliferation and the spread of violent extremism in other parts of the world, which tend to be more tangible existential threats to the US. Therefore, in the event of aggression from Khartoum or civil war in the south, it is likely that US military intervention would be pursued through an entity such as the UN or AU, and would supplement multilateral diplomatic and humanitarian efforts to bring peace and stability to the region.

## NOTES

- i The views expressed in this chapter are those of the author and not of any organisation with which she is affiliated. This chapter was written in late 2010, before the South Sudanese referendum on 9 January 2011.
- 1 Between October 2008 and February 2009, the National Democratic Institute (NDI) conducted 78 focus groups with 964 participants in Southern Sudan and the Three Areas on their perceptions of the CPA's peace dividend and the April 2010 elections. The NDI's research consistently found that separation remains the overwhelming preference for southerners. TD Cook, *Imagining the election: a look at what citizens know and expect of Sudan's 2010 vote*, National Democratic Institute for International Affairs, 30 September 2009, [http://www.ndi.org/files/Sudan\\_Imagining\\_the\\_Election\\_0.pdf](http://www.ndi.org/files/Sudan_Imagining_the_Election_0.pdf) (accessed 30 September 2009).
- 2 For a background on Sudan's north-south conflict, readers can consult RO Collins, *Civil wars and revolution in the Sudan: essays on the Sudan, Southern Sudan, and Darfur, 1962–2004*, Hollywood: Tsehai Publishers, 2005; DH Johnson, *The root causes of Sudan's civil wars*, Bloomington: Indiana University Press, 2003; FM Deng, *War of visions: conflict of identities in the Sudan*, Washington, DC: Brookings Institution, 1995; AM Lesch, *The Sudan-contested national identities*, Bloomington: Indiana University Press, 1998; KG Adar, JG Nyuot Yoh and E Maloka (eds), *Sudan peace process: challenges and future prospects*, Pretoria: Africa Institute of South Africa, 2004; S Beswick, *Sudan's blood memory: the legacy of war, ethnicity, and slavery in early South Sudan*, Rochester, NY: University of Rochester Press, 2004; PA Nyaba, *Politics of liberation in Southern Sudan: an insider's view*, Kampala: Fountain Publishers, 1997 and RO Collins, *The Southern Sudan in historical perspective*, New Brunswick: Transaction Publishers, 2006.
- 3 The other guarantors to the CPA are the Intergovernmental Authority on Development (IGAD), the African Union (AU), the United Nations (UN), the Arab League, the European Union (EU), Egypt, Italy, the Netherlands, Norway and the UK.

- 4 This assertion reflects prevalent attitudes about the post-9/11 security environment – that instances of instability abroad could become threats to the homeland, and that the United States will have to be prepared for a range of contingencies. See President Barack Obama, *National Security Strategy*, May 2010, [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf); Admiral Michael G Mullen, *CJCS Guidance for 2009–2010*, Joint Chiefs of Staff, 21 December 2009, [http://www.jcs.mil/content/files/2009-12/122109083003\\_CJCS\\_Guidance\\_for\\_2009-2010.pdf](http://www.jcs.mil/content/files/2009-12/122109083003_CJCS_Guidance_for_2009-2010.pdf); Department of Defense, *Quadrennial Defense Review Report*; Department of Defense, *National Defense Strategy*, June 2008, [http://www.comw.org/qdr/fulltext/08nationaldefensestrategy.pdf?bcsi\\_scan\\_02AA058D28E26014=0&bcsi\\_scan\\_filename=08nationaldefensestrategy.pdf](http://www.comw.org/qdr/fulltext/08nationaldefensestrategy.pdf?bcsi_scan_02AA058D28E26014=0&bcsi_scan_filename=08nationaldefensestrategy.pdf) and RM Gates, Helping others defend themselves: the future of US security assistance, *Foreign Affairs* 89(3) (May/June 2010).
- 5 The Intergovernmental Authority on Drought and Development (IGADD) became the Intergovernmental Authority on Development (IGAD) in 1996. The organisation was formed in the 1980s with the original purpose of focusing on drought and emergency issues throughout the region, but shifted its focus in the 1990s to regional security and development. Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda are members of IGAD. Eritrea, which joined in 1993 upon independence, suspended its membership in 2007.
- 6 See Government of the Republic of Sudan and the Sudan People’s Liberation Movement/Army, *The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army*, 9 January 2005, [http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf?bcsi\\_scan\\_02AA058D28E26014=0&bcsi\\_scan\\_filename=cpa-en.pdf](http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf?bcsi_scan_02AA058D28E26014=0&bcsi_scan_filename=cpa-en.pdf) (accessed 19 October 2009).
- 7 Abyei is an area on the boundary between north and south Sudan and, as such, has been the subject of political and often military dispute. Abyei is Sudan’s main oil-producing region, making the determination of where the town and its surrounding areas’ borders lie especially important in the run-up to the 2011 referendum. The region currently produces about 11 per cent of Sudan’s oil, which is equivalent to the total production of the oilfields that clearly reside in the northern part of the country. Annual revenue from Abyei’s oilfields is approximately \$500 million. In addition to having oil, Abyei is rich in grasslands, forests, swamps and river systems, on which the Ngok Dinka and the nomadic Misseriya depend for farming and grazing. Abyei has long been the subject of dispute. It is the ancestral homeland of the Ngok Dinka, who form the bulk of the settled population and use the land for farming and dry-season pasture for cattle. Nomadic Misseriya also use the land surrounding Abyei during their traditional seasonal migrations to allow their cattle to graze along the Bahr al Arab River and its tributaries. When the second civil war broke out in 1983, the Misseriya joined the Khartoum-backed Arab Murahleen, horse-borne militias who were encouraged to raid and loot southern tribes in the border region and ethnically cleanse the region around Abyei. As a result, many Ngok Dinka were displaced from Abyei before the second civil war by government-backed Arab militias. See the *Economist*, Line drawn, 23 July 2009, [http://www.economist.com/daily/news/displaystory.cfm?story\\_id=14070450](http://www.economist.com/daily/news/displaystory.cfm?story_id=14070450) (accessed 29 September 2009).

- 8 United Nations Security Council, Report of the Secretary-General on the United Nations Mission in Sudan, 14 July 2009, <http://daccessdds.un.org/doc/UNDOC/GEN/N09/394/31/PDF/N0939431.pdf?OpenElement> (accessed 29 September 2009).
- 9 International Crisis Group, Garang's death: implications for peace in Southern Sudan, Africa Briefing No. 30, 9 August 2005.
- 10 White House 'regrets' irregularities in Sudan's elections, *Voice of America*, 20 April 2010, <http://www1.voanews.com/english/news/White-House-Regrets-Irregularities-in-Sudans-Elections-91617564.html> (accessed 4 August 2010).
- 11 Article 2.5 of the Machakos Protocol had stated that the referendum was to be held at the end of the interim period, but this was changed by the 2005 interim constitution.
- 12 Sudan referendum law endorsed in cabinet, 51% 'yes' vote and 60% turnout required, *Sudan Tribune*, 14 December 2009, <http://www.sudantribune.com/spip.php?article33451> (accessed 23 July 2010).
- 13 Eritrea proposes delay to Sudan elections and referendum, *Sudan Tribune*, 5 March 2010, <http://www.sudantribune.com/spip.php?article34336> (accessed 4 August 2010). See also SPLM critical of EU Solana support for Sudan's unity, *Sudan Tribune*, 2 September 2009, <http://www.sudantribune.com/spip.php?article32335> (accessed 4 August 2010); Egypt hints at supporting a north-south confederation for Sudan rather than secession, *Sudan Tribune*, 21 March 2010, <http://www.sudantribune.com/spip.php?article34493> (accessed 4 August 2010).
- 14 JS Vieira, Sudan president makes first call for independence, Reuters, 31 October 2009, <http://www.reuters.com/article/idUSTRE59U1FT20091031> (accessed 4 August 2010).
- 15 The CPA's Protocol on the Resolution of Conflict in Abyei authorised the creation of the Abyei Boundary Commission (ABC), which released its final and binding ruling on the geographic boundaries of Abyei in July 2005. Asserting that the ABC exceeded its mandate in including the Heglig and Bamboo oilfields in the territory of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, the NCP rejected the decision, and the issue of Abyei remained unresolved. In May 2008, fighting between the Sudan Armed Forces (SAF), SAF-supported militia and the SPLA displaced 60 000 and destroyed most of the town of Abyei. In July 2008, the NCP and SPLM referred the Abyei issue to the Abyei Arbitration Tribunal (AAT), which is seated at the Permanent Court of Arbitration (PCA) at The Hague in the Netherlands. In July 2009, the AAT issued its final decision on the status of Abyei, which altered the decision that had been rendered by the ABC. The AAT determined that Abyei's eastern border was 60 km west of where the ABC had drawn it, excluding the Heglig and Bamboo oilfields and about 10 per cent of the Toma South field. In addition, the tribunal redrew Abyei's northern boundary further south and the western border further east – the latter excluding the Misseriya town of Meiram. Following the ruling, both the NCP and SPLM accepted the decision as final and binding, and agreed to move towards demarcation of the north-south border at Abyei. The tribunal's decision places a higher concentration of

- Ngok Dinka, who consider themselves southerners, in the town of Abyei. As a result, this oil-rich area is likely to vote to join the south in 2011. For more details, see International Crisis Group, Sudan, Breaking the Abyei deadlock, International Crisis Group Policy Briefing, 12 October 2007, [http://www.crisisgroup.org/library/documents/b47\\_sudan\\_abyei\\_web.pdf](http://www.crisisgroup.org/library/documents/b47_sudan_abyei_web.pdf) (accessed 29 September 2009); C Thomas-Jensen and M Fick, Abyei, Sudan's next test, The Enough Project, 20 July 2009, [http://www.enoughproject.org/files/publications/Abyei\\_Paper.pdf](http://www.enoughproject.org/files/publications/Abyei_Paper.pdf) (accessed 29 September 2009); Human Rights Watch, Abandoning Abyei: destruction and displacement, May 2008, <http://www.hrw.org/sites/default/files/reports/sudan0708-webwcover.pdf> (accessed 29 September 2009); and Human Rights Watch, Sudan, oil, and human rights, 2003, <http://www.hrw.org/reports/2003/sudan1103/sudanprint.pdf> (accessed 29 September 2009).
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  - 17 Energy Information Administration, Country Analysis Briefs: Sudan.
  - 18 To put this number in perspective, Saudi Arabia, Nigeria, and Brazil have 262, 36, and 12 billion barrels of proven oil reserves, respectively. Energy Information Administration, Country Analysis Briefs: Sudan.
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# 8 Piracy off the coast of Somalia

Towards a domestic legal response to an international concern

LEANNE MCKAY

## INTRODUCTION

Piracy off the coast of Somalia has captured the world's attention as some of the most powerful states in the world are seemingly helpless to prevent groups of ragamuffin, survival-driven, AK-47-wielding young men from attacking at will ships of all kinds traversing the Gulf of Aden and the Indian Ocean. From luxury yachts to supertankers, no vessel seems safe from the audacious and brash Somali pirates. On land, the pirates preside over coastal towns in the north-eastern region of Somalia, the semi-autonomous 'Puntland State of Somalia' and in central Somalia's littoral east.<sup>1</sup> There 'pirate economies' have flourished, as networks of communities benefit from the millions of dollars paid in ransom for ships taken hostage. For the pirates and their communities, the risks in setting off to sea to attack foreign vessels are far outweighed by the economic benefits they reap when successful.

The ever-increasing number of pirate attacks throughout 2008 and 2009 has prompted an unprecedented international response, but attacks on ships continue with little abatement. Demands are made for pirates to be brought to justice, but legal challenges are hampering the effectiveness of affected states to

prosecute detained suspects. United Nations (UN) Security Council Resolution 1851, which addresses piracy off the coast of Somalia, notes that ‘the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice’.<sup>2</sup> The Security Council further stressed, in Resolution 1918 (27 April 2010), ‘the need to address the problems caused by the limited capacity of the judicial system of Somalia and other [s]tates in the region to effectively prosecute suspected pirates’.<sup>3</sup>

As states explore and adopt a range of innovative regional and international legal mechanisms to circumvent the problems of prosecution, limited attention has been given to the capacity of Somalia itself to play a role. Most often, Somalia, the ‘world’s most utterly failed state’,<sup>4</sup> is mentioned only to be dismissed as being in a state of chaos and anarchy, with no functioning government, and, therefore, with no capacity to bring pirates to justice, especially not in a manner that would respect basic international human rights.<sup>5</sup>

But such a blanket characterisation does, however, fail to adequately acknowledge two important realities. Firstly, Somalia is a state operating as three separate administrative entities – South Central Somalia, home of the UN-backed Transitional Federal Government (TFG), Somaliland and Puntland. Secondly, unlike South Central, where all public institutions have essentially collapsed since declaring their autonomy and establishing their own regional administrations in 1991 and 1998 respectively, Somaliland and Puntland have achieved a measure of stability within the Somali territory, including the establishment of functioning formal judicial systems in both regions.

As Somali pirates continue to operate out of Puntland,<sup>6</sup> fair and effective prosecutions conducted through the Puntland judicial system have the potential to provide a strong local deterrent, in conjunction with actions at sea and additional security measures on land, to counter the immense economic benefits pirates seek from their unlawful activity. Furthermore, unlike its neighbour, Somaliland, Puntland supports a federal state of Somalia and, therefore, international interventions in Puntland that promote the stabilisation and strengthening of the rule of law and security would also contribute to the overall stabilisation and strengthening of Somalia.

Despite its relative stability, however, Puntland does face numerous challenges to the rule of law and administration of justice in its region. Therefore,



in engaging Puntland as a potential key actor in seeking to bring its pirates to justice, the international community must also examine Puntland's unique situation, develop comprehensive strategies and commit resources responsibly in order to promote the strengthening of the rule of law and security in the area. Such strategies must address the role of the judiciary, parallel legal systems and community engagement, and will require a real commitment to respect for basic human rights and the rule of law.<sup>7</sup>

This chapter examines the development of piracy off the coast of Somalia and the international response to date. It explores the question of the prosecution of pirate suspects as one element in the fight against piracy and details the condition of the Puntland judicial system and its capacity to carry out prosecutions. The chapter concludes by highlighting some key considerations for future interventions by the UN, donors and other interested parties, which include strengthening justice and the rule of law in Somalia, addressing development and livelihood needs, and by doing so, simultaneously combating piracy in the region.

## BACKGROUND

### Piracy off the coast of Somalia

Piracy off the coast of Somalia is not a new phenomenon. It began in the early 1990s, said to have grown out of Somali fishing communities acting to defend their coastal waters from 'predatory foreign fishing and ships laden with toxic cargo'.<sup>8</sup> With the fall of the Somali government in 1991, Somalia's territorial waters became fair game for foreign fishing boats whose illegal fishing could continue unchecked. As fish stocks were depleted and Somalis saw their livelihoods vanish, some fishermen allegedly began to take matters into their own hands, forming armed groups<sup>9</sup> which imposed 'fines' on foreign vessels, then returned that money to impoverished local communities.<sup>10</sup> Reports also surfaced of illegal toxic waste dumping off Somalia by European companies, a problem highlighted in the wake of the 2004 Indian Ocean tsunami, when it was reported that broken hazardous-waste containers were washing up on Somalia's shores,<sup>11</sup> and hundreds of residents had fallen ill from radiation and chemical poisoning.<sup>12</sup> Therefore, in the eyes of many Somalis, the fishermen/pirates were heroes, Robin Hood-style sea bandits, the protectors of Somali nationalism.

In the absence of a central authority willing or able to uphold law and order, and with increasingly dire economic conditions and poverty, acts of piracy flourished. The first dramatic increase in pirate attacks occurred in 2005, partly as a result of the further degradation of an already suffering fishing industry following the 2004 tsunami. The number of piracy attacks increased from five in 2004 to 35 in 2005.<sup>13</sup> The following year, the figures dropped markedly, as the Islamic Courts Union (ICU) took control of Mogadishu and its armed wing, al-Shabaab, launched attacks against pirate bases in South Central Somalia. With the removal of the ICU from power by 2007, however, incidents of piracy again began to rise and Puntland was established as the new 'pirate kingdom'.<sup>14</sup> Attacks against humanitarian ships, including World Food Programme (WFP) vessels in 2007, soon attracted international attention and the call went out for measures to be taken by the international community to repress piracy.<sup>15</sup> However, poverty, a lack of employment opportunities, the reduction in maritime resources, an unstable security situation and the lack of effective government provided few reasons for would-be pirates not to accept the risk and set out on a potentially fast money-making exercise on the high seas. Indeed, piracy off the coast of Somalia is proving extraordinarily profitable for pirates from a country where the per capita GDP is generously estimated at \$600.<sup>16</sup> In 2009, the total amount paid in ransom to the pirates was estimated at around \$82 million; four times Puntland's total annual budget of \$18 million.<sup>17</sup>

Today's pirates continue to justify their actions on the grounds that they are acting as *de facto* coastguards,<sup>18</sup> and ransoms are described as a fair 'resource swap' for the millions of dollars in fish that has been stolen from Somali waters,<sup>19</sup> or compensation for 'the toxic waste that has been continually dumped on the shores of [their] country for nearly 20 years'.<sup>20</sup> However, they do not limit their targets to fishing vessels, and attack at will anything from tankers to private yachts. Without doubt, the primary motivation for today's pirates is the prospect of massive ransoms.<sup>21</sup>

But with the massive benefits to the pirates and their beneficiaries come massive risks and costs, not only to the international community but also to the Somali people themselves. For the Somali population piracy threatens the delivery of essential humanitarian aid, placing an already vulnerable population even further at risk. In 2007, WFP was forced to temporarily suspend food aid deliveries to Somalia after pirates attacked three of its ships.<sup>22</sup> WFP provides food assistance to more than 3 million people in Somalia, and over 90

per cent of the food is delivered by sea.<sup>23</sup> In November 2007, several states, including Canada and France, responded by providing naval escorts.<sup>24</sup> The economic cost of piracy to the international community is immense. In addition to the ransom payments made by shipping companies are the huge increase in insurance premiums;<sup>25</sup> the loss of revenue for ship-owners whose vessels are hijacked; the increased hazard payments to crews asked to navigate through an extreme-risk area; and the costs of delays in waiting for naval escorts. Not to mention the human cost in terms of threats to the personal safety of hundreds of crew members, loss of life and the trauma inflicted on hostages and their families.

The dramatic upsurge in piracy attacks off the coast of Somalia during 2008 continued into 2009. According to the International Maritime Bureau,<sup>26</sup> there were 217 reported attacks on ships passing through the Gulf of Aden and the Somali region in 2009. Of these, 47 ships were hijacked and a total of 867 crew members held hostage, including the high-profile hijacking in April 2009 of the US-registered *Maersk Alabama* cargo ship and the hostage-taking of its captain, which further heightened international awareness of the piracy problem. By the end of 2009, Somali pirates had taken 12 vessels and 263 crew members.<sup>27</sup> In the first half of 2010, Somali pirates attacked 100 vessels, 27 of which were successfully hijacked.<sup>28</sup>

The thriving pirate industry has sparked a multifaceted international response, from Security Council resolutions to multilateral naval action and a plethora of regional and international conferences. The international community, however, is now struggling to find effective and sustainable ways in which to address the piracy phenomenon.

### *UN Security Council resolutions*

In 2008, the UN Security Council, acting under Chapter VII of the Charter of the United Nations, adopted a series of resolutions that gave member states' naval forces unprecedented legal authority to pursue pirates.<sup>29</sup> International law traditionally restricts military responses to piracy by foreign powers to the high seas only. However, UN Security Council Resolution 1816<sup>30</sup> authorised for six months the use of 'all necessary means' to repress acts of piracy and armed robbery at sea *within sovereign Somali waters*, as long as the acting state obtained the approval of the TFG in advance and acted in accordance with international law.<sup>31</sup> UN Security Council Resolution 1851 extended this

authorisation both in terms of time and geography, by allowing states for a further year to ‘undertake all necessary measures that are appropriate *in Somalia* [emphasis added], for the purpose of suppressing acts of piracy and armed robbery at sea’. This allowed actions not only within territorial waters, but also on the Somali mainland, pending advance permission from the TFG and consistency with applicable international humanitarian and human rights law.<sup>32</sup> Under UN Security Council Resolution 1897 the authorisation was extended for a further 12 months.<sup>33</sup>

### *Naval response*

The piracy threat has resulted in unprecedented international naval cooperation and several multinational maritime coalitions now contribute to the fight against piracy: NATO’s Operation Ocean Shield,<sup>34</sup> CTF-150,<sup>35</sup> CTF-151<sup>36</sup> and the EU’s Operation Atalanta.<sup>37</sup> More than 20 naval warships currently patrol the Gulf of Aden; states that contribute to this operation include China, Russia, the US and India.

The presence of naval forces ‘ha[s] played a key role in reducing the number of successful hijackings off the coast of Somalia ...’<sup>38</sup> However, such forces are not without cost. Pirates have responded by becoming ‘more sophisticated and daring’,<sup>39</sup> now carrying out assaults up to 800 nautical miles off the coast.<sup>40</sup> Another operational shift has been a move away from using the Puntland town of Eyl as a harbour and hostage-holding ground in favour of Gara’ad (Puntland), Xarardheere and Hobyo (central Somalia), and, to a lesser extent, Laasqoray (in the eastern Sanaag region).<sup>41</sup> Deploying one frigate costs an estimated \$1,3 million per month – an unsustainable financial burden in the long term.<sup>42</sup>

### *Regional and international conferences*

There has been a flurry of regional and international conferences and meetings seeking to develop strategies for addressing piracy. In November 2008, the League of Arab States held an extraordinary session of the Arab Peace and Security Council in Cairo to examine the issue. The following month, the International Conference on Piracy Around Somalia, held in Kenya, noted ‘the need to strengthen the capacity of Somali national as well as regional authorities in combating piracy both to interdict pirates at sea, and to take effective legal action against pirates once returned to shore’.<sup>43</sup>

In early 2009, 17 states adopted the ‘Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden’. The EU and the Combined Maritime Forces commenced co-chairing monthly military coordination meetings known as SHADE (Shared Awareness and Deconfliction) with representatives from the EU, NATO and other states in order to share information and coordinate their counter-piracy efforts.<sup>44</sup>

Pursuant to Resolution 1851, the Contact Group on Piracy off the Coast of Somalia was established in January 2009 to facilitate discussion and co-ordination of actions among states and organisations to suppress piracy. The Contact Group has created four working groups dealing with topics that include the judicial aspects of piracy.<sup>45</sup> The group has stressed the need for full cooperation between all states and international and regional organisations to facilitate the arrest, detention and prosecution of suspected pirates.<sup>46</sup> It is this question of the prosecution of pirate suspects that has now become one of the most pressing for the international community. As one maritime expert noted, ‘legal deterrence is vital – without it the whole fight against piracy is threatened’.<sup>47</sup> How then are the pirates being brought to justice, and with what effect?

## THE QUESTION OF PROSECUTION

Despite increased powers to combat piracy by virtue of the UN Security Council’s resolutions discussed above, and the status of piracy as a crime of universal jurisdiction, states have been reluctant to detain suspected pirates owing to a myriad of legal questions over how to effectively prosecute a suspected pirate.<sup>48</sup> Not only is there the issue of how to legally arrest and try a suspected pirate, given the uncertainty of the international legal framework, the differing domestic legislation of each patrolling state, evidentiary proof challenges<sup>49</sup> and overarching international human rights obligations, but also the question of where an effective prosecution may take place, and how, given the associated logistical and legal burdens of transporting pirate suspects. The predominant approach has been for navies to avoid detaining pirate suspects at all. Alternatively, when suspects have been detained, navies have been forced to release them because of a lack of options for their prosecution.<sup>50</sup> Therefore, with such de facto impunity, Somali pirates may legitimately view the risks

of their activities as insignificant compared with the very high potential financial benefits.

Acknowledging that effective prosecutions and punishment are an important element in deterring piracy, states have sought alternative mechanisms for prosecution. Returning pirates to Somalia and the TFG for trial has generally not been considered viable because of the lack of a functioning judiciary, and concern that the accused would be subject to an unfair trial and other human rights abuses. In a small number of cases, suspects have been transferred to the countries whose navies have detained them, including the Netherlands and the US. However, this approach is generally not preferred because of the expense of transporting and trying a suspect in the arresting state's territory, concerns over human rights obligations and fears that pirate suspects may seek asylum in the country of prosecution, leaving those states burdened with them in the longer term.

As an alternative, states have sought to transfer suspects to other countries in the region for prosecution. Yemen has received more than 20 pirate suspects from international naval forces.<sup>51</sup> The UK,<sup>52</sup> the US, the EU and Denmark<sup>53</sup> have all entered into agreements with Kenya to permit suspected pirates captured by their navies to be tried in Kenyan courts. In return for the promise of prosecuting the suspected pirates, Kenya will receive significant support for the improvement and development of its justice system.<sup>54</sup> These agreements have come under criticism, however, owing to the poor human rights record of the Kenyan justice system itself and the debatable legality of transfers from the capturing states to third-party states under the international law of the sea regime.<sup>55</sup> More than 110 Somali pirate suspects have been delivered to the Kenyan authorities in Mombasa by foreign navies in the past three years, with ten convictions.<sup>56</sup> The France-based legal aid network Lawyers of the World is defending 43 suspects, noting that suspected pirates have no opportunity to hire a lawyer or review the evidence against them.<sup>57</sup> The UK also signed an agreement with the Government of the Seychelles for the latter to accept the handover of pirate suspects.<sup>58</sup> However, the Seychelles was forced to repatriate the 23 Somalis it had been holding on suspicion of piracy for lack of evidence, highlighting yet again the challenges in undertaking piracy prosecutions.<sup>59</sup> There has also been some talk of establishing a special international pirate tribunal; however, this has generally been viewed as a costly and judicially cumbersome option, and has received little support.<sup>60</sup> Recently, however, the Security Council has

given the Secretary-General three months to report on possible options for the prosecution of pirate suspects, including creating a special domestic chamber, a regional tribunal or an international tribunal.<sup>61</sup>

In early 2009, France entered into an agreement with the Puntland authorities to hand over pirate suspects to the Puntland administration for prosecution,<sup>62</sup> apparently satisfied by assurances from the Puntland authorities regarding the treatment of suspected pirates.<sup>63</sup> This agreement challenges the common view that prosecution within Somalia itself is not possible.<sup>64</sup> It also raises a number of questions about Puntland, including the status of its judiciary and legal systems, and its capacity to effectively prosecute suspected pirates. The ultimate question is to what extent this is, or could become, a viable and legally sound option for patrolling states seeking to prosecute suspected pirates. Given that many pirates emanate from Puntland and that Puntland has made widely known its willingness to fight piracy,<sup>65</sup> and in light of the plethora of international commitments being made to the strengthening and stabilising of Somalia, it would seem that engagement with Puntland through financial, technical and other forms of practical assistance could reap potentially significant rewards for all.

## **PUNTLAND STATE OF SOMALIA<sup>66</sup>**

Whereas South Central Somalia has remained embroiled in incessant conflict since the eruption of civil war in 1991, by contrast, Puntland and its neighbour, Somaliland, have both enjoyed relative stability. In 1998, Puntland's leaders declared the north-eastern region of Somalia autonomous, naming it the 'Puntland State of Somalia'. They established a government, headed by the president of Puntland and commenced building a legal system. Unlike Somaliland, Puntland did not seek independence from Somalia, but instead conceived itself as a temporary entity to be incorporated as a federal state into the Republic of Somalia once the present federal government becomes stable and effective.<sup>67</sup>

## **Background to Puntland's legal and judicial systems**

Before the arrival of the British and Italian colonisers in Somalia in the late 19th century, traditional Somali communities were clan-based with a legal structure rooted in the concurrent use of *xeer* and sharia laws. *Xeer* is administered by

traditional elders, whose decisions are reached through consensus. It is transmitted orally from generation to generation and is a dynamic body of law that often varies from region to region. It is strongly male-dominated, and certain elements conflict with sharia and international human rights.<sup>68</sup>

With the arrival of the colonisers came a new system of secular law (both common and civil law systems), leading to a decline in the use of *xeer* in urban areas of Somalia. However, sharia and *xeer* remained the main legal systems of the pastoral and agricultural Somali communities, who constituted the majority of the country's population. In 1960, when the Republic of Somalia gained independence, attempts were made to unify the secular legal systems of the colonisers.<sup>69</sup> The result was criminal and civil codes based on a mixture of common law and civil law codes. Sharia was maintained for family, inheritance and minor civil matters, and *xeer* was recognised as a legitimate option for the settlement of clan disputes.

In 1969, the military took over the Somali government and brought General Mohamed Siad Barre to power. Under his military dictatorship regime, Barre sought to reform the Somali legal system, suspending the 1961 constitution and severely curtailing both sharia and *xeer*. The Supreme Revolutionary Council was given authority for all judicial, executive and legislative functions.<sup>70</sup> The Constitutional and Supreme Courts were temporarily abolished and restrictions were placed on the functions and jurisdictions of the remaining courts.<sup>71</sup> Sharia courts were permitted to function as long as they did not contradict the political and economic directives of the Supreme Revolutionary Council.<sup>72</sup>

With the overthrow of Barre and subsequent disintegration of the central government in 1991, secular law virtually disappeared from use in Puntland. The legal vacuum was filled by *xeer*<sup>73</sup> and sharia, and communities enjoyed relative stability and security, due in large part to the 'good offices' of the well-respected traditional elders.<sup>74</sup>

With the establishment of an autonomous Puntland in 1998, the Puntland Government developed a judicial system founded on the system that had been in place in the Somali Republic before the 1969 *coup d'état*.<sup>75</sup> The court system was composed of four levels: the Supreme Court, located in the capital, Garowe; courts of appeal in each administrative region; and first instance courts at both regional and district levels. The district courts operated two separate primary court sections, one applying sharia (with jurisdiction over family issues, including marriage, divorce, inheritance and child custody) and a secular section with



jurisdiction over minor civil cases and lesser crimes. The regional courts had jurisdiction over all other civil cases and over crimes punishable by imprisonment of more than ten years, or death.

Under Article 32 of the 1998 Puntland Charter ('the Charter'), 'laws and regulations legally enacted by the previous governments provisionally remain in force until they are replaced by new legislation ...'<sup>76</sup> The Charter made the caveat, however, that no earlier laws would be applicable if they contradicted either sharia or other articles of the Charter. The Charter also enshrined commitments guaranteeing universal standards of human rights to all subjects of the law, and the independence of the judiciary.

In April 1999, the Puntland Parliament adopted a new Law on the Judiciary<sup>77</sup> with a view to streamlining the court system. The new law replaced the regional and district courts with a single court of first instance that would hear both civil and criminal cases. The legislation also established a bench of three judges per court – one of a secular legal background and two of a religious background – to decide by majority. As a consequence, the bulk of judges appointed have a background in sharia. In early 2009, of the 25 judges in Puntland, five had university qualifications in law, including one in sharia. The remainder had informal qualifications in sharia only.

In 2001, the Puntland Transitional Constitution was approved, to enter into force after acceptance by a public referendum. The 2001 constitution upheld the independence of the judiciary and the existing court structure. However, no referendum was held and in mid-2009, the parliament approved an amended constitution, which is now provisionally in force pending a referendum. This new 2009 Provisional Constitution prohibits any law or culture contrary to Islam.<sup>78</sup>

Despite the establishment of a formal legal system in the late 1990s, there has been a continued reliance by the population upon traditional dispute-resolution mechanisms in preference to the perceived 'foreign' secular system. Courts are seen as cumbersome, slow, corrupt and geographically inaccessible. Traditional mechanisms, by contrast, are viewed as more accessible, affordable, timely, and able to offer more flexible and culturally relevant remedies. The role of alternative dispute resolution is even reflected in the 2009 Provisional Constitution, which states that traditional elders should be called upon to advise on and/or resolve 'disputes and misunderstanding that threaten the peace among clans or sub-clans'. In addition, any decision reached by traditional elders using

‘traditional norms and methods, shall be recognised as valid by all authorities [who] should offer their help to traditional leaders in the implementation of their decisions’. These decisions must ‘be registered at the Magistrate Court in the district where the case was settled’.<sup>79</sup> In practice, judges often refer cases to traditional elders, especially when cases concern disputes between members of a family, in-laws and extended family. But in cases in which the elders cannot reach a conclusion and the concerned parties submit a request to the court to deal with the case, then the case will follow the normal judicial process.

## Current general challenges facing Puntland’s judicial system

In January 2009, Abdul Rahman Mohamed Farole was elected president of Puntland. During his candidacy he declared his commitment to eradicating piracy. He quickly announced an anti-piracy campaign in Puntland, supported by the local religious community and involving a two-tier action plan to raid pirates on land and to warn the public of the negative effect of piracy in messages broadcast by radio and through mosques.<sup>80</sup> Since February 2009, Puntland security forces have undertaken several raids on pirate havens in the region,<sup>81</sup> arresting suspects and seizing a mother ship, five speedboats, equipment, weapons and ammunition in August 2009.<sup>82</sup> By mid-2009, Farole claimed that some two hundred pirates had renounced piracy through the encouragement of Muslim clerics and with support from the government.<sup>83</sup> In 2010 allegations surfaced that in some cases Puntland authorities were financially benefiting from piracy activities and may be protecting certain pirate leaders.<sup>84</sup> This is perhaps unsurprising given the overall level of corruption in Somalia<sup>85</sup> and the generally weak position of the authorities in contrast to the strength of the clan system, although it remains unclear the exact extent of these claims.

The Puntland authorities have also acknowledged the need to support the legal system to ensure pirate suspects are properly dealt with once detained. During a visit to Kenya, President Farole noted, ‘We [the Puntland administration] have started to increase ... our capacity to bring pirates to justice ... We are strengthening our legal system, by employing more judges and increasing their salaries.’<sup>86</sup> Certainly, increasing staffing and salaries, which in early 2009 were pitifully low – at \$80 per month for a first instance court judge and between \$200 and \$400 per month for a Supreme Court judge – is a positive start. But

far more is required to adequately address the deficiencies and challenges of the Puntland judicial system.

### *Judicial staffing and resources*

The Puntland judiciary is hampered by a shortage of not only qualified judges, but also court support staff. Most court registrars, for example, are educated to junior secondary-school level at most – and generally lower – and any professional training is usually ‘on the job’. The only female court registrar in fact trained as a nurse. Staff are poorly and irregularly paid. Throughout 2008, reports were common of judicial staff and other civil servants waiting for several months at a time to be paid their minimal salaries,<sup>87</sup> although under the new president it appears this situation is now beginning to improve.<sup>88</sup>

Puntland’s courts are ill equipped and under-resourced. Almost all have inadequate electricity supplies and plumbing. They lack basic office equipment and legal resources, such as legislation, case law or reference material. The *Official Gazette* has not been published since 2001. There is no centralised case filing system, meaning records of case statistics and judicial decisions are maintained in an ad hoc manner in each individual court, thus hampering attempts to monitor or analyse judicial proceedings. Only the Primary Court of Garowe has standard templates for issuing summons, warrants, orders and judgments, although these are frequently poorly completed and lack important information. Court compounds lack adequate security, holding cells for suspects, waiting rooms for visitors and information desks where citizens can obtain information about hearing schedules, the progress of cases or general court processes and documentation. These resource gaps create poor working conditions and reduce citizens’ confidence in the court system, thus compounding the difficulties in accessing the courts and the necessary legal information for bringing a case.

### *Independence of the judiciary*

Despite commitments in the Charter and Provisional Constitution, the independence of the judiciary is frequently compromised. Judicial appointments in recent years have tended to be clan-based and authorised by the president and parliament without the involvement of the Higher Judicial Council (the body designated by law to oversee judicial appointments). Appointed judges lack the requisite experience and qualifications, which has a negative impact on the quality of decision-making at every level of the judicial system. Judges

who challenge the administration or law-enforcement institutions risk being removed from their positions. For example, regional security committees, which consist of members from local government and security forces have the administrative power to detain persons deemed to be a threat to the security of the region, but any administrative detentions must be sanctioned by the courts. Unfortunately, local lawyers confirm that judges rarely challenge the detentions and convictions of people arrested by these committees out of fear for their own positions. The result is a large number of persons detained without any evidentiary grounds and for indefinite periods of time.

### *Human rights violations*

Unlawful and indefinite detention is commonplace in Puntland. By law, a suspect must be either charged or released within 48 hours of their detention. However, in practice, criminal procedures are frequently not respected by the police and procedural violations are rarely challenged by judges. Officially, lawyers are refused access to police cells to meet with detainees, making it extremely difficult to obtain information about people being unlawfully and arbitrarily detained. Information gathered tends to be on an ad hoc basis through personal relations between lawyers and police commanders.

Internally displaced persons from the south or asylum seekers who commit serious crimes are frequently held in Puntland prisons indefinitely. These detainees generally have sentences that involve both prison terms and the payment of compensation, or blood money (*diyah*), to their victims' families or clans. *Diyah* is calculated in the currency of camels, but in practice is paid in cash.<sup>89</sup> For those with no family or clan in Puntland, raising the *diyah* is virtually impossible. Therefore, they find themselves detained indefinitely, even after completing their prison sentence, justified by the authorities on the grounds that the detainee would face possible retribution by the aggrieved clan, potentially resulting in serious harm or even death. Their continued detention is, therefore, deemed to be in the prisoner's best interests.

There are also cases of persons detained on suspicion of committing serious crimes, such as homicide, who remain on remand indefinitely because no judge will hear the case for fear of retribution from the accused's clan. There is a high proliferation of weapons in Puntland and frequently citizens are better armed than the police. Courts receive virtually no security protection, and in areas where clan relations are very strong, especially in rural areas, the security threat

is a real constraint on the ability of the police and courts to enforce the law and judicial decisions. Prisoners regularly escape from prisons and are infrequently recaptured. The escapes are often facilitated by pressure from clan members brought to bear on the ill-equipped and poorly paid custodial corps and police, and by bribery.

In a reverse situation, judges may also face pressure from families to authorise the detention of a family member with whom the family is unhappy. Judges who comply do so out of fear for their personal safety, for bribes or, in some cases, purely because they have a poor understanding of the applicable laws and procedures.<sup>90</sup>

### *Legal representation*

By law, a defence counsel must be appointed by the state to defendants unable to afford a lawyer and who face charges for which the sentence is 20 years' imprisonment or longer, or death. In practice, however, the state rarely, if ever, fulfils this obligation. In addition, there are fewer than 20 practising lawyers in Puntland (approximately one lawyer for every 150 000 people); they eke out a meagre existence representing the few clients who can afford their services.

### *Legislative framework*

Since its inception in 1998, the Puntland administration has passed very little new legislation. Therefore, in accordance with the Charter, the primary laws in force are those Somali laws passed between 1960 and 1969, as long as they were legally enacted, consistent with sharia and respect principles of the Universal Declaration of Human Rights and provisions of international treaties to which previous legitimate Somali governments became party. Recognition must also be given to 'traditional norms that do not contravene Islamic Sharia, the [c]onstitution and the [l]aws of the Puntland State'.<sup>91</sup>

The challenge of producing a viable, harmonised, realistic system of jurisprudence that adequately reconciles existing secular laws with sharia and the *xeer* system, as well as ensuring compliance with universal human rights norms, is immense and requires a level of expertise not currently available locally. Nevertheless, this challenge will become increasingly important given the recent decision by the TFG to make sharia the basis of the entire country's legal system. As the Charter and the Provisional Constitution already give primacy to sharia, the immediate impact of this decision will be minimal.<sup>92</sup>

However, future interventions to strengthen and support the Puntland judicial and legislative systems will need to address this challenge as a priority.

## PROSECUTION OF PIRATES IN PUNTLAND

Despite these institutional weaknesses and the poor human rights record of the Puntland judicial system, which give rise to a well-founded concern that the system is unable to guarantee a fair and proper investigation and trial, state navies patrolling the region have been handing captured pirate suspects over to the Puntland authorities for prosecution. The French navy alone has handed over some sixty suspects<sup>93</sup> and other naval forces claim to have handed over at least 125 more to the Puntland authorities.<sup>94</sup> The Bosaso Prison has been steadily filling up with pirate suspects.<sup>95</sup> In April 2009, the first of a number of pirate trials was held within the confines of the prison itself (allegedly for security reasons). Local lawyers reported that 53 pirates received three-year prison sentences for crimes related to the unlawful possession of weapons, but that there was insufficient evidence to link them directly to piracy activities. All accused were represented by either a private local lawyer or a United Nations Development Programme-sponsored legal aid lawyer.<sup>96</sup> A further 19 accused were sentenced to 20 years' imprisonment for involvement in pirate activities. They were not represented by a defence counsel.

### Available legislative tools for prosecution

Somalia ratified the UN Convention on the Law of the Sea (UNCLOS) on 24 July 1989, but no specific implementing legislation has been subsequently passed in any region of Somalia. Consequently, the most topically relevant Somali domestic law is the outdated Somali Maritime Law 1959, which remains in force in Puntland.<sup>97</sup> Article 205 (Piracy) relates to attacks against a Somali or foreign ship by the crew or master of the vessel itself. It is, therefore, not applicable in situations where pirates attack vessels other than their own. In the absence of any other specific legislation addressing the act of piracy in the present form, sources in Puntland report that suspects have been arrested and charged under Articles 222 (Devastation, Pillage and Slaughter); 322 (Association for Purpose of Committing a Crime); 324 (Devastation and Pillage); and 485 (Extortion) of the Somali Penal Code 1963. Newspaper reports quoting local officials also

suggest the application of article 486 (Detention of a Person for the Purpose of Robbery or Extortion).<sup>98</sup> However, it is questionable whether these articles are able to address the various elements of the crime of piracy adequately and appropriately. Article 222, for example, only applies to persons committing an act of pillaging in the territory of the State of Somalia for the purpose ‘of making an attempt against the security of the State’. This article would, therefore, not appear to apply when the pirates act purely for personal gain on the high seas. Article 486 refers to the detention of individuals for ‘wrongful gain’, but makes no mention of a situation whereby a vessel is detained for the same purpose. In the Somali context, ransoms are almost always paid by the shipping and insurance companies for the release of their vessels,<sup>99</sup> rather than states paying for the release of the hostage crews.

Puntland’s legislation therefore appears insufficient to adequately and fairly address the various criminal aspects of the act of piracy and, therefore, hinders the ability of prosecutors to frame suitable charges for prosecutorial success. It is crucial, therefore, that attention is given to the development of domestic legislation,<sup>100</sup> including a review of Somalia’s current and potential international law obligations under UNCLOS and other relevant treaties, such as the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988), to which Somalia is not yet a party.<sup>101</sup>

## Further challenges to successful prosecution

Challenges of prosecution are not, however, limited to the lack of an applicable and effective definition of ‘piracy’ under law.

Issues of arrest and detention, and conformity with Puntland/Somali law must also be reviewed. As noted in the general challenges section above, Puntland legislation permits the detention of a suspect for a maximum of 48 hours before being brought before the courts. However, pirate suspects detained at sea may be held for many days or even weeks before they can be brought to shore. Furthermore, arresting officers are generally foreign naval officers with no training in Puntland/Somali domestic law, including, for example, necessary evidentiary requirements. These challenges could be addressed both through the review of the relevant domestic legislation suggested above and through, for example, ship rider agreements that would enable Puntland law-enforcement officers to be present on naval ships to ensure that the arrest and detention of

suspects is undertaken in compliance with Puntland legal standards. This also requires Puntland law-enforcement and judicial officers to be adequately trained not only in any legislative developments, but also in the highly specialised field of maritime law in order to ensure any prosecutions initiated meet the domestic and international standards for a fair trial.

Currently, the deficiencies in the legislation coupled with the general and specific challenges discussed above, and the added pressure of formal commitments to foreign states (such as France) to ensure suspected pirates face trial, make the likelihood of fair trials in accordance with internationally accepted standards highly improbable. Puntland does, however, have a judicial system that is functioning in some form, and successful prosecutions in Puntland, the home of many pirates, would be a real deterrent to ongoing pirate activities. Therefore, as part of the broader international response to addressing piracy, it is crucial that the UN, donors and others continue to support and promote the strengthening of governance and rule of law institutions in Puntland. At the same time, the government of Puntland should also take advantage of the current international focus to mobilise funds and expertise so as to undertake comprehensive legal and institutional reforms that address the fundamental problems of poor governance, corruption and lack of rule of law in Puntland.<sup>102</sup> These efforts will provide not only the short-term benefit of improved and increased opportunities for the prosecution of pirates in their home country, but also the longer-term benefits of stabilising and strengthening the region through ongoing peace-building initiatives.

## CONSIDERATIONS FOR FUTURE INTERVENTIONS

The international response to the piracy problem has evolved from its initial focus as a purely military reaction in late 2008 to an acknowledgement of the need for a multi-pronged approach that involves various land-based measures to tackle the underlying problems of ongoing conflict, lack of central governance, failed public institutions and lack of sustainable livelihoods in Somalia.<sup>103</sup> However, finding the solution to these decades-old problems is not easy and requires extensive and long-term engagement, which is costly in terms of both time and resources. In April 2009, at an international donor conference in Brussels, donor countries pledged more than \$213 million to bolster security in Somalia. Funds will go towards supporting the African Union Peacekeeping



Mission in Somalia (AMISOM) and strengthening local security forces.<sup>104</sup> However, significant gaps remain in the European, US and UN strategies towards Somalia, with policies still disproportionately focused on Mogadishu, at the heart of the conflict in South Central, and distorted by an exaggerated perception of Somalia as chaotic, utterly failed and lawless.

The limited engagement to date with the Puntland government<sup>105</sup> restricts the understanding of the international community of the governance situation in Puntland and, therefore, its ability to implement effective measures in Puntland to counter piracy. As more funds are committed to addressing the situation in Somalia and pressure mounts to halt piracy, greater attention must be paid to the role of Puntland and the interventions needed to create a stable environment conducive to respect for and adherence to the rule of law. Therefore, it is useful also to address a number of important considerations that should guide the development of future interventions in Puntland by international actors such as the UN and donor countries.

Firstly, although pledges of support to strengthen the local security forces is one important aspect of bringing stability to Puntland, security forces that act with impunity and without adherence to the rule of law risk being no more effective than existing militias. Attention must be given to providing adequate checks and balances to the exercise of force through strengthened rule of law and justice mechanisms, particularly the judiciary. Challenges for Puntland currently include the disconnect between the judiciary and the police, resulting in the inability of the judiciary and the private legal profession to carry out their watchdog role of holding law enforcers accountable for their treatment of suspects in detention and ensuring all persons receive fair and due process during their detention and trial. This situation has arisen in part from a lack of understanding of the basic criminal legislative system, including criminal procedures, court procedures and evidentiary requirements, by both the judiciary and law enforcers, as well as the overall weak institutional status of the judiciary. Strengthening the judiciary through improved court management systems, equipment and resourcing, as well as training staff in the judicial and law enforcement institutions alike and the provision of adequate security for members of the judiciary, will contribute to supporting the role of the judiciary within the community and play a vital part in developing improved working relations between the judiciary and the law enforcement institutions.

Secondly, although engagement with the Puntland authorities and institutions in strengthening the judicial system is necessary, it must also be acknowledged that Puntland's society is based on the structure of the clan and has maintained relative stability in the past decade because of the leadership role of its elders. Much of the population today still view formal government and its institutions with suspicion and distrust, based on past experiences of the Barre regime and the too often well-founded belief that the governing elite are corrupt and operate only to promote their own interests.<sup>106</sup> Allegations also exist that people from all sectors, including government, law enforcement and clans themselves, have been responsible for human rights abuses of Somali citizens for which they have generally not been held accountable.<sup>107</sup> Given that the primary responsibility for law enforcement and upholding justice lies with the government, care should be taken when funding and supporting a government and its institutions to ensure that recipients are held accountable for not only the way in which funds and resources are used, but also for ensuring that they act in accordance with, and promote adherence to, basic human rights principles and the rule of law. For example, the Puntland authorities must be brought to task for the unlawful actions of the government-sanctioned regional security committees, which arbitrarily and illegally detain innocent individuals with impunity.

To be effective, any institutional engagement must be coupled with transparent initiatives to engage and strengthen local communities, and which address their particular security concerns, acknowledge existing community rule-of-law mechanisms for maintaining order and address disputes and wrongdoings. Project development should not ignore the fact that in Puntland, court trials involving serious criminal cases are still the exception, not the norm. It is necessary to raise awareness and demystify the role of the formal systems, and examine ways in which formal and informal systems of law and justice can be better integrated and harmonised to enhance accountability of government to its citizens and together produce an environment conducive to respect for the rule of law and justice.

In tackling piracy, the Puntland government, UN agencies and donors face pirates who have brought huge quantities of money to the floundering Puntland economy. Entire villages along the north-eastern coast of Puntland have become economically dependent upon the successful hijacking and ransoming of vessels. Somalis ashore, faced with destitution and starvation, have been

willing to provide sanctuary and support for pirate activities in return for the hope that they too will receive some economic benefit.<sup>108</sup> Only comprehensive programmes that address the development and livelihood needs of the coastal communities by creating employment opportunities for Puntland's youth and supporting the Puntland government to strengthen the security and rule of law institutions with the full support and engagement of local communities will be able to truly bring an end to piracy in the region.

Finally, initiatives to strengthen justice and the rule of law in Puntland must fully acknowledge the role of sharia and *xeer* in Puntland, and the status of Somalia as an Islamic state.<sup>109</sup> To date, very few donor resources have been devoted to examining sharia and the informal justice system. The reasons for this include the overall limited available resources, which are generally consumed by the immense needs of the formal system; the concerns that sharia and *xeer* violate international human-rights standards, particularly the rights of women; that the issues are too sensitive to be addressed openly, especially when agencies and individuals can face permanent expulsion from the region if they challenge the government; and the inadequate understanding of the way in which sharia and *xeer* are being interpreted and applied throughout the Puntland region, with the result that the needs and challenges facing the informal justice system can be neither adequately assessed nor addressed.

Sharia and *xeer* play a significant role, formally and informally, in the social, cultural and legislative contexts of Somalia. Given that the effectiveness and sustainability of rule-of-law programmes depend upon providing assistance that is appropriate to the country, future programmes must address the role of sharia and *xeer* and help the government develop strategies for their appropriate interpretation and application in Puntland. There must be sufficient technical support provided to the government, including experts in the field of sharia, to examine the existing legal structures and legislation, including the obligations under the Charter and the Provisional Constitution, and engagement with traditional elders and religious leaders to ensure a harmonised approach is taken to the application of sharia within the formal and informal systems of law in a way that also adheres to basic principles of international human rights. Properly addressing these issues will provide Puntland, and ultimately Somalia, with the best opportunity to transform itself into a state that has a holistic, fair and transparent system of law that meets the cultural, religious and practical needs of its citizens.

## CONCLUSION

Currently, an effective deterrent to pursuing piracy as a means to economic survival does not exist for the average Somali. Until such a deterrent is present, there can be no expectation that the rate of piracy incidents off the coast of Somalia will decrease in a meaningful way. However, as states consider various solutions, involving military responses at sea and security interventions on land, attention must also be paid to a previously almost unknown region of Somalia that may in fact have the ability to become a key player in the fight against piracy.

The Puntland State of Somalia is a relatively stable region with an existing judiciary, but it requires considerable support to become an effective, fair and fully functional institution that can bring pirates to justice in a manner that garners the respect and support of its citizens and the world at large. Puntland cannot meet the challenges facing its justice and security sectors alone. Piracy has provided a timely opportunity for the international community to engage with Puntland. By means of well-thought-out, pragmatic, holistic interventions there is a real possibility of making significant and meaningful progress in not only the fight against piracy, but also the development of the world's newest Islamic state in such a way as to substantially improve the lives of 3 million Puntlanders.

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- 92 Somalia: Puntland Parliament to debate 2009 budget, Garowe Online, 23 April 2009, [http://www.garoweonline.com/artman2/publish/Somalia\\_27/Somalia\\_Puntland\\_Parliament\\_to\\_debate\\_2009\\_budget.shtml](http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Puntland_Parliament_to_debate_2009_budget.shtml) (accessed 7 September 2009).
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- 94 Piracy on high seas begins on land, defense official says, American Forces Press Service, 5 March 2009, [http://www.navy.mil/search/display.asp?story\\_id=43185](http://www.navy.mil/search/display.asp?story_id=43185) (accessed 30 August 2009); Somali pirates jailed for life, BBC News, 28 April 2009, <http://news.bbc.co.uk/2/hi/europe/7371238.stm> (accessed 30 August 2009); Puntland court jails 37 Somali pirates, Agence France-Presse, 15 April 2009, [http://www.google.com/hostednews/afp/article/ALeqM5gJCTKa\\_pRT-W3hzyfp9rfLGSuIvg](http://www.google.com/hostednews/afp/article/ALeqM5gJCTKa_pRT-W3hzyfp9rfLGSuIvg) (accessed 30 August 2009).
- 95 There are three prisons in Puntland, but only the Bosaso Prison is functioning. It is seriously overcrowded and conditions are dire.
- 96 UNDP runs a Rule of Law and Security Programme in Somalia, which includes supporting a legal aid centre with five lawyers in Puntland.
- 97 Puntland Charter 1998, Article 32.
- 98 Somali pirates jailed for life, BBC News. Note also that Article 486 (Detention of a person for the purpose of robbery or extortion) of the Somali Penal Code 1963 states: '1. Whoever detains a person with the object of obtaining for himself or for another wrongful gain as the price of releasing him, shall be punished with imprisonment [96 P.C.] from eight to fifteen years and with fine [97 P.C.] from S.So.10 000 to 20 000. 2. With the terms of imprisonment [96 P.C.] shall be from twelve to eighteen years where the offender achieves his object.'
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- 101 Somalia has not ratified the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, the main purpose of which is to ensure that appropriate action is taken against persons committing unlawful acts against ships.
- 102 International Crisis Group, Somalia: the trouble with Puntland.
- 103 United Nations Security Council, Report of the Secretary General on the situation in Somalia, 59.
- 104 See, for example, Donors pledge money to combat piracy, *Euronews*, 23 April 2009, <http://www.euronews.net/2009/04/23/donor-pledge-money-to-combat-somali-piracy/> (accessed 30 August 2009).
- 105 International engagement by UN agencies, donors and NGOs with Puntland's judicial and security institutions has occurred despite the lack of official international recognition of the status of the Puntland government. In particular, UNDP Somalia has a rule of law and security programme in Puntland. However, when in October 2008 suicide bombers attacked the UNDP compound in Hargeisa, Somaliland, all UN staff were relocated from Somalia as a security precaution and programmes were drastically scaled down.
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# 9 Water conflict resolution and institution building in the Nile Basin

TESFAYE TAFESSE

## INTRODUCTION

The Nile is a common property and resource that belongs to all the river's riparian states on an equal basis. The proper utilisation and management of the Nile Basin's resources require coordination, integration and mutual agreement for the benefit of all the peoples living in the basin. Erlich et al point out that 'cooperation and a shared concept of common Nile discourse amongst Nile co-basin countries are not only an imperative but the only road to survival'.<sup>1</sup> There is hence a dire need to come up with a cooperative framework for the entire Nile Basin that has its own legal and technical jurisdiction in order to implement a fair and equitable entitlement of the water resources of the Nile. However, this can only be achieved if all the riparian states of the Nile are fully and equally involved in an institution-building mechanism and policy formulations. One should also refrain from over-extending the roles of international organisations and donor agencies in bringing about the desired basin-wide cooperation. They should play no more than a facilitative and supportive role, i.e. bringing the riparian states together to promote cooperation. If external efforts are made prematurely to bring some or all of the protagonists together or to devise

policies without the full participation of the riparian states, the endeavour would undoubtedly be doomed to fail. Although the task of finding a cooperative solution to transboundary river usage is time consuming and arduous, the Nile riparian states themselves need to sit down, discuss, seek, initiate, lead and effect an equitable allocation of the waters of the Nile.

As evidenced by cases from other transboundary river basins, unless a basin-wide cooperation exists peace would become elusive and suspicion would rage, driving each riparian state to conduct an egocentric water race.<sup>2</sup> Such a situation would, in turn, deter all the riparian states from undertaking joint measures in vital issues such as the conservation of existing water sources and the reclamation of new ones. The problem that has persisted for a long time in the Nile Basin lies squarely with the downstream states – mainly Egypt, but to some extent also Sudan – which have blocked all routes leading to cooperation by insisting on maintaining the status quo ante at all costs. Notwithstanding its own situation as a victim of the status quo, Ethiopia is also partially to blame for the previous no-win situation and for stalling agreements on the utilisation of the Nile waters. The successive Ethiopian governments should have used all available channels, such as participation in the various Nile-based organisations that they previously avoided or in which they preferred to remain merely as observers, to hammer out a possible conclusion on the future use of the Nile waters. Instead, and regrettably, they have preferred to give a strong message to the downstream users, often claiming that they can do whatever they wish with the portion of the Nile water that flows in their own territory with or without the consent of Egypt and Sudan.

As a result of the divergent interests of the upstream and downstream states, a lack of cooperation has remained the modus operandi along the Nile for too long. However, the advent of the Nile Basin Initiative (NBI) in 1999 opened up a cooperative path by initiating confidence-building measures that would, among other things, include the circumvention of suspicions, hostilities and mutual perceptions of threat. Many authors have reiterated that confidence building is a key to the successful future river management of shared-water basins. It is worth quoting what one author stated on this point:

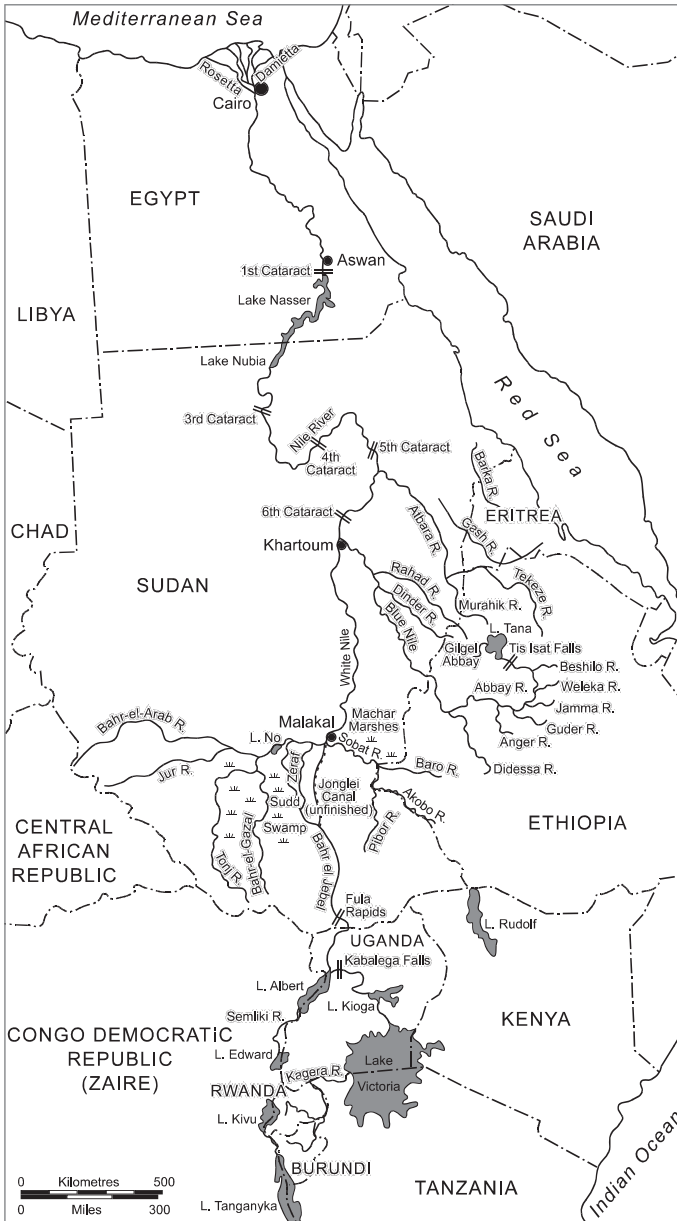
... working together will build confidence, which will be further enhanced when the projects are successfully managed together. This will thus create a positive spiral. The ambition is to reach a certain level where a country

'can afford' to invest trust in the region and be confident that it will pay off. Ultimately, the level of mutual confidence will be reached, which has been labelled as a 'security community'.<sup>3</sup>

The Nile Basin states also have a lot to learn from their counterparts in other regions of the world that share transboundary rivers. Clues to fundamental questions, such as what ways and means other shared river basins have employed to strike a deal in sharing their water resources, and how they have come up with basin-wide cooperative frameworks, could serve a good purpose in alleviating the persistent problems in the Nile Basin. For instance, the problems encountered by the Mekong, the Ganges, the Indus and the Okavango rivers and the modus vivendi that they have secured could be scrutinised carefully and adapted to the specific realities of the Nile Basin.

In addition to the standard flow of the Nile, which is estimated at 84 billion m<sup>3</sup> of water per year, there are further existing opportunities, which, if exploited, could add a significant amount of water to the Nile Basin. A case in point is the possibility of exploiting the four major swamps that are found within the basin, which, if reclaimed, could yield a total of 27,41 billion m<sup>3</sup> of water annually.<sup>4</sup> The four swamps include the Sudd and Bahr el-Gazal in the southern part of Sudan, which could supply as much as 18,23 billion m<sup>3</sup> of additional water per year; the Machar marshes along the Ethio-Sudan boundary, which could discharge 4,14 billion m<sup>3</sup> of water; and the Kioga Swamp in the equatorial lakes region, which could add 5,04 billion m<sup>3</sup> of supplementary water per year.<sup>5</sup> About two-thirds of this potential extra water supply could satisfy the water demands of the hitherto disadvantaged upper riparian states of the basin at least partially (refer to the Nile drainage pattern in Figure 1). This may hence be one way in which the downstream states could strike a deal with Ethiopia and the equatorial riparian states. It should, however, be noted that the realisation of such projects needs, among other things, basin-wide cooperation, finance, environmental scrutiny and, above all, the conviction and consent of the local population that inhabit these areas and eke a living from them. One should be fully aware that the exploitation of these potential sources of water may have detrimental effects on the biodiversity of the Nile Basin and the lives of the population. A balancing act is required between water saving and reclamation on the one hand and the environmental and social consequences that they may incur on the other.

Figure 1 The Nile drainage basin



Source Prepared by the author

This chapter aims to appraise the previous moves towards Nile Basin cooperation and institution building. In so doing, it tries to explain the rationale for the establishment of the institutions and cooperative endeavours, the problems that they have encountered while trying to create the envisaged cooperation and the reasons for their lack of success and eventual annulments. In addition, the study reviews the on-going NBI and the Cooperative Framework Agreement (CFA) in the context of the degree of strength they possess in breaking the stalemate in the basin. The chapter wraps up its discussion by assessing the current state of affairs and indicating future directions.

## THE EVOLUTION OF NILE BASIN INSTITUTIONS

Various attempts have been made over the last four decades to achieve basin-wide cooperation by setting up several institutions whose aim has been to coordinate the behaviour of the Nile riparian states. This section provides an analysis and critical assessment of the institutions that have been developed in the Nile Basin to date.

### Hydro-meteorological survey of the Equatorial Lakes (Hydromet)

Hydromet was the first Nile-based institution. Formed in 1967, Hydromet embraced some, if not all, of the Nile riparian states. As its name implies, the organisation's original aim was to undertake a hydro-meteorological survey of the equatorial lakes, including lakes Victoria, Kioga and Albert. The founding of the programme can be traced back to the sudden and unpredictable increase in rainfall in the equatorial lakes region, which caused flooding to the shores of the lakes and the wetlands of southern Sudan.<sup>6</sup> In order to mitigate the effects of this and similar natural calamities, the World Meteorological Organization (WMO) proposed the establishment of a hydro-meteorological project and submitted it to the United Nations Development Programme (UNDP) for funding.

The main objective of the programme was to collect and analyse the hydro-meteorological data of the equatorial lakes in order to derive the water balance of the equatorial Nile catchment, and possibly for prognostic purposes. All the Nile riparian states save Ethiopia and the Democratic Republic of Congo (DRC) joined Hydromet. The absence of volumetric water allocations in the objectives

of Hydromet prompted Ethiopia to distance itself from the organisation for the first four years, but it joined later as an observer in 1971. The DRC followed suit and joined the organisation as an observer in 1977. Hydromet was financed by the UNDP's special fund and executed by the WMO for the first two phases, i.e. from 1967 to 1982, and later by the riparian states' own fund until its annulment in 1992. In order to carry out Hydromet's planned activities, the executing agency, namely WMO, submitted its plan of operations to the UNDP. The latter accepted the plan and endorsed about \$18 million for the implementation of the projects.<sup>7</sup> A technical committee was set up in Entebbe, Uganda, in 1968 to organise and coordinate the survey operations in the equatorial lakes region. Preliminary work began with the installation of numerous collecting stations in and around the equatorial lakes region.<sup>8</sup>

Not only Ethiopia, but also the equatorial riparian states, on whose territory most of the activities were to be implemented, remained suspicious of the motives and the outcome of the downstream-dominated Hydromet initiative. As a result, they showed a lukewarm interest in the project's activities from the very day of Hydromet's inception. They were of the conviction that the establishment of Nile-based organisations, such as Hydromet and the envisaged Nile Basin Commission, would 'be dominated by Egypt and the Sudan by virtue of their historic and technical experience and their political and economic power'.<sup>9</sup> Side by side with this, however, four of the six equatorial riparian states, namely Burundi, Rwanda, Uganda and Tanzania, formed their own organisation that could enable them to manage and develop the Kagera River Basin. This may have been done with the intent to thwart or sidetrack the ambitions of the downstream riparian states. In any case, as confirmed by Collins, 'most of the planned projects that were proposed by the Hydromet, except the generation of some hydrological data, remained far from being realised'.<sup>10</sup> As stated by Tafesse, 'suspicions and lack of trust amongst the Nile riparian states, the non-membership of principal riparian states such as Ethiopia and lack of confidence-building measures by the downstream states' could be singled out as the underlying factors that deterred the implementation of the planned Hydromet projects.<sup>11</sup>

## Undugu

Hydromet was succeeded by the formation of Undugu (Swahili for brotherhood) in Khartoum, Sudan, in 1983 under the aegis of the Organisation of



African Unity (OAU). Undugu drew its members from six Nile riparian states: Egypt, Sudan, Uganda, Rwanda, Burundi and the DRC, and one non-riparian neighbouring state, Central African Republic. Ethiopia, Tanzania and Kenya opted to distance themselves from the group and chose, instead, to remain as observers. The objective of the Undugu grouping had been to forge cooperation in areas of infrastructure, the environment, culture and trade. However, as stated by Bram, the grouping was disbanded before achieving what it intended.<sup>12</sup> The member states of Undugu spent most of their time organising and attending conferences and ministerial meetings that bore no fruit in bringing about the desired results. In the opinion of the author, the failure of Undugu can be attributed to two factors: firstly, the non-membership of certain Nile riparian states and, secondly, the digression of its objectives from the central issue of water allocation.

## Technical Cooperation Commission for the Promotion and Development of the Nile (TECCONILE)

This organisation was formed as an extended version of the earlier Hydromet programme through the agreements reached by the Nile Council of Ministers of Water Affairs (Nile-COM) in 1992 in Kampala, Uganda. Six of the ten Nile riparian states, namely DRC, Egypt, Rwanda, Sudan, Tanzania and Uganda, became members, while the remaining four co-basin states, Kenya, Burundi, Ethiopia and Eritrea, opted to participate as observers.

Like its predecessors, TECCONILE was first concerned with issues regarding the environment and water quality control. Over time, however, an equitable entitlement of the Nile waters was included for the first time as an objective when the basin's functionaries drafted and submitted a Nile River Basin Action Plan (NRBAP) in May 1995.<sup>13</sup> NRBAP contained 22 project proposals, which needed a total sum of \$100 million to implement.<sup>14</sup> Certain donor agencies showed willingness to fund some, if not all, of the projects that had been earmarked by the NRBAP.<sup>15</sup> The World Bank was one of the organisations that expressed an interest in coordinating and facilitating the process of mobilising external support for the earmarked projects. Similarly, the UNDP, the Food and Agriculture Organization (FAO) and the United Nations Environment Programme (UNEP) showed willingness to finance some of the planned projects. The FAO, for instance, secured \$5 million from Italian and Japanese

sources to top up some of the intended projects. The Canadian International Development Agency (CIDA) also confirmed its commitment to fund the institutional strengthening of TECCONILE.

In spite of these donor commitments, not all of the planned projects came to fruition, for two reasons. Firstly, not all of the promised funding was secured and, secondly, the money that was actually raised was too little to cover the costs of the intended projects. Under these circumstances the unfinished work of TECCONILE, particularly the pending projects, was ceded to the successor organisation, the Nile Basin Initiative (NBI).

Another interesting initiative undertaken by TECCONILE was the inception of the Nile 2002 Conferences in 1993.<sup>16</sup> The conferences have created a multidisciplinary, albeit informal, forum for an exchange of views by academics and practitioners on issues related to shared river basins in general and the Nile water resources in particular. The Nile 2002 Conferences were held at different venues within the basin. The first conference took place in Aswan, Egypt, in 1993; they then continued annually – in Khartoum (Sudan), Arusha (Tanzania), Kampala (Uganda), Addis Ababa (Ethiopia), Kigali (Rwanda), Cairo (Egypt), Addis Ababa (Ethiopia) and Nairobi (Kenya). The routinely scheduled formats of the conferences included country papers, selected keynote addresses and presentations of papers dealing with various issues concerning the Nile Basin, including, but not restricted to, hydrological, meteorological, legal and hydro-political issues. The fact that the conferences created a forum for scholars, opinion makers, politicians and other concerned citizens to develop common understandings of the water problems in the Nile Basin, and the opportunity to indicate possible solutions, is a welcome sign and a positive step forward that must be encouraged to continue. The conferences sensitised to a certain degree the basin states and international organisations alike to the extent of the problems associated with the utilisation of the Nile's water resources.

## The Nile Basin Initiative (NBI)

The NBI was launched as a successor to TECCONILE in Dar es Salaam, Tanzania, in February 1999. The fact that the NBI contained the issue of water allocation in its agenda from the very day of its inception induced the otherwise non-conformist riparian states, such as Ethiopia, to become fully-fledged members. Ethiopia has long called for negotiations on water allocations to be

included in the cooperation process, which, in effect, has become an essential condition for its participation in the NBI as a full member. One can, therefore, consider such a move as a tipping point in Ethiopia's position in the hydro-political relations of the Nile Basin. Be that as it may, all the Nile riparian states – save Eritrea – have become members of the NBI.<sup>17</sup> In a dramatic shift from its confrontational and gate-keeping role, Egypt has also agreed to start negotiations for the realisation of a legal and institutional framework for the Nile. The establishment of the NBI and the subsequent founding of the Eastern Nile Subsidiary Action Programme (ENSAP) and the Nile Equatorial Lakes Subsidiary Action Programme (NELSAP) are testimonies to this. Through these programmes the downstream riparian states have given some confidence and a glimmer of hope to the hitherto disadvantaged upstream riparian states.

In the opinion of the author, three factors have been responsible for Egypt's policy shift on the Nile: firstly, pressure from third parties, such as the World Bank and UNDP, to cooperate; secondly, threats from upstream riparian states, particularly Ethiopia, to harness the Nile waters unilaterally; and, thirdly, the appointment of a well-experienced and pragmatic Egyptian Minister of Water and Irrigation, Abu Zeid, who has made a great effort to change the attitudes of higher officials and party functionaries in Egypt.<sup>18</sup>

The policy guideline and agreed minutes that were promulgated by the Nile-COM in early 1999 paved the way for the creation of the NBI. The policy guideline of the NBI contained five objectives: to develop the water resources of the Nile Basin in a sustainable and equitable way to ensure prosperity, security and peace for all its peoples; to ensure efficient water management and the optimal use of the basin's resources; to ensure cooperation and joint action among the riparian countries seeking win-win gains; to target poverty eradication and promote economic integration; and to ensure that the programme results in a move from planning to action.<sup>19</sup>

The NBI is governed by the highest decision-making organ in the basin, Nile-COM, which is mandated to set out policy and guidance on issues related to the Nile's water resources. The NBI also maintains the Nile Secretariat (Nile-SEC), which was officially launched on 3 September 1999 at its headquarters in Entebbe, Uganda. Similarly, a Nile Technical Advisory Committee (Nile-TAC) was set up as an organ of the NBI to coordinate joint basin-wide activities. It is composed of two technical experts from each of the member states of the basin. Like the NBI and Nile-SEC, Nile-TAC is accountable to Nile-COM. The

NBI is established as a transitional mechanism pending the signing and ratification of the ongoing D3 Project, which was subsequently renamed as the Nile Cooperative Framework Agreement (CFA) and the establishment of the NBC. The activities of the NBI are financially supported by the World Bank, CIDA, and the UNDP.

The NBI is based on a vision entailing a strategic action programme that consists of two complementary programmes, the Shared Vision Programme (SVP) and Subsidiary Action Programme (SAP). The SVP focuses on projects at the macro-level (encompassing the whole Nile Basin), while SAP focuses on the micro-level (sub-basin). The major objective of the SVP is to ‘... achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources’.<sup>20</sup> The SVP, which is designated as ‘Pillar A’ in the document, is planned to be underpinned by the CFA (i.e. ‘Pillar B’). Pillar B would, in turn, be supported by four major basin-wide tasks, including ‘confidence-building and stakeholder involvement’ (‘Pillar C’); ‘socio-economic, environmental and sectoral analysis’ (‘Pillar D’); ‘development and investment planning’ (‘Pillar E’); and ‘applied training’ (‘Pillar F’).<sup>21</sup>

The second programme of the NBI, the SAP, currently embraces two sub-basin groupings: ENSAP, which comprises Egypt, Ethiopia and Sudan, and NELSAP, which comprises all the equatorial co-basin states plus Egypt and Sudan. Given the fact that sub-basin cooperation on specific projects that involve two or more riparian states is easier to attain than for basin-wide projects, the idea of forming the SAPs is a pragmatic approach that may in the long run lead towards a cooperative solution. Even then, however, the Nile upstream states need to be cautious about this project-by-project approach because it could eclipse the fundamental issue of the equitable allocation of the Nile waters. Put another way, the bottom line for the SAPs should be the holistic development of the sub-basins and the implementation of water allocation to all the Nile riparian states.

The rationale behind the establishment of ENSAP and its technical arm, the Eastern Nile Technical Regional Office (ENTRO), is to come up with concrete transboundary projects in the Eastern Nile, i.e. in Egypt, Ethiopia and Sudan. ENTRO is responsible for the identification of projects related to watershed management, power production and pool, irrigation and ‘joint multipurpose projects’. The latest information the author has about such projects is that some are at the pre-feasibility stage, others at feasibility and some others at the design stage. The Ethio-Sudan power transmission interconnection is showing signs

of progress, whereas for reasons that are not known the much-awaited Baro-Akobo Multipurpose Project has been derailed.

## THE COOPERATIVE FRAMEWORK AGREEMENT (CFA)

Of the aforementioned six pillars of the SVP, the Nile River Basin Cooperative Framework (Pillar B, also commonly called the D3 Project) has been functioning since 1997. The major objective of the D3 Project, which has been renamed the CFA, is spelled out as ‘... enabling the Nile River Basin countries to determine equitable entitlements for each riparian country for the consumptive and non-consumptive use of the Nile waters [and] for optimum sustainable socio-economic benefits of the inhabitants of the basin’.<sup>22</sup> The CFA is a legal and institutional framework that is designed to transform the transitional mechanism, i.e. the NBI, into a permanent Nile Basin Commission (NBC). It will be incumbent upon the latter to coordinate, guide and facilitate the mechanisms of use, management and protection of the Nile waters.

That said, the task of preparing a draft CFA – in line with the terms of reference that were elaborated by Nile-COM – was given to independent consultants. The latter were given directives to consider as many relevant provisions of international water laws on transboundary river basins as possible before drafting the cooperative framework for the Nile.<sup>23</sup> These included, among others, assessing the status of international water laws and existing legal and institutional frameworks; identifying relevant and applicable principles for the Nile Basin; appraising water supply quantity and quality in the basin; prioritising existing uses and needs; exploring the potential of the basin’s resources for development; and understanding the compatibility of sectoral water development programmes, projects and plans of the different riparian states of the basin. In addition, the CFA has outlined the relevant factors that need to be considered in order to come up with a cooperative framework, which, among other things, seeks to attain equitable and legitimate water use of the Nile Basin.<sup>24</sup> Accordingly, factors such as the amount of water that is currently used, the benefits that are derived from water use, the trend line of water use, population size and growth trends, as well as other economic, social and physical parameters, have been included in the CFA.

In the end, the consultants came up with a draft CFA at the end of 1999 and submitted it to the Panel of Experts (PoE) of the Nile Basin states for discussion

and revision.<sup>25</sup> The PoE discussed every provision of the draft document and produced a revised version that was marred by reservations made by one riparian state or another. As exemplified in the revised document, the sticking points revolved around two classic issues, namely the equitable and reasonable utilisation of the waters of the Nile, and the causing of no significant harm to downstream users. For obvious reasons, the former issue is underpinned by upstream states such as Ethiopia, and the latter by Egypt and Sudan. Put another way, as victims of the status quo in Nile water utilisation, the Ethiopian members of the PoE expressed reservations about certain provisions, such as 'prior notification for planned projects in the Nile Basin' and 'upstream water utilization should not cause significant harm to downstream users'. The Egyptian and Sudanese members of the PoE objected to provisions that are directly or indirectly related to water allocation and issues relating to existing projects.<sup>26</sup> The downstream states have, for instance, expressed their misgivings on the articles that referred to 'environmental audits of existing projects' and 'taking appropriate measures to prevent the causing of significant harm to other basin states'. In the case of the latter, the Egyptians and Sudanese PoEs wanted to replace the statement that read as 'prevent the causing of ...' with 'refrain from and prevent'.<sup>27</sup> Therefore, what is acceptable to upstream states has fallen prey to downstream states and vice versa, perpetuating the stalemate. This indicates the ascendancy of conflicts of interest and locked-in positions that have long prevailed in relations among Nile Basin states.

Nevertheless, the draft of the revised cooperative framework containing the above-stated footnote of reservations was submitted to the respective Nile Basin governments for further discussion and comments in late 1999. All indications suggest that things became worse when additional rounds of reservations and deletions of clauses that the individual states deemed detrimental to their respective 'national interests' were added to the draft CFA. This can best be testified to by the fact that the revised cooperative framework document that was submitted to Nile-COM in August 2000 failed to be accepted and ratified by the same body. Instead, it was acknowledged at the meeting that '... substantive issues in the cooperative framework remain unresolved'.<sup>28</sup> In order to find a way out of the deadlock through a further re-examination of the matter at stake, and to possibly include some of the suggestions made by the parties, Nile-COM formed a Joint Negotiation Committee (JNC) in August 2000 that was made up of two water experts from each of the Nile riparian states.

The JNC met regularly and came up with a draft CFA of its own in 2007. As stated earlier, the CFA is considered as a precursor to the establishment of the NBC. This process has, however, encountered a series of setbacks. The Nile riparian states have failed to agree on some of the clauses and articles in the legal and institutional framework. The sticking point hinges on Article 14b, referring to water security.<sup>29</sup> The seven upstream states want to keep the clause in Article 14b as it is – ‘not to cause significant harm to the water security of any other Nile basin state’, whereas the two downstream states – Egypt and Sudan – want the clause to be altered to ‘not to adversely affect the water security of current users and the rights of any other Nile basin country’.<sup>30</sup> In other words, by so saying, ‘Egypt and Sudan want a clear recognition of their “historic share of the Nile water” in the CFA based on the 1929 and 1959 agreements’.<sup>31</sup> In April 2010, after agreeing with all the articles and clauses except for the aforementioned article, two more contentious issues have been added by the two downstream states, which could possibly compound the problems related to the signing and ratification of the CFA. Firstly, Sudan and Egypt want the upstream states to make commitments to early notification before the construction of any project – so-called ‘prior notification’ – and, secondly, the downstream states oppose the two-thirds or majority vote principle by advocating decision-making on any project on a consensual basis.<sup>32</sup>

As stated by Cascão, ‘after years of negotiations and two years since the negotiations were concluded, no political decision has been taken and the CFA has neither been signed nor ratified’.<sup>33</sup> The Nile heads of state and Nile-COM have failed to resolve the impasse. The various meetings of the JNC members to resolve the issue have also failed. The meetings that took place in Kinshasa, DRC, in May 2009, in Alexandria, Egypt, in July 2009, in Kampala, Uganda, in October 2009, in Dar es Salaam, Tanzania, in December 2009 and in Sharm-el-Sheikh, Egypt, in April 2010 failed to bear any fruit. For instance, at the extraordinary Nile-COM meeting in Kinshasa the seven upstream states proposed to proceed with the signing of the CFA by either holding or annexing the contentious Article 14b, which, according to their view, must be resolved by the NBC within six months of its establishment.<sup>34</sup> Sudan and Egypt, however, have objected to the proposal and suggested an alternative by which the NBC will be established by presidential decree to be followed by further negotiations on the CFA.<sup>35</sup> These proposals and counter-proposals have created political and legal deadlocks in the Nile Basin.

As a follow-up to the previous meetings and with the intention of finalising the procedures for the signing of the CFA, and to possibly replace the transitional NBI with a permanent NBC, Nile-COM and the JNC held their last meeting at Sharm-el-Sheikh on April 14–15 2010. Sadly, the meeting encountered the same fate as its predecessors. As stated by Uganda's Environment Minister, Maria Mutagamba, 'the seven countries [upstream states] have agreed to sign the CFA, but two [downstream states] decided to continue disagreeing with us'.<sup>36</sup> The same thing was repeated at Sharm-el-Sheikh, with Egypt and Sudan insisting on proceeding with the establishment of the NBC before concluding negotiations on the CFA.<sup>37</sup> It has also been stated that the upstream states, Kenya, Uganda, Tanzania, Ethiopia, Rwanda, Burundi and the DRC, viewed the proposal made by Egypt and Sudan as 'an attempt to sidestep the real issue'.<sup>38</sup> At the end of the meeting, the seven upstream states agreed to move on to the next stage, i.e. the signing of the CFA, starting on 14 May 2010. According to a Ugandan Ministry of Environment press release, the CFA will remain open for signing for not more than a year, after which the countries will engage in the ratification process.<sup>39</sup>

The deadlock can be attributed to the stance of the Egyptian government, as reflected in the statements made by the new Egyptian Minister of Water Resources and Irrigation, Mohamed Nasr Eddin Allam:

We still want historical uses of the Nile water to be recognized by other Nile Basin countries because this is the only source of water we have ... we want historical rights to be recognized in the agreement before it is signed.<sup>40</sup>

The minister has reiterated that Egypt will not sign a deal until the following three conditions are met: that it should maintain its share of 55,5 billion m<sup>3</sup> of water from the river that has been apportioned to it by the 1959 agreement;<sup>41</sup> that it would like to see a commitment to prior notification by upstream states before they construct hydraulic projects; and that it wants basin decisions to be made not by majority vote, but by consensus.<sup>42</sup> The same author quoted Hany Raslan, head of the African Research Unit at Al-Ahram Political and Strategic Studies Centre, who said:

Up until now, there has not been any breakthrough regarding the three contentious issues holding back the signing of the Agreement [the CFA].



Egypt sees no urgency in making concessions to the upstream countries. Instead, Cairo can rely on what it considers its leverage to press donor bodies like the World Bank not to provide aid to projects – particularly dams – that could reduce Egypt's share of Nile water.<sup>43</sup>

## STATE-OF-THE-ART REVIEW

The Shared Vision and Subsidiary Action Programmes of the NBI have created platforms for discussions and dialogue. The fact that there is the Nile Secretariat in Entebbe, Uganda, is in itself a virtue. The establishment of the NBI has also kindled some hope for the people living in the basin with expectations to improve their wellbeing through irrigation agriculture, watershed management and access to hydropower. The other advantage of the NBI is its creation of employment opportunities for many basin-based professionals. The NBI and its affiliates have also funded a number of studies on socio-economics, hydrology and water technology. As a result, a sizeable number of valuable research outputs have been produced and published. These achievements indicate that the aims and objectives of the NBI signify a strong departure from the three previous institutions. Despite the prevailing unresolved issues, the creation of opportunities for rapprochement among the Nile Basin states, which are otherwise known for their intransigence and maintenance of the status quo ante, indicates a positive step and signals a glimmer of hope. It is this guarded optimism that prompted all the Nile riparian states and organisations such as the World Bank to portray the NBI as 'promising'.<sup>44</sup>

In spite of the aforementioned strides made in the Nile Basin, the Egyptians still stick to their water-security policy and the maintenance of the status quo on Nile water utilisation. Owing to the disagreements between upstream and downstream countries over the water-security issue, the CFA remains in limbo. The outstanding challenge, namely Article 14b, was transferred to the Nile heads of state in 2009 and then to Nile-COM in 2010 to come up with a solution, but to no avail. Subsequently, the issue was placed in the hands of the JNC. The crux of the matter lies in the fact that unless Egypt and Sudan, which have adamantly overplayed the issue, make a U-turn, the impasse cannot be resolved. It is incumbent upon the downstream states to change their policy fundamentally, even going as far as compromising some of their 'national interests' to solve this problem for the sake of bringing a lasting regional peace to the

basin. Put another way, a breakthrough requires a strong departure from principles already held by downstream states. Unless there is a change of heart and mind on these sticking issues, it will become very difficult to build confidence and trust among the Nile riparian states and to establish the NBC.

The downstream states of the Nile should extricate themselves from the aforementioned dogmatic beliefs or principles by resorting to more pragmatic approaches, i.e. introducing and implementing confidence-building measures for the mutual benefit of all. Moreover, Egypt should stop bluffing with unwarranted threats and instead devise a mechanism by which the Nile question can be fairly and squarely resolved once and for all. All the Nile riparian states should bear in mind the perspective of international law, according to which neither upstream countries' 'absolute territorial integrity' nor downstream countries' 'historical use of surface water' entitle them to 'absolute sovereignty' over shared waters.

Confidence-building measures of the sort being undertaken by ENSAP and NELSAP, which have proposed hydraulic projects to benefit the hitherto disadvantaged upstream states, need to be strengthened further. As stated earlier, however, these should not eclipse the issue of the 'equitable and reasonable allocation' of the waters of the Nile, which is considered by many of the upper riparian states, particularly Ethiopia, as an Achilles' heel. For obvious reasons, upstream states would prefer to talk about conservation, reclamation and the environment after the outstanding issue of the equitable allocation of the water resources of the Nile is concluded. It is hence high time for downstream states to stop paying the increasingly high price for non-cooperation, since the opportunity costs of silt accumulation, flooding, food insecurity, suspicion and mistrust continue to accumulate to the detriment of all countries in the basin.

The other major problem bedevilling the NBI and the SAPs is the immense amount of time it is taking to get the hydraulic projects up and running. So far, little or nothing has been completed. This increases the frustration not only of impoverished people living in hitherto disadvantaged countries like Ethiopia, but also of elites and sceptics alike. Everybody knows that hydraulic projects require a significant amount of time to materialise. However, it is inconceivable and unbearable to see little or nothing achieved by the NBI in the past ten years and by ENSAP in the past seven years. The picture is complete if one adds the failure to come up with a permanent institution through the signing and

ratification of the Legal and Institutional Framework, i.e. the CFA, which was initiated as far back as 1997.

International funding organisations, such as the World Bank and the UNDP, can also play a significant role in bringing the Nile riparian states together to settle outstanding issues, the most important of which being the still pending CFA. The funding agencies can go ahead with their arbitration and go-between roles of bringing the downstream states in the direction of cooperative solutions through the signing and ratification of the CFA. Now, more than ever, such organisations can underline the principle of cooperation among the riparian states as a decisive criterion for granting loans to fund hydraulic projects of any sort. The fact that most of the Nile riparian states are too poor to fund hydraulic projects without external assistance could in this context be considered as a blessing in disguise in the sense that the states will be forced to fulfil the condition of the prospective donors, i.e. the signing and ratification of the CFA and the establishment of the NBC. Hence, by employing a ‘carrot and stick’ strategy, the donors – or any other third party for that matter – may act as honest brokers whose objective should be to create rapprochement amongst the protagonists. The World Bank carried out this very approach successfully in 1997, when it promised the Nile riparian states \$100 million funding for joint water projects on condition that they embrace a cooperative impulse.<sup>45</sup> Interestingly, the riparian states stuck to the stated conditions more out of a desire to secure the funds than real conviction.

In addition to the funding agencies, given the strategic significance of the Nile Basin region and its potential role in global security, the West, and most particularly the US, has a major stake in helping to resolve the impasse by persuading the downstream states to sign and ratify the CFA.<sup>46</sup>

## CONCLUSION

The Nile-based institutions that came into existence prior to the formation of the NBI in 1999 have failed to be all-inclusive simply because they lacked impartiality. The aims and objectives of those institutions, and their agendas, were set by the downstream states to suppress the interests and wishes of the upstream states. For example, the issue of equitable water allocation that has been advocated by the upstream states of the Nile for many decades has been given a deaf ear by the downstream states. As a result, the institutional efforts

that had been designed to provide basin-wide cooperation failed. Instead, and ironically, they served only to deepen suspicions and mistrust among the riparian states of the Nile.

Notwithstanding all these problems, the attempts made to forge cooperation and build basin-wide institutions after the establishment of the NBI in 1999 are steps in the right direction that need to be strengthened further. Speculation and scepticism aside, one should acknowledge Egypt's agreement to come up with a legal and institutional framework as a confidence-building measure.<sup>47</sup> However, unless mechanisms are found by which the identified hydraulic projects in the Nile Basin can be translated into reality and the CFA is signed and ratified sooner rather than later, frustrations may rage among upstream states and unilateralism may reign. The decision made by the seven upstream states in Sharm-el-Sheikh in April 2010 to proceed to the next stage – i.e. signing the CFA from 14 May 2010 and leaving it open for signing for not more than a year, after which it will be ratified – is testimony to this possibility. So far, five riparian states have signed the CFA – Ethiopia, Kenya, Rwanda, Tanzania and Uganda – with Burundi and the DRC expected to follow suit. When either Burundi or the DRC signs, the two-thirds majority will be gained, creating the ground for parliaments in the six states to ratify the deal. Following this, the anticipated permanent commission, namely the NBC, will be established with a mandate to decide on water allocation and related issues.

The deadlock can be broken if the downstream states stop 'canonizing the status quo' and become more pragmatic.<sup>48</sup> Indeed, the CFA can bring major benefits to Egypt and Sudan by protecting their interests through the reduction of sediments, availability of more water in the basin and assurance of water security. Conversely, failure to sign the CFA by the downstream states brings about the risk of unilateralism and/or partial multilateralism. In the opinion of the author, the pledges made by Egypt in 2010 to invest in upstream states, such as Ethiopia and Kenya, can in no way sidetrack the long-standing issue of water entitlement and the still pending CFA.<sup>49</sup>

Given the current situation in the Nile Basin, the following three scenarios can be envisaged:

- **Scenario 1: Constructive engagement.** This is the best-case scenario, whereby the two downstream states continue negotiating and renegotiating with upstream states to resolve the impasse. In the opinion of Pham,

as quoted by McConnell, one way out for the downstream states will be to prepare themselves to 'revisit the old agreements, employ new technologies to make better use of the water and cooperate on a regional basis'.<sup>50</sup> A one-year period was provided to settle these issues and join the upstream states before the signing period closes in May 2011.

- **Scenario 2: Legal and diplomatic engagement.** In spite of the debatable nature of 'historic rights' claimed by downstream states in international law, Egypt can take its case to different international legal forums. One has to wait and see the decisions that will be made by such international organisations on the fate of the colonially induced 1929 treaty that gave the lion's share of the water to Egypt and the 1959 bilateral agreement that divided the water resources of the Nile between Egypt and Sudan.
- **Scenario 3: Destructive engagement.** This, the worst-case scenario, refers to subversive activities and war waged by downstream countries against upstream states. There are some analysts, including the current executive director of the NBI, Henriette Ndombe, who see the breakdown of talks between upstream and downstream states as the 'beginning of a conflict'<sup>51</sup> and another author who qualified it as a 'looming water war'.<sup>52</sup> In the opinion of the author, the war option, which is outdated and old-fashioned, will see no winner, but only losers.

It seems logical to conclude this study by quoting an author who has succinctly depicted the stark reality that shared-river basins such as the Nile are facing: 'Where nature conspired to provide common resources, there can be no ultimate independence, only mutual dependence.'<sup>53</sup>

## NOTES

- 1 H Ehrlich and I Gershoni, *The Nile: histories, cultures, myths*, London: Lynne Rienner Publishers, 2000, 55.
- 2 D Grey and C Sadoff, Sink or swim? Water security for growth and development, *Water Policy* 9 (2007), 545–571.
- 3 J Oejendal, Mainland Southeast Asia: cooperation or conflict over water, in L Ohlsson (ed), *Hydropolitics: conflict over water as a development constraint*, London: Zed Books, 1995, 162.
- 4 N Kliot, *Water resources and conflict in the Middle East*, London: Routledge, 1994.

- 5 A-A Khashef, The Nile – one river and nine countries, *Journal of Hydrology* 53 (1981), 53–71.
- 6 R Collins, In search of Nile waters, in H Erlich and I Gershoni (eds), *The Nile: histories, cultures, myths*, London: Lynne Rienner Publishers, 2000.
- 7 Collins, In search of Nile waters.
- 8 As stated by Collins (2000), the collecting stations comprised 24 hydro-meteorological stations; 156 for rainfall; 67 hydrological; and 14 lake level measurements. In addition, the package contained aerial and ground surveys and facilities for the training of African staff in various hydro-meteorological fields.
- 9 Collins, In search of Nile waters, 288.
- 10 Ibid.
- 11 T Tafesse, The hydropolitical assessment of the Nile question: an Ethiopian perspective, *Water International* 26(4) (2001), 578–588, 586.
- 12 Bram, Nile Basin nations move towards cooperation, March 2000, <http://www.oneworld.org> (accessed 14 December 2000).
- 13 S Abdalla, The Nile Basin: century of cooperation, paper presented at the 8th Nile 2002 Conference, Addis Ababa, Ethiopia, 23–30 June 2000.
- 14 Most of these projects focused on conservation issues, such as water saving, storage and utilisation; the preparation of master plans; and capacity building. One of the projects, designated as D3, was designed to help forge a cooperative framework that would in the last resort solve the problems of water allocation among the Nile riparian states (for details of the D3 project refer to the next section on NBI).
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- 16 It was with the initial aim of conducting a series of Nile conferences – from 1993 and thereafter annually – in each of the ten riparian states that the conference was labelled ‘Nile 2002’. However, due to *force majeure* (e.g. regional instability in the equatorial lakes region) and a lack of preparedness on the part of some of the Nile riparian states, the organisers have been obliged to skip some of the scheduled venues and give some host countries a second chance to hold the conference. Ethiopia and Egypt hosted the conference twice; Burundi, the DRC and Eritrea have failed to host it once.
- 17 The Eritrean government has so far given a deaf ear to the Nile Secretariat’s repeated requests to join the NBI by stating that it is not yet prepared to become a member. No further explanations or details have been given to date (refer to Nile Secretariat Online, 5 April 2001).
- 18 Abu Zeid was replaced by Mohamed Nasr Eddin Allam as the new Egyptian Minister of Water Resources and Irrigation in March 2009.
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- 20 Nile-COM, Policy guidelines for the Nile river basin strategic action programme, 1.

- 21 Ibid.
- 22 Nile-COM, Policy guidelines for the Nile river basin strategic action programme, 7.
- 23 UNDP, Project document of the Nile Basin countries, 5.
- 24 Ibid.
- 25 The Panel of Experts was composed of water specialists from each of the Nile riparian countries (three apiece), excluding Eritrea.
- 26 Panel of Experts, Draft of the cooperative framework: revision 2, Entebbe, Uganda, December 1999.
- 27 Ibid.
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- 29 Water security refers to the capacity of a population to ensure that they continue to have access to potable water ([wikipedia.org](http://wikipedia.org)).
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- 32 Ibid.
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- 37 W Menya, No deal on use of Nile waters, April 2010, <http://www.nation.co.ke> (accessed 15 April 2010).
- 38 Ibid.
- 39 Egypt, Sudan opposed to Nile sharing deal.
- 40 Pham, Crisis, conflict, and opportunity in the Nile basin.
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- m3 (75 per cent) while Sudan has been allowed to use the remaining 18,5 billion m3 (25 per cent).
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- 43 S Nasrawi, Disagreement looms on Nile Basin meeting, 7.
- 44 World Bank, Managing world's water resources requires partnerships, innovations, March 1999, <http://worldbank.org/> (accessed 25 January 2001).
- 45 Ibid.
- 46 Pham, Crisis, conflict, and opportunity in the Nile basin.
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- 48 Borrowing Pham's expression, Crisis, conflict, and opportunity in the Nile basin.
- 49 According to information obtained from Nasrawi, Disagreement looms on Nile Basin meeting, 2010, 7: 'Egypt's public and private sectors have both recently unveiled plans to invest billions of dollars in projects in upstream countries, including an electricity grid in Ethiopia and a railway in Kenya. Egypt proposed a \$5 billion electricity project in the Eastern Nile and a \$150 million investment in building a 2000 km railway that connects Kenya and Uganda.'
- 50 T McConnel, Tensions rise over access to the Nile river, *Global Post*, 13 June 2010.
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- 52 T McConnel, War clouds gather as nations demand a piece of the Nile, *Times Online*, 4 June 2010.
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# 10 Eritrean- Yemeni relations

M. VENKATARAMAN AND SOLOMON MEBRIE

## INTRODUCTION

The end of the Cold War heralded the end of superpower rivalry in the Horn of Africa. This was accompanied by dramatic changes in regional security in the Horn of Africa in the post-Cold War period. The civil war in Ethiopia – one of Africa’s most protracted – ended when the then ruling socialist military regime was overthrown and the Ethiopian People’s Revolutionary Democratic Front (EPRDF) took power in 1991, followed by the separation from Ethiopia of Eritrea, which later became an independent state. At about the same time, across the Red Sea, the end of the superpowers’ ideological rivalry took the wind out of the sails of the socialist Republic of Yemen, paving the way for its unification with North Yemen. Somalia has remained without an effective central government for about two decades since then, and has been a magnet for numerous agents embroiled in its conflicts. The emergence of new actors and the continuing involvement of various actors, along with other factors operating at various levels, have created interesting forms of interaction in the region. These dynamics without doubt have created a new context for regional security in the Horn of Africa in the post-Cold War period.

At a global level, the Horn of Africa, the Red Sea and the Middle East together form a particular geopolitical and geo-strategic setting that has continued to provide scope for geopolitical conflict as long as the Red Sea has continued to serve as one of the busiest sea lanes. For example, the recent incidence of piracy in the Indian Ocean south of the Red Sea has attracted great attention. Global powers such as the US, Egypt and Israel have continued to actively engage themselves in the region for strategic and security reasons. Currently, Eritrea's alleged involvement in the war in Somalia, and the war against fundamentalism, extremism and terrorism in Yemen have attracted the attention of the global patrons of the regimes in the region. Some of the countries in the region are aware of their geopolitical significance and one can observe their attempts to outmanoeuvre each other. And appearing loyal to one or more regional and global powers may also have a negative impact on relations among states in the region.

At the regional level, the nature of relations among actors in the post-Cold War period has led to the emergence of regional political and security groupings which have considerable impact on the perceptions of threats among countries in the region, including Eritrea and Yemen. Even though such political groupings may not have immediate socio-economic benefits for their members, the political and diplomatic implications of such groupings are far more serious.

At the bilateral inter-state level, the countries of the Horn of Africa have experiences of sponsoring one another's political oppositions. For instance, since its independence Eritrea has been consistently supporting political groups opposing the incumbent leaders of states in the region, which has affected its relations with neighbouring countries, including Yemen.

Perceptions associated with the availability of resources in certain countries and across their borders can be a source of conflict among states in the region. As will be discussed later, from an economic point of view, Eritrea experienced a period of conflict with Yemen partly because of the perceived aquatic and mineral resources along its maritime border with Yemen in the Red Sea. The nature of state actors and their relations with their respective societies also has a significant impact on inter-state relations in the region, with considerable implications for regional security.

It is important to note that this discussion does not intend to utilise the mainstream theoretical perspectives, which have long been criticised for failing to adequately explain political phenomena in Africa, including those concerning

inter-state relations. However, the arguments in this chapter tentatively utilise the perspectives developed by Clapham in his work *Africa and the international system: the politics of state survival* (1996), and other writings along similar perspectives. In short, this is a perspective in which inter-state relations take place in complex global and regional contexts, in conditions of antagonistic state-society relationships in which military options take precedence over other actions, and in which decision-making is highly personalised, unpredictable and, worse still, has the aim of achieving regime survival.

The objective of this chapter is to contribute to the assessment of regional security in the Horn of Africa in the post-Cold War period by exploring the relations between Eritrea and Yemen. By reviewing the political and economic ties between the two countries, the chapter reveals the evolution of bilateral relations between Eritrea and Yemen in the 1990s. It identifies the maritime border and the perceived resources in the Red Sea as key issues which have influenced their relationship, and which at the later stages of the countries' relationship led to armed conflict. The discussion then proceeds with further identification and analysis of the interplay of regional and international factors, which has a considerable effect on the relationship between the two countries. In attempting to provide explanations for the prevailing state of affairs, this chapter highlights policy determinants of the two countries by examining the domestic contexts of state-society relationships, which when combined with regional and international factors have a bearing upon regional security in the Horn of Africa.

## THE EVOLUTION OF ERITREAN-YEMENI RELATIONS

An important dimension in Eritrean-Yemeni relations is the existence of a maritime frontier between the two states in the Red Sea, which has allowed centuries of exchanges among their societies. Historical contact among the peoples of what are today Eritrea and Yemen is reflected in the names of places, rivers and localities. For example, Bisha is a village and valley in Yemen; it is also the name of a place in the western lowland of Eritrea. The Mereb River in Eritrea separating Ethiopia and Eritrea is believed to have been named after the Semitic Sabeans crossed the Red Sea into Eritrea, and is linked to the name of the Maareb Dam that was built in Yemen.<sup>1</sup> Similarly, the Rashida ethnic group in eastern Eritrea is said to have migrated from Hadramount in Yemen around 1846.<sup>2</sup>

Before the emergence of Eritrea as an independent state, the regimes in Yemen, in the south in particular, played a role in helping the Eritrean-based movements in their war against Ethiopia. The port city of Aden in South Yemen allowed the establishment of offices of the Eritrean liberation fighters, and many of these were trained in the Yemeni town of Shaikh Uthman.<sup>3</sup> After the expulsion of the British from Aden in 1967, the Eritrean liberation movements were said to have hailed the victory of South Yemen over the British colony as their own. The new South Yemeni government officially declared its support for the Eritrean struggle for national liberation. South Yemen served as a passage for arms to be transferred to the Eritrean fighters. It should be noted that during this time the government in North Yemen also supported the Eritrean cause. It is worth quoting what Isaias Afewerki, the Eritrean president, had to say on this:

It is true that ex-North Yemen had allowed Eritrean refugees to live in its territory, and ex-South Yemen, until it changed its stand in 1977, offered a fertile ground for the Eritrean revolution. It offered us free access in its land and sea and Aden was our main passage through which arms were transferred to the field of Eritrea. Maybe some underground or unofficial support had also been channelled to us. [...] we are always grateful to those who supported us even morally.<sup>4</sup>

Things changed in 1978 when support for the Eritrean movement was halted when the Derg military socialist regime in Ethiopia came to power. The Derg regime in Ethiopia brought socialism under the tutelage of Soviet Russia and its allies, who had also been supporting the regime in South Yemen. As the logical outcome of the Cold War ideological alliances, South Yemen started to support the Derg regime against the Eritrean liberation struggle and involved itself in various areas of cooperation with the Derg in Ethiopia. In 1981 Ethiopia, South Yemen and Libya concluded a tripartite agreement in which the three signed the Aden pact, called the Treaty of Friendship and Cooperation, which included the fields of politics, the military and the economy.<sup>5</sup> This allowed Addis Ababa to introduce a strong offensive against the Eritrean movement.<sup>6</sup>

In contrast to South Yemen's curtailment of support for Eritrea, the support that North Yemen extended to the Eritrean cause continued until Eritrea's independence. North Yemen provided a safe ground for the Eritrean People's

Liberation Front (EPLF) to use its land as a base as well as for receiving logistical supplies from Arab countries.<sup>7</sup>

## RELATIONS SINCE ERITREAN INDEPENDENCE

Soon after Eritrea obtained *de jure* independence in 1993, Yemen was among the first to establish diplomatic relations with the provisional government of Eritrea. In the immediate aftermath of Eritrean independence the relations between the two states were cordial, although tensions existed between Eritrea and its other neighbours, such as Sudan and, later, Ethiopia. During the same period, Yemen was undergoing internal political turmoil. And to date, the internal political situation in Yemen since the April 1993 general elections, in which a united Yemen was formed, has not yielded any stability. Tensions between northern and southern Yemen continued in the aftermath of the election of Ali Abdella Salih, a northerner, prompting an official visit by Eritrea's President Isaias Afewerki in April 1994 to Sanaa in order to mediate the differences between the north and the south. Eritrea supported the unification of the country and offered to protect both the north and south's aviation facilities. In other words, Eritrea appeared to take a neutral stand.<sup>8</sup>

The good offices extended by the Eritrean president were reciprocated by Yemen in December 1994, when its president visited Asmara and Khartoum in an attempt to mediate between Eritrea and Sudan. However, these mediation efforts did not yield results.<sup>9</sup> Nevertheless, further developments in bilateral relations during the same period were witnessed when Eritrea and Yemen signed cooperation agreements on trade and maritime security. Discussions were held regarding investments, fishing and related activities. In addition, during the same period, students of the University of Asmara obtained scholarships to study at the University of Sanaa in the fields of medicine, pharmacy and engineering.

## PERIOD OF CONFLICT

The friendly and cordial relations between the two countries gradually deteriorated. In early 1995, the issue of the ownership of a group of islands in the southern Red Sea – the Hanish-Zuqar Islands – sparked differences leading to strained relations. The islands are situated in one of the world's busiest shipping

lanes 160 kilometres north of Bab-el-Mandeb, the southern entrance to the Red Sea. Inevitably, the conflict raised concerns about a possible threat to international navigation. The Hanish Islands, uninhabited except for a few Yemeni fishermen and Eritrean soldiers, who were allowed to use them as a base during their struggle for independence,<sup>10</sup> are roughly equidistant from Eritrea and Yemen, and conflict over the ownership had been on the anvil for quite some time. The spark that ignited the powder keg was the stationing of troops by Yemen on these islands in early 1995. In a statement made by Yemeni President Ali Abdella Salih issued on 20 December 1995 in setting out the background to the dispute, it was said that a German company wanted to launch an investment project on Greater Hanish.<sup>11</sup> The company (Knozepbau) was said to have planned a £1 million investment to construct a tourist complex, including a hotel and scuba-diving facilities. The company's request was granted by Yemen and work began in the middle of 1996. Yemeni troops were also deployed on the islands.<sup>12</sup>

These activities by Yemen alarmed the Eritrean government, which subsequently attempted to resolve the matter. Eritrea claimed that on the basis of historical facts the Hanish Archipelago had been 'part of Eritrea from the period of the Ottoman Empire through Italian, British and Ethiopian occupations of the country'.<sup>13</sup> The Eritrean position was largely based on the assertion that the islands had belonged to the Ottoman Empire until World War I. According to the 1923 Treaty of Lausanne, the islands were given to Italy by the Turks. Furthermore, Eritrea claimed that the agreement sponsored by the UN, which federated it with Ethiopia, made the islands part of Eritrean marine territory.<sup>14</sup>

Yemen, on the other hand, argued that Britain had occupied the Hanish Islands in 1915 and from then on it had been in charge of the maintenance of the lighthouses on the islands. Another Yemeni argument has been that during the Arab-Israeli war of 1973, Egypt requested Yemen to use the islands, which was granted by an agreement signed with Egypt on 12 May 1973.<sup>15</sup> Rejecting this argument, Eritrea claimed that the islands were used by the EPLF during the war of independence and that Yemen never questioned such a right since it recognised that the islands were part of Eritrean territory. Sanaa responded that the islands had been used with its consent.<sup>16</sup>

Official negotiations between the Eritrean and Yemeni presidents followed and the Eritrean foreign minister was sent to Sanaa in early October 1995 in an attempt to resolve the issue.<sup>17</sup> However, the bilateral negotiations failed and on



16 December military conflict ensued. Each side blamed the other for starting the conflict. The confrontation lasted for two days, 16 and 17 December, and it was declared that Yemen lost more than 50 soldiers in the conflict.<sup>18</sup>

The position of both countries regarding the ownership of the Hanish Archipelago seemed irreconcilable. However, Asmara proposed that in the event of an inability to reach an agreement international arbitration could be requested. This was reiterated in a meeting on 7 December 1995, during which Eritrea gave its intention to bring its case before the International Court of Justice (ICJ).<sup>19</sup>

The news of the conflict alarmed the Arab states. Egypt became concerned because the area is a lane for international shipping and it has long-standing strategic interests in the region. Therefore, Egypt offered mediation. The secretary of the Arab League was also involved to mediate. The dispute then threatened to become an Arab-African issue. The Arab League and many Arab countries appeared to side with Yemen. Their pro-Yemeni stand was believed to be partly because they perceived Eritrea to be a friend of Israel, whose relationships with the Arabs has been hostile for obvious reasons. They viewed the dispute in the context of Arab-Israeli relationships dominated by conflict, in which the Palestinian question figured prominently. Accordingly, these Arab states believed that Israel supported Eritrea since by removing Yemen's claim to the Hanish Islands a conducive environment would be created for using the islands as a base to control the southern part of the Red Sea. The Arabs justified their stand in view of the relations that Israel had been trying to build with many African countries, especially those that have a Red Sea coast. What is more, they believed that Israel had a military base in Eritrea.<sup>20</sup>

The Arabs' suspicion that there was an Israeli presence in Eritrea is manifested in the interviews conducted with the Eritrean president. Questions were raised regarding the alleged Israeli presence in Eritrea, to which President Isaias Afwerki retorted: 'When this incident erupted suddenly, reports started coming that Eritrea is supported by Israel, Kuwait or other Israeli allies. This is only a pretext for covering up mistakes [...] it is shameful to relate every problem to Israel.'<sup>21</sup>

Although Eritrea (and Israel) rejected the accusations, it nevertheless felt it was affected by what it regarded as propaganda and attempted to build bridges by sending missions to its Arab neighbours to explain its position. The Eritrean government delegation led by Interior Minister Ali Said Abdella visited Saudi

Arabia, United Arab Emirates, Qatar, Kuwait, Bahrain, Oman, Jordan and Iraq. Referring to this diplomatic mission, Ali Said Abdella said that ‘the talks and exchange of views on the Hanish Islands issue have helped to correct misrepresentation by the Yemeni mass media about the affair’.<sup>22</sup>

## THE RESOLUTION OF THE CONFLICT

At the beginning of 1996 a French government delegation visited both countries offering its mediation and both parties later accepted this offer.<sup>23</sup> As mentioned above, the Eritrean government, in an attempt to calm the waters, dispatched a diplomatic mission that visited eight Arab countries to explain the position of Eritrea in the conflict.

Other international efforts were also made to solve the issue. Notable among them was the Ethiopian Foreign Minister Seyoum Mesfin’s visit to Sanaa on 21 December 1995 to make a three-point proposal, which included the return of Yemeni prisoners of war, the mutual withdrawal of security forces and the submission of the issue to the ICJ.<sup>24</sup> Besides the efforts by Ethiopia, the UN Secretary General Boutros-Ghali also involved himself by visiting the capitals of both countries and suggested mediation efforts. Interestingly, Boutros-Ghali supported the French mediation effort, as it was felt that working through the ICJ would take a long time. Because of the sensitivity of the issue and the islands’ proximity to major shipping lanes, it was indicated that a quick solution was advisable.

France offered to mediate the dispute and Ambassador Francis Gutman was sent on a fact-finding mission to both countries. Eritrea and Yemen eventually reached an agreement on the principles for arbitrating their dispute, which was signed in Paris on 21 May 1996 and witnessed by the foreign ministers of Egypt, Ethiopia and France. There was also a trilateral agreement on technical arrangements, presumably relating to ceasefire monitoring. The two disputants committed to maintain the status quo, refrain from the use of force, submit the dispute to a five-member arbitration panel and allow France to monitor military movement on the islands. It was also agreed that each claimant would choose two members of the panel, and the four members would jointly select the chairman. After the withdrawal of troops, which was monitored by France, the disputants agreed on the formation of a court, after which the arbitration process began. The arbitration agreement provided for

ruling in two phases: one on the issue of sovereignty and the other on the delimitation of boundaries.<sup>25</sup>

Almost three years after the conflict, the court gave its ruling, discarding the Yemeni argument that the entire group of islands belonged to it from the medieval period as false because at that time Yemen was basically an entity in the mountains and not on the coast. The court also rejected the Eritrean argument that it had inherited the islands at the end of the colonial period.<sup>26</sup>

The court finally gave its verdict in October 1998 (phase I),<sup>27</sup> granting Eritrea the islands of Mohabbakah, which lie some 20 kilometres off the coast and inside its territorial sea; the Haycocks Islands; and the rocks to the south-west, because they were part of the Ottoman territory administered from the African coast. The rest of the Greater and Small Hanish islands (which were the cause of the conflict) were granted to Yemen, as they had been under the jurisdiction of the Arab coast during the Ottoman Empire.<sup>28</sup> Yemen obtained most of the islands it claimed and Eritrea got a few, but the latter fulfilled its commitment to respect the decision of the court, despite speculations of the existence of petroleum on the Hanish-Zuqar Islands.<sup>29</sup>

A notable decision of the court concerns the rights of Eritrean fishermen to pursue their activities on the islands that are part of Yemen, whereas Yemeni fishermen cannot fish in the waters and islands awarded to Eritrea. This could be considered as an invitation to conflict or cooperation depending on the nature of the relationship that prevails between the two states.

The resolution of the Eritrean-Yemeni conflict through the decision of the ICJ on 9 October 1998 paved the way for cooperation between the states. In November 1998, the Eritrean president made a three-day visit to Sanna, during which the two countries set up a committee for implementing previous bilateral agreements in the fields of trade and industry, transportation and communication, energy, fisheries, education and culture.<sup>30</sup>

However, by 1999 disputes derived from the decision of the court arose with regard to the fishing rights. Eritrea interpreted that these rights were granted to their fishermen and not to Yemen's in those places awarded to Eritrea. Again the case was taken to the court, which approved Eritrean fishing rights in the islands of Tebal al-Tayir, the Súber group of islands and Hanish-Zuqar. It also confirmed articles 103 and 108 of the previous decision. Article 103 not only gave Eritrean fishermen sole fishing rights, but also the right to camp inshore and repair their boats. Should the government of Yemen plan to take actions

that affect these rights, it should first notify Eritrea to obtain its prior consent. Article 108 provides that should Yemen take any initiative that affects the traditional rights, it must do so upon the consent of Eritrea.<sup>31</sup>

## ECONOMIC COOPERATION

Economic relations between the two countries have not been strong, although the opportunity to strengthening them was present, given the long maritime border that the two countries share. Besides, in view of Eritrea's conflictual relationships with other neighbouring countries in the region, continuing economic ties with Yemen would have been a good opportunity. Realising the importance of economic ties, the two countries made initial moves to expand their relationship beyond the political level, and in April and October 1993 both countries signed an airfreight agreement. A brief lull existed in their economic relations between 1993 and 1994 due to the civil war in Yemen. The signing of the Sanaa Pact in November 1994 brought to the fore a new partnership between the two states aimed at reinforcing and further expanding fields of cooperation, which included a defence pact, tourism and education.<sup>32</sup> A joint commission was set up to execute the implementation of the protocol agreement. Economic harmonisation between the two states was the most important part of the Sanaa Pact. Unfortunately, however, by mid-1995 the implementation of most of the signed agreements was hampered because of the deterioration in relations at the political level, as discussed above. Indeed, economic issues were the primary cause of the dispute over the Hanish Islands since their location in a strategically important area accompanied the perceived economic benefits of controlling the transit lines and thereby reinforced the differences that existed over fishing rights.

Although trade between the two countries declined as a result of the conflict, it was not severely affected. Soon after the peaceful resolution of the dispute, a joint communiqué was issued on 6 November 1998 that aimed to reinforce economic relations. Both countries undertook to work together and coordinate their development strategies through harmonisation of economic policies. Nevertheless, the issue of traditional fishing rights dominated the next couple of years, reflecting the tensions in their economic relations.

Table 1 provides a statistical account of the extent of economic relations between Eritrea and Yemen.

**Table 1** Average imports and exports between Eritrea and Yemen (1994–2002)

Commodity type	Imports (Eritrean nakfa)	Exports (Eritrean nakfa)
Food and live animals for food	343 845 664	45 804 200
Beverages and tobacco	11 263 212	–
Crude materials (inedible) excluding fuel	520 122	4 844 888
Animal, vegetable oil and waxes	12 558 800	–
Chemicals and related products	15 920 104	8 969
Manufactured products	24 767 800	–
Machinery	20 305 816	–
Miscellaneous	23 538 584	74 664
<b>Total</b>	<b>452 720 232</b>	<b>50 732 720</b>

Note: Imports and exports represent Eritrean commodities imported from and exported to Yemen.

*Source* Ministry of Finance and Customs Department, Eritrea

Table 1 shows that economic relations appear to have been much more beneficial to Yemen because Yemen's exports to Eritrea were greater than its imports. The reason could be that most of Eritrea's exports, until the beginning of Eritrea's war with Ethiopia in 1998, were to Ethiopia. About two-thirds of Eritrea's exports were to Ethiopia and the rest to other states, including Yemen. In other words, the disadvantage in bilateral economic ties was overcome through its ties with Ethiopia until the beginning of its war with the latter. On the other hand, as a result of the conflict with Ethiopia in 1998, its economic ties with Yemen became much more important for Eritrea.

Generally, the bilateral relationship improved with the Yemeni national airline travelling three times a week to Asmara, and Yemeni products such as honey, biscuits, milk, sweets, chlorine and others were imported in large quantities to Eritrea. It is significant that, despite their need to solidify their economic relationship, both countries share the characteristics of small economies in the sense that each is unlikely to consider the other vital in issues relating to their economic relations. As discussed in the next section, the internal condition of both states and regional and international political considerations outweigh

the economic imperatives of cooperation in the relations between Yemen and Eritrea. Moreover, the tension relating to fishing rights and complaints about Yemeni fishermen intruding into Eritrean waters have been frequent and have the potential to escalate, affecting bilateral relations and further threatening regional security.

## THE FORMATION OF THE SANAA FORUM AND ITS IMPLICATIONS FOR YEMENI-ERITREAN RELATIONS

Even more pronounced in the relations between Yemen and Eritrea in the post-conflict period was the formation of a forum in Sanaa in October 2002, with Yemen, Ethiopia and Sudan the original members. Although Somalia failed to resolve its internal conflict and sustain its statehood effectively, it joined the Sanaa Forum in 2004 and subsequently Djibouti joined. The forum is said to have been formed for the purpose of cooperation in areas such as energy, transport and trade,<sup>33</sup> to deal with issues of regional security, such as in Somalia and Darfur, Sudan, and to fight against extremism in the region. The Ethio-Eritrean border dispute is also considered one of the regional security issues of interest to the Sanaa Forum countries.

Since its formation the Sanaa Forum has hosted periodic meetings, the latest in October 2009. However, the forum's contribution to economic cooperation and regional security in practical terms is far from concrete, except for proposals to form a subregional Sanaa free trade area.<sup>34</sup> As can be noted from media sources, which commented on a number of meetings hosted by the forum, there appears to be a lack of serious deliberation on issues and there is no indication that tangible results, especially in terms of economic cooperation, have been achieved.<sup>35</sup>

What is important, however, is the exclusion of Eritrea, which is geographically surrounded by the countries that formed the forum. Although the agreement per se is not overtly adversarial to Eritrea, the implications are huge considering the state of relations that exist between Sudan, Yemen and Ethiopia, and hence it is not surprising that Eritrea challenged the formation of the Sanaa grouping by denouncing it as an 'axis of belligerence' and by claiming that it was an act of conspiracy against Eritrea and its people. Eritrean media sources tried to justify their claims by citing what they called evidence of how Sudan, Yemen and Ethiopia have aligned together against Eritrea.<sup>36</sup> This is indicative of the level of exclusion or isolation the Eritrean leadership may have felt. The

popular perception – not only in Eritrea, but also in the neighbouring countries – was that the group's aim was to create a security alliance against Eritrea.

In this regard, it is worth noting that perceptions are often as significant as reality in influencing policy decisions and their implementation. The establishment of the Sanaa Forum has created a siege mentality within the Eritrean leadership. The argument for this siege mentality is valid given the Eritrean leadership's experiences of conflict with the current political leaderships of the Sanaa Forum countries. Worse still, the Eritrean political leadership, which is weakened by internal rivalry, a growing 'internal' opposition and the difficulty of leading its country and people, to whom it has given unfulfilled promises,<sup>37</sup> will continue to be wary of the forum, irrespective of the actual performance of the forum in realising its goals of cooperation, including those relating to security.

Most importantly, in an atmosphere in which personal relationships prevail among 'peer' leaders in the Horn of Africa, most of whom were 'comrades in arms' in armed movements in the region, membership of regional groupings such as the Sanaa Forum are very significant. In this context, the feeling of exclusion by the Eritrean leadership will continue to be immense. The sense of exclusion will continue to be significant given the non-resolution of the major problems in Eritrea's relations with its neighbours, especially Ethiopia, and to some extent Sudan and Djibouti. More particularly, the presence of Eritrean opposition political parties in Ethiopia would have a profound effect on how the former perceives such moves. In effect, this will continue to give the Sanaa Forum some relevance and a political leverage for the constituent countries in their relations with Eritrea.

However, it is also important to note that the Eritrean leadership has on occasion sought a working relationship with some of the political leaders of the neighbouring countries, especially with its Sudanese counterparts, in a bid to make up for the sense of exclusion from the regional league of leaders, who have a close alliance. To what extent such occasional bilateral engagements have improved or will improve Eritrea's perception of threat from the forum countries remains to be seen. At the same time, any qualitative improvement in Eritrea's relations with Yemen, Ethiopia or Sudan will help overcome the sense of exclusion from the exclusive club that the Sanaa Forum attempted to institutionalise. It has also been reported that the Eritrean leadership was approached to join the forum, but refused.<sup>38</sup>

So far, although the forum does appear not to yield any immediate economic benefits for Yemen, it continues to give Yemen diplomatic backing, especially since the beginning of the intense internal warfare within Yemen during the 2009/10 conflict. It is also interesting to note that Eritrea was implicated in the conflict in Yemen as it was accused of serving as a conduit for support to rebels in north Yemen – although this is unsubstantiated. Nevertheless, it is not clear how much the forum was a tangible factor with regard to Yemen's relationship with Eritrea. This is partly because the forum was formed after the conflict with Eritrea over the Hanish Islands had been resolved, and, therefore, the security provision to Yemen from the forum countries was not put to the test in that particular case.

## **DECISION-MAKING AND POLICY DETERMINANTS IN ERITREA AND YEMEN**

In the world of international relations policy formulation and implementation are influenced by a number of factors, and more so in Yemeni-Eritrean relations. As it would be difficult to consider all of these factors exhaustively, a realistic approach would be to identify the major actors and issues, the forms of interaction among actors at domestic, regional and international levels and the possible outcomes of those interactions<sup>39</sup> in Eritrean-Yemeni relations.

Therefore, it is pertinent, first and foremost, to identify contexts in which the external policies of the countries are to be formulated and implemented. Along this line, three broad contexts can be identified, namely national/internal, regional and international, which may all have an impact on policy formulation and implementation, and ultimately on the regimes' international relations. It is on the basis of these contexts that we hope to identify issues of relevance to the execution of foreign policy in both countries.

### **The nature of state-society relations in Eritrea and Yemen**

Eritrea as a state has a very short history. Following the end of the war of independence with Ethiopia and the symbolic referendum, Eritrea was perceived as an emerging African nation expected to thrive economically. The image of a new, thriving nation in the model of Singapore was portrayed on various



occasions. Its political leadership was considered progressive, at least by African standards. This image and popular perception was also backed by the high morale within its leadership in the aftermath of political independence. The political independence combined with syndromes of being different in view of its 'victory' over Ethiopia appeared to have boosted the image of the leadership and, therefore, served as a point of focus in the relations between the leadership and the people. To date, Eritreans are reminded of their country's military struggle and the political independence gained from Ethiopia so as to maintain relations between the incumbent leaders and a population that is increasingly insecure due to the absence of human rights, freedom and democracy, and the lack of progress in the provision of basic services.

After the optimism of its early years of independence Eritrea later faced considerable challenges. The main reason is that with time the Eritrean national 'cake' could not grow. The inflated economic image of Eritrea was gradually found to be untenable, as can be seen from the poor economic situation reported by sources such as the UN Development Programme (UNDP) and the International Monetary Fund (IMF).<sup>40</sup> Right at the outset of Eritrean independence there was doubt as to Eritrea's economic/fiscal viability<sup>41</sup> and questions as to the democratic credentials of its leadership.<sup>42</sup>

Some form of collective leadership and a modicum of press freedom appeared on the Eritrean political scene during the early days of independence. However, following its war with Ethiopia (1998–2000), the political credentials of its leadership, its claimed espousal of democracy and the economic promises have largely been discredited. This has created the challenge of state viability in Eritrea. The failure to be economically viable and politically accountable and democratic led first to a serious division within the leadership and later appears to have widened the gap in the relations between the state and society at large. The division within the political leadership led to increased repressive measures and heavy reliance on the military and security forces to suppress domestic political dissent. The result is a narrowing of the political leadership circle, which has led to an increasingly personalised decision-making approach.

The militarisation of the state<sup>43</sup> is being observed to be too demanding for the population living on the edges of poverty and more so for the young population, who have little to attain given that higher education in particular is increasingly unavailable for them. Resorting to forceful conscription under

the guise of national military service, locally called *sawa* training in Tigrinya, inevitably alienates the young population and their communities in Eritrea. The leadership's intolerance towards religious groups and political minorities has added to the antagonisms between state and society in Eritrea.<sup>44</sup>

There are fundamental divergences between the interest of the state, personified by the increasingly insecure political leadership in Eritrea, on the one hand and the insecure population at large on the other. This creates a policy context in which political antagonism, secrecy and exclusion form the basis for decision-making, including the formulation and implementation of foreign policies primarily geared towards state or regime survival.<sup>45</sup> Therefore, in antagonistic state-society relationships policies remain the exclusive domain of a few coterie or, indeed, of the ruler himself. The autocracy, boosted by the lack of the people's control over decision-making and implementation of policies, will continue to have a negative impact on the foreign policies of Eritrea, including its relations with Yemen. The personalisation of political leadership and its ability to control military and security resources in Eritrea will continue to be by far the most important determinant of Eritrea's foreign policy. This is because most of Eritrea's policies will aim at combating political instability arising from antagonistic internal state-society relationships. Therefore, a change in the quality of Eritrea's relations with its neighbours, including Yemen, would not be expected in the short term, unless Eritrea's antagonistic state-society relationship transforms itself internally.

Similarly, decision-making in Yemen since independence has taken place in a context in which there appears to be no fundamental change in the state's relationships with society at large. In other words, state-building efforts in Yemen did not transform Yemen's economy and politics. In fact, Yemen's recent history has witnessed turbulence and political instability. One of the fault lines in Yemen's internal politics is its division into two – North and South Yemen – before and in the post-independence period. The southern part became socialist, whereas the northern part was considered the ally of the West. Although the two reunited in 1993, the reunification did not help the transformation of Yemen's state in terms of its relations with society. The political instability within the country has continued to threaten the 1993 union. Religious radicalism is challenging the state in Yemen, and it is currently waging a bitter war against a rebellion in the north. Economically, Yemen has remained stagnant. The continuing political instability and economic stagnation provided the

imperative of regime survival in Yemen. Therefore, policies are primarily aimed at suppressing dissent. As more and more financial resources and human energy are diverted towards this objective, the gaps in the relations between state and society will be likely to widen.

This creates an atmosphere of continued instability and has a considerable impact on the way the political leadership of Yemen formulates and implements its policies towards its neighbours, including Eritrea.<sup>46</sup> In fact, the recent conflict north of Yemen, which has been on-going since 2004, has only dimmed any prospective relationship between Eritrea and Yemen. Eritrea has been perceived to support, along with Iran, the rebel groups in the north (called the Haouthis – named after the clan leader, and largely following Shiite Islam) against Yemen and Saudi Arabia. As will be discussed later, inevitably, the entry into the political picture of such regional and extra-regional actors only heightens rivalry and misperception, and exacerbates relations, particularly between Eritrea and Yemen. The involvement of the US in supporting the Yemeni government against the northern rebels only adds fuel to the fire.

## Regional factors

Regional issues will continue to shape decision-making processes in both countries and influence their relations. As far as Eritrea is concerned, its leadership was regarded by its counterparts, especially the leaders of Ethiopia and Sudan, as an ally in regional power play. However, as noted above, the good relations between Eritrea and its neighbour did not continue. After a few years of cordial and supportive relations between Ethiopia and Eritrea following the latter's independence, the relationship ran into challenges. Worsening relations resulted in the 1998–2000 war between the two countries.<sup>47</sup> The crisis in its relations with Ethiopia brought to an end Eritrea's economic lifeline, and this has significantly diminished its regional standing. Eritrea's miniscule economy was no longer able to benefit from the substantial Ethiopian market and lost revenue derived from Ethiopia's use of Eritrea's ports – major blows that provided a tough test to its economic viability as a state in both the Horn of Africa and the Middle East. In other words, Eritrea's attempt to thrive and develop under Ethiopia's shadow did not succeed, at least economically. Therefore, Eritrea's hostile relationships with Ethiopia will continue to significantly affect its relations at the regional level, including those with Yemen.

Similarly, Eritrea's relationship with Sudan has been in turmoil.<sup>48</sup> The root cause of the worsening relations relates to mutual accusations of sponsoring internal opposition in each country. On occasions the Eritrean leadership has tried to persuade its Sudanese counterpart that they are more allies than enemies. At the same time, their relationship came under severe pressure due to issues such as Darfur, in which it has been claimed that Darfur rebels were granted sanctuary in the Eritrean capital.<sup>49</sup> Therefore, no significant development towards viable relations has been achieved. The porous border will also continue to be a central problem between the two states. It has been noted that the importance of Sudanese relations with Eritrea lies in the fact that the former has a relatively strong economy, whereas Eritrea, at least for now, can offer Sudan very little economically. Eritrea may also need Sudan even more because of the latter's emerging oil economy, which may attract the Eritrean labour force. Eritrea, which is perceived in military terms as a relatively strong regional actor, will continue to portray the image of the regional 'kingmaker'. And this will not augur well with the Sudanese or with the political leaderships of the other states in the region. Overall, Eritrea has constantly fluctuating relations with Sudan, and its relations with such an important regional power are unlikely to favour Eritrea in its relations with its other neighbours, including Yemen, in the near future.<sup>50</sup>

Worse still, Eritrea has been at loggerheads with Djibouti over a border dispute. Djibouti, as the smallest state in the region, attempted first to appease Eritrea, but this could no longer continue once hostility broke out in the form of a border conflict. The brief war with Djibouti added to Eritrea's worsening image at regional and global levels. This has led to the assertion that Eritrea is now an isolated state surrounded by hostile neighbours. Even though Djibouti, which has provided military bases for global powers such as the US and France, may not pose a military threat to Eritrea, the diplomatic cost of this conflict will be very significant for Eritrea.

Eritrea's worsening relations with its neighbours are also evidenced in its isolation from the regional multilateral forums, IGAD in particular. The diplomatic cost of the failure to be part of such multilateral forums, which it could have used for dialogue and for creating a better image, will no doubt further harm Eritrea's long-term interests. Overall, the extent to which Eritrea will be able to improve its relations with Sudan, Ethiopia and Djibouti will definitely impact on its relations with Yemen.

In assessing the role of regional factors affecting Yemeni-Eritrean relations, Yemen's relations with its Middle Eastern neighbours have not been smooth, which could in one way or another impact on its relations with Eritrea. Like Eritrea, Yemen is neither a military nor an economic giant in the region. Yemen, which is geographically adjacent to oil-rich emirates, is considered the most impoverished state in the Middle East. Its lack of economic resources impacts negatively on Yemen's image, and have made it economically less attractive to its neighbours, such as Saudi Arabia. The border between Yemen and Saudi Arabia, although now demarcated, nonetheless remains a cause for tension. Saudi Arabia considers its border with Yemen a liability that can be traversed by fundamentalists and extremists. This is out of fear that Yemeni and African immigrants may cross into Saudi Arabia via its border with Yemen and create insecurity and discord in Saudi Arabia itself. As a result Yemen lacks the credible support of Saudi Arabia, which is potentially an important ally in Yemen's international relations, including those with Eritrea.<sup>51</sup>

## International dimensions

International dynamics also bring interesting dimensions to Eritrean-Yemeni relations, beyond the regional level. In this regard, Yemen and Eritrea are more or less equally attractive to extra-regional power players. The single most important factor at an international level is the geopolitical situation of both countries. The interaction of political issues and the location of the two countries bordering the international gateways to the Red Sea and Indian Ocean will bear on the two states individually and on the future of their relationships.

The history of the Cold War attests to the geopolitical significance of the two countries divided by the Red Sea. The attention given to the region in the past pitted the then superpowers against each other. The geopolitical importance of the region has continued even today. As a result, despite the fact that Eritrea and Yemen are economically less attractive, they have continued to attempt to appease global powers with a strong interest in the region. The US, for instance, is currently using Djibouti as a base and regards Yemen as strategically important in its war against terrorism.<sup>52</sup>

Therefore, their strategic location will continue to be an important currency for Yemen and Eritrea, which may attempt to use their respective extra-regional patrons at times of hostility and for economic, military and diplomatic support.

In this regard, the political leaderships of the two countries appear to be well aware that their strategic locations could bring them advantage by engaging extra-regional powers, and tempt both Yemen and Eritrea to work to outmanoeuvre each other. To illustrate, there was a rumour, though unsubstantiated, that Eritrea was making its ports accessible to Iran, while Iran is being accused by Yemen of sponsoring groups fighting the Yemeni government. Such actions may deepen the mutual suspicion between the two.

In dealing with global determinants in Eritrean-Yemeni relations the role of the US will be as important as ever. The US will continue to be a factor in the international relations between the two countries, as well as at the regional level for that matter. In the context of hostile relations and in an atmosphere of mutual suspicion, the mere perception that the US favours either of the leaderships of the states in question may have an impact on the way one party perceives the other.<sup>53</sup>

In this regard, the US has major issues with Eritrea because of its involvement in Somalia. Indeed, recently, US policy-makers, after urging Eritrea to refrain from destabilising Somalia, went ahead in backing a UN Security Council resolution in December 2009 imposing sanctions on arms and a travel ban against Eritrean leaders. Notably, the sanction condemned Eritrea's continued position on Somalia. Therefore, Eritrea's inability to refrain from its controversial activities in the region and in Somalia, and the inability of US policy-makers to persuade Eritrea to subscribe to their demands, do not enhance Eritrea's image vis-à-vis the leaderships of neighbouring countries.

The US is also pondering the fallout of political problems in Yemen, as it does not want the state of Yemen to fall into the hands of so-called terrorists and the groups sympathising with them. As a result, the US will continue to engage actively with Yemen by using both 'carrots and sticks'.<sup>54</sup>

The interests of other actors, such as Israel, will be an important factor in Eritrean-Yemeni relations. The popular perception has always been that Israel favours Eritrea, with the aim of using it as a 'night watchman' over the Red Sea. However, how much Israel will have to offer Eritrea financially in this function is debatable. Similarly, other regional players, like Ethiopia, Saudi Arabia and Egypt, which have relative capabilities over Yemen and Eritrea, will be important. The nature and timeliness of their support for any of the impoverished states under discussion in this chapter will be mirrored in the relations between them.

## CONCLUSION

The Yemeni-Eritrean conflict that manifested itself in the war for the Hanish Islands was resolved after they agreed to the settlement of the dispute by international arbitration. Once the Yemeni-Eritrean border commission announced its ruling, both of them accepted it in a relatively short period of time. This was taken as a positive development in the relationships between the two states and was expected to contribute to enhance the images of the political leaderships in Yemen and Eritrea in upholding the principles of international law.

However, although the conflict over the Hanish Islands has ended, bilateral relations have not shown significant improvement. The impoverished economic status of Yemen and Eritrea has failed to become an incentive for cooperation between the two countries across the Red Sea. This is essentially because conditions of mutual distrust appear to continue in the post-conflict period. A number of factors responsible for the lack of observable change in the relations between the two states have been explored.

Primarily, the instability in both countries is a critical factor for the external policies of both states. Political instability in Yemen and Eritrea relates largely to the nature of state-society relations in both states. State-society relationships in both countries are largely antagonistic in that the policies that the respective political leaderships pursue are geared towards regime survival. Yemen and Eritrea's external policies will continue, therefore, to reflect the broader internal political objectives or strategies the regimes in power pursue. Therefore, the future directions in the relations between Yemen and Eritrea will largely depend on the resolution of state-society antagonisms within Yemen and Eritrea.

Both the available and perceived resources along the borders of the two countries within the Red Sea remain the locus of attention and the sources of conflict in the relations between the two. Eritrea, known for supporting political groups opposing the incumbents in states in the region, may also be tempted to take the same stance towards Yemen's administration – or at least there is no guarantee that these states will in the future not be the sponsors of each other's opposition. This phenomenon is likely to continue to feature in the relations between the two countries.

Regional power relations also have a considerable impact on the future of Yemeni-Eritrean relations. The nature of the relations of both states with Middle Eastern countries such as Saudi-Arabia and Iran and with African countries,

mainly Ethiopia, Egypt and Sudan, will be significant for Yemeni-Eritrean relations. The formation of regional groupings such as the Sanaa Forum has had a considerable impact on the way the two states perceive each other. It was discussed earlier that no sooner was the forum formed than Eritrea declared it an 'axis of belligerence'. Yet, the fact remains that even though such political groupings may not have immediate socio-economic benefits for their members, the political and diplomatic implications of such groupings are far more significant, in as far as such regional/international organisations have continued to provide forums for negotiation to advance their interests and help facilitate the settlement of disputes by peaceful means. The feeling of isolation that comes from being excluded from the 'forum of peers' is politically costly for the leadership of the Eritrean state. This is especially the case with politics in Africa and the Middle East, where the informal interaction among elites, including those in state power, is no less important than formal state-to-state relations. Such regional groupings are useful in terms of informally providing a sense of security and mutual confidence in the relations between political leaders.

The geographical situation of Yemen and Eritrea, with the Red Sea lying between them, is in the spotlight of global geopolitical contest, and means that they continue to be attractive to the major global players, which attach importance to the region. Global powers such as the US, and others such as Iran and Israel, would wish to utilise either Eritrea or Yemen, or both, as strategic and security 'watchtowers' over the Red Sea and the Indian Ocean. Currently, the state of Yemen has appeared to be even more vital to the US in the context of the latter's strategic interest in waging war against extremism or terrorism.

Overall, Yemeni-Eritrean relations take place in complex national, regional and global contexts. This makes it difficult to foresee the trend that relations between the two countries will take. Relations between the two in the future will depend on the strategies the incumbents in both countries deploy at domestic, regional and international levels to prolong their stay in power. In this regard, although antagonistic state-society relations in each country are not likely to be resolved in the short term, the winning of the 'domestic war' predicated on the politics of survival will determine who survives and remains at the helm of state power. Consequently, the current nature of Eritrean-Yemeni relations does not augur well for either of the countries, and it is difficult to visualise how this will positively and tangibly contribute to regional security in the post-Cold War period.



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- 35 See <http://www.sudantribune.com/spip.php?page=recherche&recherche=sanaa+forum&x=12&y=11>, (accessed 20 September 2009).
- 36 See [http://www.dehai.org/demarcationwatch/articles/ECSS\\_Sanaa\\_axis\\_of\\_belligerence\\_partii.html](http://www.dehai.org/demarcationwatch/articles/ECSS_Sanaa_axis_of_belligerence_partii.html) (accessed 21 September 2009).
- 37 See the commentary by M Plaut, The Eritrean opposition moves towards unity, *Review of African Political Economy* 32(106) (2005), 638–643.
- 38 Ethiopia, Sudan back calls to include Eritrea in regional forum, *Sudan Tribune*, 27 December 2004, <http://www.sudantribune.com/spip.php?article7228> (accessed 21 September 2009).
- 39 KJ Holsti, *International politics: a framework of analysis*, 7th ed, Prentice Hall, 1998.
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- the Eritrean diaspora. For more information, see Africa south of the Sahara in *Europa World* online, <http://www.europaworld.com/entry/er.dir.171> (accessed 27 April 2010); see also [www.imf.org](http://www.imf.org) for more statistical data (accessed 15 July 2010).
- 41 T Medhane, *Eritrea: the dynamics of a national question*, Amsterdam: BR Grunner, 1986.
  - 42 See K Tronvol and T Negash, *Brothers at war*, Oxford, OH: Ohio University Press, 2000.
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  - 44 Amnesty International, Human rights in state of Eritrea, <http://www.amnesty.org/en/region/eritrea/report-2009> (accessed 25 September 2009).
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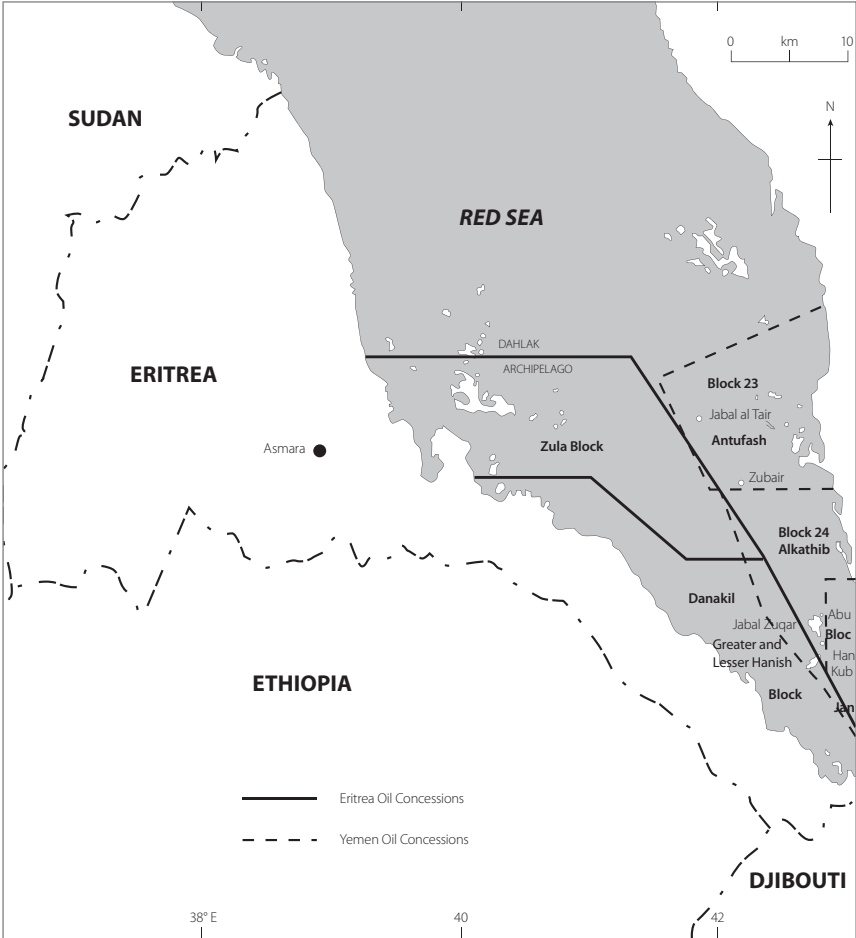
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# APPENDIX

Figure 1 Map of the region



Source Dzurek, D.J. Eritrea-Yemen dispute over the Hanish Islands, IBRU Boundary and Security Bulletin, spring 1996, 70

# 11 Not born as a de facto state

Somaliland's complicated state formation

MARKUS VIRGIL HOEHNE

## INTRODUCTION

The recent debate about state formation highlights the conflict-ridden and complicated nature of this process.<sup>1</sup> States are increasingly recognised as heterogeneous and contested constructs. Different local or regional powers coexist, and sometimes compete, with official state institutions. Such powers may even command their own armed forces and establish their own legal and administrative structures.<sup>2</sup> Clearly, the once broadly accepted Weberian definition of the state as the authority with the legitimate monopoly of violence over a defined territory is being challenged at the beginning of the 21st century.<sup>3</sup> Nonetheless, statehood is still the 'entrance ticket' to the world system for those aspiring to political recognition and the resources that come with international sovereignty. This explains why new states continue to be established, such as Croatia (1991), East Timor (2002) and, most recently, Kosovo (2008), and why other state-like entities continue to struggle for recognition, such as Transnistria, Northern Cyprus, Palestine and Somaliland.

Some of the latter conform to the definition of statehood, in so far as they include a permanent population, a defined territory and a government.

However, since the recognition of states is as much a legal as a political matter, not all state-like entities enjoy recognition. In Africa, in particular, the principle of the sanctity of the post-colonial borders – originally adopted by the Organisation of African Unity (OAU), and since upheld by its successor organisation, the African Union (AU) – opposes secession and the formation of new states. From the perspective of existing governments, this principle helps prevent large-scale instability due to the contested nature of most of Africa’s state borders.<sup>4</sup> The complicated nature of international recognition, and the relative lack of resources and the centralisation of the economy in many African states also prevent local elites in the continent from pursuing secessionist politics. Instead they compete for the resources of the existing state.<sup>5</sup>

In some cases, the gap that results between the empirical reality of state-like entities and the politics of (non-)recognition is filled by the concept of de facto states. According to Scott Pegg’s definition, de facto states:

... feature long-term, effective, and popularly supported organized political leaderships that provide governmental services to a given population in a defined territorial area. They seek international recognition and view themselves as capable of meeting the obligations of sovereign statehood. They are, however, unable to secure widespread juridical recognition and therefore function outside the boundaries of international legitimacy.<sup>6</sup>

This article shows that the Republic of Somaliland in the Horn of Africa, which seceded from collapsing Somalia in May 1991, but still lacks international recognition, fulfils most criteria of this definition of a de facto state. Interestingly enough, and in contrast to all other cases of secession in Africa, Somaliland’s existence derives from the collapse of the ‘parent state’ of Somalia.<sup>7</sup> This particular situation – secession from a collapsed parent state – is closely related to the ongoing problems that the country faces regarding the recognition of its statehood.

One must understand that Somaliland was not ‘born’ as a viable de facto state: it emerged in relation to complex social and political dynamics within the region and, partly, in response to external factors, such as the situation in Somalia and the establishment of Puntland in north-eastern Somalia.<sup>8</sup>



## BACKGROUND

In colonial times, the Somali peninsula was divided among Great Britain, Italy, France and the Ethiopian Empire. The British established their protectorate of Somaliland in the north-west. The Italians administered the territory from the north-east to south Somalia. The British Protectorate became independent on 26 June 1960; four days later, Italian Somalia followed. On the same day, 1 July 1960, both territories merged to form the Somali Republic. The first decade after independence was characterised by internal problems of legal and administrative integration, and corruption and clanism within the political system.<sup>9</sup> Externally, the so-called 'Greater Somalia' policy of the government in Mogadishu, which aimed at uniting all Somalis within one state, led to major conflicts with Kenya and Ethiopia. In October 1969, a group of 25 military and police officers led by General Mohamed Siad Barre toppled the democratic government of Somalia.<sup>10</sup> The new rulers subsequently strengthened the military capacities of the country. The instability reigning in Ethiopia after the fall of Emperor Haile Selassie and the takeover by the Derg in 1974 prompted Somalia's attack on its neighbour in pursuit of its irredentist dream. This resulted in one of the bloodiest inter-state wars in Africa, popularly known as the Ogaden War (1977–78). In this war, Moscow, which had been formerly allied with Mogadishu, sided with Addis Ababa. The devastating defeat of the Somali national army weakened the regime of President Siad Barre. In the 1980s the Somali Salvation Democratic Front (SSDF) and the Somali National Movement (SNM) took up the struggle against the government in Mogadishu. The SSDF was predominantly a Majeerteen movement. Members of this clan resided in north-eastern Somalia. The SNM was dominated by Isaaq, whose clan territories were in the north-west of the country. Both guerrilla fronts were hosted by Ethiopia. The SSDF dissolved owing to internal problems and conflicts with the Derg, but the SNM continued its struggle, and after the peace agreement between Mogadishu and Addis Ababa in 1988 it was forced to enter Somalia. In reaction, the Somali government bombarded the main towns of the north-west, Hargeisa and Burco. Siad Barre clung to power by distributing among his followers resources and weapons that were largely provided by his Western allies. Many of the followers were relatives of the president.<sup>11</sup> By manipulating Somali clans against each other, Barre contributed to the disintegration of Somalia. The government was overthrown by Hawiye guerrillas belonging to

the United Somali Congress (USC) in January 1991. Fear and hatred between descent groups, and the lack of agreement between the various Somali guerrilla movements led to new violence and the complete collapse of the state in Somalia, which was followed by international intervention in southern Somalia and internal territorial reorganisation in the north.<sup>12</sup>

## THE TROUBLED FOUNDATION OF SOMALILAND

The SNM, and with it the Isaaq, was the strongest military power in the north-west in early 1991. But instead of continuing the fighting along descent lines against the other clans in the region, such as the Gadabuursi and the Ciisa (belonging to the Dir clan family) in the far west, and the Dhulbahante and the Warsangeeli (belonging to the Darood clan family) in the east, most of which had been supporting the government of Siad Barre, the SNM proposed peace negotiations. In May 1991 a conference (*shir* in Somali) was held in Burco. Guerrilla commanders, traditional authorities and clan representatives participated. The SNM leadership was not in favour of secession. However, the rank and file of the movement was. They remembered the devastation of the civil war and particularly the harsh measures that had been taken by the previous Somali government against the civilians in the north-west. Also, the news from Mogadishu was worrisome. Cali Mahdi, one of the two leaders of the USC, had usurped the presidency of Somalia. He had done so without the consent of his co-leader in the USC, Maxamed Faarax Caydiid, and without consulting the other guerrilla factions, such as the SNM. Mogadishu was on the verge of descending into extreme violence.

The news broadcast on Radio Mogadishu that the SNM leadership had agreed to meet with the southern groups in Cairo triggered large demonstrations in the major towns of north-western Somalia. The SNM leadership was compelled to declare the independence of the Republic of Somaliland on 18 May 1991.<sup>13</sup> The declaration happened ‘without the benefit of planning or careful considerations of the possible consequences’.<sup>14</sup> The political leaders and the people in southern Somalia did not accept this step. However, caught up in civil war and warlordism, there was not much they could do. Even many members of the non-Isaaq clans in the region were not in favour of the secession. Nevertheless, they accepted it in the light of the superior military power of the SNM and the escalating violence in and around Mogadishu.<sup>15</sup>

Map 1 Political divisions in northern Somalia since 1991



Source Max Planck Institute for social anthropology

Arguably, secession was essentially a security measure. It created political distance from collapsing southern Somalia and provided people in the north-west with some political orientation and the incentive to halt the escalation of violence in the region. The most decisive feature of Somaliland at this point was its claimed territory: the republic was declared in line with the borders of the former British Protectorate. A two-year interim government led by the SNM was established in the capital city of Hargeisa. Cabdiraxmaan Axmed Cali Tuur, the last SNM chairman, and Xassan Ciise Jaamac, his vice chairman, became

President and Vice President of the Republic of Somaliland. The cabinet consisted of some guerrilla commanders and six members of the non-Isaaq clans. The lack of state revenue, the destruction of the regional infrastructure due to the civil war, the high number of armed clan and freelance militias, and splits within the SNM made any form of effective government impossible. Intra-Isaaq fighting broke out in Burco in early 1992 between two rivalling clans, Habar Yonis and Habar Jecllo, over the issues of demobilisation. Simultaneously, other Isaaq clans fought over the control of the port of Berbera. Some Gadabuursi elders offered to negotiate. A peace conference was held in the town of Sheekh in October 1992.

Peace and a national charter were adopted at a second big national *shir* in the town of Boorama in the Gadabuursi area in the first half of 1993. The national charter functioned as a provisional constitution for Somaliland. It provided for the separation of the executive, legislative and judicative branches of the government, and introduced a bicameral parliament, consisting of a House of Elders (*Golaha Guurtida*, commonly shortened to *Guurti*) and a House of Representatives (*Golaha Wakiilada*). Thereby, a hybrid political system was founded that incorporated ‘traditional’ and ‘modern’ elements of governance. The experienced Isaaq politician, Maxamed Xaaji Ibraahim Cigaal, was elected as the new president for a two-year term. He had not been part of the SNM struggle. Nevertheless, as an elder statesman he enjoyed respect. Cigaal had been the head of Somaliland before the unification with the south, and Somalia’s last prime minister before the coup of 1969. His Habar Awal clan held key economic positions in the north. This would prove crucial for Cigaal’s rule. Aw Cali Tolwaa, an SNM veteran and a member of the Gadabuursi clan, became vice president. The Boorama conference had been a ‘watershed event in Somaliland’, since it established the political framework of the country for the coming years.<sup>16</sup>

However, after the Boorama conference peace had not firmly taken root in Somaliland. Cabdiraxmaan Tuur, the former president, abandoned the secessionist project and turned to the south, where he joined Maxamed Faarax Caydiid in Mogadishu. He appeared together with Caydiid at a press conference in Addis Ababa in April 1994, presented himself as SNM chairman, and declared his support for a federal system for Somalia, including Somaliland. While Tuur followed his own personal agenda, he also represented some sections among the Isaaq, particularly among his own Habar Yonis clan, which

**Map 2** Clan territories in northern Somalia

Source Max Planck Institute for social anthropology

opposed secession and looked for other options for Somalia. In addition, Tuur and some others managed to manipulate those clan members who, after Tuur's replacement, felt deprived of power in Somaliland, even if they were not necessarily opposed to the secession. Finally, Cabdiraxmaan Tuur mingled with the UN, which had staged its intervention in southern Somalia (UNOSOM) and was interested in extending its operations into Somaliland, which was refused by the Cigaal administration.

Simultaneously, the government got involved in another conflict over the control of Hargeisa's airport. After the port of Berbera, this airport was the country's second most important economic and political asset. It was the gateway for goods and people, including representatives of the international community, into Somaliland. In the early 1990s it was held by local militias of the Ciidagale clan. These militias refused to compromise in any way with the government. The more the government threatened their position, the more their resistance gained backing within the Ciidagale clan.<sup>17</sup>

Both of these conflicts became increasingly intertwined owing to the genealogical factors involved: within the Isaaq clan family, the Habar Yonis and the Ciidagale clans belong together as Garxajis. This provided a basis for their alliance against what they perceived as a Habar Awal-dominated government that was aided by others, e.g., the Habar Jecllo, who, as mentioned above, were the traditional rivals of the Habar Yonis in Burco. Fighting escalated when government troops set out to seize Hargeisa Airport, and quickly spread to Hargeisa town and Burco. For one year, from mid-1994 to mid-1995, both places were haunted by sporadic episodes of violence and civil war that alternated with periods of tense stalemate. Tens of thousands of inhabitants fled the towns temporarily.

These events, however, concerned only a part of the polity of Somaliland. The Habar Yonis and Habar Jecllo, residing in the Sanaag region, managed to keep the politics in the centre and the inter-clan fighting at bay.<sup>18</sup> The Habar Jecllo and Habar Yonis in Burco and further south-west, and their relatives who reside from east of Burco up to Ceerigaabo and the coast, belong partly to different lineages. In Ceerigaabo Habar Yonis and Habar Jecllo reside together with Dhulbahante and Warsangeeli. Therefore, they had to maintain 'Isaaq unity' against the local Darood clans. People in Ceerigaabo had already tasted the bitterness of internecine fighting between local SNM supporters and local government supporters in the last years of the anti-regime struggle between 1988 and 1991. This explains the differences between conflict dynamics in central Somaliland and further north-east.

Simultaneously, the non-Isaaq clans in the west and east existed in limbo; they remained in peace, but without any state administration. Governance was exercised locally, by traditional authorities, other community leaders (e.g. former military or police officers and teachers) and by members of the diaspora. The following example of administration building in the Sool region illustrates the fluid nature of the process of local reconstruction and points to emerging tensions within the polity of Somaliland.

The members of the Dhulbahante clan held a *shir* in Boocame, in the south-east of the Sool region, in early 1993 when the second national Somaliland conference was underway in Boorama. The Boocame conference had been co-organised by some Dhulbahante in the near diaspora, in Nairobi, Kenya, who were largely opposed to the secession of Somaliland.<sup>19</sup> The diaspora hard-liners tried to play the 'clan card' and called for Darood solidarity against the

Isaaq dominating in central Somaliland. They wished to prevent members of the Dhulbahante clan from attending the Boorama conference. However, there were also voices in the conference (which became known as 'Boocame I') that tried to prevent the community in Sool from being misled by Darood chauvinism.<sup>20</sup> The result of the controversial discussions was the establishment of a local council for the Sool region. It consisted of 33 men, mostly intellectuals and former professionals. The local traditional authorities cooperated with this council.<sup>21</sup>

During the meeting in Boocame an Isaaq delegation came and invited Dhulbahante delegates to Boorama. Around fifty Dhulbahante men were sent there. Some members of the clan perceived this as an attempt to 'split' the Dhulbahante community.<sup>22</sup> Obviously, the *shir* in Boorama was essentially a state-building conference, as outlined above. When the Dhulbahante delegation came back from Boorama to the Sool region they found that during their absence things had changed. The anti-Somaliland faction had influenced the people, who now in their majority were against supporting Somaliland's independence.<sup>23</sup>

Between 1993 and 1996, the local council worked for peace in the Sool region. Its capacities, however, were limited since it lacked finances. It had relations with the administration in Hargeisa. In particular, Garaad Cabdiqani, the highest-ranking traditional authority of the Dhulbahante, was in contact with President Cigaal. However, in those days, Hargeisa had neither the interest nor the resources to engage with the Sool region.

Boocame I showed the will of the majority of the Dhulbahante clan to regulate its own affairs autonomously. It also revealed the increasing split within the Dhulbahante community. Some Dhulbahante, including Garaad Cabdiqani, were in fact moderately pro-Somaliland, since this seemed to be the way towards peace and prosperity in the early 1990s. Others preferred to distance themselves from Hargeisa after they had been compelled by the circumstances to participate in the *shir* in Burco in 1991. The other non-Isaaq group that kept some distance from Somaliland was the Warsangeeli clan, whose members reside in the east and north-east of the Sanaag region. The Warsangeeli also established a degree of local administration in the early 1990s, led by their traditional authorities. In contrast to the Dhulbahante, however, the majority of them did not openly oppose the politics of Somaliland in the early 1990s.

## THE CONSTRUCTION OF AN IMAGINED COMMUNITY IN SOMALILAND

Despite the fighting and instability in central parts of Somaliland, President Cigaal was able to undertake important steps towards state building. He came from a wealthy merchant family and had good relations with the business class of his clan. Since his Ciisa Muuse sub-clan controlled the port of Berbera, Cigaal was able to raise substantial funds in order to engage in some of the most basic tasks of the state: paying salaries to those in the administration and the armed forces, and engaging in demobilisation. Additionally, first steps in the direction of the economic consolidation of Somaliland were taken. The Habar Awal business community financed the introduction of a new currency, the Somaliland Shilling, in 1994. By early 1995 it had become legal tender in western and central Somaliland, up to the city of Burco.<sup>24</sup> The government started some basic taxation of the *qaad* trade,<sup>25</sup> imports and exports to and from the port of Berbera and the businesses in the centre and the west of the country. The moderate state revenue was consumed by the administration in the capital, the security forces, the war efforts inside the country and corruption. Consequently, the only real service provided by the government, usually in cooperation with local traditional authorities, was basic security in central Somaliland, where the authority of the government reached. In the more peripheral regions the authority of Hargeisa was minimal.

The violent conflicts in central Somaliland, which had followed Tuur's anti-secessionist move, were mediated by various parties, such as the diaspora-based Peace Committee for Somaliland, local traditional authorities and members of the *Guurti* in Somaliland. This time, however, the elders did not act as a unified body of 'neutral' mediators, as previously in Boorama. In fact, the traditional authorities of the Isaaq clan family and the *Guurti* members were divided. Some were in favour of the government of Cigaal, whereas others were against it. This weakened their overall influence and standing in Somaliland's politics.<sup>26</sup>

A final national *shir* was held in Hargeisa from October 1996 to early 1997. It marked the end of large-scale fighting in Somaliland. In contrast to the previous conferences in Burco and Boorama, the *shir* in Hargeisa was clearly dominated by the government and the incumbent president (whose term of office had been extended previously by the *Guurti* owing to the fighting in Somaliland). The *shir* was held in the capital city, which was fully in the hands of the government,



which financed the conference. The voting delegates were all 150 members of the two houses of parliament, plus 165 additional clan representatives. The members of the chairing committee (the *shir gudoon*) who chose the additional delegates were under Cigaal's control. Therefore, the selection process became problematic. The chairing committee preferentially endorsed delegates from various clans who were perceived as pro-government. The list sent by Garaad Cabdiqani, for instance, naming the participants from the Sool region, was rejected by Cigaal. This strongly irritated the *garaad*, who had been moderately pro-Somaliland in the years before.<sup>27</sup>

Maxamed Xaaji Ibraahim Cigaal's plan worked out and in February 1997 he was re-elected as President of Somaliland, this time for a five-year term of office. Cigaal had massively bribed delegates to secure his re-election.<sup>28</sup> Dahir Rayaale Kahin, a Gadabuursi who at that time was a rather unknown figure, became the new vice president. In addition, a new interim constitution of the country was approved at the Hargeisa conference. This constitution represented a compromise between Cigaal's wish for a strong executive and the preference of many delegates for a parliamentary democracy. It also provided for increasing the members of parliament from the previous 75 to 82 per chamber. The additional positions in the *Guurti* were mostly given to Habar Yonis and Ciidagale. The extra seats in the House of Representatives were divided among some small, hitherto unrepresented – or not properly represented – groups, such as the Midgan. This was one way to incorporate and appease former opponents of the government.<sup>29</sup>

Formally, the system of clan representation continued, but, as outlined above, many clan representatives at the national level had lost legitimacy. The hybrid political system established in Boorama in 1993 had come with a cost to the 'nationalist' elites, who had to accept traditional authority. It had also come with a cost to the elders. Renders argues that already before Cigaal's coming to power the system of clan nomination for delegates/parliament members was hardly transparent.<sup>30</sup> Generally, urban-based and politically and economically well-connected men became clan representatives. In many cases, they were not even chosen by 'their people', but simply nominated themselves, or were pushed by influential interest groups. By 1996, most members of the *Guurti* in particular and many of Somaliland's leading traditional authorities in general had lost their 'innocence'. Their integration into the state apparatus had forced them to take sides and to get involved in 'national' politics. In many instances, this

made them a party to ongoing conflicts and susceptible to manipulation and corruption.<sup>31</sup> Nevertheless, they continued to occasionally intervene in situations of crisis and worked as mediators between clans, lineages, families and political interest groups.

The *shir* in Hargeisa also marked the final turning point in the already difficult relationship between the Dhulbahante and the government of Somaliland. Again, as in the case of the *shir* in Boorama, some anti-Somaliland forces had organised a ‘counter-*shir*’ in Boocame in 1996, parallel to the meeting in Hargeisa. This conference became known as ‘Boocame II’. The local council established at Boocame I had become inactive. Boocame II strengthened the power of the anti-Somaliland faction within the Dhulbahante clan. It paved the way for the clan’s engagement in the establishment of Puntland (see below).

Despite its shortcomings, the Hargeisa conference enabled Somaliland to move forward with political, economic and social reconstruction. In the second half of the 1990s, Somaliland as a polity took shape in a quid pro quo struggle for power and participation among the leading politicians, the business community, SNM veterans, traditional authorities, members of the nascent civil society and diaspora actors. Despite the importance most people in Somaliland attribute to Islam – and the fact that Somaliland is officially an Islamic state – religious leaders did not play a visible role in the state formation process in Somaliland. Within the government, civilians and bureaucrats successively took over from the former SNM cadres. In this context, Isaaq politicians, who had served in the administration of Siad Barre up to 1990, came to power again in Somaliland. It was not uncommon to hear ordinary people in Hargeisa in 2003 and 2004 describe members of the government as ‘*faqash*’. *Faqash* is a derogatory term that can be translated as ‘collaborator’ or, generally, ‘filth’. The government in Hargeisa successively established more authority over central and western Somaliland in terms of general administration and the control of key economic resources. It also began to reach out to some more peripheral regions, particularly to Sanaag in the north-east and Awdal in the west. The state institutions, however, did not hold the legitimate monopoly on violence. Clans and individuals retained their small arms. Even in the capital city, traditional authorities continued to act as ad hoc mediators between families, between state institutions and between citizens and the government, in times of crisis. Among the population, criminal cases (from shoplifting to murder) were usually handled by family elders. In those cases

in which the police got involved, it was only in agreement with the relevant traditional authorities.

Financial remittances from Somalis abroad to their families ensured their survival and moderate ‘wealth’ for the people of Somaliland. Collective initiatives by those in the diaspora contributed to the establishment of basic infrastructure, such as schools, hospitals and even universities. Diasporic actors increasingly became involved in politics. Some engaged in local peace building; others supported local politicians or traditional authorities, or returned and tried to build for themselves a political position ‘back home’ in Somaliland.<sup>32</sup> The basis for these various social and political forces working in concert (although not necessarily always in harmony) was mutual recognition and the will to keep the peace.<sup>33</sup> This arguably constituted a moderate and family-based form of ‘external’ interference that was controllable by the actors themselves. By contrast, however, the large-scale military and humanitarian interventions in southern Somalia between 1992 and 1995, led by the UN and the US, clearly escalated the conflict there.<sup>34</sup>

The vision of Somaliland as an independent state inhabited by a particular community or nation gained substance through the establishment of Radio Hargeisa (1991), the foundation of several daily newspapers, such as *Jamhuuriya* and *Haatuf* (through the 1990s and early 2000s), the introduction of a national currency (1994), the introduction of a new flag for the country (1996), the composition of a national anthem (1996), the development of a Somaliland school curriculum (from 1997 onwards), the erection of national and civil war monuments (2001), and so forth. The symbolism of the current flag is particularly interesting. For the first six years, Somaliland used the SNM flag, which was white with a green circle in the centre, and the words *Allahu akber* (‘God is the greatest’) written in Arabic on top. In October 1996, when the most recent national *shir* in Hargeisa began, a new flag was introduced, with green, white and red horizontal stripes, *La Illaha Illallah Muhammedan Rasuul Allah* (‘There is no God apart from God and Muhammad is his messenger’) written in Arabic in the green field, and a small black star with five corners in the white field. The meaning of the colours is green for prosperity, white for peace and red for the fallen fighters. The black star indicated the ‘death’ of the idea of ‘Greater Somalia’.<sup>35</sup>

Since 1991, 26 June and 18 May are national holidays that have been celebrated annually. They mark the original independence of Somaliland from British

colonial rule and the day of (renewed) independence, respectively. Other important Somaliland celebrations, but not official national holidays, were 6 April, the day of the SNM (instituted in London on 6 April 1981), and 17 October, the day of the fallen SNM fighters (*Maalinta Shuhadada* in Somali).<sup>36</sup> The latter commemorated a particularly decisive battle against the Somali national army in Burco Duuray on 17 October 1984. Another institution related to the vision of Somaliland as a distinct polity was the Technical Commission for the Investigation of War Crimes. This commission was established in August 1997, after heavy rains in mid-May that year had opened up several mass graves in and around Hargeisa containing the remnants of hundreds of bodies. The commission later changed its name to the War Crimes Investigation Commission (*Xafiiska Badhitaanka Xasuuqa*). In December 1997 a team of UN forensic experts visited Hargeisa for an on-site assessment of the alleged mass graves. After excavating some of the more than one hundred potential sites of mass graves, the UN confirmed the suspicious character of the killings, which constituted human-rights violations. There were occasional requests for a war crimes tribunal. However, President Cigaal was opposed to such a tribunal. In an interview in May 2001 Cigaal argued that it would be very difficult to determine the exact perpetrators, since there had been informers of the national army among the civilian population – meaning the Isaaq – in the north.<sup>37</sup>

These various above-mentioned policies, symbols, memorials and practices facilitated the development of an ‘imagined community’ within Somaliland.<sup>38</sup> They added weight to the country’s de facto statehood, along with the political institutions created in Boorama in 1993. Contrary to Bradbury’s (2008) presentation of the process of ‘becoming Somaliland’, which sweeps aside regional and political differences in Somaliland’s history and politics, the processes of state formation and community building outlined so far concerned only a portion of the country, namely the area from Boorama to Burco and Ceerigaabo, and the people living there. Bradbury also ignores the fact that the historical experiences and political orientations within the groups that predominantly supported Somaliland were far from homogeneous. Even in the centre of the polity an influential minority continued to exist that resented the definitive secession from Somalia and the ‘death’ of the vision of Greater Somalia.<sup>39</sup>

Beyond ‘core Somaliland’, the political consensus was fragile. Members of the Dhulbahante and Warsangeeli clans in Sool and eastern Sanaag, as well as parts of southern Togdheer, increasingly distanced themselves from the idea of

an independent Somaliland. This means that roughly 30 per cent of the territory and 20 per cent of the population of the polity were not integrated (see Maps 1 and 2). The members of these clans felt politically and economically marginalised by Hargeisa. Moreover, the non-Isaaq groups had clearly experienced Somali history in a different way from most of the Isaaq. For the former, the monuments, holidays and other symbols of Somaliland frequently did not instigate 'heroic' memories and a sense of togetherness. Quite the opposite – Somaliland's symbols stood for the defeat of the values and visions which many Warsangeeli and Dhulbahante had upheld until 1991, and many continued to do so, even though political pragmatism had dictated some concessions to the Isaaq majority and the overwhelming firepower of the SNM.

## THE FORMATION OF PUNTLAND, SOMALILAND'S RIVAL

The anti-secessionist position of the Dhulbahante and Warsangeeli hardened in the second half of the 1990s and finally found a new political home in Puntland in north-eastern Somalia.<sup>40</sup> Puntland was established in 1998 as an (autonomous) regional administration (*maamul goboleed* in Somali). The region was mostly inhabited by Majeerteen and had been controlled by the regrouped SSDF forces in cooperation with local traditional authorities since 1991. In the mid-1990s the SSDF participated in several conferences organised in Sodere, Ethiopia, and Cairo, among others, which were aimed at rebuilding Somalia. When these conferences failed to yield any tangible results, the people and political leaders in the north-east decided to create their own administration. They called for a clan conference, similar to the ones held previously in Somaliland. The *shir* that eventually led to the establishment of Puntland took place in the town of Garoowe between May and August 1998. Its participants came from all the clans of the north-east. Members of the Dhulbahante and Warsangeeli clans residing in eastern Somaliland also participated in the meeting.<sup>41</sup> Genealogically, most of these clans belong together as descendants of an ancestor named Harti, who descends from Sheekh Cabduraxmaan Ismaaciil al Jabarti, the founding father of the Darood clan family. Before the state collapse of Somalia, Harti had not been very significant in northern Somali clan politics.<sup>42</sup> Harti only became an important genealogical reference point in the context of inter-clan fighting around the town of Kismaayo in the south,<sup>43</sup> the defence of the Majeerteen in

the north-east against Hawiye forces in Gaalkacyo<sup>44</sup> and the growing distance of the Dhulbahante and Warsangeeli from Somaliland.

On 1 August 1998 the State of Puntland was officially established. Its founding president, became Colonel Abdullahi Yusuf, the former SSDF leader Garoowe became its capital. The Charter of the State of Puntland, which functioned as the polity's preliminary constitution, followed 'the pattern of the Boorama National Charter, which formalized the birth of Somaliland'.<sup>45</sup> Elsewhere, the present author argues that Puntland emerged by mimicking the institutional framework that contributed to the emergence of Somaliland.<sup>46</sup> Puntland was initially based on a similar 'formula', integrating clans and their traditional and other leaders. The political aims behind it, however, were quite different from those previously pursued in Burco, Boorama and Hargeisa. Most significantly, Puntland did not claim independence from Somalia. Article 1.4 of its charter provides that 'Puntland is part of Somalia, and it is striving to regain the unity of Somali people and the creation of a Somali government based on a federal system'. Therefore, Puntland works as an autonomous regional administration (*maamul goboleed*) in north-eastern Somalia, neighbouring Somaliland. Article 1.2 of the charter confirmed that the territory of Puntland includes the regions 'Bari, Nugaal, Sool, South Togdheer (Buuhoodle district), Mudug (with the exception of the districts of Hobyo and Xaradheere) and east, south and north-east of Sanaag'. This means that Puntland, at least on paper, cut the Dhulbahante and Warsangeeli territories out of Somaliland. It thereby undermined the (ex-)colonial borders claimed by the government in Hargeisa to substantiate its demand for international recognition.

Battera rightly presumed from the very beginning that 'eastern Somaliland might become a buffer zone between two entities, without clearly defined sovereignty'.<sup>47</sup> He also thought that Puntland's incorporation of the Harti territories in the north might convince Somaliland to give up its claim to independence. This was confirmed, in his eyes, by a statement of President Maxamed Xaaji Ibraahim Cigaal in the Egyptian newspaper *Al-Hayat* on 21 February 1999, in which he announced that he would be in favour of a confederation system for a united Somalia. This statement triggered vehement protests by the majority of people in central Somaliland.<sup>48</sup> By contrast, this author argues that the establishment of Puntland in fact strengthened core Somaliland. Puntland provided a 'relevant other' in northern Somalia against which Somaliland's own polity is continuously defined. Identification against another group is the

precondition of any process of identity formation.<sup>49</sup> Certainly, (de facto) state formation, if successful, is always accompanied by the formation of a collective identity. On a generic level, the territorial principle underpinning Somaliland's existence is opposed to the genealogical principle providing the basis of Puntland's existence.

The first three years of Puntland's existence were marred by internal conflict. Whereas power-sharing among the different Harti clans was regulated (the Majeerteen took the presidency, Dhulbahante the vice presidency, Warsangeeli the speaker of the parliament, and so forth), tensions increased within the leading Majeerteen clan. The Cusman Maxamuud and Cumar Maxamuud lineages rivalled for political and economic dominance. The former was the 'aristocratic' lineage leading the Majeerteen. It dominated the port of Bosaso, Puntland's economic hub. The Cumar Maxamuud, considered the 'nomadic' and 'warrior branch', was the descent group of President Abdullahi Yusuf. It dominates in and around (northern) Gaalkacyo, bordering central Somalia, which is Hawiye territory. Besides, Yusuf made himself enemies, since he did not fulfil the constitutional demands for decentralisation. Indeed, he was accused of running a 'one-man state', in which mostly supporters of the administration received posts, and finances were handled in a non-transparent way by the president alone. Under President Yusuf, the state became the largest employer, with around 7 000 public employees, 4 500 of whom served in the security forces. The salary of public servants and security forces consumed around 90 per cent of government revenue. The growth of the security apparatus was on the one hand typical for Abdullahi Yusuf, who was widely considered to be a 'soldier'. On the other hand, it was an effect of the 'demobilisation' of the clan militias. Many irregular units had been integrated into the police or the army, which in fact contributed to the security in the region.<sup>50</sup>

In 2000 the government of Djibouti hosted a Somali national peace conference in Arta, a town south-east of Djibouti city. This conference was supported by the international community. It resulted in the establishment of the Transitional National Government (TNG). Since the Arta conference ignored the existence of Somaliland and Puntland, both administrations boycotted this initiative. In Puntland, Yusuf's opponents took their chance, allied with the TNG and mobilised against the president, whose term officially ended in mid-2001. In November 2001 some traditional authorities elected Jaamac Cali Jaamac of the Cusman Maxamuud lineage as the new President of Puntland.

Abdullahi Yusuf retreated to his home town, Gaalkacyo, where he amassed his forces. In the aftermath of 11 September 2001, Yusuf managed to brand Jaamac Cali Jaamac and his allies from the TNG government in the south as ‘terrorists’.<sup>51</sup> This secured him Ethiopia’s backing. Yusuf’s faction ousted Jaamac Cali Jaamac from Puntland in early 2002. Fighting between different Majeerteen groups continued throughout 2002. Somaliland aided the anti-Yusuf forces. An agreement within Puntland was reached in 2003, and Abdullahi Yusuf managed to re-establish himself as president for the coming years.

## DEMOCRATISATION IN SOMALILAND

In the meantime, the people of Somaliland were approaching the transition from clan representation to multi-party democracy. The conflict between President Cigaal and the parliament over the development of the constitution had ended in 2000 in a compromise. The constitution in its first article confirmed the independence of Somaliland. It affirmed a presidential system of government and demanded the installation of a multi-party electoral democracy. When the referendum on the constitution was held in May 2001, it was essentially a vote for or against Somaliland’s independence, particularly against the background of the establishment of the TNG, which was recognised as the government of Somalia by the international community. The official result of the referendum was that 97 per cent of all registered voters (about 1.18 million people) approved the constitution.<sup>52</sup> International observers evaluated the referendum positively, even if they were not numerous enough to report authoritatively on the poll throughout the country. In particular, in Sool, eastern Sanaag and southern Togdheer, the Dhulbahante and Warsangeeli territories, not many people registered for the poll. Nonetheless, since the number of the actual voters represented approximately two-thirds of all eligible voters, the 97 per cent approval meant that roughly 65 per cent of all eligible voters confirmed the constitution and, therefore, the independence of Somaliland.<sup>53</sup>

The next steps were to introduce political parties and prepare local-government elections. During this process, on 5 May 2002, Maxamed Xaaji Ibraahim Cigaal died while on a personal visit to South Africa for medical treatment. According to the constitution, Vice President Dahir Rayaale Kahin took over the presidency for the remainder of the term. People in Somaliland came to terms with the shock of their president’s unexpected death and progressed with



democratisation. On 15 December 2002, six political organisations competed in local-government elections. The first three positions were taken by UDUB (*Ururka Demoqraadiga Ummada Bahowdey*),<sup>54</sup> Kulmiye<sup>55</sup> and UCID (*Ururka Caddaaladda iyo Daryeelka*).<sup>56</sup> These became the three national parties that would shape the future of Somaliland politics.<sup>57</sup> UDUB, the party of the incumbent president, became the ruling party, while the other two parties formed the opposition. The first democratic presidential elections were held on 14 April 2003. Dahir Rayaale Kahin won by a minimal margin of about 80 votes. The result was contested by Kulmiye. The Supreme Court decided in Kahin's favour and the opposition finally accepted, bowing to increasing public pressure. Parliamentary elections took place on 29 September 2005. While UDUB won the largest single share, Kulmiye and UCID together formed an opposition of almost 60 per cent in the House of Representatives. Both the presidential and parliamentary elections were deemed reasonably free and fair by international election observers.<sup>58</sup> Notably, the parliamentary elections only concerned the Lower House of Parliament. The members of the *Guurti* remained unelected.

Between 2000 and 2005, Somaliland's de facto statehood had developed apace. This went hand in hand with the growing demand by active supporters of Somaliland for the state's international recognition. The democratisation process also added to the argument of the very small, but vocal, group of international 'Somaliland lobbyists' that Somaliland was 'Africa's best kept secret', in the sense that it was democratic and peaceful, and showed signs of modest economic development, albeit without being recognised.<sup>59</sup>

Despite the impressive successes of Somaliland with regard to the formal democratisation of its political system, several problems remained. Firstly, in everyday political life, clan politics continued within the parties and, therefore, within all government institutions, including the cabinet and parliament. Leading positions were divided among members of different descent groups. In the absence of ideological differences between the three parties, the mobilisation of party supporters also followed clan lines.<sup>60</sup> This brought about the unfinished status of the democracy that characterised Somaliland until late 2010.

Secondly, the democratisation process barely occurred in southern Togdheer, Sool and eastern Sanaag (if at all), where the Dhulbahante and Warsangeeli resided. This meant a disproportionate under-representation of these clans in the government institutions of Somaliland.<sup>61</sup> The Harti peripheries in the east largely remained outside the reach of Hargeisa. And when Puntland

started to interfere there, the conflict between Somaliland and Puntland took a violent turn.

## CONFLICT BETWEEN SOMALILAND AND PUNTLAND

Until the early 2000s, both Hargeisa and Garoowe refrained from actively engaging in the contested borderlands. When Puntland was weakened by internal conflict in late 2002, however, President Dahir Rayaale Kahin of Somaliland visited Laascaanood, capital of the Sool region, on 7 December 2002. This visit triggered a clash between troops from Somaliland and Puntland in Laascaanood. Shocked by the event, Hargeisa withdrew its forces and local shadow administration from Laascaanood.<sup>62</sup> The Puntland forces also retreated. For a year, Laascaanood was left to the local powers.

In December 2003, Puntland police forces used clashes between two Dhulbahante lineages as an excuse to intervene and occupy Laascaanood. The government of Somaliland was compelled to react, and sent its army to the region. The dominant sentiment in Hargeisa at the time was that the Somaliland national forces had to defend the territory of the country. The *Republican*, one of the most influential English weeklies published in Hargeisa, printed an article in which a Somaliland minister, one of the few Dhulbahante in the government, called on the people to safeguard Somaliland and go to war over Sool. The minister was cited as follows:

[T]here is no better cause than to fight in defen[c]e of one's country or to be a martyr . . . I wonder why the people of Somaliland are not fighting for their territory.<sup>63</sup>

In autumn 2004 the conflict between the two polities over the periphery in Sool came to a head. This was related to some 'external' events concerning Somalia. The TNG established in Arta had proven a failure. After the terror attacks on 11 September 2001, Western powers grew increasingly concerned about stateless Somalia. A Somali peace and reconciliation conference under the auspices of the Intergovernmental Authority on Development (IGAD), and financially backed by the international community, had been held in Kenya from October 2002 onwards. Somaliland had refused to participate, but Puntland attended. The agenda of the conference, namely to establish Somalia as a federal state, was

in accordance with the provisions of the Charter of Puntland. The Transitional Federal Government (TFG) was established in mid-2004. Its members elected Abdullahi Yusuf, the President of Puntland, as the new President of Somalia on 10 October 2004. One of his first announcements made it clear that he would not tolerate the splitting up of Somalia. Against this background, the confrontation between Somaliland and Puntland took a new turn, although the President of Somalia, now Abdullahi Yusuf, still controlled politics and particularly the military in Puntland. On 29 October 2004, the armies of Somaliland and Puntland clashed some 30 kilometres west of Laascaanood. Several dozen soldiers on both sides were killed or wounded. Politically, the clash did not bring about any decisive result. Laascaanood remained under Puntland's rule. However, the politicians in Hargeisa and their constituencies, who by 2004 had developed a strong feeling of belonging to a state known as Somaliland, could no longer ignore the problems at the eastern margins of their polity.

The situation remained tense, but for some years no further fighting occurred in the contested borderland. Abdullahi Yusuf's TFG got caught up in fighting against the Islamic courts and Islamist militants in southern Somalia between 2006 and 2008. Maxamuud Muuse Xirsi (also known as Cadde Muuse), a Majeerteen from the Cusman Maxamuud branch, was elected new President of Puntland in January 2005. He did not make Laascaanood his priority. The situation changed again in mid-2007, when Axmed Cabdi Xabsade, Puntland's Minister of the Interior, a senior Dhulbahante politician, fell out with Cadde Muuse. Xabsade turned to the government in Hargeisa for help, and in October 2007, Somaliland forces ousted the Puntland army from Laascaanood.<sup>64</sup> Until 2010, the town and surrounding areas have remained under Somaliland's control. Occasionally, politicians in Garoowe vow to take back the lost territory. While the Dhulbahante and Warsangeeli borderlanders try to make the best of their position between the two regional state-like entities, they also suffer from the continuous instability that hampers development in the contested borderlands.<sup>65</sup>

It is worth noting that the conflict between the two administrations in the north is not about land or resources (even if, reportedly, oil may be struck in the regions of Sool and Sanaag), but about political vision. Somaliland longs for international recognition. It needs to control the contested borderlands to bolster its claim to be an established state. Puntland envisions a unitary, but federal, Somalia. This aim compels it to prevent Somaliland's *de jure* independence. By

undermining the borders claimed by Hargeisa, Puntland greatly complicates the position of Somaliland.

## SOMALILAND 2007–2010

The future of Somaliland, however, hinges not only on the conflict with its neighbour, Puntland. The years 2007 to 2010 have shown how precarious the country's own domestic situation is. The government of Dahir Rayaale Kahin was facing growing internal opposition. In 2007, the president and his family came under attack when *Haatuf*, one of several independent newspapers in Hargeisa, published reports alleging the involvement of the president's wife in a corruption scandal in Boorama, the home town of the presidential family. The heavy-handed response involved armed police raiding the offices of *Haatuf*. The newspaper's managing editor and several journalists were arrested and put on trial. The court proceedings were highly dubious. Despite public outcries in Somaliland, the diaspora and internationally, the trial continued, and in March 2007 the *Haatuf* journalists were sentenced to several years' imprisonment. In addition, the court ordered Haatuf Media Network (HMN) to pay a fine and called for the suspension of HMN's licence. Within weeks, President Kahin pardoned the journalists. HMN continued publishing. Nevertheless, the government had made its position clear, and many journalists understood the warning.<sup>66</sup>

This conflict over freedom of expression was followed by a struggle involving political participation in Somaliland. In April 2007, a group of Somaliland intellectuals, former politicians and businessmen formed the political organisation Qaran ('Nation') in Hargeisa. The government argued that Qaran was illegal because article 9 of the constitution only allowed for the existence of three political parties. However, the leadership of Qaran and its followers emphasised that article 22 of the constitution provided that 'every citizen shall have the right to participate in the political, economic, social and cultural affairs in accordance with the laws and the Constitution'.<sup>67</sup> Even before these contradictions had been reconciled the government took action. The three Qaran leaders were arrested in Hargeisa in July for allegedly engaging in unauthorised political activities with the intent to cause subversion. The court proceedings followed the model of the previous case of *Haatuf*, and the three politicians were sentenced in August 2007 to several years in prison and a five-year ban from holding public office. In

late December 2007, they were released by order of the president. The ban from holding public office remained in force. In early 2008, Qaran formed a joint opposition committee together with Kulmiye, Somaliland's leading opposition party. Its aim was to remove President Dahir Rayaale Kahin from power in the upcoming presidential elections.

The preparations for these elections turned into a major crisis between early 2008 and early 2010. According to the constitution, the elections had to take place in April 2008, yet neither the administration nor the opposition had taken the necessary steps to hold these elections. The nomination of the seven members of the National Electoral Commission (NEC) through the government and the opposition took longer than expected. After its establishment, the NEC was continuously criticised for its ineffectiveness and inability to organise the elections. The elections had to be postponed repeatedly, and the president's term was prolonged accordingly. The process was complicated by the agreement between the government of Somaliland, the European Commission and the international NGO Interpeace to organise a country-wide voters' registration the aim of which was to issue voters' and ID cards.<sup>68</sup> The Somaliland parties and NEC opted for a sophisticated biometric registration system based on fingerprint identification, against the explicit advice of the donors and Interpeace. The ID cards were supposed to contain photographs. Registration involved taking fingerprints in order to prevent double registration. This process was technically both very ambitious and highly symbolic – for the first time, all citizens of Somaliland would be able to receive a document identifying them as 'Somalilander'. It started in October 2008 and proceeded relatively quickly from western to eastern Somaliland, despite a host of logistical problems. The process then came to a sudden halt when Somaliland and Puntland were shaken by five concerted suicide-bomb attacks on 29 October 2008. In Hargeisa, the presidential palace, the UNDP compound and the Ethiopian liaison office were attacked. In Puntland, two offices of the Puntland Intelligence Service were bombed in Bosaso. In Somaliland alone, more than 20 people were killed and about 30 injured. It was commonly suspected that the perpetrators were closely related to Islamic extremists based in southern Somalia, who also had supporters in the north.<sup>69</sup> With regard to Somaliland, the attacks were most probably intended to end the relative peace and stability of the country, sabotage the elections and thereby undermine its de facto statehood. Somaliland's independence has never been accepted by southern

leaders. It also went against the Islamist agenda of a strong, united and Islamic state of Somalia in the Horn of Africa.<sup>70</sup>

Voter registration in Somaliland began again in late November 2008 after an interruption of about six weeks. Initial registration was completed by the end of the year. Latecomers had a chance to make use of supplementary registration until February 2009. For the first time, the national policies of the government in Hargeisa reached out to and were partly implemented in the territories inhabited by the Dhulbahante and Warsangeeli. At least in Laascaanood and some surrounding areas voters' registration had taken place.

Just after the first region (Saxiil) had been registered in October 2008, however, it had already become obvious to close observers that many people had registered several times, circumventing registration rules.<sup>71</sup> Nonetheless, the politically responsible actors in Somaliland, as well as the donors, let the process continue. Public lament about misconduct during registration started only in January 2009. About 1,4 million registrations were counted, over 50 per cent without fingerprints.<sup>72</sup> Therefore, the voters' registration had turned into a major barrier for holding transparent and fair elections. It should have been clear to all parties involved (particularly the actors in Somaliland) that deceiving external observers and exaggerating the numerical strength of the group to which one belongs constitute a form of tradition in Somali society – one which has resisted several attempts to count and register Somalis accurately since colonial times. Registration and census are classic state technologies of control and a 'power game'. People in Somaliland reacted accordingly. Since certain locations in Somaliland could be easily identified as strongholds of the UDUB, Kulmiye or UCID respectively, it was clear that the purpose of multiple registrations, particularly in Boorama, Hargeisa and Burco and surroundings, was to increase the voting powers of the different party constituencies. In early 2009, representatives of the three parties lamented the 'misbehaviour' of their opponents' supporters, and sought to play down the fraud of their own followers. Soon it became clear that sorting out the extra registrations was more than a technical issue. Representatives of the EC and Interpeace repeatedly visited Hargeisa in early 2009 to help resolve the crisis. However, neither the opposition party leaders nor the government were ready to compromise. Once again, it became impossible to hold elections on the date that had been set – 29 March 2009.

In early March 2009, the *Guurti* extended the president's term for a second time. It referred to provisions in the constitution concerning the 'security

situation' (article 83 [5]), which arguably did not apply in the context. This delay, which many believed to be unconstitutional, caused rising tensions in Somaliland. Calls from the opposition parties for demonstrations were regularly met with responses from the administration declaring any demonstration illegal, accusing opposition leaders of undermining the 'peace and stability' of Somaliland, as well as the deployment of armed police and the military in the major cities to keep the situation under control.<sup>73</sup> Nonetheless, demonstrations took place in the capital and major towns in August and September 2009, and at least one person died when the police opened fire during a demonstration in Hargeisa on 12 September 2009. On 25 September 2009, the *Guurti* extended the term of the president and vice president again 'until one month after holding the presidential elections', without presenting a date for these elections. This decision meant that a power vacuum and possibly further escalations of violence were prevented. However, the election crisis was not resolved.

The tensions within Somaliland only dissolved after presidential elections were finally held on 26 June 2010. The opposition candidate Axmed Maxamed Maxamuud Siilaanyo, chairman of the Kulmiye party, won. Although it is too early to assess the consequences of this election, for example, with regard to Somaliland's conflict with Puntland or the incomplete integration of the Dhulbahante and Warsangeeli in Somaliland, it is clear, nonetheless, that the second peaceful presidential elections sent a very positive signal regarding the continuing democratisation of the country.

## THE ISSUE OF INTERNATIONAL RECOGNITION

The main arguments in favour of recognising Somaliland as an independent state are the following: first, Somaliland existed as an independent state between 26 and 30 June 1960. Second, the union of Somaliland and Somalia on 1 July 1960 was a voluntary one between the two states, Somaliland and ex-Italian Somalia. Third, northerners were treated unfairly in the newly established Somali Republic, where power and resources were concentrated in the south. Many northerners expressed their disappointment with the union through the boycott of the constitutional referendum in early 1961. Fourth, under Siad Barre people in the north were systematically oppressed by the government in the south, which from 1988 onwards (at the latest) launched a genocidal campaign

against the Isaaq. Against this background, in 1991 Somaliland 'revoked' the union and re-established its independent statehood.<sup>74</sup>

Those are the historical aspects of the issue. As for the period since 1991, the argument continues that Somaliland's case complies with the basic requirements of the Montevideo Convention on the Rights and Duties of States. Somaliland comprises clearly demarcated boundaries, a permanent population and a government. Since its borders go back to treaties between the colonial powers and were 'inherited' upon independence on 26 June 1960, Somaliland's claim for recognition is even 'consistent with both the letter of the AU Charter and the spirit in which it has historically been applied'.<sup>75</sup> Somaliland's case for independent statehood is completed when one takes into account the public support for independence inside the country, expressed in the 2001 constitutional referendum, the economic viability of the country and its democratic credentials 'in full accordance with the requirements of the current dominant narratives of Western donors'.<sup>76</sup>

This line of argument is presented to the outside world in writing (e.g. in official government publications) and whenever Somaliland officials address audiences/partners inside and outside of the country.<sup>77</sup> Arguably, over the past decade or so it has condensed into a dominant discourse on the matter, informing the speeches of many Somaliland supporters to outsiders.<sup>78</sup>

This claim for recognition as an independent state is met by two very different approaches under international law. The constitutive approach stresses that an emerging state has to be recognised by existing states in order to become a state. Recognition is a *conditio sine qua non* for state formation under international law. The declaratory approach, on the other hand, maintains that recognition is a political act that is independent of the actual existence of a new state. The constitutive approach clearly emphasises the agency of the existing states. This guarantees that, once recognised, the new state can count on some support from the existing states. But it detaches recognition from the question of internal stability and effectiveness of the newly recognised state. Kosovo is the most recent example of state formation through external recognition. Its problems functioning as a stable state illustrate the weaknesses of this approach. By contrast, the declaratory approach prioritises effectiveness and the de facto existence of a state. This, however, does not necessarily mean that diplomatic relations between the existing states and the 'newcomer' will be established. Without acceptance from other states, however, even a highly



effective polity cannot participate in international relations.<sup>79</sup> Somaliland is a case in point.

The case of Somaliland is complicated by the fact that it seceded from a collapsing parent state. Schoiswohl, who has written the most detailed legal analysis of Somaliland's claim for recognition, outlined that in international law secession is generally understood as a separation of a part of a territory of a state carried out by the resident population with the aim of creating a new independent state or to accede to another state. This happens without the consent of the previous sovereign. Nevertheless, recognition usually hinges on the later acceptance of the secession by the former sovereign. Should the new political entity emerge from a collapsed state and prove a reasonable degree of stability and continuity, it can acquire statehood even without the recognition of the parent state.<sup>80</sup> This conclusion, however, remains theoretical. Somaliland can be understood as a state in the doctrinal sense (and according to the declaratory approach), but as long as it is not treated as such by the international community, its statehood does not yield the expected results, including international sovereignty.<sup>81</sup>

It is noteworthy that an AU fact-finding mission dispatched to Somaliland in early 2005 evaluated the case of Somaliland favourably. The mission found that since 1991, a democratic order has been established in Somaliland. It confirmed the emotional attachment of the people to the claimed independence and a firm determination not to return to the failed union with Somalia.<sup>82</sup> Most importantly, the AU delegation stressed that the case of Somaliland should not be linked to the notion of 'opening a pandora's box'. This referred to the issue of the contested (colonial) boundaries in Africa.<sup>83</sup> In December 2005, President Dahir Rayaale Kahin submitted Somaliland's application for membership to the AU.<sup>84</sup> Since then, however, the case is pending.

Recognition is not an aim in itself. One has to ask what it would bring to Somaliland and its citizens. On the one hand, it would endow Somalilanders with the rights and liberties enjoyed by citizens of recognised states, including the freedom to travel abroad legally, engage in economic transactions more easily, have one's documents and certificates acknowledged in other countries, and so forth. It would also open Somaliland to international cooperation and, most probably, assistance on a large scale. On the other hand, recognition may have severe negative consequences for the nascent democracy in Somaliland. Shortly before the first presidential elections in 2003 Matt Bryden pointed out

that Somaliland would pass the test of statehood easily, particularly if compared with its undemocratic, highly militarised and internally divided neighbours in the Horn of Africa. Nonetheless, Bryden stressed that ‘in reality, the foundations of democracy and rule of law in Somaliland are still fragile and the transition has far to go’.<sup>85</sup> He confirmed that corruption was endemic, and clan-based interest groups would cling to power. He emphasised that only the government’s relative poverty and its lack of coercive authority rendered it somewhat accountable to the public. ‘But if Somaliland receives recognition, all that could change.’<sup>86</sup> To endow a government that displays a growing tendency to disrespect the laws of its own country and keeps its population ‘hostage to peace’ by arguing that any oppositional move would endanger the country’s chances for recognition may worsen the situation.<sup>87</sup> This rather negative assessment of Somaliland’s government in the early 2000s may have to be qualified after the elections of June 2010. If the new administration takes its responsibility seriously to fight corruption and deliver basic services to Somaliland’s citizens, Somaliland has a good chance of becoming the champion of democracy in the Horn of Africa.

## CONCLUSION

No one could have predicted the success of Somaliland’s state and, to some extent, nation-building process in the early 1990s. Certainly, Somaliland today is not simply the continuation of the (ex-)British protectorate, even if this is frequently stressed by political actors in, and supporters of, Somaliland. Somaliland has to be understood as a complex new state, born out of civil war – which in fact provided the drive to engage in secession and state formation – and shaped by complex political dynamics since 1991. The common experiences of guerrilla struggle and hardship provided a basis for state formation in central Somaliland, the home of the Isaaq, who filled the ranks of the SNM and constitute the majority of the population of Somaliland. The peaceful handover from the SNM to civilian leaders, unparalleled in African post-colonial history, paved the way for the establishment of Somaliland’s hybrid system of government in Boorama in 1993. This system carried the polity a long way. The most important factors on the way to a de facto state, however, were the countless, everyday practices and decisions of ordinary people who increasingly left their guns at home when tensions arose, tolerated power-hungry and corrupt leaders

patiently, worked for slow but steady transitions of the system of government, endured economic hardship due to lack of resources and non-recognition, and relied on self-help and their relatives abroad rather than on help from the government or the international community. In many cases, the financial remittances sent by the diaspora facilitated family survival in the absence of jobs and public services.

The lack of integration of the Harti peripheries in Sool, Sanaag and southern Togdheer (sometimes called Cayn) remains a problem. Most people there have a different political vision from those in central Somaliland – they still hope for the resurrection of a unitary Somalia. They also view Somali history differently from most Isaaq who dominate between Hargeisa, Berbera and Burco. Finally, they feel marginalised by both centres – the governments in Hargeisa and Garoowe. Many complain that the Isaaq would punish them for their previous loyalty to the Barre regime. In fact, hardly any national or international development projects take place in the Harti peripheries in eastern Somaliland. The government in Hargeisa usually argues that the insecurity there makes it impossible, particularly for foreign organisations and NGOs, to implement long-term projects.

Finally, a number of external factors aided Somaliland's gestation. Somalia's continued state failure and war, which over the past two decades was complicated by external interventions, forced people in Somaliland to move on. To return to a collapsed Somalia is no option after the successful peace and democratisation processes in Somaliland that have happened since 1991. The establishment of Puntland in north-eastern Somalia in 1998 seemingly threatened Somaliland. Puntland was constructed as a 'counter-polity' to Somaliland. It capitalised on the fact that the above-mentioned de facto state formation of Somaliland had happened largely in central and western Somaliland. In the 1990s most Dhulbahante and Warsangeeli distanced themselves from Hargeisa and finally engaged in the establishment of Puntland. They are united with the Majeerteen dominating in north-eastern Somalia by descent and in their vision to re-establish a unitary Somalia. This author argued, however, that this seeming threat to Somaliland's state formation in the long run has contributed to Somaliland's stabilisation, at least in its centre. Puntland provides the 'relevant other' against which Somalilanders, who share the vision of gaining international recognition, define their identity and polity. By engaging in military conflict over the contested borderlands with Puntland,

Somaliland eventually established some control over the so far peripheral and not well-integrated territories. The process of state and nation building in Somaliland is still ongoing.

## NOTES

- 1 C Tilly, Reflections on the history of European state-making, in C Tilly (ed), *The formation of nation states in Western Europe*, Princeton: Princeton University Press, 1975; C Tilly, *Coercion, capital, and European states, AD 990–1990*, Cambridge: Basil Blackwell, 1990; C Clapham, Degrees of statehood, *Review of International Studies* 24, 1998; JS Migdal and K Schlichte, Rethinking the state, in JS Migdal and K Schlichte (eds), *The dynamics of states*, Burlington: Ashgate, 2005; M Doornbos, *Global forces and state restructuring: Dynamics of state formation and collapse*, London: Palgrave, 2006.
- 2 C Clapham, Rethinking African states, *African Security Review* 10(3), 2001; A Bellagamba and G Klute, Tracing emergent powers in contemporary Africa, in A Bellagamba and G Klute (eds), *Beside the state: emergent powers in contemporary Africa*, Cologne: Ruediger Koeppel, 2008, 9–11.
- 3 B Kapferer, New formations of power, the oligarchic-corporate state, and anthropological ideological discourse, *Anthropological Theory* 5(3), 2005, 286.
- 4 J Herbst, The creation and maintenance of national boundaries in Africa, *International Organisation* 43(4), 1989.
- 5 P Englebert and R Hummel, Let's stick together: understanding Africa's secessionist deficit, *African Affairs* 104(416), 2005.
- 6 S Pegg, *International society and the de facto state*, Aldershot: Ashgate, 1998, 4.
- 7 L Ciabbari, No representation without redistribution: Somaliland plural authorities, the search for a state and the 2005 parliamentary elections, in A Bellagamba and G Klute (eds), *Beside the state*, 57.
- 8 For reasons of space and lack of reliable data, this text does not analyse the local and regional economy in any depth and only occasionally refers to the wider political dynamics in the region, particularly the politics of Ethiopia, Djibouti and some Arabic states in terms of how it affects Somalia in general, and Somaliland in particular.
- 9 In Somali society, groups belonging together by patrilineal descent cooperate or compete with regard to sharing resources. Besides descent, co-residence and adoption also provide a social basis for group-belonging, particularly in central and southern Somalia.
- 10 Somali place and personal names in this text generally follow the Somali orthography. The Latin 'c' stands for a sound close to the Arabic 'ع' (ayn); 'x' denotes 'ح' (ha), as in, for example, *Cali* and *Faarax*.

- 11 Barre was Marrexaan. His mother was Ogadeen. An important companion of the president, Axmed Sulebaan Daffle, a so-in-law of Barre and high government official, was Dhulbahante. Their clans provided the backbone of the regime.
- 12 D Compagnon, Political decay in Somalia: from personal rule to warlordism, *Refuge* 12(5), 1992.
- 13 J Drysdale, *Somaliland: the anatomy of secession*, copyright John Drysdale, 1992, 25.
- 14 M Bradbury, *Becoming Somaliland*, London: James Currey, 2008, 82–83.
- 15 G Cabdiqani, interview, September 2002; C Cali Shire, interview, 5 December 2003.
- 16 Bradbury, *Becoming Somaliland*, 98.
- 17 K Eikenberg, *Somaliland: Der Konflikt in Hargeisa*, AG KAD (Arbeitsgemeinschaft kirchlicher Entwicklungsdienst) *Informationen zum Horn von Afrika* 1, 1995.
- 18 U Terlinden, Emerging governance in Somaliland: a perspective from below, in E-M Bruchhaus and MM Sommer (eds), *Hot spot Horn of Africa revisited*, Hamburg: Lit Verlag, 2008, 51–67.
- 19 Y Faraton, interview, 4 November 2003.
- 20 A second *shir* was held in Boocame in 1996/97; see below for details on Boocame II.
- 21 JC Shurie, interview, 11 September 2002.
- 22 C Qalaffo, interview, 18 December 2003.
- 23 Y Faraton, interview, 4 November 2003.
- 24 East of Burco the old Somali Shilling continued to be used because there the economic ties to the rest of Somalia were strong.
- 25 *Qaad* is a mild drug. The leaves of the *qaad* tree (*catha edulis*) are chewed for their stimulating effect. The leaves are imported from eastern Ethiopia into Somaliland.
- 26 M Renders, Traditional leaders and institutions in the building of the Muslim Republic of Somaliland, unpublished PhD dissertation, University of Ghent, 2006, Chapter 4; Bradbury, *Becoming Somaliland*, 116–123.
- 27 G Cabdiqani, interview, 28 October 2003.
- 28 Bradbury, *Becoming Somaliland*, 126.
- 29 MC Faruur, interview, 15 February 2009.
- 30 Renders, Traditional leaders and institutions, Chapter 5.
- 31 MV Hoehne, From pastoral to state politics: traditional authorities in northern Somalia, in Buur and HM Kyed (eds), *State recognition and democratisation in sub-Saharan Africa: a new dawn for traditional authorities?* New York: Palgrave, 2007.

- 32 MV Hoehne, *Diasporisches Handeln in Bürgerkrieg und Wiederaufbau: Beispiele aus Somalia und Somaliland*, *Friedens-Warte* 85(1–2), 2010.
- 33 Ciabbari, No representation without redistribution, 62.
- 34 The example of the role of members of the Dhulbahante diaspora at the Boocame conference shows that diasporic actors also could engage in conflict escalation.
- 35 By contrast, the five-pointed white star on a light blue background of the old Somali flag had expressed the idea of Greater Somalia, including the British and Italian Somalilands, as well as the Somali territories in Djibouti, Ethiopia and Kenya.
- 36 *Shuhada* is the Somali plural of the Arabic word *Shihiid*, denoting a fighter killed in jihad. The SNM had termed its struggle against the Barre regime as jihad.
- 37 Africa's 55th President, Egal of Somaliland, May 2001, [http://www.afrol.com/Countries/Somalia/backgr\\_egal\\_interview.htm](http://www.afrol.com/Countries/Somalia/backgr_egal_interview.htm) (accessed 3 July 2007).
- 38 B Anderson, *Imagined communities: reflections on the origin and spread of nationalism*, London: Verso, 1983.
- 39 During an interview, a former minister in Somaliland came to praise the beauty of Mogadishu before the war. He concluded: 'I tell you one thing: if there is law, order and a government in Mogadishu, and if people are given their property back and anybody can feel safe in Mogadishu, nobody will stay in Hargeaysa; everybody will go to Mogadishu.' (Interview, anonymous, Hargeisa, 19 September 2003.)
- 40 M Bryden, New hope for Somalia? The building block approach, *Review of African Political Economy* 26(79), 1999.
- 41 F Battera, Remarks on the 1998 charter of the Puntland State of Somalia, Working Paper, United Nations Development Office for Somalia (UNDOS), 1999; M Doornbos, When is a state a state? Exploring Puntland, in P Konings, W van Binsbergen and G Hesselning (eds), *Trajectoires de libération en Afrique contemporaine*, Paris: Karthala, 2000; AY Farah, Somalia: Modern history and the end of the 1990s, in War-Torn Societies Project, *Rebuilding Somalia: issues and possibilities for Puntland*, London: HAAN, 2001; AY Farah, Troubled transition in Puntland State of Somalia (PSS), 1998–2001, unpublished paper, Nairobi: UNDP Resource Centre, 2004.
- 42 In the south, the Harti had played a role before. It 'was activated in Kismayo in the 1920s by workers who had been recruited in the north-east and moved to Kismayo by the Italian colonial administration. When faced by local Marehan and Ogaden opposition to their presence, the new arrivals from the Majeerteen, the Dhulbahante, and Warsangeeli found it helpful to band together as Harti.' (P Gilkes, National identity and historical mythology in Eritrea and Somaliland. *Northeast African Studies* 10(3), 2003, 182.
- 43 Kismayo, an important port town some 450 kilometres south of Mogadishu, has been home to a significant Majeerteen population since the time of Italian colonialism. The Dhulbahante

also emigrated there in the early 20th century. In the early 1990s the town was heavily contested between two splinter groups of the Somali Patriotic Movement (SPM), which had originally been an Ogadeen movement. One of the splinter groups was the SPM (Harti).

- 44 USC forces loyal to Maxamed Faarax Caydiid tried to spread to the north-west in 1991. SSDF/Majeerteen troops under Abdullahi Yusuf fought against them in Gaalkacyo until 1993. The conflict ended with the division of the town into a Hawiye and a Darood/Harti part.
- 45 Battera, Remarks on the 1998 Charter of the Puntland State of Somalia, 4.
- 46 MV Hoehne, Mimesis and mimicry in dynamics of state and identity formation in northern Somalia, *Africa* 79(2), 2009.
- 47 Battera, Remarks on the 1998 Charter of the Puntland State of Somalia, 12.
- 48 Ibid., 13.
- 49 F Barth, Introduction, in F Barth (ed), *Ethnic groups and boundaries. The social organization of culture difference*, London: Allen and Unwin, 1969.
- 50 Farah, Troubled transition in Puntland State of Somalia.
- 51 The TNG had close relations with some reform-oriented Islamist groups in Somalia, particularly Al Islaax. The latter, however, is clearly not a militant or terrorist organisation.
- 52 The figure of 1,18 million voters must have included a large number of people who voted twice or more times. In the parliamentary elections of 2005 only 674 000 voters were counted.
- 53 M Bryden, A state-within-a-failed-state: is Somaliland headed for recognition or reunification? In P Kingston and IS Spears (eds), *States-within-states: incipient political entities in the post-Cold War era*, New York: Palgrave Macmillan, 2004, 178.
- 54 Literally, the Party of the Democratic People's Alliance. The abbreviation 'UDUB', however, refers to the Somali word *udub* that denotes the central pillar in the nomadic hut.
- 55 The party name Kulmiye is not an abbreviation. Etymologically, it comes from *kulan* meaning 'meeting'.
- 56 Literally, the Party of Justice and Welfare. The abbreviation UCID refers to the Somali construction *u cid*, which means 'responsible'/'care for' (e.g. *Somaliland anaga u cid ah*, meaning 'we are responsible/care for Somaliland').
- 57 Article 9 of the Constitution of Somaliland provides that not more than three national parties must exist in Somaliland. This was a measure against clan factionism.
- 58 U Terlinden and MH Ibrahim, Somaliland – a success story of peace-making, state-building and democratisation? In E-M Bruchhaus and MM Sommer (eds), *Hot spot Horn of Africa revisited*, Berlin: Lit, 2008.
- 59 I Jhazbhay, Somaliland: Africa's best kept secret, a challenge to the international community? *African Security Review* 12(4), 2003; DH Shinn, Somaliland: the little country that could, *CSIS Africa Notes* 9, 2002.

- 60 This did not mean that 'pure clanism' reigned and that one party was controlled and supported by only one clan. Within each party, all the clans had their share. It did mean, however, that positions within the government and the parties were awarded on the basis of clans rather than individual merit or individuals being elected.
- 61 SJ Hansen and M Bradbury, Somaliland: a new democracy in the Horn of Africa? *Review of African Political Economy* 3(113) (2007), 470–471.
- 62 MV Hoehne, Political identity, emerging state structures and conflict in Northern Somalia, *Journal of Modern African Studies* 44(3) (2006), 406–407.
- 63 *Republican*, issue 304, 17–23 July 2004, 1.
- 64 MV Hoehne, Puntland and Somaliland clashing in northern Somalia: who cuts the Gordian knot? 2007, <http://hornofafrica.ssrc.org/Hoehne>.
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- 66 MV Hoehne, Newspapers in Hargeisa: freedom of speech in post-conflict Somaliland, *Africa Spectrum* 43(1), 2008, 100.
- 67 The English translation of the Constitution of Somaliland is available at <http://www.somalilandlaw.com>.
- 68 Most of the resources were provided by the EC, DfID/UK, USAID, SIDA Sweden, Norway, DANIDA/Denmark; together, these organisations form the Democratization Program Steering Committee.
- 69 Since May 2008 Axmed Cabdi Godane has been leader of al-Shabaab, the most notorious and successful militant Islamist organisation. By clan he is an Isaaq and originates from north-western Somalia.
- 70 MV Hoehne, *Somalia: update on the current situation (2006–2008)*, Bern: Schweizerische Flüchtlingshilfe SFH, 2008, 13–15.
- 71 Personal communication with an anonymous source based in Nairobi, 26 September 2009.
- 72 In the parliamentary elections of 2005, during which ink was used to prevent multiple voting, only about 674 000 voters were counted.
- 73 Author's observations, Hargeisa, January to May 2009.
- 74 Ministry of Foreign Affairs, *The case of Somaliland's international recognition as an independent state*, Hargeisa: Ministry of Foreign Affairs, 3–6.
- 75 Ministry of Foreign Affairs, *The case of Somaliland's international recognition as an independent state*, 10.



- 76 Ciabbarri, No representation without redistribution, 55–56; Ministry of Foreign Affairs, The case of Somaliland’s international recognition as an independent state, 12–48.
- 77 For the description and analysis of an impressive elucidation of Somaliland’s claim during a visit of British parliamentarians to Hargeisa in January 2004, see MV Hoehne, Political identity, emerging state structures and conflict in Northern Somalia, 402–404.
- 78 Personal communications, Hargeisa, July and October 2004, December 2008, January 2009.
- 79 M Schoiswohl, *Status and (human rights) obligations of non-recognized de facto regimes in international law: the case of Somaliland*, Leiden, Boston: Martinus Nijhoff Publishers, 2004, 32–35.
- 80 Schoiswohl, *Status and (human rights) obligations of non-recognized de facto regimes in international law*, 48–58.
- 81 The case of Eritrea is different, since its independence in 1993 was recognised by the government in Addis Ababa.
- 82 The mission only visited central and western Somaliland, particularly the cities of Hargeisa, Berbera, Burco, Sheikh and Boorama. It did not approach the regions contested between Somaliland and Puntland.
- 83 AU, Résumé: AU fact-finding mission to Somaliland (30 April to 4 May 2005), 2005.
- 84 International Crisis Group (ICG), Somaliland: time for African Union leadership, *Africa Report* No. 110, 2006, i.
- 85 M Bryden, The banana test: is Somaliland ready for recognition? *Annales d’Ethiopie* XIX, 2003, 363.
- 86 Ibid.
- 87 The term ‘hostages to peace’ has recently been used as the title for the Human Rights Watch report on the situation in Somaliland, see Human Rights Watch, ‘Hostages to peace’: threats to human rights and democracy in Somaliland, 2009, <http://www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> (accessed 30 November 2010). It was originally used by Matt Bryden. He argued that ‘[o]rdinary Somalilanders today seem to want more, referring to themselves as hostages to peace – desirous of change but fearful that any tinkering with their political system might trigger a sudden implosion’ (Bryden, The banana test, 363).

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# 12 IGAD's peace and security strategy

A panacea for long-term stability in the Horn of Africa region?

KASAIJA PHILLIP APUULI

## INTRODUCTION

The Intergovernmental Authority on Development (IGAD) region has seen a fair share of inter- and intra-state conflicts. Inter-state conflicts include Ethiopia and Somalia in 1977; Ethiopia and Eritrea (1998–2000) and Eritrea and Djibouti since 2008. Intra-state strife has occurred in Djibouti, Uganda, Kenya, Sudan, Ethiopia and Somalia.

The Intergovernmental Authority on Drought and Desertification (IGADD) was established in 1986 by Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda to coordinate the efforts of member states to combat the problems of drought and desertification in the region. The state of Eritrea was admitted as the seventh member of IGADD at the fourth Summit of Heads of State and Government at Addis Ababa in September 1993.<sup>1</sup> Subsequently, it soon became apparent that IGADD could provide a regular forum in which leaders of the region could tackle other political and socio-economic issues in the regional context. Realising this, the heads of state and government at an extraordinary summit on 18 April 1995 resolved to expand the mandate of IGADD and issued a declaration to revitalise the authority and expand areas of cooperation among

member states. The revitalised IGADD was renamed the Intergovernmental Authority on Development (IGAD) in 1995.

The amended IGAD agreement spelled out as its core principles, *inter alia*, the following: the sovereign equality of all member states; non-interference in the internal affairs of member states; the peaceful settlement of inter- and intra-state conflicts through dialogue; and the maintenance of regional peace, stability and security.<sup>2</sup> As one of its aims and objectives the revitalised IGAD also committed itself to 'promote peace and stability in the sub-region, and creat[e] mechanisms within the sub-region for the prevention, management and resolution of inter- and intra-state conflicts through dialogue'.<sup>3</sup>

To test the efficacy of the revitalised and expanded IGAD mandate in the area of conflict resolution, the member states of IGAD embarked on finding solutions to the Somali and Sudanese conflicts in 2002 and 2000, respectively. The IGAD intervention culminated in the successful conclusion of the Comprehensive Peace Agreement (CPA) for Sudan in 2005 and the Nairobi Peace Process for Somalia in 2004. However, IGAD's mediation was *ad hoc* and lacked a comprehensive framework within which conflicts in the region would be tackled. Nevertheless, buoyed by the successes in Somalia and Sudan, the IGAD heads of state and government tasked the IGAD secretariat in 2004 with developing a comprehensive peace and security strategy for the region.

This chapter examines and discusses the following issues: the context of the development of the IGAD Peace and Security Strategy (IPSS); IGAD's past handling of peace and security issues, drawing on the examples of the peace processes in Sudan and Somalia; the components of the IGAD Peace and Security Strategy (IPSS); and the challenges facing the implementation of the IPSS. This chapter's overarching aim is to unpack the different components of the IPSS and discuss whether the IPSS is the panacea to finally deal with the issues of peace and security of the region. The key conclusion is that given the failure of IGAD to identify the most important issue(s) that give rise to conflict, and the challenges posed by the politics of the region, the lack of human and financial resources and overlaps with the East African Community (EAC) Peace and Security Strategy among others, the IPSS Plan cannot be a panacea for resolving the numerous conflicts that continue to ravage the region.

## THE CONTEXT OF THE DEVELOPMENT OF THE IGAD PEACE AND SECURITY STRATEGY

IGAD's mandate in the area of conflict resolution urges member states to collectively preserve peace, security and stability, which are prerequisites for economic development and social progress.<sup>4</sup> In this regard, the member states committed themselves to take effective collective measures to eliminate threats to regional cooperation, peace and stability; establish an effective mechanism of consultation and cooperation for the pacific settlement of differences and disputes; and agree to deal with disputes between member states within the subregional mechanism before they are referred to other regional or international organisations.<sup>5</sup>

The organs of IGAD comprise the assembly of heads of state and government (the summit); the council of ministers; the committee of ambassadors; and the secretariat.<sup>6</sup> The summit ordinarily meets once a year and reaches its decisions by consensus. It has, *inter alia*, the following functions: policy-making, directing and controlling the function of the organisation; determining the main guidelines and programmes of cooperation; and giving guidelines and monitoring political issues, especially on conflict prevention, management and resolution.<sup>7</sup>

The council of ministers, composed of the ministers of foreign affairs and one other focal minister designated by each member state,<sup>8</sup> is tasked with, *inter alia*, following up political and security affairs, which include conflict prevention, management and resolution, as well as post-conflict building; monitoring and enhancing humanitarian activities; promoting peace and security in the sub-region; and making recommendations to the assembly.<sup>9</sup> The council ordinarily meets twice a year<sup>10</sup> and normally reaches its decisions by consensus.<sup>11</sup>

The committee of ambassadors, which reports to the council of ministers, comprises member states' ambassadors or plenipotentiaries accredited to the country of the headquarters of the organisation.<sup>12</sup> Its functions are to advise the executive secretary on promotion of his or her efforts in realising the work plan approved by the council of ministers, and guiding the executive secretary on the interpretation of policies and guidelines that may require further elaboration.<sup>13</sup> The committee holds meetings when necessary<sup>14</sup> and normally reaches its decisions by consensus.<sup>15</sup>

The secretariat,<sup>16</sup> which is headed by an executive secretary,<sup>17</sup> is the executive body of the authority. It is tasked with, inter alia, implementing the decisions of the assembly and the council; preparing draft proposals and agreements on matters arising from the decisions and recommendations of the assembly and the council; and assisting the policy organs in their work relating to political and humanitarian affairs.<sup>18</sup>

From the foregoing, it can be observed that decision-making in IGAD is in pyramid form, with final decisions being made by the summit. The IPSS Plan process began in 2004 when the IGAD heads of state and government tasked the secretariat with developing a comprehensive peace and security strategy. This was against the background of IGAD's success in mediating the Somali and Sudanese peace processes. In March 2005, the IGAD secretariat convened a launching conference of the process in Khartoum, Sudan.<sup>19</sup> A follow-up workshop was convened in Mombasa, Kenya, in July 2007, which was attended by representatives of civil society, government representatives and eminent personalities. At this workshop thematic areas were identified to constitute the issues to be covered by the IPSS Plan. The identified themes included border demarcations of IGAD member states and their implications; cross-border economic cooperation in the IGAD region; access to the sea for landlocked countries in the region; trans-boundary water-resources management; and cross-border cooperation and counter-terrorism.

Papers covering these issues were presented to experts at two round-table workshops held in Djibouti in February 2008 and Entebbe in May 2008.<sup>20</sup> The modus operandi of the IGAD secretariat in preparing the IPSS Plan, therefore, has been the adoption of the principles of ownership, participation and partnership. The document resulting from these consultations is what is now called the 'IPSS Plan 2010–2014'. The IPSS Plan has been initialled by the member states, but is yet to be passed by the relevant institutional mechanisms of IGAD.

## **IGAD'S PAST HANDLING OF PEACE AND SECURITY ISSUES**

### **The cases of the Sudanese and Somali peace processes**

When the leaders of the IGAD region decided to involve the organisation in the process of mediation, first in Sudan and then Somalia, they didn't do so under



any established framework. They just realised that IGAD as an organisation could be utilised as a forum to discuss the conflicts occurring in these member states. Their concern was how peace could be realised in these states. As a result, when IGAD became involved in the Sudanese and Somali peace processes, firstly, its involvement was ad hoc, and, secondly, emphasis was placed on political mediation, which resulted in the signing of the CPA for Sudan and the establishment of a transitional government for Somalia. In this section I discuss IGAD's mediation efforts in Sudan and Somalia, and show that it was both the perceived successes and shortcomings of the mediation efforts that led to the leaders of IGAD calling for the development of a comprehensive strategy to deal with all the other conflicts in the region.

## Sudan

The war between the Government of Sudan (GoS) and the Sudanese People's Liberation Movement/Army (SPLM/A) broke out in May 1983. Prior to that, the people of southern Sudan had engaged in a number of rebellions against the government in Khartoum, citing political, economic and social marginalisation. At independence in 1956, Sudan had been ruled as a condominium for 80 years by the Anglo-Egyptian administration.<sup>21</sup> In this arrangement, northern and southern Sudan were administered separately under a Governor General. Northern Sudan was ruled as a colonial territory along Islamic/Arab lines, with its future and cultural orientation towards Egypt and the Arab world, whereas southern Sudan was ruled as an African colonial territory in which African languages, culture and Christianity were all encouraged to flourish to the exclusion of anything Arab or Islamic, and with its future and cultural orientation towards East Africa.<sup>22</sup>

At independence, the north and the south were united and the independent Sudanese state was created, dominated by the Arab and Islamic citizens of northern Sudan.<sup>23</sup> It made no difference to the plight of the southern Sudanese whether the governments of Sudan were military, Islamic dictatorships or multi-party systems.<sup>24</sup> This marginalisation led to the first Anyanya War in Sudan, which lasted for 17 years from 1955 to 1972.<sup>25</sup>

The search for peace in Sudan is traceable to the 1930s when the British developed a policy for the south in the Closed District Ordinance.<sup>26</sup> The southern policy was a British design for the eventual political independence of the south

from the north. The policy entailed both the progressive separation of the south from the north and the fostering of particularism within it.<sup>27</sup> The history of Sudan reveals that several major conferences were convened in an attempt to resolve the conflict between the north and the south, in the hope of reconstituting a peaceful and inclusive modern state in Sudan.<sup>28</sup> This chapter is concerned with the IGAD-led Sudan Peace Conference from 1993 to 2005. This peace conference was divided into two phases, namely phase one (September 1993–May 2002) and phase two (May 2002–January 2005).

### *Phase one: September 1993–May 2002*

The failure of the various Sudanese peace conferences laid the basis for the region to take up the gauntlet. As already mentioned in the introduction, IGAD was established with a mandate to deal with issues of drought and desertification in the Horn of Africa region. However, as already mentioned, its mandate was subsequently expanded to cover issues of peace and security. It has been observed that this expansion of the mandate to assume responsibilities in the field of peace and security 'followed a new thinking on the role of regionalism and regional cooperation in safeguarding international order'.<sup>29</sup>

IGADD launched its peace initiative for Sudan at its Addis Ababa summit on 7 September 1993 by constituting a peace committee made up of the heads of state and government of Ethiopia, Eritrea, Kenya and Uganda, with President Daniel arap Moi as the chairman.<sup>30</sup> The mediation process was handled by a standing committee made up of the foreign ministers from the same countries and chaired by Kenya. In addition, the Friends of IGAD was formed by the leading Western countries (now called the IGAD Partners Forum [IPF]) and it promised support for IGAD's peacekeeping role.<sup>31</sup> The IGAD sub-committee was entrusted with the responsibility of bringing the Sudanese conflict to an end through a negotiated settlement.

In March 1994, the meeting of the IGADD sub-committee was convened in Nairobi, at which it proposed a Declaration of Principles (DoP) to form the framework of the negotiations. The DoP acknowledged the right of the south to self-determination, but made this contingent upon the failure of the GoS to introduce democracy and secularism.<sup>32</sup> It was also stipulated that Sudan must respond to its diverse population's need for social and political equality. The DoP was rejected by the GoS, whilst being accepted by the SPLM/Mainstream and SPLA/United.<sup>33</sup> The hardening of positions on the DoP led to polarisation,

which prompted the convening of the second Summit of IGAD Heads of State Peace Committee in Nairobi in September 1994. This meeting resolved that the IGAD peace process should continue and that the DoP should form the basis of the negotiations.<sup>34</sup> Unfortunately, the negotiations stalled for the next 33 months owing to the disagreements over the DoP.<sup>35</sup>

In October 1997, the GoS returned to the negotiating table and thereafter in May 1998, accepted the DoP as the basis for negotiations.<sup>36</sup> However, the outbreak of the Ethiopia-Eritrea War in May 1998 reduced the government's enthusiasm for the IGAD peace initiative.

Meanwhile, with the IGAD process faltering, other mediators jumped into the fray. These included the Joint Libyan and Egyptian Initiative (JLEI); the Eritrean-initiated negotiations between the National Democratic Alliance (NDA) and the GoS; and the Nigerian-led initiatives. Although these initiatives attracted the support of the parties to the Sudan conflict, they did not achieve much. Although it was faltering, the IGAD process was seen by all as the best forum to deal with the Sudan issue. Notwithstanding, the IGAD process suffered from major flaws: inter alia, the failure to involve other political forces (other than the SPLM/A and the GoS)<sup>37</sup> and a perennial shortage of funds.<sup>38</sup>

On the positive side, this phase of the IGAD process accomplished some achievements, including the production of a well-thought-out DoP; workable relations with the conflicting parties; the development of a system of ambassador envoys; the attraction of political and financial support from the IPF; and international legitimacy.<sup>39</sup> Furthermore, the process made good progress on a wealth-sharing agreement and on the resolution of the problem of the marginalised territories.<sup>40</sup>

### *Phase two: May 2002–January 2005*

From the experience of the first phase of the IGAD peace process, it became clear that if the sub-regional organisation was to succeed with the Sudanese problem, the process had to be rejuvenated. The second phase of IGAD mediation kicked off in June 2001 with the convening of an extraordinary IGAD summit in Nairobi. The summit recognised the outstanding issues that constituted a stumbling block to the negotiations, and recommended serious dialogue between the parties.<sup>41</sup> Subsequently, in November 2001, Lieutenant General Lazaro Sumbeiywo was appointed special envoy to the IGAD peace process in Sudan.<sup>42</sup> In May 2002, Sumbeiywo drew up a programme of work for the

negotiations.<sup>43</sup> In July 2002, the parties succeeded for the first time in reaching an agreement on the issues of the right of self-determination and the separation of the state and religion.<sup>44</sup> The detailed agreement was titled 'Agreed Text on the Preamble, Principles, and the Transition Process between the Government of the Republic of Sudan and the Sudanese People's Liberation Movement/Army'. As well as the issues of the right of self-determination and the separation of the state and religion, the agreement dealt with, inter alia, issues of transition, structures of government and the establishment of an Assessment and Evaluation Commission (AEC).

The agreement, however, suffered a setback in September 2002 when the GoS decided to recall its delegation from Machakos. The GoS argued that it could not continue with the negotiations based on the SPLM/A position regarding power-sharing, the status of the national capital and the issue of Nuba Mountains, Funj and Abyei. The SPLM/A had proposed a structure of power-sharing at three levels of government: the national government, South Sudan government and state government.<sup>45</sup> It had also proposed a sharia-free capital for the central government. On the question of the three areas of Nuba Mountains, Abyei and Funj, the SPLM/A had accepted the proposal of the mediators that the status of these areas be dealt with under IGAD mediation as part of an overall solution to the Sudanese conflict. However, the GoS had demanded that IGAD limit the peace process to southern Sudan in accordance with the borders of 1 January 1956.

The negotiations recommenced in October 2002 when the parties signed a memorandum of understanding (MoU) on cessation of hostilities in order to 'create and maintain a conducive atmosphere throughout the negotiations until all the outstanding issues were resolved'.<sup>46</sup> After several violations of the MoU, an addendum was agreed and signed providing for the establishment of a verification and monitoring team, which was empowered to travel to any area where a violation was reported and filed by any of the parties, and made its findings public to IGAD and the international community. According to Kwaje, 'the MoU and [a]ddendum contributed to the maintenance of the ceasefire and consequently created a conducive atmosphere for negotiations'.<sup>47</sup>

From Machakos in 2002, the negotiations were shifted to Nakuru in July 2003, then Nanyuki in August 2003 and finally to Naivasha in September 2003. The Naivasha negotiations finally led to the conclusion and signing of the CPA on 9 January 2005. Specifically, at the Naivasha round of negotiations,

the parties reached agreement on the issues of security arrangements, wealth sharing, oil and the decentralisation of power.

A number of things can be noted from the IGAD mediation. Firstly, the process was not all inclusive, as it excluded the participation of civil society and other political parties. In fact, according to Young, 'the negotiations were narrowed to the participation of two elites [Garang and Taha] whose support base was questionable'.<sup>48</sup> The lack of inclusion was later to manifest itself when the issue of Darfur emerged. Darfur was not part of the agenda of the IGAD-led process.

Secondly, although IGAD was given authority to conduct the mediation, its continued role after the conclusion of the negotiations was not made very clear. Although the CPA generally provided for IGAD to have special envoys to the AEC, which is tasked with, *inter alia*, monitoring the implementation of the agreement, no appointments were immediately made.<sup>49</sup> Therefore, IGAD had no mechanism by which it could follow directly the day-to-day implementation of the CPA.

Thirdly, as has been noted, although it provided a measure of legitimacy and a formal structure, the IGAD secretariat had almost no other role in the Sudan peace process.<sup>50</sup> The financing was largely funnelled through the government of Kenya and the international cooperation organisation GTZ; Special Envoy Sumbeiywo reported to Kenya; the peace process secretariat staff reported to the special envoy; and the observers were responsible to their respective countries, as were the ambassador envoys.

At the time of writing, the CPA is still holding despite continued challenges to its full implementation. The Fifth Sudan Population and Housing Census, a milestone in the implementation of the CPA, was conducted from 22 to 30 April 2008. National elections which were supposed to be held in July/August 2009 were postponed to February 2010. The explosive issue of Abyei was finally settled in July 2009 by the Permanent Court of Arbitration in The Hague.<sup>51</sup>

## Somalia

For the past 19 years, Somalia has been a state without a functioning government. The collapse of the Somali government and state was occasioned by the overthrow in 1991 of the late dictator, Siad Barre. Since 1991, Somalia has gone militarily from warlord clashes to almost regular warfare.<sup>52</sup> Meanwhile,

the regional and international communities alike have been searching for ways to reconstitute the Somali state by instituting a functioning government in Mogadishu.

Between 1991 and 1997, 13 attempts were made to institute a functioning government for Somalia and re-establish the state.<sup>53</sup> None of these attempts achieved much. As a regional body, IGAD set in motion its own peace process for Somalia in 1997.<sup>54</sup> IGAD gave its backing to the Arta Conference in 2000<sup>55</sup> hosted by Djibouti, which resulted in the formation of the Transitional National Government (TNG). IGAD made a strategic breakthrough in 2002 with the start of the Somali National Reconciliation Conference in Kenya. The IGAD initiative became the 14th attempt at trying to re-establish the Somali state and government.

The 9th IGAD Heads of State and Government Summit, held in Khartoum, Sudan, in January 2002, passed a resolution mandating Djibouti, Ethiopia and Kenya (also known as the 'frontline states') to coordinate efforts for national reconciliation in Somalia. Thereafter, a Technical Committee on Somalia, comprising the three frontline states under the chairmanship of Kenya, was set up to fulfil this mandate. The summit reaffirmed IGAD's commitment to the unity and territorial integrity of Somalia. It decided to hold a reconciliation conference on Somalia in Nairobi within two months, with the President of Kenya as the coordinator of the frontline states. The summit mandated the ministerial committee to prepare the conference; urged the TNG and all the other parties to commit themselves to combating terrorism in all its forms; and called upon the international community to join IGAD in establishing peace in Somalia.<sup>56</sup>

Preparations for the start of the 14th Somalia National Reconciliation Conference (SNRC) began in February 2002 with a meeting of the committee of the IGAD foreign ministers in Nairobi, which reviewed the situation in Somalia and the concerns of the frontline states and the region. The committee observed, *inter alia*, that the absence of a central authority in Somalia over the past decade had created a situation whereby terrorists and extremist groups operated freely in the country, thereby threatening the national security of neighbouring countries. Thereafter, a technical committee of the frontline states chaired by Kenya and including the IGAD secretariat was established to work out modalities to facilitate the proposed SNRC. Kenya was mandated to convene the conference during the second half of April 2002.

The opening of the IGAD-led SNRC took place on 15 October 2002 in the town of Eldoret, and it ran until 15 February 2003. Thereafter, the negotiations were shifted to Mbagathi from 15 February 2003 up to the time they ended on 1 December 2004, with the formation of the first Transitional Federal Government (TFG) cabinet. At Eldoret, various Somali factions signed a Declaration on the Cessation of Hostilities on 27 October 2002. The SNRC was divided into three phases.<sup>57</sup> Phase one was concerned with agenda-setting to establish the ownership of the process. Phase two tackled the issue of reconciliation, including the core issue of drawing up the Transitional Federal Charter (TFC). Phase three was concerned with the issue of power-sharing, including the core issue of the formation of the Transitional Federal Institutions (TFIs).

The decision-making structure at the SNRC was at four levels. The first level was that of the Summit of the IGAD Heads of State and Government. Below this structure was the IGAD council of ministers, which was composed of all the foreign ministers of the IGAD region and acted as the advisory organ of the summit. The facilitation committee, comprising the special envoys of Djibouti, Eritrea, Kenya and Uganda and working closely with the IGAD Partners Forum (IPF),<sup>58</sup> did the day-to-day running of the conference on behalf of the IGAD governments. The secretariat serviced the facilitation committee.

The actual decision-making at the conference was at three levels. The first level comprised the leaders' committee, composed of 24 Somali leaders who had signed the Declaration on the Cessation of Hostilities at Eldoret. The second level comprised the officially invited guests belonging to various factions, who numbered between 360 and 1 000. The last level included the plenary composed of the delegates, the leaders' committee, the IGAD facilitation committee and observers. This was the highest decision-making organ of the conference, with powers to ratify all decisions taken by the other organs. The idea of the plenary was introduced 'to allow the widest participation in decision-making for purposes of ownership and consensus building'.<sup>59</sup>

The climax of the SNRC occurred in October 2004 when Abdullahi Yusuf was elected as interim President of Somalia. Subsequently, on 3 November 2004, Ali Mohamed Ghedi was named as the new prime minister to head the TFG. Ghedi named a cabinet of 27 ministers on 1 December 2004. Due to the prevailing security situation in Somalia, the TFG was forced to operate out of Nairobi for a while. When President Yusuf finally relocated to Somalia in June 2005 under heavy Kenyan pressure, the TFG could not exercise effective

control over the country, as the warlords had consolidated themselves in power. In addition, by early March 2005 two rival camps had emerged within the TFG. One was led by President Yusuf and Prime Minister Ghedi; the other was composed of the parliamentarians and cabinet members mainly based in the capital and principally from the Hawiye clan.<sup>60</sup> Two issues divided the government: the location of the capital from where the TFG would function and the proposal to invite peacekeeping forces to support the TFG. Whilst the president and his allies pushed for the TFG to operate from the provisional capitals of Johwar and Baidoa owing to the insecurity in Mogadishu, the Mogadishu-based parliamentarians and cabinet members perceived this to be a plan to isolate them. They also opposed the deployment of peacekeepers out of fear that Yusuf would use them to pacify their turf, Mogadishu, which would be tantamount to a declaration of war. Disagreements notwithstanding, what is clear is that the election and stationing of the TFG in exile contributed immensely to the chaotic situation in the country, as there was no administration that could exercise control.

After Ethiopia invaded Somalia and overthrew the Islamist regime that had been established there in the second half of 2006, the TFG – which had hitherto been based in the town of Johwar – was finally able to relocate to Mogadishu. Nevertheless, the TFG operated under very difficult conditions and ‘assumed control over key government buildings under heavy Ethiopian protection’.<sup>61</sup> The TFG limped on until a new round of negotiations led by the UN and held in Djibouti resulted in the establishment of a new transitional Government of National Unity (GNU) in January/February 2008. This marked the end of the IGAD-led 14th Somalia peace negotiations.

A number of observations, inter alia, can be made on the 14th IGAD-led Somalia peace negotiations. The negotiations followed the so-called 4,5 clan formula that had been initiated during the Arta peace process. According to the formula, power must be shared between the four main clans of Somalia, namely the Hawiye, Darood, Digil-Rahanweyn<sup>62</sup> and Dir, together with the minority clans, which constitute the 0,5.<sup>63</sup> This results in a process that is all-inclusive.

Secondly, before embarking on leading the negotiations, IGAD carried out a fact-finding mission to Somalia. This ensured that there was adequate preparation in developing consensus on the criteria of participation and agreement on the number of participants.<sup>64</sup>



Thirdly, the negotiations were structured into phases that ensured their success. Each phase had its own rules of procedure, major issues to be discussed and a conclusion in the form of agreements, findings and declarations.

Fourthly, on the downside, the IGAD facilitation committee, which was in charge of mediating the negotiations, did not provide opportunity for face-to-face reconciliation for two years, but concentrated instead on power-sharing.<sup>65</sup> This resulted in the issue of reconciliation not being emphasised during and after the negotiations.

Lastly, there was no IGAD follow-up mechanism that was established to monitor the implementation of the Somalia peace process. Once the negotiations were complete and the government established, IGAD took a back seat. Therefore, the region could not hold to account the parties as a result of non-implementation of the agreement.

## **THE DRAFT IGAD PEACE AND SECURITY STRATEGY (IPSS) PLAN**

The IPSS Plan defines the road map and approaches that IGAD and its member states intend to adopt for the period 2010–2014. It is borne out of the belief that peace and security are prerequisites for the countries and citizens of the IGAD region to achieve their potential. The need for an IPSS is anchored in the founding agreement of IGAD, which states that the organisation's objectives include, *inter alia*, the 'promotion of peace and stability in the sub-region and creating mechanisms within the sub-region for the prevention, management and resolution of inter- and intra-state conflicts through dialogue'.<sup>66</sup> As early as 2001, the IGAD secretariat had commissioned a study, 'Conflict prevention, management and resolution: Capacity assessment study in the IGAD sub-region', carried out by Leeds University.<sup>67</sup> A key recommendation of the study was the elaboration of a conflict-prevention, management and resolution (CPMR) strategy. In fact, as a result of the study, IGAD established its Conflict Early Warning and Response Mechanism (CEWARN) programme in 2003.

The IPSS Plan is based on the primary responsibility of governments to provide peace and security for their citizens.<sup>68</sup> Its aim is to enable the IGAD secretariat to fulfil the responsibilities entrusted to it by the African Union (AU), and thus is based upon the principles enunciated in, *inter alia*, the Constitutive Act of the AU; the IGAD Charter; the Protocol on the Establishment of the AU

Peace and Security Council; the Solemn Declaration on a Common African Security and Defence Policy; the African Non-Aggression and Common Defence Pact; and the African Charter on Human and People's Rights.<sup>69</sup>

The broad aim of the strategy is to enable IGAD member states, the IGAD secretariat and citizens of the IGAD countries to actively contribute to developing and maintaining a robust peace and security order throughout north-east Africa. Therefore, the strategy will contribute to the promotion of democracy, good governance, economic development and the social and economic integration of the IGAD sub-region and the African continent.<sup>70</sup> In this section I present the details of the draft strategy and ask whether it can actually be a panacea for resolving the peace and security challenges facing the region. The key conclusion of the section is that the strategy will not be a panacea for resolving the conflicts in the region because of the challenges that I identify.

## Conceptual issues underpinning the IPSS Plan

The IPSS Plan is underpinned by a number of conceptual threads, including human security, collectivism, interest convergence, constructivism and subsidiarity. Human security envisages peace, security and stability of the region as being informed by several factors, including the state of economic development, adequate environmental resources, the state of human-capital development and public health.

Collectivism advocates for a collective security approach in the region and a departure from rigid sovereignty-oriented or state-centric approaches. Through collectivism the IGAD countries would focus on addressing common vulnerabilities by transforming dead capital (including borderlands, water, power and other natural resources, sea outlets and transit corridors), which is currently a contributory cause of conflicts in the region, into security-generating variables for local community, state and regional socio-economic and political progress.

Interest convergence denotes the development of frameworks for the identification and promotion of reconciliation of the various national interests, leading to convergence with common regional interests. Due to differing national interests of the various IGAD member states, interest convergence entails identifying and mapping out the various national interests of the individual IGAD member states; crafting a framework for interest convergence, since individual

national interests are not mutually exclusive; and identifying common threats to the region as a whole.

The principle of constructivism entails an incremental rather than a fresh and new way of doing things. The IPSS Plan builds on existing institutional and normative frameworks and relies on the existing goodwill and cooperation among the IGAD member states to strengthen cooperation and integration, rather than assuming that there is no cooperation at all.

Finally, the subsidiarity principle entails leaving activities to the authorities or levels best suited to handle them. In this regard, the IPSS envisages the AU at the top of the pyramid, followed by IGAD as the fulcrum at the regional level, and the regionalised local structures – such as triangles, zones, forums and authorities – as the interface between the state and IGAD.

## Identified strategic issues/areas

The IPSS Plan identifies four core strategic priority areas whose implementation would achieve the overall goal of the strategy – to achieve sustainable peace and security for the attainment of economic integration and development in the IGAD region. The first identified core priority area is strengthening and streamlining the CPMR programme. IGAD already has a functioning CEWARN mechanism.<sup>71</sup> However, the IPSS plan contemplates anchoring IGAD's CPMR programme in a protocol that will be developed and negotiated by the member states. The mandate of CEWARN will be reviewed and expanded to improve on its capacity to monitor not just pastoral conflicts, but also other types of conflicts. In addition, CEWARN's early-response component will be strengthened by operationalising the Conflict Early Warning and Early Response Units (CEWERUs) in all member states, and its role will be anchored and related to the AU's early-warning mechanism. Other undertakings under this priority area will include, inter alia, developing and implementing an IGAD protocol on non-aggression; implementing the AU Charter on Democracy, elections and good governance; developing and implementing an IGAD protocol on demobilisation and disarmament; and developing and implementing IGAD best practices on peace-support operations, covering peacekeeping, peace enforcement and post-conflict reconstruction and development.

CEWARN, which has been operating since 2003, has had mixed results. Although the mechanism has made significant strides to facilitate the collection

and analysis of early-warning information, it is still weak and suffers from, for example, a lack of effective synergy between the national and CEWARN structures, and is, therefore, unable to influence national authorities to take action when needed.<sup>72</sup> This lack of synergy also results in a tendency for national authorities to work independently of CEWARN, even when there would be an advantage in working together. Besides, since its inception, CEWARN has concentrated on pastoral-related conflicts. As Sabala has observed, 'while pastoral conflict[s] should not be overlooked and ignored as minor, they are politically less sensitive and the [mechanism] needs to give more attention to serious situations that threaten inter-state relations as well as internal stability.'<sup>73</sup> As of now, this seems not to be a priority, as even under the current CEWARN Strategic Plan (2007–2011), it is not envisaged that the mechanism will expand its activities to politically sensitive conflicts.

Connected with the above point is the fact that CEWARN's analysis work is largely dependent on open information sources. However, the sources should also include hard intelligence information and other relevant studies in order to improve its analytical capability. Member states have not been comfortable sharing their intelligence information (either military or civil) with the mechanism. As a result, the low quality of early-warning reports, which lack intellectual and practical rigour, and currently focus on politically insensitive pastoral conflicts, have not attracted the attention of policy-makers.

The second priority area for the IPSS Plan is strengthening preventive (i.e. Track 2) diplomacy. First used by Joseph Montville in 1981 in his search for a term that encompassed the unofficial efforts made outside governments that brought about diplomatic resolution of conflicts, the term Track 2 – or 'citizen diplomacy' – refers to 'private citizens discussing issues that are generally reserved for official (state) negotiations'.<sup>74</sup> Track 2 Diplomacy transcends the narrow, power-based approaches of traditional diplomacy by replacing the nation state as the primary referent of conflict with all interest groups. The concept of Track 2 diplomacy stems from the belief that war can be avoided if contacts between people are initiated to build linkages of friendship and understanding. These contacts result in conflict transformation, whereby those engaged in conflict are encouraged to engage in dialogue.<sup>75</sup> As has been noted, there exists a pool of former diplomats, eminent persons and traditional leaders who can be called upon to mediate in conflicts at community and state levels.<sup>76</sup>

Although efforts by Track 2 diplomacy would supplement the state-centred efforts at conflict resolution hitherto seen in the region (as the cases of Sudan and Somalia illustrate), this type of diplomacy has not always succeeded in resolving conflicts in the region, as illustrated by the example of northern Uganda. For a long time, the civil-society groups in northern Uganda called on both sides of the conflict – namely, the Lord’s Resistance Army (LRA) and the government – to engage in peace talks. Generally, these calls were ignored by the conflicting parties, who continued fighting. In fact, the government reached the extent of describing the civil-society activists as ‘LRA apologists’. When eventually the two sides started peace talks at Juba, southern Sudan, in 2006, civil-society groups were only invited as observers and not as key participants in the talks. Consequently, there are doubts as to whether member states would allow Track 2 diplomacy to replace the traditional, diplomatic mechanisms/institutions of state-centric conflict resolution.

The third identified priority area is cooperation to address the emerging common peace and security threats, including terrorism, piracy, organised crime and security-sector reform. There are strong linkages between addressing terrorism, maritime security and trans-boundary organised crime – e.g. money laundering, the illicit flow of small arms and light weapons (SALW), human trafficking in narcotic drugs and psychotropic substances, cyber-crime and intellectual property-related crime – and security-sector reform. The security situation in Somalia exemplifies the linkage between all these security threats. As a result, the linkage makes it necessary to synchronise all the existing IGAD programmes and activities in place to address these transnational challenges, and where no programme or activity exists, to establish one and create an umbrella programmatic arrangement.<sup>77</sup>

This is a very broad priority area. The identified issues of, inter alia, terrorism, organised crime and piracy are very present and prevalent in the region. The conflict in Somalia embodies them all. The terrorism in the region witnessed today being sown by the Somali radical militant group al-Shabaab resulted in the bombings in Kampala, Uganda, on 11 July 2010, in which more than 80 people died. In the past, al-Qaeda elements (some allegedly coming from Somalia) carried out terrorist attacks in Nairobi and Dar es Salaam, Tanzania, in 1998. Piracy continues to be a source of concern off the coast of Somalia, where pirates have seized many ships and liners. The Somali conflict continues to act as a catalyst for illicit trafficking in SALW in the region. Although IGAD has in the

past actively worked to resolve the Somali conflict, the security situation there continues to deteriorate year in, year out. For example, in order to deal with continued conflict in Somalia, in October 2008 the IGAD assembly established the IGAD Facilitation Office for Peace and Reconciliation in Somalia,<sup>78</sup> based in Addis Ababa, to coordinate its activities regarding the conflict in Somalia. However, other than attending meetings held all over the world on Somalia, the office has not facilitated any reconciliation meetings of the various factions in the Somali conflict. The reasons for this are that the office does not have enough expertise and financial and human resources.<sup>79</sup> As a result, the office has had no impact whatsoever on the ongoing conflict in Somalia.

Apropos of terrorism, the IGAD Capacity-Building Program against Terrorism (ICPAT) was established following a resolution passed by the 9th Summit of the IGAD Assembly, held in Khartoum, to combat terrorism in the region. The ICPAT programme has engaged in counter-terrorism training of security officers from member states, with the specific aim of building national capacities against terrorism and promoting regional cooperation. What must be observed, however, is the fact that the work of ICPAT has not been visible in member states. Other than the low-level training given to state-security and judicial officials from member states, the programme has had minimal impact, for example, in combating piracy off the coast of Somalia. Besides, ICPAT has been poorly funded by donations from friendly countries and donors, and as a result a decision was taken by the IGAD secretariat to suspend its operations in 2010 pending its transformation into a security-sector programme under the IPSS Plan.

The final strategic priority area of the IPSS Plan is cooperation in the areas of disaster management, prevention and control of forced migration, border management, trans-boundary water resources management, energy resources management, environmental management and boundary demarcation and management. In these areas, it is envisaged that IGAD will, inter alia, promote normative frameworks on disaster prevention, management and response; develop disaster-management capacity and infrastructure through regional disaster-management institutions; popularise and promote the ratification and implementation of the AU conventions relating to refugees and internally displaced persons (IDPs); develop and implement a protocol and promote strong regional institutional mechanisms for the management of shared water resources; promote the conclusion of agreements between states in the use

and management of transit corridors; enhance sustainable environmental and natural-resource management and equitable access to natural resources; and liaise with the UN, the AU, and other relevant regional normative frameworks, over disasters, forced migration, shared water resources, energy and environmental protection.

Again, this is a broad priority area. Cooperation between member states in some of the identified areas within this cluster has left a lot to be desired in the past. The region has suffered from natural disasters, including the drought that has ravaged Ethiopia, Kenya and Somalia; the floods in Somalia; and the landslides in eastern Uganda, among others. In all these situations, IGAD has been absent. The provision of relief assistance to the affected population has been left to national and international non-governmental organisations, such as the International Committee of the Red Cross, Red Crescent and national Red Cross societies, among others. The absence of IGAD is attributed to the fact that it does not have the necessary financial and human capacities to be involved. More importantly, however, it has no framework through which it can react when such disasters strike.

Apropos of border management, transboundary water resources management, energy resources management, environmental management and boundary demarcation and management, although IGAD can be credited for attempting to establish programmes in the areas of the environment and water-resource management, it has been absent in all the other identified areas. In fact, during one of the consultation meetings called to draw up the draft IPSS Plan, some member countries were not comfortable with the fact that IGAD was attempting to enter into the realm of border demarcation in the region. Specifically, on the issues of border demarcation and the right of access of landlocked countries of the region to the sea, Djibouti questioned how the IGAD secretariat had selected these thematic areas without consulting member states. That country objected, among other things, to the assertions made at the meeting that the bilateral agreement reached between Djibouti and Ethiopia for the latter to use Djibouti's port should be renegotiated because it disadvantaged Djibouti. To Djibouti, this amounted to interfering with and infringing on its sovereignty. Perhaps Djibouti had a point because the thematic areas underpinning the IPSS Plan were identified by the IGAD secretariat and only 'sold' to the member states. In the end, when the other member states present refused to discuss the matters raised by Djibouti, the latter walked out of the meeting.

The question that can be asked, therefore, is whether the thematic areas, as identified by the IPSS Plan, are the most urgent and prominent in the region. The answer, to the author, is clearly no. Although these are important issues – and they are indeed sources of conflict – there are other issues that need to be considered. The author's view is that the issue of governance is of great urgency. Practically all the countries in the region suffer from a crisis of governance. For example: The post-election violence witnessed in Kenya in 2007–2008 exposed the issue of election rigging in the region. Before the 2007 elections, multi-party elections had been held in Kenya in 1992, 1997 and 2002. Although the 2002 elections saw the removal from power by the opposition of the Kenya African National Union (KANU), those of 1992 and 1997 were marred by rigging, allegedly by KANU. In Uganda, political parties were to all intents banned when President Museveni came to power in 1986. The agitation for multi-party democracy saw the government holding a referendum on the issue in 2005, which was boycotted by the opposition political parties. Nevertheless, political parties were allowed to operate again after the referendum. However, the 2006 (and previously the 1996 and 2001) general elections were allegedly rigged by the Museveni government. In Ethiopia, the 2005 elections are said to have been rigged by the government of Prime Minister Meles Zenawi. These examples show that there is a crisis of governance in the region. Addressing bad governance should have been one of the identified priority areas to be dealt with under the IPSS Plan. Unfortunately, it does not feature in the plan.

As well as the failure to address issues of governance in the region, the IPSS Plan faces other challenges, including the politics of the region, lack of resources and overlaps with the East African Community (EAC) Peace and Security Strategy.

### *Politics of the region*

The most immediate challenge that may hinder the successful implementation of the IPSS is the politics of the region. The Horn of Africa is composed of quarrelsome neighbours. For example, at one time Uganda failed to see eye to eye with Sudan over allegations that both countries were supporting each other's rebels. Ethiopia and Eritrea, and Eritrea and Djibouti have border conflicts that have in the past resulted in open warfare. Generally, Eritrea is at loggerheads with the whole of the IGAD region over the situation in Somalia, which resulted in Djibouti deciding in April 2007 to suspend its membership to the



organisation.<sup>80</sup> Today, Eritrea does not participate in the organisation's activities. In August 2008, an IGAD ministerial delegation visited Asmara, Eritrea, in an attempt to persuade the Eritrean government to return to IGAD.<sup>81</sup> The delegation held talks with President Isaias Afwerki and in the discussions that followed Afwerki stated the reason for Eritrea's suspension of its membership to IGAD. He said that Eritrea was motivated to leave IGAD firstly because the organisation had failed to pronounce itself on the Eritrea-Ethiopia border dispute, and, secondly, because Ethiopia had invaded the state of Somalia with the support of the organisation.<sup>82</sup> Therefore, he said that he saw no reason for his country to continue belonging to such an organisation. At the time of writing, Eritrea has not returned to IGAD and, therefore, has not been part of the process of preparing the draft IPSS. The author's conclusion on this point is that, firstly, if the IPSS is meant to deal with the issues of the region, then one wonders how this will happen when one of the member states has not participated in its preparation. Secondly, and more importantly, is the fact that IGAD has continuously failed to pronounce itself on the inter-state conflicts affecting its member states, with the case of Eritrea and Ethiopia being a telling example.

### *Resources*

The implementation of the IPSS will require a lot of human and financial resources, which currently the organisation does not have. One of the problems that continue to bedevil African regional economic communities (RECs) is the issue of financing. Most often, RECs are dependent on external funding for almost all of their programmes, as the member states do not meet their membership obligations. On this matter, Konare and Amoako have observed:

... Africa's integration cannot be funded solely by the traditionally unreliable financial contributions of [p]artner [s]tates or outside support. Relying principally on assessed contributions has proven unsustainable for regional economic communities ... Dependence on external assistance is not a viable way to buttress ... integration in general ... [E]nsuring a brighter future for Africa's integration require[s] more than a precarious dependence on the limited traditional sources of funding.<sup>83</sup>

By the end of 2008, Djibouti, Kenya, Sudan and Uganda were still paying arrears accumulated over the previous years in membership contributions to

IGAD.<sup>84</sup> Some of the IGAD programmes like ICPAT are funded by donors to the tune of 100 per cent.<sup>85</sup> This situation pertaining to the financing of IGAD does not augur well in the author's opinion for the funding of the implementation of the IPSS.

As regards human resources, the IGAD secretariat is not adequately staffed. A number of professional posts are vacant.<sup>86</sup> One of the reasons that the posts have not been filled over the years is the lack of financial resources. One, therefore, wonders how the IPSS will be implemented if this situation continues.

### *Overlap with EAC Peace and Security Strategy*

There is the danger of the IPSS overlapping with the Peace and Security Strategy of the EAC. The EAC Peace and Security Strategy, published in 2007, comprehensively proposes to deal with issues of peace and security in the EAC region. However, two member states of the EAC, namely Kenya and Uganda, are also members of IGAD. Some of the proposed strategic areas that the IPSS will deal with, for example the proliferation of small arms and light weapons, are also to be dealt with under the EAC strategy. Through its CEWARN programme, IGAD has a comparative advantage over the EAC in this area. Therefore, there is a distinct danger of duplication of efforts resulting in wastage of scarce resources.

On the basis of the discussion above, it is my conclusion that the IPSS Plan may not be a panacea to resolve the numerous conflicts that continue to ravage the Horn of Africa region.

## **CONCLUSION**

The draft IPSS Plan has been formulated and is soon to be discussed by the IGAD council of ministers. Subsequently, it will be recommended to the IGAD summit for final adoption. Although IGAD has recorded modest success in mediating in the Sudanese and Somali peace processes, its mediation efforts have been ad hoc. There has been an absence of a framework to comprehensively deal with the underlying factors that give rise to the insecurities – and thus conflicts – that continue to ravage the IGAD region. Therefore, the IPSS Plan is a very welcome development.

The draft IPSS Plan is very ambitious and one can only hope that the ambitions of the region will be met by equally strong enthusiasm to implement it. The challenges facing the implementation of the IPSS Plan, as identified and

discussed above, are enormous. The draft plan, although it identifies some of the issues that have continued to breed conflicts within the region, fails to identify the most important source of conflict in the region, which is poor governance. Over the years, bad governance has characterised the region and resulted in the outbreak of conflict in almost all the member states of IGAD. The IPSS Plan also faces challenges of the politics of the region, the lack of human and financial resources and overlaps with the EAC Peace and Security Strategy, which may lead to duplication. Given all these issues, one can only unfortunately conclude that the IPSS Plan will not be the panacea for resolving the numerous conflicts in the region.

## NOTES

- 1 Agreement establishing the Intergovernmental Authority on Development (IGAD) (1996), 3.
- 2 Agreement establishing IGAD, Article 6A.
- 3 Agreement establishing IGAD, Article 7G.
- 4 Agreement establishing IGAD, Article 18A.
- 5 Ibid.
- 6 Agreement establishing IGAD, Article 8.
- 7 Agreement establishing IGAD, Article 9(2).
- 8 Agreement establishing IGAD, Article 10(1).
- 9 Agreement establishing IGAD, Article 10(2).
- 10 Agreement establishing IGAD, Article 10(4).
- 11 Agreement establishing IGAD, Article 10(5).
- 12 Agreement establishing IGAD, Article 11(1).
- 13 Agreement establishing IGAD, Article 11(2).
- 14 Agreement establishing IGAD, Article 11(3).
- 15 Agreement establishing IGAD, Article 11(4).
- 16 Agreement establishing IGAD, Article 12.
- 17 The detailed functions of the executive secretary are spelled out in the Agreement establishing IGAD, Article 13.
- 18 Agreement establishing IGAD, Article 12(2).

- 19 IGAD, Final draft IGAD Peace and security strategy plan 2010–2014 (undated) (on file with the author) (hereinafter 'IPSS Plan').
- 20 The author participated in these meetings.
- 21 SL Kwaje, The Sudan peace process: from Machakos to Naivasha, in M Mwagiru (ed), *African regional security in the age of globalization*, Nairobi: Heinrich Boll Foundation, 2004, 95.
- 22 Ibid.
- 23 Kwaje, The Sudan peace process: from Machakos to Naivasha, 96.
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- 27 Ibid.
- 28 Ibid. Kwaje details four phases of the Sudan peace process. Phase One (1947–1972) included the Juba Conference of 1947, the Khartoum Round-Table Conference of 1965, and the Addis Ababa Agreement of 1972, which addressed the first conflict, known as the Anyanya War, which waged from 1955 to 1972. The second phase (1985–1988) covered peaceful resolution attempts made by the SPLM/A after 1983 and before the National Islamic Front (NIF) government came to power in a military coup. Phase Three (1988–1993) started after the NIF came to power and included the Abuja 1 (May–June 1992) and 2 (April–May 1993) negotiations organised by the government of Ibrahim Babangida of Nigeria. Phase Four (1994–2001) covers the entry of IGAD as a mediator in the Sudan peace process.
- 29 J Young, Sudan IGAD peace process: an evaluation, paper prepared for the Lessons Learned Workshop from the two IGAD-led processes: Towards the development of an IGAD peace and security strategy, IGAD, Mombasa, Kenya, 9–11 July 2007 (on file with the author). This paper was not presented at the workshop because the government of Kenya objected to its presentation. It was alleged that the paper had made 'unbalanced, casual, incorrect and denigrating' remarks about the government of Kenya in its handling of the Sudan peace process.
- 30 Young, Sudan IGAD peace process. Young has opined that actually President Omar Bashir is the one who proposed that IGADD take up the process. The reasons, inter alia, being: the desire to pre-empt any UN initiative; fear that in the absence of a viable peace process, the US military engagement underway in Somalia could spread to Sudan; and that since Bashir's government had provided support to the Ethiopian and Eritrean rebel groups in the period immediately prior to their capture of state power, he anticipated the process would receive a fair hearing from them.
- 31 Young, Sudan IGAD peace process.
- 32 Young, Sudan IGAD peace process, 11.

- 33 In 1991, the SPLM/A split into the factions of SPLM/A Mainstream, led by John Garang, and SPLM/A United, led by Lam Akol.
- 34 IGAD heads of state, Communiqué, Nairobi, 19 September 1994.
- 35 Kwaje, *The Sudan peace process*, 97.
- 36 Young, *Sudan IGAD peace process*, 12.
- 37 Young, *Sudan IGAD peace process*, 13.
- 38 There was a battle between IGAD's Djibouti secretariat and the international donors. The former wanted the latter to deposit the money into its accounts, whereas the latter complained of a lack of accountability by the former. Thus the process was starved of funds.
- 39 Young, *Sudan IGAD peace process*, 14.
- 40 These were named as Abyei, South Kordofan and Southern Blue Nile.
- 41 Kwaje, *The Sudan peace process*, 98.
- 42 Kwaje, *The Sudan peace process*, 99.
- 43 This agreement came to be widely known as the Machakos I Protocol. (It also called the Framework for Negotiations Agreement.) The session of the meeting was held at Karen, Nairobi. However, it ended with minimal progress.
- 44 Kwaje, *The Sudan peace process*, 99. The agreement reached was called the Machakos II Protocol. The details are as follows: 'WHEREAS the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (the Parties) having met in Machakos Kenya, from 18 June 2002 through 20 July 2002 under the auspices of the IGAD Peace Process; and WHEREAS the Parties have reiterated their commitment to a negotiated, peaceful, comprehensive resolution to the Sudan Conflict within the Unity of Sudan; and WHEREAS the Parties discussed at length and agreed on a broad framework which sets forth the principles of governance, the general procedures to be followed during the transitional process and the structures of government to be created under legal and constitutional arrangements to be established; and NOW RECORD THAT the Parties have agreed to negotiate and elaborate in greater detail the specific terms of the Framework, including aspects not covered in this phase of the negotiations, as part of the overall Peace Agreement; and FURTHER RECORD THAT within the above context, the Parties have reached specific agreement on the Right to Self-Determination for the people of South Sudan, State and Religion, as well as the Preamble, Principles, and the Transition Process from the Draft Framework, the initialled texts of which are annexed hereto, and all of which will be subsequently incorporated into the Final Agreement; and IT IS AGREED AND CONFIRMED THAT the Parties shall resume negotiations in August, 2002 with the aim of resolving outstanding issues and realizing comprehensive peace in the Sudan.'
- 45 Kwaje, *The Sudan peace process*, 101.

- 46 Memorandum of understanding between the GoS and the SPLM/A on the resumption of negotiations on peace in the Sudan, 15 October 2002.
- 47 Kwaje, The Sudan peace process, 102.
- 48 Young, Sudan IGAD peace process, 26.
- 49 Agreement establishing IGAD, Articles 2.4.1, 2.4.1.1. The envoys were to be drawn from members of the IGAD sub-committee on Sudan composed of Djibouti, Ethiopia, Eritrea, Kenya and Uganda. Members of the sub-committee agreed among themselves that Ethiopia and Kenya be the ones to designate envoys. In January 2009, Ethiopia finally designated its envoy, but owing to disagreements within the Kenyan government, no person has been designated by Kenya at the time of writing.
- 50 Young, Sudan IGAD peace process, 52.
- 51 Permanent Court of Arbitration (PCA), Final award, The Hague, 22 July 2009. 'In the matter of an arbitration before a tribunal constituted in accordance with Article 5 of the arbitration agreement between the government of Sudan and the Sudanese People's Liberation Movement/Army on delimiting Abyei area and the PCA optional rules for arbitrating disputes between two parties of which one is a state between the Government of Sudan and the Sudanese People's Liberation Movement/Army.'
- 52 A Weber, State building in Somalia – challenges in a zone of crisis, in EM Bruchhaus and MM. Sommer (eds), *Hot spot Horn of Africa revisited: approaches to make sense of conflict*, Berlin: LIT VERLAG, 2008, 16.
- 53 These included, inter alia, the two UN-led peace and reconciliation conferences held between January and March 1993 attended by 15 warlords and the European Commission initiatives in the mid-1990s, which mainly focused on engaging a broad range of the Somali population on dialogue and issues relating to their welfare.
- 54 IGAD, IGAD's Role in Regional Processes for Promoting and Sustaining Peace, Grand Regency Hotel, Nairobi, 1–3 December 2003.
- 55 This was one of the most serious attempts to establish a functioning government for Somalia. After protracted talks in Arta, Djibouti, involving the different Somali parties the Somali TNG was established, led by President Abdikassim Salat. The TNG was to last for three years from 2000, but it ran into problems, as it could not establish its authority beyond a few areas of Mogadishu. The TNG faced a lot of difficulties because, although it had been elected by members of civil society and traditional elders, together with professionals, economists, teachers, farmers, healthcare workers, jurists and writers, among others, the other crucial group of actors (i.e. those who were armed) did not participate. Therefore, the armed groups effectively blockaded the TNG, confining its activities to a section of Mogadishu.
- 56 O Nyunya, Lessons learnt from the IGAD-led 14th Somalia Peace Process, Djibouti: IGAD Publications, 2007.

- 57 For a detailed account of how the negotiations actually progressed, see O Nyunya, Lessons learnt from the IGAD-led 14th Somalia Peace Process. See also O Kamudhayi, The Somali peace process, in M Mwagiru (ed), *African regional security in the age of globalization*, Nairobi: Heinrich Boll Foundation, 2004, 107–122.
- 58 This brings together donor countries that work closely with the IGAD secretariat.
- 59 Kamudhayi, The Somali peace process, 108.
- 60 International Crisis Group, Can the Somali crisis be contained? *Africa Report* No. 116, 10 August 2006, 4.
- 61 K Menkhous, The crisis in Somalia: tragedy in five acts, *African Affairs* 106(204) (2007), 357–390.
- 62 Sometimes called the Digil-Mirifle.
- 63 The half clans are two: Isaaq and Rahanweyn.
- 64 Nyunya, Lessons learnt from the IGAD-led 14th Somalia Peace Process.
- 65 Ibid.
- 66 Agreement establishing IGAD, Article 7G.
- 67 On file with the author.
- 68 IGAD, Conference to launch the IGAD peace and security discourse: consensus document, in IGAD, Towards the IGAD peace and security strategy, Khartoum, 1–3 October 2005, 206.
- 69 IGAD, Conference to launch the IGAD peace and security discourse, 207.
- 70 Ibid.
- 71 For a detailed discussion on this, see KP Apuuli, The Inter-governmental Authority on Development's (IGAD) Conflict Early Warning and Response Mechanism (CEWARN): a ray of hope in conflict prevention? In AG Nhema (ed), *The quest for peace in Africa: transformations, democracy and public policy*, Addis Ababa: International Books with OSSREA, 2004, 173–187.
- 72 K Sabala, The African Regional Economic Communities (RECs) as building blocks for the African Peace and Security Architecture (APSA), *Mimeo*, 2010 (on file with the current author).
- 73 Sabala, The African Regional Economic Communities (RECs) as building blocks for the African Peace and Security Architecture.
- 74 S Naidoo, The role of Track Two Diplomacy in the Democratic Republic of Congo (DRC), *African Journal on Conflict Resolution* 1(2) (2000), 87.
- 75 Ibid.
- 76 IPSS Plan, para. 17.

- 77 IPSS Plan, para. 18.
- 78 See IGAD, Declaration of the 13th Extra-ordinary Session of the IGAD Heads of State and Government, Nairobi, 29 October 2008, para. 14.
- 79 The author was a senior official in this office.
- 80 Note that the Agreement establishing IGAD (1996) does not provide for such an action.
- 81 The author was part of this delegation.
- 82 See IGAD, Mission of the IGAD ministers of foreign affairs and the executive secretary to Eritrea, 16 August 2008 (on file with the author).
- 83 Cited in East African Community (EAC), Report of the committee on fast-tracking East African Federation, 26 November 2004, para. 437.
- 84 See IGAD, Annual report, 2008, 81.
- 85 IGAD. IPSS Plan 2008–2030, para. 98.
- 86 IGAD, Annual report, 2008, 89.

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# 13 Keeping an elusive peace

AMISOM and the quest for peace in Somalia

MUPENDA T. WAKENGELA

## INTRODUCTION

Since the ousting of General Siad Barre in December 1991, peace has remained elusive for the people and the state of Somalia. Conflict has continued unabated in the country, aggravated by the increasing number of internal actors and untimely interferences on the part of external players from both within and beyond the region. Although there is an apparent consensus, at least among conflict practitioners and academics, that the conflict in Somalia constitutes one of the most protracted contemporary crises in both Africa and the world, there has also been a feeling that the conflict has failed to receive all the attention it deserves. This state of affairs can partly be explained by what has come to be known as the ‘Somali syndrome’, in other words, externals have withdrawn from involvement in peacekeeping efforts in Somalia owing to the complexity of this conflict as well as the ‘allergy’ of Somali fighting factions towards external interveners. As a consequence, no peacekeeping operation was undertaken in Somalia between March 1995 – when the United Nations Operation in Somalia II (UNOSOM II) withdrew from the country – and January 2007, when the African Union (AU) Peace

and Security Council (PSC) decided to deploy the African Union Mission in Somalia (AMISOM).

The decision by the AU to deploy AMISOM followed a request by member states of the Intergovernmental Authority on Development (IGAD) in their attempt to support the Somali Transitional Federal Institutions (TFIs), established through the framework of the 2002–2004 Kenya-based Mbaghati peace process for Somalia. IGAD initially committed to deploying its own peacekeeping force (IGASOM) in Somalia. However, IGAD failed to live up to its promises because of, among others, differences among its members over their respective roles in the Somali conflict. In January 2007, the AU PSC finally undertook to deploy AMISOM with the ultimate objective of working towards ensuring that conditions are conducive for a broader peacekeeping mission in Somalia.

However, the deployment of AMISOM has raised the debate of the timeliness of a peacekeeping intervention in Somalia. Both an ‘orthodox’ reading of the core principles of peacekeeping deployment and AMISOM’s own shortcomings in the face of an increasingly deteriorating security situation contribute to feeding the discussions on the relevance of AMISOM in Somalia given the circumstances in the country. Has there been any peace to be kept by AMISOM? Is there any possibility for AMISOM, operating as a peacekeeping mission, to succeed in Somalia?

This chapter debates the relevance of AMISOM. It investigates the context and circumstances under which the mission has been established and operates, and discusses the possibilities for the mission to succeed. The chapter is divided into five sections. The first section sets the background to the Somali crisis. The second section explains the context to and circumstances surrounding the establishment of AMISOM. The third section discusses AMISOM’s main stakeholders, namely the United Nations (UN), the AU, IGAD, the troop-contributing countries (i.e. Uganda and Burundi) and the Somali government. The fourth section attempts an assessment of the mission’s work on the ground, with particular emphasis on its relations with Somali stakeholders (government, the opposition and the population in general). Lastly, the fifth section highlights the challenges facing AMISOM and explores future perspectives for the mission.

## **BACKGROUND TO THE SOMALI CRISIS**

A set of factors needs to be taken into account in order to understand the real causes of the ongoing crisis in Somalia. These factors relate simultaneously

to the country's history, sociological and anthropological heritage, colonial legacy and the political economy of its post-colonial experiences. Dersso<sup>1</sup> distinguishes between the historical, social and political root causes of the Somali conflict. Relating historical causes to colonisation, he emphasises that the particular Somali colonial experience bears at least four consequences that have greatly impacted on the crisis unfolding in Somalia. They include the colonial division of the Somali population into various sovereign territories (Somalia, Ethiopia, Kenya and Djibouti), thus complicating relations between Somalia and its neighbours; the institutionalisation of a centralised state system in a society where socio-political organisation was based on a clan and sub-clan system (resulting in the politicisation of the clan and sub-clan); the strain brought about by a double colonial legacy (Italian and British); and 'the inequality that resulted from the distribution of modern goods and access to political power among members of various clans within the colonial contrived Somali state'.

The social root causes of the conflict include, according to Dersso,<sup>2</sup> 'the politicisation of the clan structure during and after colonial rule [resulting in] its deployment in the struggle for control of the enormous political power and economic resources of the modern centralised state imposed on Somalis by colonial fiat' as well as 'the failure of the establishment of the rule of law by the post-colonial Somali state and the militarisation of society'. Clan politicisation as well as factionalism within the Somali context are partly regarded as unintended consequences of 'the mismatch between the post-colonial state and the nature and structure of Somali civil society based on clan systems of "decentralised" governance and socio-political control'.<sup>3</sup> The justification for this argument derives from the fact that '[f]or most of its history, Somalia was a loosely defined area occupied by pastoralists and nomads who shared a common ethnic, linguistic, and religious background'.<sup>4</sup> Within this apparently homogeneous context, but devoid of any unified political entity, '[s]ocial organization was based on nomadic pastoralism with a decentralized democracy based on the complex relationships between clans, sub-clans and families'.<sup>5</sup>

The political root causes of the conflict relate to 'the establishment of an authoritarian rule under Siad Barre, the dependency of Somalia on support from its Cold War allies [USA and USSR] and the socialist economic policy, the corrupt and patrimonial system of governance, and regional politics'.<sup>6</sup> As Francis correctly points out, '[t]he root causes of the [Somalia] civil war and

state collapse derive from the nature of domestic politics under the brutal and repressive military regime of Siad Barre, propped up since 1969 by the Cold War rivalry played out in the Horn ...<sup>7</sup>

But even prior to Barre's ascent to Somalia's presidency, the short-lived post-independence civilian administration that governed Somalia between 1960 and 1969, based on the principles of parliamentary democracy, had already 'suffered from clientelism, clan favouritism, and factional politics, giving way to [the] coup led by Mohamed Siad Barre and a Supreme Revolutionary Council (SRC) [controlled] by his own Maheran subclan and excluding other important subclans'.<sup>8</sup>

With regard to regional politics, it should be noted that the desire on the part of Somalia's successive post-colonial governments to further their claim to the entire 'Somali nation' in the Horn led them to adopt irredentism as their regional foreign policy ideology and a confrontational attitude towards Kenya, Djibouti, but more importantly, Ethiopia. As a consequence, Somalia invaded Ethiopia in 1969 and again in 1978. Its defeat in the second invasion helped accelerate the demise of the Barre regime not only through its increasing loss of internal legitimacy, but also because in retaliation, the Ethiopian regime under Mengistu Haile Mariam started providing support to emerging regional rebel movements in Somalia vying to topple Barre from power.

By the 1980s 'Siad Barre had become increasingly autocratic and isolated while his poor human rights record alienated international opinion'.<sup>9</sup> The regime's poor performance on the socio-economic front had further contributed to alienating Barre from both the donor community – as the country was labelled the 'graveyard of aid'<sup>10</sup> – and, more critically, from the Somali people, who were witnessing an uninterrupted deterioration of their living and social conditions, compounded by deteriorating environmental conditions (successive droughts) in the region. Furthermore, by 1990, Barre 'had not only failed to eliminate the Somali clan system but had produced a situation in which there was escalating fighting both between clans and between clans and government'.<sup>11</sup>

Lastly, the severest blow against the survival of the Barre regime came with 'the effects of the end of the Cold War'.<sup>12</sup> The end of the Cold War brought about the waning of Africa's geo-strategic significance on the part of the world's major powers. This sudden change was felt even more strongly in regions, such as the Horn of Africa, and countries, such as Somalia, that had been theatres of competition between the opposing blocs. In these areas this meant the withdrawal

of the superpowers and the subsequent suspension of any form of military, technical and financial assistance.

In the current context, the historical, social and political root causes described above are compounded by warlordism, factionalism, statelessness and the militarisation of society, as well as interferences from neighbouring and distant polities. All these variables emerged as consequences of the ongoing conflict, but have since become aggravating factors behind the persisting violence in the country. Among all these variables, statelessness – understood as the absence of legitimate government structures capable of monopolising legitimate violence, imposing order throughout the territory and guaranteeing security to all citizens – represents the most pressing challenge hindering efforts towards stabilising Somalia. Since 1991, statelessness has denied all concerned external interveners the necessary structures upon which to lay the foundations for restoring and building peace in Somalia.

## **THE CONTEXT OF AND CIRCUMSTANCES SURROUNDING THE ESTABLISHMENT OF AMISOM**

Whereas the AU has insisted over the years on the possibility (and probably the opportunity) for peacekeeping deployment in Somalia (as exemplified by the deployment of AMISOM in 2007), the UN – despite endorsing and giving support to AMISOM – has repeatedly emphasised that the environment is not conducive to an effective peacekeeping deployment. What explains these conflicting perceptions on the part of these two organisations, which are expected to play a synergetic role for any peacekeeping effort to succeed in Somalia? To be able to answer this question, it is necessary to discuss the very concept of peacekeeping and explain AMISOM in the light of the long-standing practice and tradition of international peace-mission deployment.

Although the concept of peacekeeping does not explicitly appear in the UN Charter, it has over the years represented ‘the technique most frequently used by and associated with the United Nations to terminate conflicts and establish peace ...’<sup>13</sup> In ‘An agenda for peace: preventive diplomacy, peacemaking and peace-keeping’, Boutros-Ghali identifies ‘four areas of action’ that, if ‘taken together and carried out with the backing of all Members [of the United Nations] offer a coherent contribution towards securing peace in the spirit of the [UN] Charter’.<sup>14</sup> One of these four areas is peacekeeping, which Boutros-Ghali defines

as ‘the deployment of a United Nations presence in the field, hitherto with the consent of all parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well’.

Learning from its very first fully-fledged peacekeeping mission – and the first to be termed as such<sup>15</sup> – the UN established a set of principles in the late 1950s under which future peacekeeping missions would be undertaken. They include the principle of the consent of the parties to the dispute for the establishment of the mission, the principle of non-use of force except in self-defence, the principle of voluntary contributions of contingents from small, neutral countries to participate in the force, the principle of impartiality and the principle of control of peacekeeping operations by the secretary general.<sup>16</sup> According to Arnold, ‘any peacekeeping operation requires at least a minimal desire amongst the combatants to find a solution to their confrontation’.<sup>17</sup>

Once a consensus had been reached within the Security Council, the UN’s initial peacekeeping operations (i.e. those undertaken during the Cold War) were usually smoothly undertaken, as they generally involved cases of inter-state conflicts. Inter-state wars were classical (traditional) in nature and did not involve much casualty among civilian populations and, therefore, did not carry many humanitarian implications. Therefore, peacekeeping operations undertaken to address these types of conflicts were traditional in nature. According to Doyle and Sambanis, ‘[t]raditional peace operations, or *first-generation peacekeeping*, were designed to respond to inter-state crises by stationing unarmed or lightly armed UN forces between hostile parties to monitor a truce, troop withdrawal, or buffer zone while political negotiations went forward’.<sup>18</sup> In contrast to traditional peacekeeping operations, second-generation peacekeeping – also referred to as multidimensional operations – generally ‘involve the implementation of complex, multidimensional peace agreements designed to build the foundations of a self-sustaining peace and have been utilized primarily in post-civil war situations’.<sup>19</sup>

Consequently, multidimensional peace operations emerged in the aftermath of the Cold War and originate from Boutros-Ghali’s 1992 report, ‘An agenda for peace’, in which he argues that:

[P]eace-making and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. [T]hese may include disarming



the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions, and promoting formal and informal processes of political participation.<sup>20</sup>

In the context of Somalia, peacekeeping deployment in this new framework would entail – as UNOSOM II attempted to do between 1993 and 1995 – rebuilding the state from scratch while convincing all the major Somali conflicting parties of the necessity to support such an endeavour. Such a task would simply be a ‘mission impossible’ for any African regional body, including the AU. However, as the UN adopted a hands-off approach at a time when peacemaking initiatives were being piloted by regional actors, IGAD undertook to lead efforts for peacekeeping deployment in Somalia. On 6 December 2006 the UN Security Council adopted Resolution 1725 (2006) authorising ‘IGAD and [m]ember [s]tates of the [AU] to establish a protection and training mission in Somalia’, named IGASOM.<sup>21</sup> However, IGASOM was never deployed to Somalia. Instead, IGAD member states requested that the AU lead the peacekeeping efforts in Somalia.

It is for this reason that at its 69th meeting held on 19 January 2007 in Addis Ababa, the AU PSC decided:

[T]o authorise the deployment of AMISOM, for a period of 6 months, [...] to provide support to the TFIs in their efforts towards the stabilisation of the situation in the country and the furtherance of dialogue and reconciliation, to facilitate the provision of humanitarian assistance, and to create conducive conditions for long-term stabilisation, reconstruction and development in Somalia.<sup>22</sup>

In the spirit of the communiqué, the main objectives of AMISOM would be:

- ‘to support dialogue and reconciliation in Somalia, working with all stakeholders;
- to provide, as appropriate, protection to the TFIs and their key infrastructure, to enable them carry out their functions;

- to assist in the implementation of the National Security and Stabilisation Plan of Somalia, particularly the effective re-establishment and training of all inclusive Somali security forces ...;
- to provide, within capabilities and as appropriate, technical and other support to the disarmament and stabilisation efforts;
- to monitor, in areas of deployment of its forces, the security situation;
- to facilitate, as may be required and within capabilities, humanitarian operations, including the repatriation and reintegration of refugees and the resettlement of IDPs; and
- to protect its personnel, installations and equipment, including the right of self-defence.<sup>23</sup>

With regard to the force size, AMISOM would ‘comprise nine infantry battalions of 850 personnel each supported by maritime, coastal and air components, as well as an appropriate civilian component, including a police training team’.<sup>24</sup> Following developments at the AU level, the UN Security Council finally adopted on 20 February 2007 Resolution 1744 authorising the deployment of AMISOM.

The current AMISOM force capacity stands at 5 250 troops, comprising 2 700 Ugandans and 2 550 Burundians. This number is slightly short of the initial 8 000 troops that the AU member states had committed to deploy in Somalia. Nigeria, Ghana and Malawi, which had initially pledged to deploy troops, have since apparently renounced their commitment to the initiative. No doubt the precarious security conditions on the ground compounded by the hostility of the Somali armed opposition towards the peacekeepers must have contributed to their hesitation. Between March 2007, when the first Ugandan contingents arrived in Mogadishu, and July 2010, 29 Ugandan and 29 Burundian peacekeepers were killed in Somalia, as well as 51 Ugandan and 17 Burundian wounded, mainly as the result of direct attacks from militants belonging to groups opposing the Transitional Federal Government (TFG), such as al-Shabaab and Hizbul Islam. In most cases, militants have used roadside bombs against AMISOM’s patrolling soldiers or direct suicide attacks within the mission’s bases or headquarters. The most alarming of these attacks occurred on 22 February 2009 when 11 Burundian soldiers were killed and 15 wounded, and on 17 September 2009 when 17 AMISOM peacekeepers were killed (12 Burundians, including Deputy Commander Major General Juvenal Niyonguruza, and five Ugandans).

As the situation currently stands, the deployment of AMISOM has not stopped the violence in Somalia. At best, Somali militants seem determined to draw the mission into direct fighting as a strategy to both curtail its legitimacy in the eyes of the most optimistic Somalis and, more importantly, put pressure on the troop-contributing countries to withdraw. This was evidenced by the twin bombings carried out by al-Shabaab in Kampala on 11 July 2010 at an Ethiopian-owned restaurant and a rugby club, killing over 70 people. In response, the AU has committed to reinforce AMISOM. Countries such as Guinea and Djibouti are pledging to deploy troops, and South Africa continues to study the AU's request to involve its navy in the peacekeeping operation.

In the meantime, AMISOM has been striving to keep a very low profile and has concentrated its work only around the Mogadishu area. But this is not surprising to African leaders, who knew while deploying AMISOM that the mission was not designed to endorse the full and complex task of keeping the peace in Somalia, but simply to set the ground for a stronger peacekeeping operation to be mounted by the UN, in which Africa would be expected to play a significant role. In the initial PSC communiqué, it was clearly stipulated that 'AMISOM [would] be deployed for a period of six months, aimed essentially at contributing to the initial stabilisation phase in Somalia, with a clear understanding that the mission will evolve to a United Nations operation that will support the long-term stabilisation and post-conflict reconstruction of Somalia'.<sup>25</sup>

In essence, two main factors had contributed greatly to reducing AMISOM's chances of success. Firstly, the deployment of AMISOM – though already mooted as early as in 2005 – was only effected in March 2007, three months after Ethiopia's military intervention had dislodged the Union of Islamic Courts (UIC) from Mogadishu (in December 2006). Given the identity between Ethiopia's intervention objective (to install the TFG in Mogadishu) and one of AMISOM key objectives (to protect the TFIs), the UIC and its allies could not regard AMISOM as a neutral third-party intervener, as would be expected in the case of a conventional and principled peacekeeping deployment. Matters were made worse when AMISOM landed in Somalia while Ethiopian troops continued to carry out their operations against opposing militants. Secondly, and directly linked to the first point above, the AU failed to tame its peacekeeping intervention by engaging politically the defeated UIC and attempting

a rapprochement between the latter and the TFG. Facing exclusion and with nothing at stake with the peacekeeping effort, it was logical for the UIC to ensure that AMISOM fails.

Nearly three years down the line, neither has AMISOM reached the full strength the January 2007 PSC communiqué provided for – despite being compelled to extend its operations beyond its initial six-month deployment time frame – nor has the UN discussed the details of the deployment of the 27 000-strong peacekeeping mission proposed by its Secretary General in March 2008 and approved by the Security Council in May 2008. In the meantime, AMISOM strives to replicate the role played by the African Union Mission in Burundi (AMIB) and the African Union Mission in Sudan (AMIS) prior to the deployment of the UN Operation in Burundi (ONUB) and the expected full deployment of the 26 000-strong UN-AU Hybrid mission in Sudan (UNAMID). To achieve that goal, AMISOM's main stakeholders ought to explore better possibilities for mainstreaming peace efforts in Somalia, taking into account the prevailing conditions on the ground.

## AMISOM AND ITS MAIN STAKEHOLDERS

### The United Nations

When it was established in 1945, the UN was designed to ‘maintain peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace ...’<sup>26</sup> Some sixty years later, the UN endorsed the 2001 report prepared by the Canada-sponsored International Commission on Intervention and State Sovereignty (ICISS). In so doing, the UN was moving towards ensuring that ‘[w]here a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-interference yields to the international responsibility to protect’.<sup>27</sup>

Therefore, Somalia presents an excellent case for the UN and the international community to explore the possibilities of operationalising the new doctrine of the responsibility to protect. And in this particular case, the UN would only be left with two alternatives, namely the responsibility to react and the responsibility to rebuild in a Somali scenario in which prevention no longer applies as a strategy for peace.

The UN has indeed continued to track the situation in Somalia since 1995 (when it withdrew its last peacekeeping mission, UNOSOM II, from the country) mainly through its Kenya-based political office for Somalia (UNPOS). UNPOS is credited with the Djibouti peace process, which resulted in the signing of the June 2008 agreement between the TFG and the Alliance for the Re-liberation of Somalia (ARS) and the emergence of new transitional institutions, including ARS and civil-society representatives. However, it is the UN's stance on the way forward for the modalities of peace implementation and peacekeeping deployment in Somalia that has raised much concern and many unresolved questions. The dominant view within the UN – the one shared by major powers, particularly the US – is to wait until conditions are conducive to international intervention. Such conditions have failed to materialise for 14 years, and the UN has restricted itself to merely supporting AMISOM politically and financially. As the hope brought about by the Djibouti process has systematically faded, it remains to be seen whether the UN will attempt to engage directly with the strongest 'peace spoilers' in Somalia, al-Shabaab, which is regarded by the US as a terrorist organisation, or passively observe AMISOM's debacle almost in the same way as it retreated from the country some 14 years ago.

## The African Union

Since its inception in 2002, the AU has committed to playing a significant, indeed, prime, role in resolving conflicts on the African continent. In recent years, the AU has continued to support IGAD peacemaking efforts in Somalia through both the 2000 Djibouti and 2002–2004 Kenya processes. More significantly, since 2007, the AU undertook to deploy its third peacekeeping mission, in Somalia, following what can be considered as successful models in Burundi (AMIB) and Sudan (AMIS). But in contrast to Burundi and Sudan, AMISOM deployment took place in a context of statelessness and the absence of a meaningful, let alone comprehensive, consensus on the part of all major parties for third-party intervention. Was the AU merely heeding Clapham's call that sometimes it may be necessary to jump in and – without self-delusion – hope for the best?<sup>28</sup> After three full years on the ground, there do not seem to be signs that the 'best' will materialise for AMISOM in Somalia.

It can be argued that the separation between the political process – entrusted to UNPOS – and the peacekeeping operations led by the AU/AMISOM, despite

levels of cooperation between the two structures, has contributed to deny the AU/AMISOM an opportunity to build confidence with major Somali parties and, subsequently, negotiate their support for the mission. Centralising both peacemaking and peacekeeping initiatives at the AU/AMISOM level would, therefore, ease the process of synchronising these two ineluctably linked mechanisms and probably increase AMISOM's leverage on the ground.

## IGAD

The establishment of the Inter-Governmental Authority on Drought and Development (IGADD, as IGAD's predecessor was known) in 1986 came as a response to environmental and development problems faced by the Horn of Africa as a region and their impact on human security in the region. IGADD's aim was to address issues relating to drought, desertification and famine in the region. Despite the declared political will and the noble goals to be pursued, IGADD did not meet the expectations it had created. It is only thanks to the resurgence of regionalism in world politics – mainly due to the end of the Cold War and ongoing transformation crises within larger multilateral bodies such as the UN and the OAU – that political leaders in the Horn started exploring the possibility of both reviving IGADD while at the same time broadening its mandate to include political, peace and security issues. As a consequence, IGADD was transformed into IGAD in 1996 in Nairobi with the aim of promoting 'regional peace and stability as the foundation for attaining the goals of food security, environmental protection and sustainable regional development. Within this context, regional integration and co-operation in the Horn [were] to serve as the driving force in achieving the goals of regional peace and security.'<sup>29</sup>

According to Francis, 'IGAD's active involvement in facilitating the Somali peace process and negotiating a civil war peace settlement started in 1998'.<sup>30</sup> IGAD's peacemaking strategy not only sought to move the process beyond the warlords and faction leaders alone (as was the case with previous initiatives) to include other stakeholders, such as civil society, women's groups, clan and religious leaders, political parties, the business community and the diaspora, but also to adopt a more unified approach involving external interested actors (the US, Yemen, Egypt, Italy, the UN, the League of Arab States, etc.). In this context, the 2000 Arta (Djibouti) Conference and the 2002–2004 Kenya-based Somalia National Reconciliation Conference (SNRC) represent two instances of

IGAD's most tangible interventions to resolve the Somali crisis. Despite their respective shortcomings, both conferences provide testimonies to the 'resolvability' of the Somali conflict.

Indeed, AMISOM should rightly be considered as IGAD's brainchild because the Nairobi process provided for the deployment by IGAD of a peacekeeping mission to Somalia. When the idea of an IGAD peacekeeping mission to Somalia was endorsed by the AU PSC in January 2005, IGAD's member states were requested to contribute the necessary troops, and the mission's mandate would include the provision of security for the transitional federal institutions in Somalia in order to 'guarantee the sustenance of the outcome of the IGAD peace process and assist with the establishment of peace and security, including the training of the police and the army'.<sup>31</sup> However, in spite of being instrumental in mooted the concept of a peacekeeping mission for Somalia, IGAD has been unable to play a more significant role in AMISOM beyond high-level rhetoric, and incapable of translating this into concrete action capable of moving the process forward. This shortcoming may be seen as the result of an absence of a requisite legal framework to support IGAD's peace and security initiatives, the absence of a regional hegemon prepared to lend both political and military leadership to the sub-regional body and probably a tacit acknowledgement by regional governments of the high risks involved in over-commitment to the Somali conflict.

## **The countries that contribute troops: Uganda and Burundi**

Currently Uganda (with 2 700 soldiers) and Burundi (with 2 550 soldiers) are the only two countries to have deployed peacekeepers in Somalia. The concept of logistical support for AMISOM is based on bilateral arrangements between the troop-contributing countries and AU partners. This means that a particular country will deploy troops to AMISOM in so far as there is provision of logistical support from a specific AU partner or a group of partners, while reimbursement is made for contingent-owned equipment. In the same vein, equipment provided by partners is not reimbursed as it is deemed part of their assistance given to the AU. The main objective of this well-considered strategy is to ensure that troop-contributing countries do not incur any additional costs beyond the contingent-owned equipment. Notwithstanding this

pertinent provision, there is concern about the continued sustainability of troops on the ground. Uganda and Burundi have repeatedly called on the UN to speed up the process of deploying a larger international peacekeeping force due to replace AMISOM.

Although the two countries have braved various difficulties, including having their troops targeted and killed, to maintain their presence in Somalia – with Burundi effecting its latest deployment in July 2009 despite the killing of 11 of its contingent’s members five months earlier – the escalating number of casualties within the mission’s ranks has increasingly become a matter of national politics in the troop-contributing countries, especially in Burundi as the country moved through its second post-transition elections in 2010. The political opposition and some civil-society activists had already earnestly opposed Burundi’s participation in peacekeeping efforts in Somalia. They argued that the country had neither the required military preparedness nor the necessary financial capacity to involve itself in such a demanding exercise. Casualties such as those that occurred in September 2009 can only provide more arguments to those particular groups.

More importantly, the very concept of AMISOM is based on the assumption of an interim force due to be replaced at the soonest by a more competent operation. But at the moment, the mission is faced with the inability to not only secure its required size, but also to achieve its principal objective of stabilising Somalia. Unless there is a dramatic turn of events, AMISOM is likely to be faced with two difficult choices in the near future: to remain on the ground for many more months in an increasingly hostile environment or simply to withdraw.

## The Somali ‘government’

The current Somali government – understood in the broadest sense of the concept as encompassing all governing institutions relating to the state – is the product of two peace initiatives, namely the 2002–2004 Kenya-based SNRC and the 2008 Djibouti peace talks.

The Kenya conference – regarded as the most comprehensive peace and political dialogue organised for Somalia to date – resulted in the setting up of TFIs, including the Transitional Federal Charter (TFC), the Transitional Federal Parliament (TFP) and the TFG. Established outside the country and



grappling with problems relating to their lack of legitimacy among the Somali population, the TFIs faced a major challenge to relocate into Somalia, especially in Mogadishu. Hence the call made by IGAD to hasten the deployment of a peacekeeping mission that would ensure security for the TFIs in the absence of clearly defined Somali national security forces.

However, the delay in the deployment of the peacekeeping mission, coupled with the fact that Ethiopian forces continued to remain in Somalia in support of the TFIs, contributed to a toughened stance by al-Shabaab and other allied groups vying to topple the TFIs. By the time AMISOM was deployed in the country in March 2007, the TFIs were embroiled in infighting, especially between the TFG and the TFP, despite three of the five transition years provided for in the TFC having passed. The appointment of Nur Hassan Hussein as premier minister by President Yusuf Abdullahi Ahmed in November 2007 was initially welcomed as a move in the right direction, for he was perceived as non-partisan and capable of providing stability to the government. But in the medium and long term, his commitment to affirm his autonomy vis-à-vis President Yusuf soured relationships between the two leaders. Nevertheless, his appointment provided an opportunity for direct political negotiations between the TFG and the ARS within the framework of the Djibouti process.

The Djibouti process led to the signing of the agreement between the TFG and the ARS on 9 June 2008, as well as other subsequent arrangements relating to its implementation. Through the new arrangement, the TFP has been expanded from 275 to 550 members to include 200 delegates of the ARS and 75 civil-society representatives. The reconfigured TFP met in January 2009 and elected ARS leader, Sheikh Sharif Sheikh Ahmed, as President of Somalia. The term of the transition was extended by two years to end in 2011 instead of 2009, as initially provided for in the TFC.

However, '[d]espite many of its positive differences from the [initial] TFG in terms of internal and external support, the current national unity government of President Shiek [sic] Sharif [...] suffers from many of the problems that bedeviled the TFG'.<sup>32</sup> These problems include the increasing number of opponents it has to deal with, its dependence on external support and its inability to exercise its authority in the country mainly because of its lack of 'adequate control over [the] various security forces – the national police, the army, the Mogadishu city police, and the national security service – that are supposedly under its authority'.<sup>33</sup>

Nevertheless, the TFG enjoys the recognition of the international community, which considers it the 'legitimate' government of Somalia. More than any other factor, this international recognition has been the force keeping the TFG in place amid an increasingly hostile national environment.

## **THE MISSION ON THE GROUND: ASSESSING AMISOM AND ITS RELATIONS WITH OTHER SOMALI STAKEHOLDERS**

### **The opposition: ICU, ARS, al-Shabaab, Hizbul Islam**

Discussing the issue of the impartiality of intergovernmental peacemaking and peacekeeping interventions, Clapham argues:

The state-centredness of the UN instantly renders the premise of impartiality extremely problematic. While it is possible for an institution formed in this way to remain impartial in issues concerning two or more of its own member states, it is scarcely possible for it to remain so with regard to conflicting parties which are states and ones which are not. For a start, it normally requires the consent of the state concerned to become involved in the conflict in the first place [...]; and such consent is only likely to be given if the government concerned believes that such involvement will benefit itself. Furthermore, the operating principles and assumptions of institutions formed by states will almost inevitably incline them towards solutions conceived in statist terms, notably the maintenance of the territorial integrity of an existing state, and the extension of effective state control over the whole of its territory.<sup>34</sup>

Clapham's observation applies well to the AU and its peacekeeping mission in Somalia.

Somali groups that oppose the TFG, including al-Shabaab and Hizbul Islam, regard AMISOM as a close ally of the TFG. Prior to Ethiopia's military intervention in December 2006 to install the TFG in Mogadishu, the city was undergoing a stabilisation process under the leadership of the UIC and its armed wing, al-Shabaab. In the eyes of these groups, the intervention of Ethiopia and AMISOM and their determination to impose the unpopular TFG on the people

of Somalia simply represent unnecessary delays to what they regard as a golden opportunity for Somalia's revival. In this context, al-Shabaab, Hizbul Islam and other allied groups will inevitably continue to challenge the TFG, especially if the latter's fighting capabilities do not improve in the near future.

Observed closely, the current situation in Somalia is reminiscent of the 1990s scenario, as accurately assessed by Arnold when he writes: 'The Somali combatants had not asked for UN intervention, despised and resented UN efforts, and when the UN forces did attempt to intervene in Mogadishu fought them grimly, inflicting sufficient casualties to make UNOSOM-II change both its tactics and its objectives.'<sup>35</sup>

However, despite their shared despal of the TFG and its backers (Ethiopia, AMISOM), Somali entities opposing the TFG do not necessarily make up a homogeneous group capable of ensuring internal cohesion in trying times. This was exemplified during the Djibouti process, when the ARS experienced its first major split. In recent months, there have been reports of tensions between al-Shabaab and Hizbul Islam. Despite being allies and sharing the common objective of unseating the TFG and fighting AMISOM, they are currently involved in a battle for the control of the southern maritime city of Kismayo. This simply testifies to the issue of factionalism among the Somali conflicting parties. It also raises questions about the ability of the Somali groups currently opposing the TFG to work out a consensual framework in case of the collapse of the latter. Finally, it also exacerbates the difficulty of identifying parties likely to be engaged in possible future peacemaking initiatives.

## The Somali people

The people of Somalia have had to endure unimaginable sacrifices since 1991, when their country slid towards statelessness. Whereas Somalis living in Somaliland and Puntland have experienced relative peace since their territories 'detached' themselves from the rest of the country in 1991 and 1996 respectively, those caught between the Shabelle and Juba rivers in the southern and central regions remain at the mercy of warlords, militias and fighting groups usually lacking clear political agendas. In this context, people have not only become direct casualties of the ongoing infighting, but have also succumbed to the hardships brought about by the persistent violence, including preventable diseases, hunger, etc. To quote Dersso:

According to UN sources, the Somalian situation has become the worst humanitarian crisis in the world. It was reported that more than 10 000 people have lost their lives over the course of the past two years. The number of Somalis who are in need of emergency food aid is about 3.2 million, constituting more than 40 per cent of Somalia's population.<sup>36</sup>

It was a similar dire humanitarian predicament that set the stage for UN peace-keeping/enforcement interventions in Somalia in the early 1990s. The failure of these operations and their subsequent withdrawal from the country left the Somalis with a bitter taste of peacekeeping, even though its intention was a good one, namely to ensure the distribution of humanitarian assistance. Therefore, though AMISOM's presence has contributed towards the alleviation of the humanitarian crisis, the mission is yet to win the trust of the majority of the population. Indeed, many Somalis still reminisce about the hope for peace brought about by the emergence of the UIC prior to the December 2006 Ethiopian military intervention in the country. At that particular juncture, 'the UIC managed to bring about a degree of peace and security unknown to the south for more than fifteen years. Mogadishu was reunited, weapons removed from the streets and the port and airport reopened.'<sup>37</sup> In the same perspective, Nakaya observed that 'many Somali women seem to be supportive of the introduction of the Islamic sharia law for curtailing the widespread looting and robbery, which is a sign of non-confidence in state-sponsored law enforcement'.<sup>38</sup>

Relations between AMISOM and the Somali population are further strained as a consequence of the fighting between peacekeepers and Somali armed groups. The militarisation of Somali society has complicated the issue of differentiation between 'military' and civilian targets. AMISOM has, therefore, been repeatedly accused of targeting civilians – especially in the Bakara Market in central Mogadishu – while responding to attacks from armed opposition groups. There is an assumption that armed Somali opposition groups may have opted to attack AMISOM from civilian locations either in the hope of discouraging the mission from retaliating or simply as a strategy to render the mission responsible for civilian casualties, thereby delegitimising it in the eyes of the population. Whatever the case, however, there is much certainty that the longer the understaffed AMISOM remains in Somalia, the more it will be drawn into fighting by the Somali armed opposition groups, the more it will cause casualties among the civilian population and, ultimately, the more it will lose the trust and support of the Somali people.

## PERSISTING CHALLENGES AND THE FUTURE OF AMISOM

### Persisting challenges

#### *The nature and relevance of the mission*

The nature of AMISOM poses a major challenge to the mission and its operations on the ground. Established as a peacekeeping mission, although failing to fulfil the critical criterion of acceptance by some of the major parties to the conflict – in this case, the ARS (at least for the period before the Djibouti process in 2008), al-Shabaab and other allied groups – AMISOM is not likely to succeed in Somalia even if it reaches its required strength of between 8 000 and 9 000 personnel (civilians inclusive), as prescribed by Article IV.6 of the Status of the Mission Agreement (SOMA) signed by the TFG and the AU on 6 March 2007. In a traditional peacekeeping scenario, AMISOM would be expected to act as an interposition mission to enable conflicting parties to explore possibilities for resolving their differences through negotiations. However, in Somalia, AMISOM is reduced to guarantee the survival of the weaker party to the conflict, the TFG. This situation has raised, at least among armed Somali opposition groups, the issue of the impartiality of the mission and, subsequently, of its relevance. Referring to the UN peacekeeping efforts in Somalia in the early 1990s, Tadesse pointed out that '[t]he single most important social and political repercussion of UNOSOM II was its transformation from an impartial interlocutor into an interested party'.<sup>39</sup> As for AMISOM, of principal concern is the issue of its ability to survive an imminent spiralling of violence against it from al-Shabaab and Hizbul Islam.

#### *The absence of a consensual peacemaking framework*

The absence of a comprehensive consensual peacemaking framework endorsed by the main conflicting parties (the TFG, al-Shabaab, Hizbul Islam, etc.) and inclusive of other non-violent groups (civil society, the diaspora, traditional and clan leadership) represents a major challenge to AMISOM's success. Peacekeeping deployment is generally regarded as a mechanism designed to complement ongoing peacemaking efforts. By contrast, AMISOM was deployed within a polarised environment caused by Ethiopia's military intervention and victory over the UIC/al-Shabaab as well as the continued

stay of Ethiopian contingents in Somalia providing assistance to the TFG. Though the Djibouti process represented an effort to address this challenge, the split within the ARS, among other factors, severely diminished prospects for the success of the initiative. One possibility that ought to be explored at the moment would consist of entrusting the AU with the mandate to lead a new peacemaking effort towards the Somali parties, pursuing the UNPOS's current standpoint.

### *State collapse*

State collapse, or statelessness, represents perhaps the greatest challenge facing AMISOM. State collapse in Somalia has meant that there is no specific entity legitimate enough to claim representation of the Somali people. Though the international community has consistently and unequivocally entrusted the TFG with such a role, the latter's inability to project its authority over Somali society only contributes to mistrust towards any external 'third-party' interveners among groups that oppose the TFG and even among a portion of the Somali population.

State collapse has also resulted in the militarisation of society, clan politicisation and the multiplication of parties to the conflict, further jeopardising the prospects for building consensus, a key element in the success of any peacemaking and peacekeeping efforts. Furthermore, state collapse has exacerbated insecurity in Somalia because the TFG has failed to monopolise the use of legitimate violence in the south and central regions where it is expected to extend its authority, let alone in the entire country. High levels of insecurity in and around Mogadishu have caused AU member states to rethink their initial commitment to make troops available to AMISOM.

### *Regional rivalries and the absence of a regional hegemon*

As a region, the Horn of Africa has been characterised by inter-state and regional rivalries since the late 1960s. Regional rivalries in the Horn have been played out through direct confrontations between states and the provision of support to rebel movements in neighbouring countries. In 1977 and 1978, Somalia and Ethiopia were involved in direct inter-state armed confrontation that not only contributed to directly weakening the already strained Barre regime, but also precipitated its demise, as Ethiopia engaged in providing military support and bases to emerging regional rebellions attempting to topple Barre.

In recent years, the Horn has witnessed the only protracted inter-state war in Africa, represented by the 1998–2000 war between Ethiopia and Eritrea over the two countries' claim over Badme, a town situated at their common border. Tensions persist between the two countries, especially after Ethiopia refused to abide by the April 2002 ruling of the Eritrea-Ethiopia Boundary Commission (EEBC), which awarded Badme to Eritrea. Their rivalry has since been transposed to the conflict in Somalia, with the two countries providing support to conflicting parties. This became more evident in the aftermath of Ethiopia's military intervention in Somalia in December 2006. Eritrea hosted the dislodged UIC leadership as well as other groups that opposed Ethiopia's presence in Somalia. In September 2007, Eritrea hosted the Somali opposition conference in Asmara, which ran parallel to the Somali National Reconciliation Conference organised by the TFG in Mogadishu in an effort to bridge the divide among Somali stakeholders. The Asmara conference resulted in the formation of the ARS. Since the ARS split in 2008 and the group, led by current Somali President Sheik Ahmed, relocated to Djibouti and committed to pursue talks with the TFG, relations between Eritrea and Djibouti have remained tense. Asmara is believed to continue to provide political and military support to the 'dissidents' and al-Shabaab, whereas Addis Ababa remains a key ally to the TFIs.

The Horn of Africa is also characterised by the absence of a hegemonic state willing to take up political and military responsibility for peace and security endeavours. The lack of such a hegemon in the region has had a negative impact on the Somali conflict, and may even be considered as one of the reasons that explain its persistence to date.

### *External interferences*

As developments in the second half of September 2009 demonstrated, peace efforts in Somalia are significantly influenced by the conduct of external actors not only from the Horn and Africa, but also from the international community as a whole. On 17 September 2009, two bomb-trapped cars exploded inside the AMISOM compound at Mogadishu Airport, killing 17 peacekeepers (12 Burundians and five Ugandans) and wounding nearly 40 others, including Ugandan AMISOM commander, General Nathan Mugisha. Al-Shabaab claimed responsibility for the attack, and they argued that they had acted in response to the American killing of Saleh Ali Saleh Nabani a week earlier. Nabani, a fugitive Kenyan national who sought refuge among radical Somalis, was hunted by the

US Government after he was accused of the 2002 Mombasa ‘terrorist’ attacks that targeted Jewish and American tourists in the Kenyan coastal city. The AU and African governments have correctly condemned attacks on AMISOM by al-Shabaab. However, there is also a need for AMISOM to discuss the impact of the continual direct US interventions in Somalia in its search for ‘terrorists’ on AMISOM’s presence in the country, as well as to assess the implications of such interventions on the perception of any third-party intervention in Somalia’s peace process in general.

Since the United Task Force (UNITAF) ‘catastrophe’ in 1992–1993 the US has been perceived as a spoiler of the Somali peace process. Just as the Somali 1992–1995 episode greatly defined UN peacekeeping interventions in Africa, the UNITAF debacle resulted in a negative construction of external (especially Western) intervention in the psyche of both the opposition and ordinary Somalis. This hostility has been extended to African actors as well since the Ethiopian military intervention in December 2006, which resulted in the ousting of the UIC from Mogadishu. Therefore, it is no surprise that AMISOM’s intervention in Somalia, the aim of which is not only to back but also protect the TFG, faces increasing hostility from the Somali armed opposition led by al-Shabaab.

## The future of AMISOM

Commenting on the UN’s intervention in Somalia in the early 1990s, Francis et al argue that ‘[t]o secure rebel-held areas, UN forces mounted operations that are not authorised under chapter VII of the UN Charter namely the use of force to defeat the militias’.<sup>40</sup> If the UN’s previous experience is, therefore, something to build upon, entrusting AMISOM with a peace-enforcement mandate does not seem a plausible option. If that is the case, then what alternatives can be explored by the AU, taking into consideration the increasing hostility of the Somali armed opposition towards AMISOM, the increasingly deteriorating security situation on the ground and, more importantly, the inadequacies inherent in the mission itself in terms of personnel and logistics?

### *Withdrawal*

Before Ethiopia’s military intervention in Somalia in December 2006, the south-central region of Somalia that encompasses the capital, Mogadishu,



and the cities of Baidoa and Kismayo, was undergoing stabilisation under the management of the UIC. In retrospect, it appears that Ethiopia's intervention has, therefore, contributed not only to a worsening of the security situation in south-central Somalia, but has also further radicalised the Somali opposition in general, and al-Shabaab in particular.

The withdrawal of Ethiopian troops in December 2008 contributed to further exposing the weaknesses of the TFG security forces as well as the inadequacies of AMISOM. As a consequence, the balance of power on the ground has been swaying towards al-Shabaab and allied fighters, resulting in their increased reluctance to adhere to any peacemaking proposals to resolve the conflict. Reassured by the evidence that AMISOM can only act on a defensive paradigm, these groups have opted to frustrate the mission through suicide attacks, thereby denying the peacekeepers any possibility of responding forcefully and meaningfully. The opposition has called for the mission to withdraw from the country or assimilate with the enemy (i.e. the TFIs) and be dealt with accordingly.

The call for AMISOM's withdrawal from Somalia does not only come from the Somali opposition. The mission's own inadequacies in terms of logistics and personnel suggest that AMISOM may find itself compelled to withdraw sooner or later. In the same vein, an orthodox observance of peacekeeping intervention principles and practice would argue for the withdrawal of AMISOM, at least temporarily, until it seeks the support of all major Somali parties and acts in tandem with a peacemaking initiative to which they all agree. Discussing previous peacekeeping efforts in Somalia, Arnold argues that '[d]espite its status as a failed state at the beginning of the new century, Somalia appeared less violent and somewhat less troubled than when it played unwilling host to the UN, the US marines and military forces from another 35 countries, a fact that should give pause to advocates of intervention'.<sup>41</sup>

Of course, AMISOM's withdrawal would signify the abandonment of Somalia as a state and its people and, therefore, represent an unjustifiable paradox to the world's 2005 commitment 'never to abandon innocent people whose government is incapable or unwilling to protect them'. But in the meantime, borrowing from Karl von Clausewitz, the 19th century Prussian military thinker, Aboagye is of the view that 'the fact that war is horrible should not be the predominant rationale why we must hasten towards humanitarian interventions, willy-nilly, as a modern conflict resolution tool'.<sup>42</sup> It is, therefore,

not surprising that, among alternatives to humanitarian intervention, Aboagye proposes '[n]on-intervention to allow the conflict to run its course and yield a military victory to one or the other side ...'

### *Strengthening the mission*

Instead of withdrawal, and probably because of its moral implications, the AU can, in close cooperation with the UN, explore the more difficult option of maintaining and strengthening AMISOM. Though AMISOM will maintain its status as a peacekeeping operation, its mandate will be revised, taking into account Carey's four conditions for a successful peacekeeping intervention.<sup>43</sup> Firstly, the conflicting parties must renounce military confrontation and commit to a peaceful resolution of the dispute. Secondly, there ought to be a clear political strategy to resolve the underlying causes of the conflict and oversee a reconciliation process. Thirdly, a clear operational mandate must be spelled out in earnest, specifying all tasks to be executed by the mission. Fourthly, the international community must be prepared to provide the necessary financial and political support for the mission.

Although the particular context of the Somali conflict poses a serious challenge to any attempt to fully operationalise Carey's conditions, it ought to be acknowledged that further thinking should have been put into the conceptualisation of peacekeeping and peacemaking strategies for Somalia. In this regard, the AU ought to take the lead in both peacekeeping and peacemaking initiatives for Somalia. This means that the AU would undertake to design the new framework for negotiation and persuade all major Somali stakeholders to buy into it. Concomitantly, the AU will seek their support for a larger and re-conceived AMISOM (of up to 20 000 personnel).

### *Further engagement*

Lastly, the future of AMISOM will continue to depend to a large extent on the ability of the AU to further engage major players within the international community (e.g. the UN, the US, the EU, Russia, China, Japan) on the necessity to urgently address the Somali crisis, given its implications not only for international peace and security, but also, as recently shown, for international trade. The engagement will entail, among others, maintaining Somalia high on the UN Security Council agenda, mobilising resources for peacemaking and peacekeeping efforts and persuading the US to refrain from any direct military

action in Somalia. Furthermore, it is of utmost importance that the AU should, in collaboration with Somali stakeholders and through the new peacemaking framework, continue to mobilise resources for the ongoing training of Somali national security forces.

## CONCLUSION AND RECOMMENDATIONS

The deployment of AMISOM has raised more questions than answers as far as the search for peace in Somalia is concerned. It would be perhaps uninformed to have expected the opposite, taking into consideration the peculiarity of the Somali national context, in which interested third parties have to grapple with the absence of reliable and responsible state institutions. State collapse or statelessness in Somalia has meant that third-party interveners are denied the essential pillar on which their entire action should be premised in the first place.

With regard to AMISOM, it is worth noting that the context and circumstances under which the mission was deployed had already set the stage for its eventual failure. These include the continued stay of Ethiopian troops in Somalia; the lack of a consensual, let alone comprehensive, peacemaking framework agreed upon by all, or at least by the majority of the main parties to the conflict; and the explicit resistance of Somali opposition armed groups to the deployment of AMISOM. All this is currently compounded by a number of challenges that further annihilate AMISOM's chances of success. State collapse stands out as the greatest of these challenges, and has brought about the generalisation of violence in the country (especially in the south-central region) – one main factor, among others, leading to the observed reluctance on the part of other AU member states (beyond Uganda and Burundi) to supply troops to AMISOM.

At a time when concerns are mounting about the future of AMISOM in an increasingly deteriorating security situation in Somalia, this study formulates the following recommendations as a way forward for AMISOM:

- AMISOM's capacity in terms of personnel and logistics ought to reflect the complexity of the Somali conflict. In this context, its currently suggested size, as contained in the 2007 Status of the Mission Agreement, should be significantly increased.
- The AU should take over peacemaking initiatives from UNPOS as a way for peacemaking and peacekeeping efforts to be anchored at the same level

and thus ensure their synchronisation. This should not be mistaken for an attempt to sideline UNPOS and the UN in general, as they remain key players in the search for peace in Somalia.

- An AU mediator for Somalia should be appointed – possibly a former head of state with political clout and leverage at the continental level. The mediator should at the same time assume the responsibilities of the Special Representative of the AU Commission.
- The mediator's priority should consist of engaging all major Somali stakeholders – including those regarded by the US as terrorist groups and individuals, such as al-Shabaab and its leadership – and attempt to work out a new inclusive peacemaking framework to be supported by at least the vast majority of them. Concomitantly, the new mediator should engage with countries such as Ethiopia and Eritrea, and others within the Horn and beyond, to explore modalities for their refraining from subversive actions as far as the Somali peace process is concerned.
- The AU should intensify its engagement with major players in the international community, including the UN, the EU, the US, Russia, China, Japan and other interested countries, as well as intergovernmental organisations in order to ensure that Somalia is kept high on the agenda of peace discussions in international forums, and to mobilise the much needed resources and support in the search for peace in Somalia.

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# 14 Building a regional peacekeeping capacity

The challenges facing the African Union in Darfur

KRISTA NERLAND<sup>1</sup>

‘The AU was being asked to provide shelter when its house had no roof.’  
(Said Djinnit, AU Peace and Security Commissioner, on the AU Mission in Sudan)

## INTRODUCTION

The ongoing conflict in Darfur has focused international attention on the potential role of regional organisations, such as the African Union (AU), in addressing conflict and humanitarian emergencies. Since its establishment in 2002, and as part of the trend in the early years of the new century towards acknowledging a ‘responsibility to protect’,<sup>1</sup> the AU has developed a regional peace and security architecture to protect civilians in cases of mass killings, ethnic cleansing and other serious security or humanitarian threats. Darfur, however, has become one of the biggest challenges facing both the AU and its international supporters. As of October 2008, there were nearly 2.7 million internally displaced people living in Darfur,<sup>2</sup> and still more across the Chadian border. Although estimates vary, approximately 200 000 more people are thought to have been killed since the conflict erupted in 2003.<sup>3</sup>

A political solution to the conflict remains elusive. In spite of a ceasefire and a peace accord, the situation remains tense in Darfur as rebel groups and parties to the conflict have fragmented; attacks on humanitarian actors and peacekeepers have continued; a low-intensity conflict has simmered; and more civilians have been displaced. The situation has only become more complex in the aftermath of the warrant issued against Sudanese President Omar al-Bashir by the International Criminal Court (ICC), which has led to decreased access by humanitarian groups and, some argue, has complicated efforts towards a negotiated settlement.<sup>4</sup> However, despite the attention the conflict has garnered in the media, and although the humanitarian situation has certainly improved significantly since the African Union Mission in Sudan (AMIS) was deployed in 2004, the international response to the conflict has been fraught with challenges. Throughout the international engagement in Darfur, the AU has taken a lead operational role, launching and running AMIS and acting as a key partner in the subsequent hybrid operation, the United Nations-African Union Mission in Darfur (UNAMID).

This chapter examines the challenges the AU has faced throughout its operations in Sudan, first during AMIS and then during the ongoing hybrid mission, and focuses particularly on operational challenges that affected the two missions. The author then looks at some of the implications of the AU's experiences with AMIS and UNAMID for the developing African Union Peace and Security Architecture (APSA). Has AMIS, and now the transition to a hybrid force, the AU/UN joint hybrid mission, UNAMID, strengthened the capacity of the AU to address conflict in the continent?

Early assessments of the AU's work, particularly in planning and executing AMIS, are critical, and tend to focus on internal shortcomings, such as the AU's lack of capacity and the weakness of AMIS's mandate. Although capacity issues certainly plagued the AU's engagement, this perspective obscures problems with partnerships, the political terrain and funding structures that exacerbated the challenges posed by weak capacity. These issues require attention if future missions are to be more successful. Furthermore, the way the transition has unfolded suggests that a UN hybrid force was not the panacea that many hoped. Partnership issues among the key actors and ongoing political challenges have continued to be significant obstacles, and a weak incorporation of existing logistical arrangements has ensured that some of the same problems faced by the AU over the course of AMIS have continued to plague UNAMID.

Finally, while the engagement in Sudan has highlighted the need to strengthen the APSA and engaged donors in the process of building up the African Standby Force (ASF), very little was accomplished in terms of capacity building during AMIS itself. Indeed, AMIS became an inadvertent ‘money pit’ for resources earmarked for the development of the APSA. To support the capacity development of the AU more effectively, donors need to consider not just the ASF, but also the Continental Early Warning System (CEWS) and Panel of the Wise. These institutions within the APSA provide early-warning, prevention and peace-support operations, thereby obviating the need for future missions on the scale of AMIS – or at least providing advance warning and thus improving the planning of such missions, should they be necessary. Improved arrangements for partnership and communication between organisations in cooperative missions will also be needed to improve the AU’s performance in future operations.

## AMIS IN CONTEXT

AMIS was deployed by the African Union Peace and Security Council (PSC) in May 2004 to monitor the implementation of a humanitarian ceasefire agreement between the Sudanese government and two rebel groups, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). The first military observers (MILOBs) arrived in El-Fashir, North Darfur, on 4 June 2004.<sup>5</sup> In July 2004, the AU sent 300 troops from Nigeria and Rwanda to protect its observers.

Over time, in response to security challenges on the ground, including frequent ceasefire violations, AU policymakers expanded the mission into a larger-scale peacekeeping mission. From a few unarmed military observers, the mission transformed into a major operation with armed protection, unarmed civilian police (civpol) and support teams. The mission was given a broader range of tasks, including four major areas of responsibility: to monitor observance of the ceasefire and any future agreements; to assist with confidence-building measures; to contribute to a secure environment for humanitarian relief and the return of displaced populations; and to contribute to ‘overall’ security.<sup>6</sup> The mission was also charged with a limited civilian-protection mandate. It was to ‘protect civilians whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the

protection of the civilian population is the responsibility of the Government of Sudan.<sup>7</sup>

This mandate was a compromise: the PSC backed away from its campaign for a stronger mandate around civilian protection in order to secure Khartoum's cooperation with AMIS, which it believed was necessary to the mission's operation.<sup>8</sup> The new mission was allocated 3 320 personnel, including 2 341 military, and did not have the backing of a Chapter VII UN Security Council authorisation.

## **AMIS: key challenges**

The AU faced significant operational problems over the course of AMIS, due both to its lack of capacity and the unwillingness – and, in many cases, inability – of donors to effectively support the mission. These included problems with force generation; insufficient equipment, supplies and logistical arrangements; variable and often insufficient troop preparedness; and security breaches. AMIS experienced struggles because of several linked challenges. First, the series of tasks required of AMIS were significantly more complex than the nascent AU peace and security architecture was capable of supporting at the time. Additionally, administrative capacity was weak, recruitment difficult and cumbersome, and funding structures nearly impossible to manage. As a result, donors found it challenging to support the mission in a way that offered effective responses to its needs, to balance the goal of building the capacity of the AU peace and security architecture with the need to protect civilians and accomplish key mission tasks and to ensure some basic level of value for money. At the same time, underfunding and ineffective funding structures, coupled with the AU's weak management capacity, made it difficult for the mission to function effectively.

### ***A new organisation***

The first key challenge – one which frames all the others that the AU faced – was the AU's youth and inexperience. The AU was created out of the Organisation of African Unity in 2002, in part to enable a new set of institutions that could better address peace and security challenges in Africa.<sup>9</sup> However, these new institutions, which include the CEWS, Panel of the Wise, ASF and Peace and Security Council, were just being created when the AU launched AMIS to monitor the

N'djamena Humanitarian Ceasefire Agreement in 2004.<sup>10</sup> As a result, they were not ready to be used when the mission began. The AU's only previous experience in launching a peacekeeping mission was the African Union Mission in Burundi (AMIB), a 3 335-strong force launched in April 2003, which became a UN force in April 2004. AMIB was much smaller and much less complex than the AU's eventual engagement in Sudan. At its largest, AMIB was allocated 6 171 military and 1 560 civpol officers.<sup>11</sup> AMIS also faced a somewhat hostile host government, as well as an unstable peace process in Sudan. The AU had no experience of managing a mission of such complexity when it deployed. The AU may have felt pressured to act – it could hardly ignore the international outcry over Darfur – but it was certainly inexperienced and ill-prepared to intervene in an engagement of the scope that AMIS would eventually become.<sup>12</sup>

### *Personnel and troop challenges*

The second challenge that the mission faced was the recruitment of officials and staff, both at mission headquarters and in the field. Because of the AU's bureaucratic structures and the requirements of regional representation, it took a long time to bring people into the team. Once hired, personnel rarely stayed long, regularly moving to better-paying international organisations, such as the UN. Often, staff would stay at the AU long enough to receive training, and would then move on to more lucrative opportunities. As a result, the AU was chronically short-staffed.<sup>13</sup> This lack of capable, trained staff to manage contracts and donor contributions made it difficult to mount an effective operation.

Partially as a result of this, the AU had trouble finding, deploying and paying well-trained troops. At first, there was no central strategic organ to coordinate and direct these issues at the mission level. Even once the Darfur Integrated Task Force (DITF) was launched to fill this role, it – like much of the rest of the mission structure – lacked the administrative capacity to function effectively. As a result, building up forces of police civpol and MILOBs in particular was slow.<sup>14</sup>

Moreover, the troops that arrived to serve for AMIS were of varying, and sometimes insufficient, quality and preparedness. The troop-contributing countries had trouble identifying troops with the ability to carry out mission tasks and the language skills necessary to work in the Sudanese theatre.<sup>15</sup> Civpol were often inexperienced and ill-prepared, and they had little understanding of the laws of Sudan, or international policing standards.<sup>16</sup> There were also too few female staff with expertise in sexual and gender-based violence,

and too few interpreters to help AMIS staff communicate with the population. Finally, there were consistently too few troops to complete the required tasks. The March 2005 Joint Assessment Mission found that the force was spread too thinly to provide adequate protection. Although this assessment prompted the expansion of the mission to AMIS II-Enhanced, with double the personnel, the shortage of troops was a problem that was never fully rectified.

### *Funding and partnership issues*

The problems posed by the shortage of qualified staff and insufficient materials were exacerbated by the challenges of securing predictable and sufficient funds to finance a mission of such a scope, which cost \$40 million a month to sustain.<sup>17</sup> When the UN Security Council authorises a mission, funding is drawn from the assessed contributions paid by its member states. The AU does not have the luxury of regular contributions from wealthy states, and the UN argued that it could not pay for a regional peacekeeping operation that it was not leading.<sup>18</sup> As a result, the AU relied almost entirely on donor support, which was not sufficient to meet mission needs. In August 2005, in spite of a May donor conference that conferred \$312 million in contributions (mostly in kind), the AU estimated that it would have difficulty paying its troops' salaries in less than three months' time.<sup>19</sup> That year, it reported a deficit of \$173 million. Reports indicate that by May 2007, many of the AU peacekeepers had not received a pay cheque in months.<sup>20</sup>

In part as a result both of weak staff capacity and these poor funding structures, AMIS personnel lacked the materials and tools to do their jobs effectively. The first three MILOBs to arrive in Darfur, for instance, shared a single satellite phone and had no vehicle.<sup>21</sup> One AU officer interviewed noted that early in the mission they had no power source to recharge their phone in order to communicate with HQ; as a result, they had to wait for helicopters to arrive in order to send messages to El-Fashir on slips of paper.<sup>22</sup> Early mission personnel also lacked secure lodging, owing to delays by Western subcontractors.<sup>23</sup> Commented an AU official: "The danger was that they would bring money to you in the bush, and what you did with it was your problem. Everyone knew when we were being paid, and when we went on patrol we had all our money with us, which led to hijackings."<sup>24</sup>

Several factors exacerbated the shortage of materials. First, the AU mission operated with very short mandate periods – first one month and then three

months in duration. This made it difficult for donors to plan their long- or medium-term engagement according to appropriate funding cycles. It also reinforced the notion that this force was simply biding time until the UN could take over, which reduced the incentive to think and plan for effective engagement over the long term. While some donors disbursed money relatively quickly, the short mandates complicated the efforts of key players in the donor community. Often, promised funds and contributions would be substantially delayed, forcing the AU to struggle to manage money. These delays, funding struggles and gaps adversely affected AMIS, its relationship with its suppliers<sup>25</sup> and, therefore, its ability to supply its troops with the logistical and operational support they required. Secondly, due to its lack of experience and gaps in staffing, the AU did not have the capacity to manage the scope and number of donor contributions involved in operating such a mission. Therefore, simply increasing the flow of donations – especially without sustained attention to budget support and capacity building of the architecture as a whole – would be unlikely to fully mitigate the financial challenges the AU faced.

Donor responses to the AU's lack of capacity in many cases inadvertently exacerbated staffing and capacity shortages. The AU had a difficult time managing cash donations and turning them into effective contracts for the services required to mount a successful operation, such as regular fuel for aircraft. As a result, most donors relied on in-kind donations to support the mission and keep it afloat. The coordination of these donations was fairly successful: the donors met weekly as a group to coordinate among themselves, and met a second time to coordinate with the DITF. These in-kind donations had significant advantages: donors could be sure of where their money went, and the AU's limited capacity for managing funds and contracts was relieved to an extent. However, the coordination mechanism of assigning in-kind responsibilities to different donors created new challenges. Important matters were left behind once the donors had chosen their areas of engagement. Medical support, for instance, was not addressed, as donors were nervous about engaging with items that might give rise to a significant risk of liability. This meant that the AU had to fill those kinds of gaps with limited liquid funds by juggling money earmarked for other areas.<sup>26</sup>

Funding the AU mission presented a dilemma to donors. The AU lacked the capacity to take funds and disburse them in contracts for services. Canada's dry lease arrangement with the AU, in which AU personnel drafted

and executed contracts for helicopter fuel, for example, led to fuel shortages and service stoppages. As a result, this was eventually changed to a wet-lease agreement, in which the Canadian International Development Agency managed all the fuel contracting arrangements through its contractor.<sup>27</sup> Ultimately, cash funding was risky and monies often leaked because of system weakness; without cash funding, however, the AU faced significant challenges in meeting its needs.

The funding structure also led to burdens on the AU, which distracted staff from the mission and led to higher risk for donors. The EU, for instance, audited its cash-based assistance to the AU and found that between €50 million and €100 million was unaccounted for at the end of the project due to weakness in the AU's financial-management systems. Donors were wary of these accountability problems, and audits were a regular occurrence. However, managing these sorts of audits placed a strain on the system, and donors failed to harmonise their requirements to make things easier on the overburdened AU administrative capacity. One week, the AU struggled to manage at least three audit teams going through its accounts books.<sup>28</sup> The same staff had to simultaneously manage the audit requirements, often necessary to unfreeze donations, and the mission itself. As a result, at times donor pressures and political timelines influenced AU decisions that would better have been taken according to the operational and logistical needs of the mission.

This lack of capacity created a feedback loop that undermined operational capacity on the ground. The AU lacked capacity and had unreliable funding structures from which to plan. This meant that it could not ask donors for the items it would require for its operations. Commented one Canadian official who had worked on the programme:

The AU had trouble providing ... the donor community with a definition of their requirements. They lacked the expertise to be able to do any planning ... As a result, we ... had to in many cases guess at the support the AU required. Contracts would get signed on the basis of our guesses, and then the AU would sometimes say after the fact that they needed more.<sup>29</sup>

This led to more gaps and operational problems, such as an inability to pay suppliers and donations failing to meet the operational needs of the mission. There is no simple answer to this funding dilemma – for donors or for the



AU. It is worth noting, however, that unless steps are taken to build the AU's logistical capacity to manage and account for funds and in-kind contributions, it will be difficult for the AU to work with donors to support future peace operations.

### *Political challenges*

Capacity and funding issues, however, by no means present the whole picture. Political issues also posed significant challenges. Darfur covers a large area, making logistics difficult; the political agreements supporting the peace operations were structurally flawed and/or lacked political buy-in across much of Darfur; and Khartoum was a difficult 'partner' in the peace process. Moreover, the political situation on the ground has become increasingly complex over time and a viable political solution to the issues at stake has not been forthcoming. Not surprisingly, these issues have affected AMIS – and later UNAMID – at an operational level.

First, and perhaps most obviously, Darfur is a large and difficult territory for any peacekeeping mission. Absent roads and infrastructure, as well as a challenging rainy season, make the terrain particularly tough for peacekeeping forces. Shipping food, water, troops and supplies around the territory would be a difficult endeavour for even the most experienced personnel in a well-run mission. To execute operations in such a theatre, access to sufficient air assets is particularly important,<sup>30</sup> something AMIS and UNAMID alike have struggled to procure from donors in sufficient numbers.

Second, the agreements that AMIS was meant to support have served to undermine the mission. The AU sent AMIS into Darfur to implement the Humanitarian Ceasefire Agreement of 2004. However, the concessions to the various parties made in the agreement later presented AMIS with significant operational challenges. Each party provided permanent representatives to each team of MILOBs sent to investigate ceasefire violation, as well as to the Ceasefire Commission itself. Their presence in the investigating teams was largely destructive. Although at times they were able to play a liaising role between the investigation teams and field commanders to allow safer passage of the MILOBs, more often than not they served to frustrate effective investigations and manipulate their outcomes, using satellite phones to contact their colleagues in the field to warn them of pending investigations.<sup>31</sup> Reports indicate that in some instances investigation teams

were even held hostage by representatives from warring factions in order to avoid an investigation.<sup>32</sup>

The Darfur Peace Agreement (DPA), signed in 2006 between one faction of the rebels, SLA-Minawi, and the government, did not improve matters. AMIS's key role in the implementation of the DPA, which was wildly unpopular with supporters of the SLA's Abdul Wahid and other non-signatories, tarred the AU's image in the eyes of much of the population.<sup>33</sup> Demonstrations and violence against the AU increased as the organisation came to be seen as the face of the DPA and, as a result, being too closely aligned with the Government of Sudan.<sup>34</sup> Over time, there were a growing number of deadly attacks on the force by militias and frustrated internally displaced persons. At times, this forced troops to remain in the barracks, unable to protect the populations they served.<sup>35</sup>

Finally, Khartoum's well-known intransigence affected the AU in running both AMIS and the transition to a hybrid mission. One donor official described Khartoum as 'able to kill you with a thousand tiny cuts'. At every stage of approval for troops or equipment, Khartoum has manufactured obstructions and slowdowns. For instance, a fleet of armed personnel carriers (APCs) sent by Canada was blocked from entering the country for months in the autumn of 2005. They sat at the port while AMIS remained unable to defend itself as a result of the lack of the APCs and other pieces of equipment.<sup>36</sup> During the delay, time was lost in training drivers and crew to use the APCs in the difficult terrain of Darfur.<sup>37</sup> Although the situation was eventually rectified through the tenacity of the AU, this kind of obstruction has remained Khartoum's *modus operandi* – a tactic which has effectively undermined the work of the international community in Darfur.

### *Security challenges*

Given the problems outlined above, the AU faced significant security challenges. It could not cover enough ground to ensure that civilians were protected when they came under threat. The mission was vulnerable to attack, particularly by groups and individuals trying to access its weapons and armoured vehicles.<sup>38</sup> Patrols were often suspended because of widespread violence, particularly after the signature of the DPA, leaving civilians at risk. As a result, the mission spent much of its time protecting itself.

That said, the AU did better than it might have, given these difficult circumstances. Much of the literature on the AU focuses, indeed, on its failures – the

security challenges, the weak mandate, the slow deployments – rather than on what the organisation did achieve. In part, this is a measurement issue: it is difficult to surmise or measure what civilian casualty counts may have been without the beleaguered force. However, some of the personnel interviewed for this project noted that the AU managed a surprising amount, given the circumstances under which it was conducting its mission. Even though the AU mission was always envisioned as a short-term operation, its presence made a significant difference to people on the ground, in part because many commanders interpreted their mandate for civilian protection liberally. In November 2004, for instance, AU troops evacuated humanitarian workers under attack in Kawilla; at the same time, they evacuated wounded civilians. They have provided this kind of support on numerous occasions. In other cases, they have been able to defuse tensions between warring groups, and thus prevent significant death and displacement. Reports also indicate that AMIS civpol improved security in the camps for displaced persons,<sup>39</sup> and that it effectively opened up access to the territory for the international community to monitor and report on human rights violations that occurred there.<sup>40</sup> Although attempting to quantify the successes of the mission in terms of civilian protection is beyond the scope of this paper, there is certainly evidence that AMIS made a significant difference to civilians at various points throughout the mission despite the challenges it faced.

## THE TRANSITION TO UNAMID

Over the course of AMIS, there was intense international pressure for a transition to a UN force. Strong domestic constituencies in the global north pushed for the UN to intervene, which met with equally strong opposition from Khartoum.

Partially in response to concerns about the financial sustainability of AMIS, and noting that donors had not committed to fund the mission after March 2006,<sup>41</sup> the AU Peace and Security Council expressed support in principle for a transition from AMIS to a UN operation in its communiqué on 12 January 2006. The UN, many reasoned, had more experience in and capacity for conducting missions to oversee comprehensive peace agreements.<sup>42</sup> As a result of the scope and scale of the DPA of May 2006, the mounting international belief in and pressure for a UN mission and the struggles faced by the AU in conducting AMIS, an agreement was reached in 2007 to implement

a transition to a hybrid force with integrated components from the AU and UN. In July 2007, the Security Council unanimously adopted Resolution 1769, which called for the establishment of the hybrid force for an initial period of 12 months.<sup>43</sup>

This hybrid force was to be implemented through a three-phase programme that offered increasing amounts of UN support to AMIS, culminating in the hybrid UNAMID. Khartoum accepted this deal (after considerable international pressure) with the caveat that the force be 'African' in character. It was an ad hoc compromise, and there were few structures in place at the outset to facilitate the cooperation between the AU and UN that would be necessary to launch such a mission successfully.

UNAMID was based on a series of difficult and unwieldy compromises forged among the UN, AU and Khartoum. The mission was organised around four key principles: the appointment of a special representative of the hybrid mission to help re-energise the peace process; the appointment of an African force commander by the AU in consultation with the UN; access of the mission to UN backstopping and command and control structures; and determining the force level jointly by the AU and UN. The two parties agreed that force generation would be handled at UN HQ, but that a joint support and coordination mechanism between the AU and UN would be developed. Meanwhile, whereas the UN would hold strategic and command and control authority, the AU force commander would exercise operational control over routine operations on the ground.<sup>44</sup>

The new mission was mandated with 19 555 military personnel (including 360 MILOBs), and up to 3 772 police officers and 19 formed police units, which were to include the troops already on the ground for AMIS.<sup>45</sup> The mission was mandated under Chapter VII to monitor and verify the 2004 ceasefire, support the implementation of the DPA, protect civilians under threat and work to support the mediated peace process.<sup>46</sup>

## Challenges facing UNAMID

Although it had a stronger mandate and the considerable experience and resources of the United Nations behind it, UNAMID too faced a series of challenges. The kind of cooperation required for the mission – which involved the AU and UN working together under a single command and control structure

– was unprecedented, and the modalities for cooperation and effective collaboration were difficult to work out in practical terms. Finding a workable partnership and navigating the transition process proved challenging for both partners in the new hybrid mission, undermining the ability of UNAMID to fulfil its mandates. Moreover, international support was still unable to meet the mission's needs. As a result, some of the same issues that AMIS faced continued to plague UNAMID.

### *Troop shortages*

The UN has much more experience in conducting peacekeeping missions than the AU. However, the corollary of this is that the UN Department of Peacekeeping Operations (DPKO) has a lot of missions that fall under its responsibility, and it is already overstretched. By the first quarter of 2008, the number of UN military and police personnel on the ground had risen to over 90 000 and was expected to reach 100 000 by the end of the year.<sup>47</sup> This is a 600 per cent increase between 1998 and 2008.<sup>48</sup> This overstretch may be contributing to the trouble in meeting the ambitious deployment targets set for UNAMID. When the UN deployed in Sierra Leone in 2000, for instance, it was able to mobilise 12 000 troops – nearly the full mission – in nine months. UNAMID, however, beginning from a starting point of 6 000 troops on the ground, reached less than half of its deployment target in nine months.

UNAMID has had trouble accessing enough troops to roll out, because it too had to rely mostly on troop contributions from within Africa as a result of the requirement that the hybrid force be 'African in character'. This means that the UN cannot draw heavily on its typical major contributors, such as Pakistan. Although the rate of deployment increased towards the end of 2008, it has remained markedly behind schedule since the mission was launched (see Appendix 1).<sup>49</sup>

### *Equipment shortages*

The hybrid mission operates with some significant advantages. For example, because it is funded by the UN, it is unlikely to experience the same liquidity issues that AMIS faced. Soldiers will be paid on time and structures will be in place to manage payrolls effectively. Nevertheless, the UN has had trouble securing some of the military assets it wants – such as sufficient air support

– owing to its transition strategies and reluctance on the part of donors to donate these assets.

In August 2008, well into the mission, shortfalls included 18 medium lift helicopters, six attack helicopters, one aerial reconnaissance unit, one medium transport unit, one heavy transport unit, one multi-role logistics unit and four additional light helicopters.<sup>50</sup> Although part of this shortfall is due to donor reluctance to donate attack helicopters and military assets of this grade, that is not the whole story. The UN turned down donations of certain aircraft – many of which had been used with great success during AMIS – because of the UN’s particular requirements when it comes to equipment standards. Skylink helicopters that Canada had donated to AMIS, for instance, were deemed unacceptable by the UN, in spite of the fact that it lacked viable alternatives, and inspections revealed only very minor shortcomings in the aircraft.<sup>51</sup>

### *Partnership issues*

Partnerships posed significant challenges to the effectiveness of the transition process. Typically, DPKO had its own operating procedures and – noting the problems that the AU had faced, as well as its lack of capacity to address logistical matters – was inclined to begin with a clean slate, without the arrangements that the AU had put in place. However, as the AU had experience working in the challenging political context of Darfur, it could have brought useful experience to the table. Instead, partnership became a problem for the two organisations, and key lessons and logistical arrangements were lost. This manifested itself in two ways: first, the working relationship between the UN and the AU was difficult at best; and, second, donors and the UN collectively mismanaged the logistical transition to a hybrid force.

The AU-UN partnership was problematic on a number of levels. First, the concept of a hybrid mission was never entirely clear; the roles and responsibilities of both organisations, as well as the mechanisms through which they would cooperate, were ill defined. As such, there was significant room for failures in cooperation, which would be essential if the two organisations were to work together under a single command and control structure. Moreover, neither organisation is set up to support, or has experience of, this kind of collaborative work. Consequently, the structures for communicating and working together had to be built from scratch, and the experience and goodwill to make those structures work was in short supply. Although the UN had taken over from the

AU mission in Burundi, there had been no hybrid mechanism in place during the course of the transition. Launching UNAMID required working with structures already on the ground, and working cooperatively to effect a transition of logistics and lessons learnt by converting them into a hybrid form.

As the transition was implemented, cooperation proved very difficult. The AU was marginalised from decision-making structures, limiting its ability to bring its experience with AMIS to the table when key decisions were made. For instance, donor and other planning meetings held at DPKO would regularly begin without AU representation, in spite of the supposed hybrid nature of the force.<sup>52</sup> Some observers reported an attitude within DPKO that the UN should take control of all decisions, for it was footing the bill.<sup>53</sup> Although there was meant to be a joint coordination mechanism for UNAMID in Addis Ababa, this was not established until November 2008 and interviewees indicated that it was not fully operational in the months after it had been established. This ‘failure to operationalise the joint mechanism [is] perhaps an indication of the UN’s desire to maintain full control of UNAMID, partially undercutting the idea of a hybrid arrangement’.<sup>54</sup> Moreover, the Joint Coordination Support Mechanism was meant to take decisions that involved both the AU and UN, but instead was only used as a means to exchange information. Whereas the UN saw the mechanism as a means for liaising with the AU, the AU had hoped the mechanism would take a leadership role in the mission.<sup>55</sup>

The marginalisation of the AU from the hybrid mission had operational costs. In spite of its capacity challenges, the AU did have a number of logistical arrangements in place when the UN took over. However, the UN, pursuing a clean slate, halted ongoing AU contracts in advance of securing alternatives. For instance, the AU had a ration contract in place for its troops; the UN cut the contract without ensuring that it had an alternative mechanism in place. As a result, for a period of two weeks, the AU troops on the ground did not receive any food deliveries.<sup>56</sup> Similarly, the UN asked Canada to remove the Skylink helicopters it had donated to AMIS without securing permission from Khartoum to bring in new helicopters. The Lieutenant Colonel to US Special Envoy Williamson, who visited El-Fashir to investigate the deployment of the new mission, called the UN’s treatment of the helicopter situation ‘criminally stupid’.<sup>57</sup>

Officials who had been working the field during the transition noted that this disconnect during the transition process was exacerbated by weak communication between operators in the field and the DPKO headquarters. The

skills to manage – or at least plan for – Khartoum’s intransigence, as well as to address shortages that arose were, therefore, in short supply. Interviewees commented that the UN underestimated the difficulty it would face in getting its supplies and vehicles on the ground, something AMIS knew well because it had experienced it first-hand – for instance, through its (successful) efforts to get the 105 APCs donated by Canada into the territory.<sup>58</sup>

Therefore, some of the challenges that UNAMID faces today are a function of a weak partnership between the two organisations.<sup>59</sup> Even with the resources and experience that the UN brought to the mission, it still had trouble planning for the logistical aspects of the transition. Often the logistical needs of the mission were not taken into account when making decisions about which equipment to keep from the AU force, and plans to replace equipment that the DPKO did not wish to keep were often inadequate. One official from the DPKO argued that:<sup>60</sup>

There were enormous challenges in the transition, in virtue of the fact that we were taking over from AMIS, which was severely under-staffed and under-resourced. They lacked the logistical infrastructure, and the idea of a transfer presupposes an infrastructure on which to build. In this case there was none. So the transfer of authority was largely artificial; in fact it was more like handing a piece of paper over. It took us a long while after the transition to become operational to a degree.

Indeed, the UN did have much work to do to establish infrastructure during the transition. However, there certainly were logistical arrangements in place for equipment and supplies, as well as political relationships that had been developed. By making more effective use of the existing structures and plans that the AU had established and operated, and by working more effectively with AU leadership, some of the operational and logistical problems that emerged might have been ameliorated.

AMIS also suffered from this weak transition. After June 2006, international support for AMIS declined drastically as donors waited for the UN to take over, fostering a climate of uncertainty about the future of the mission.<sup>61</sup> Funding of the AU became a (somewhat ineffective) tool for some donors to encourage a transfer to a UN force. In September 2006, for instance, the US held back funding of AMIS to compel the transfer to a UN force.<sup>62</sup> Even Rwanda and Senegal, who contributed the majority of the peacekeepers to AMIS, indicated



that they might withdraw if the force was not transformed to a UN mission, or if they did not receive financial support.<sup>63</sup>

### *Security challenges*

In the early stages of UNAMID, and when the ICC warrants against Omar al-Bashir were announced, the mission faced serious security challenges that inhibited its ability to deploy and fulfil its mandate. Intra-Arab fighting not only led to increased insecurity across the territory in general terms, but there were also a number of attacks against the mission itself. During its first month on the ground, for instance, its supply convoy was attacked repeatedly.<sup>64</sup> In July 2008, seven UNAMID troops were killed and 19 were wounded after 200 militia members attacked the military and civilian police in a government-controlled area. UNAMID's lack of air assets was partially to blame, and rendered it unable to respond to attacks or protect its troops.

The declining security situation forced the evacuation of staff and a reduction in humanitarian activities, reducing the efficacy and scale of civilian protection. This was further compounded by the expulsion of several key aid organisations in the aftermath of the ICC warrants against al-Bashir.<sup>65</sup> This created a feedback loop, further slowing troop deployments because the mission was forced to focus on issues of staff security and the logistical machinations that accompany a declining security situation.<sup>66</sup>

### *Political challenges*

The mission continues to face significant political problems, underscoring the fact that no peacekeeping effort can replace an effective political process, or operate effectively in the absence of a minimal level of international support. Thus, although a strong civilian-protection mandate may be useful in helping protect populations during a ceasefire, it is not equivalent to a political solution to a conflict. Indeed, by over-tasking missions with wide-ranging mandates, particularly when unable to provide the money and equipment to back up those mandates, the international community may instead be limiting the efficacy of the missions they deploy.

This is true of the situation in Darfur. Although the joint AU/UN-appointed mediator has done some admirable work, the political situation has remained extremely tenuous. The DPA, which both AMIS and UNAMID were deployed to help implement, is still ignored by most of the parties, and unrecognised by

non-signatories. Efforts to unify the fragmented rebel movements have met with very limited success, complicating the political process further, and increasing reliance on UNAMID as a tool, in the face of political pressure from domestic constituencies in the north.

Finally, the ICC warrant against al-Bashir has added another factor to an already complex peace process. Some commentators within the UN credited the warrant with helping speed UNAMID troop deployments in the last quarter of 2008.<sup>67</sup> Others argue that it has complicated the political process by discouraging the rebels from making necessary compromises, and that it has done little to marginalise al-Bashir or encourage moderation in the central government as a whole.<sup>68</sup> While a deep analysis of the implications of the warrant are beyond the scope of this chapter, certainly, in the short term, it led to an increased security threat, prompting the UN to raise the security classification in Darfur to level 4 and move non-essential personnel, which distracted UNAMID from its work.

## **IMPLICATIONS FOR THE DEVELOPMENT OF THE AU PEACE AND SECURITY ARCHITECTURE**

The experience with AMIS and UNAMID has had mixed impacts on the development of the AU's capacity to manage peace and security issues. The donor community initially hoped their engagement would lead to both an effective mission and an opportunity to develop the capacity of the APSA, but the mission itself did little to build the AU's capacity in this area. Canada, for instance, sent military officers to partner with and work alongside officers at the AU in the planning and execution of AMIS in order to support capacity development. However, capacity building was pushed off the table, as the visiting international officers met with a significant lack of basic capacity, empty positions and resistance to their help. As a result, instead of building capacity of AU staff, donor personnel would take over empty roles and execute required tasks. Furthermore, the mission at times inadvertently served to divert resources that were earmarked for supporting the development of the architecture as a whole. For instance, the European Development Fund allocated €12 million to develop the APSA, but most of this was consumed by AMIS.<sup>69</sup>

Moreover, there was little cooperation between the AU headquarters and the nerve centre of the mission, the DITF. They were not co-located and there was no real relationship between the two. Consequently, lessons learnt and resources

collected by the DITF did not easily or always flow through the AU planning architecture.<sup>70</sup> This limited the effect of AMIS on the capacity of the AU as a whole. The tensions that donors encountered while trying to achieve two joint goals simultaneously – building the capacity of the APSA, and launching an effective mission – were not resolved over the course of the mission, nor has there been a move to change that practice in subsequent missions. When the AU mission in Somalia was launched, it pulled people from the Peace and Security Department, the secretariat responsible for the development of the APSA as a whole, in spite of the department's crucial need for personnel.<sup>71</sup>

However, the challenges the mission faced served to highlight the need for engagement with the capacity of the APSA as a whole. Since their engagement with AMIS, for instance, Canada and the EU have been working on developing the capacity of the ASF. Although the structures of the ASF were developed before AMIS, they are now being rethought with the AMIS experience in mind.<sup>72</sup> A major planning exercise is being prepared for February and March 2010 to gauge the status of the forces and make plans for moving forward.<sup>73</sup> The UN has also established mechanisms to support the capacity development of the AU. In 2006, the UN and the AU signed a plan developed by the AU, 'AU Vision 2010', which envisions enhanced AU-UN cooperation to build the capacity of the AU, which includes several key areas identified in this chapter, such as human resources development, financial management and peace and security. The UN has also established a peace and support team to help build long-term capacity associated with the ASF, as well as the capacity of the AU headquarters. These different processes must be strengthened and effectively coordinated in partnership with the AU.

However, as donors have moved to support the ASF, other aspects of the peace and security architecture have been left behind – particularly, the AU's institutions for early warning, conflict prevention and mediation remain weak. As Kagwanja and Mutahi note, 'Darfur's overarching impact on the AU security system has been a trend of giving weight to military capabilities to the neglect of capacity for non-military option'.<sup>74</sup> The Panel of the Wise and the CEWS should receive attention, as they may be important first efforts at a substantive prevention mechanism, which are lacking not just in the AU, but also in the international community at large. Effectively developing this early-warning capacity and effective means to support conflict prevention will be crucial in correcting some of the problems that have plagued AMIS, and now UNAMID. It

will also enable the ASF to be used more effectively. Early warning can help the AU identify and execute the necessary level of alert for the regional brigades, for instance, to maximise the efficiency of resource allocation. By building up the analytical and institutional capacity to engage in meaningful early warning and effective mediation, the international community can acquire more tools in its toolkit to address conflict situations so that peacekeeping operations are required less frequently, and are less frequently used as the default mechanism for addressing conflict situations.

Moreover, building up the ASF does not get to some of the crucial issues that plague AU engagement in peacekeeping operations, such as funding and equipment shortages. Even if the international community effectively supports the development of a stronger AU capacity to manage troop deployments and logistics, AU missions will still struggle if there is no mechanism to adequately fund and equip the missions that are sent into the field. This is particularly true if, as has been the case in Sudan and Somalia, the AU goes to the most difficult and dangerous conflict situations, clearing the way for the UN to take over later on. It is also worth noting the risk of a form of peacekeeping ‘apartheid’, whereby powerful countries prefer to send African regional organisations and troops into difficult situations on the continent, both refusing to send their own troops and failing to adequately fund AU troops on the ground.<sup>75</sup>

It is unrealistic to think that the hybrid structure of UNAMID will be an anomaly in peacekeeping, in spite of the headaches it has caused planners. The trend in peacekeeping has been towards cooperative arrangements in recent years. For example, 40 of the 50 missions discussed in the 2008 *Annual Review of Peacekeeping Operations* published by the Center on International Cooperation are partnerships of some kind. Even if they are formed and constituted differently from UNAMID, cooperative arrangements are, nevertheless, the future of peacekeeping. As such, the lessons learnt from the transition to the hybrid mission, and from UNAMID itself, could have significant impacts on future missions. Therefore, efforts from both the AU and UN to engage in critical lessons-learnt exercises will be crucial.

## CONCLUSION

The AU faced significant challenges in launching an effective mission in Darfur: a conflict with no effective peace agreement; a hostile host government;

difficult terrain in which to launch operations; and a fragmented and challenging political situation. Combined with a shortage of funds and weak capacity, the AU mission struggled and, in turn, faced sharp criticism for its performance in Darfur.

However, although AMIS certainly struggled with many of these challenges, they were not the sole reason for the mission's mixed record, nor did they prevent the AU from garnering experience that might have been useful in launching UNAMID. Donors sometimes inadvertently exacerbated the AU's capacity challenges, in spite of their efforts at good coordination and planning. Funding was unpredictable and insufficient, and capacity building of the peace and security architecture as a whole was and remains insufficient. Partially as a result, the transition and hybrid force faced significant logistical, political and operational challenges.

Similarly, the UN was far from a panacea for the problems the AU faced in its work in Darfur. In spite of its more stable funding structure and the UN's stronger capacity for managing peacekeeping operations, UNAMID faced many of the same difficulties as AMIS. These included problems with force generation and troop roll-outs, equipment shortages, logistics and partnership challenges and security-related mission slowdowns. Far from 'starting fresh' with the hybrid, DPKO struggled to get required logistics on the ground, in part because it was hesitant to transfer existing structures into the new mission, and because its partnership with the AU was weak. Both the UN and the AU have important work to do in integrating the lessons learnt in this experience into their planning for future missions.

The AMIS experience, as well as the transition to UNAMID, has had significant impacts on the development of a peace and security architecture as part of the AU. Although capacity building was a goal for donors in engaging with AMIS, it was quickly brushed aside in the face of urgent mission needs, empty positions and glaring gaps in capacity. In fact, resources that could have been used to build the capacity of the architecture were instead diverted into the mission in response to the scale of the need. However, AMIS did flag the need for donor engagement with the architecture in the future, leading to current donor attention to the ASF. For the APSA as a whole to develop, however, the international community must focus not just on the military structures, but also on early-warning and mediation structures, which may help make engagement in future conflicts more effective.

Dedicated capacity building of the AU is crucial if it is to have the ability to complete its tasks. Although admirable, trying to build capacity while undertaking a complex mission such as AMIS meant on some level that both capacity building and the efficacy of the force were compromised. These findings point to the need for more – and more substantive – commitment to two key tasks. Firstly, donors must commit, in partnership with AU officials, to holistic capacity building of the AU, including a commitment to funding not just military capacity and missions, but the architecture and institution as a whole. Capacity building requires longer time frames and commitment than was available during the support for AMIS and UNAMID. A substantive political commitment to capacity building as a long-term endeavour, separate from short-term intervention support, will be crucial. The AU must focus first and foremost on building the capacity to manage funding and donations, as well as effective coordination among partners to alleviate the administrative burden of the donation process. This is crucial if difficult peacekeeping tasks are to be devolved to the still nascent regional organisation. Secondly, there is a need for improved structures for and commitment to effective cooperation and partnership between organisations that collaborate on peacekeeping missions.

Although AU peace missions may be appealing as ‘African solutions to African problems’, the reality remains that sending such missions into complex environments without adequate capacity, supplies or funding represents an abdication of responsibility on the part of the international community, and in particular of global-northern countries reluctant to send not only their own troops, but also their supplies and their funds. The emerging pattern of asking the AU to address the most difficult and intractable conflicts with its peacekeeping operations requires a respect for its capacity and work, as well as a commitment to support it through effective, sustained and reliable funding structures and partnership arrangements.

## NOTES

- i This work was supported by the Security and Defence Forum programme at the Canadian Department of National Defence. The author is grateful to the North-South Institute, the Canadian Department of National Defence, as well as her colleagues Abraham Sewonet Abatneh, Jennifer Erin Salahub and David Gillies for their support with this project.

- 1 Developed in 2001, the 'Responsibility to Protect' (R2P) doctrine reconceptualises state sovereignty from a right to a responsibility to protect one's citizens, which, if ignored, is ceded to the international community. Therefore, the international community has a 'responsibility' to protect citizens if their state is unwilling or unable to do so. Although the R2P doctrine suggests that the UN Security Council is the proper body for authorising military responses to such conflicts – which it envisions as just one extreme in a continuum of tools of protection – the authors of the R2P noted that regional organisations could play a role as well, especially where the UN Security Council fails to act. In recent years, the R2P has come under increasing criticism. For more information, see K Powell, *The African Union's emerging peace and security regime: opportunities and challenges for delivering on the Responsibility to Protect*, Working Paper, the North-South Institute, May 2005, 6–8.
- 2 Office of UN Deputy Special Representative of the UN Secretary-General for Sudan, Darfur Humanitarian Profile No. 33, 1 October 2008.
- 3 P Kagwanja and P Mutahi, *Protection of civilians in African peace missions: the case of the African Union Mission in Sudan, Darfur*, Institute for Security Studies Paper 139, May 2007, [http://www.issafrica.org/dynamic/administration/file\\_manager/file\\_links/PAPER139.PDF?link\\_id=&slink\\_id=4473&link\\_type=&slink\\_type=13&tmpl\\_id=3](http://www.issafrica.org/dynamic/administration/file_manager/file_links/PAPER139.PDF?link_id=&slink_id=4473&link_type=&slink_type=13&tmpl_id=3) (accessed 21 September 2008). It should be noted, however, that estimates of those killed by the conflict and associated events are far from systematic.
- 4 A Natsios, *Waltz with Bashir: why the arrest warrant against Sudan's president will serve neither peace nor justice*, *Foreign Affairs*, 23 March 2009, <http://www.foreignaffairs.com/articles/64904/andrew-natsios/waltz-with-bashir> (accessed 15 April 2009).
- 5 Kagwanja and Mutahi, *Protection of civilians in African peace missions*, 6.
- 6 PD Williams, *Military responses to mass killings: the African Union Mission in Sudan*, *International Peacekeeping* 13(2), June 2006, 175.
- 7 African Union Peace and Security Council communiqué, 17th meeting, PSC/PR/Comm (XVII), Addis Ababa, 20 October 2004.
- 8 Kagwanja and Mutahi, *Protection of civilians in African peace missions*, 6.
- 9 Powell, *The African Union's emerging peace and security regime*, 9. See also T Murithi, *The African Union's evolving role in peace operations: the African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia*, *African Security Review* 17(1) (2007), [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/17NO1MURITHI.PDF?link\\_id=4057&slink\\_id=5820&link\\_type=12&slink\\_type=23&tmpl\\_id=3](http://www.iss.co.za/dynamic/administration/file_manager/file_links/17NO1MURITHI.PDF?link_id=4057&slink_id=5820&link_type=12&slink_type=23&tmpl_id=3) (accessed 13 November 2008).
- 10 J Cilliers, *The African Standby Force: an update on progress*, ISS Paper 160, March 2008, 17, [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/PAPER160.PDF?link\\_id=3&slink\\_id=5753&link\\_type=12&slink\\_type=13&tmpl\\_id=3](http://www.iss.co.za/dynamic/administration/file_manager/file_links/PAPER160.PDF?link_id=3&slink_id=5753&link_type=12&slink_type=13&tmpl_id=3) (accessed 15 September 2008).

- 11 Human Rights Watch, *Imperatives for immediate change: the African Union Mission in Sudan*, 18(1A) (January 2006), 16, <http://www.hrw.org/en/reports/2006/01/19/sudan-imperatives-immediate-change> (accessed 10 December 2008).
- 12 Kagwanja and Mutahi, *Protection of civilians in African peace missions*, 4.
- 13 Anonymous, personal communication, December 2008.
- 14 Anonymous, personal communication, December 2008.
- 15 Human Rights Watch, *Imperatives for immediate change*, 41.
- 16 Human Rights Watch, *Darfur in 2007: chaos by design: peacekeeping challenges for AMIS and UNAMID*, 19(15A) (September 2007), 63, <http://www.hrw.org/en/reports/2007/09/19/darfur-2007-chaos-design> (accessed 10 December 2008).
- 17 Kagwanja and Mutahi, *Protection of civilians in African peace missions*, 9.
- 18 This raises questions about how the AU, which is often sent in to prepare the ground for an eventual UN mission, is to fund its work, and whether it is ethical to send in the AU to do work deemed too difficult for the UN without adequate funding.
- 19 Human Rights Watch, *Imperatives for immediate change*, 33.
- 20 S Kreps, *The United Nations-African Union Mission in Darfur: implications and prospects for success*, *African Security Review* 16(4) (2007), 68, [http://www.iss.co.za/index.php?link\\_id=3&slink\\_id=103&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.iss.co.za/index.php?link_id=3&slink_id=103&link_type=12&slink_type=12&tmpl_id=3), (accessed 10 December 2008).
- 21 Kagwanja and Mutahi, *Protection of civilians in African peace missions*, 6.
- 22 S Appiah Mensah, personal communication, 23 January 2009.
- 23 Powell, *The African Union's emerging peace and security regime*, 35.
- 24 Appiah Mensah, personal communication, 23 January 2009.
- 25 Canadian official, personal communication, December 2008.
- 26 Anonymous, personal communication, December 2008.
- 27 Canadian official, personal communication, December 2008.
- 28 Canadian official, personal communication, December 2008. In many ways, Canada was ahead of the game in this respect. Canadian contributions came in a few large transactions, and quickly after help was promised, which facilitated easier AU planning and more streamlined reporting.
- 29 Anonymous, personal communication.
- 30 S Appiah Mensah, *The African Union Mission in Sudan: Darfur dilemmas*, *African Security Review* 15(1) (2005), 5, [http://www.iss.co.za/index.php?link\\_id=29&slink\\_id=3451&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.iss.co.za/index.php?link_id=29&slink_id=3451&link_type=12&slink_type=12&tmpl_id=3) (accessed 26 September 2008).



- 31 Appiah Mensah, *The African Union Mission in Sudan*, 15.
- 32 Human Rights Watch, *Imperatives for immediate change*, 5.
- 33 For more on this, see International Crisis Group, *Darfur's new security reality*, *Africa Report No. 134* (26 November 2007) 1–2, <http://www.crisisgroup.org/home/index.cfm?id=5180> (accessed 18 September 2008).
- 34 Peace and Security Council, *Report of the chairperson of the commission on the situation in Darfur (the Sudan)*, Addis Ababa, 27 June 2006, 3, para. 10.
- 35 A Sewonet Abatneh, *Applying 'the Responsibility to Protect' principle in contemporary conflicts: the case of Darfur*, unpublished work, 11.
- 36 Canadian official, personal communication, December 2008.
- 37 These delays also included the obstruction of key personnel. For example, trainers sent to build the capacity of the struggling AMIS civpol had trouble getting Sudanese visas. Canadian official, personal communication, December 2008.
- 38 Kagwanja and Mutahi, *Protection of civilians in African peace missions*, 8.
- 39 Sewonet Abatneh, *Applying the 'Responsibility to Protect' principle in contemporary conflicts*.
- 40 Appiah Mensah, *The African Union Mission in Sudan*, 6.
- 41 Peace and Security Council, *Report of the chairperson of the commission on the situation in Darfur (the Sudan)*, Addis Ababa, 12 January 2006, 34.
- 42 Henry L. Stimson Center, *Fact Sheet: UNAMID, 2007*, [http://www.stimson.org/fopo/pdf/AU\\_UN\\_Hybrid\\_Fact\\_Sheet\\_Aug\\_07.pdf](http://www.stimson.org/fopo/pdf/AU_UN_Hybrid_Fact_Sheet_Aug_07.pdf) (accessed 2 February 2009).
- 43 United Nations Security Council, *Resolution 1769 (2007)*, adopted by the Security Council at its 5727th meeting on 31 July 2007, <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/N07/445/52/PDF/N0744552.pdf?OpenElement> (accessed 19 August 2010).
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- 45 United Nations Security Council, *Resolution 1769*.
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- 47 R Gowan, *Strategic context: peacekeeping in crisis, 2006–2008*, *International Peacekeeping* 15(4) (2008), 457.
- 48 Lieutenant Commander P Paterson, *Darfur and peacekeeping operations in Africa*, *Military Review*, July–August 2008, 14, [http://findarticles.com/p/articles/mi\\_m0PBZ/is\\_4\\_88/ai\\_n28048847/](http://findarticles.com/p/articles/mi_m0PBZ/is_4_88/ai_n28048847/) (accessed 25 January 2009).

- 49 It is worth noting, however, that the delays are in part related to a very ambitious deployment schedule, especially given the requirement that troops be sourced predominantly from African countries.
- 50 Center on International Cooperation, *Annual Review of Peacekeeping Operations 2008*. New York: New York University, 2009, 43.
- 51 Canadian official, personal communication, January 2009.
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- 53 J van der Lijn, To paint the Nile blue: factors for the success and failure of UNMIS and UNAMID, Clingendael Institute, 2008, 35, [http://www.clingendael.nl/publications/2008/20080100\\_cscp\\_paper\\_lijn.pdf](http://www.clingendael.nl/publications/2008/20080100_cscp_paper_lijn.pdf) (accessed 11 February 2009).
- 54 Center on International Cooperation, *Annual Review of Peacekeeping Operations*, 42.
- 55 Van der Lijn, To paint the Nile blue, 35.
- 56 Canadian official, personal communication, December 2008.
- 57 Canadian official, personal communication, January 2009.
- 58 Canadian official, personal communication, January 2009.
- 59 Canadian official, personal communication, January 2009.
- 60 Michael Heller-Cu, personal communication, 22 January 2009.
- 61 Kagwanja and Mutahi, Protection of civilians in African peace missions, 12.
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- 63 Kagwanja and Mutahi, Protection of civilians in African peace missions, 12.
- 64 Center on International Cooperation, *Annual Review of Peacekeeping Operations*, 43.
- 65 E Schroeder, Hybrid AU-UN operation in Darfur: precedents, progress, and challenges, *Project Ploughshares Briefing* 7(3) (October 2007), 4, <http://www.ploughshares.ca/libraries/Briefings/brf073.pdf> (accessed 13 December 2008).
- 66 Center on International Cooperation, *Annual Review of Peacekeeping Operations*, 44.
- 67 M Heller-Chu, personal communication, 22 January 2009.
- 68 Andrew Natsios, Waltz with Bashir.
- 69 Kagwanja and Mutahi, Protection of civilians in African peace missions, 12.
- 70 Anonymous, personal communication.
- 71 Anonymous, personal communication.
- 72 Indeed, some have argued that international engagement with the ASF is excessive; the sheer number of Western troops and advisors (often with more resources than the African

commanders they support) may be undermining African ownership of the institution. For more on this, see J Cilliers, *The African Standby Force*, 18.

- 73 Anonymous, personal communication, 11 January 2009.
- 74 Kagwanja and Mutahi, Protection of civilians in African peace missions, 5.
- 75 T Otheino and N Samasuwo, A critical analysis of Africa's experiments with hybrid missions and security collaboration, *African Security Review* 16(3) (2007), 34, [http://www.issafrica.org/dynamic/administration/file\\_manager/file\\_links/ASR16NO3OTHIENO.PDF?link\\_id=3&slink\\_id=5039&link\\_type=12&slink\\_type=13&tmpl\\_id=3](http://www.issafrica.org/dynamic/administration/file_manager/file_links/ASR16NO3OTHIENO.PDF?link_id=3&slink_id=5039&link_type=12&slink_type=13&tmpl_id=3) (accessed 17 November 2008).

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## INTERVIEWS

Many of the interviews conducted for this project were held on the condition of anonymity. They included current and former Canadian government officials working on the file, and AU and UN personnel.

## APPENDIX

### Appendix 1 Deployment figures of UNAMID personnel

Date	Military deployed/19 555 mandated (% of mandated)	Police deployed/ 6 432 mandated (% of mandated)	Civilians deployed/ 5 569 authorised (% of authorised)
26 March 2008	7 500 (38%)	1 600 (25%)	1 400 (25%)
17 April 2008	7 439 (38%)	1 691 (26%)	1 474 (26%)
29 May 2008	8 246 (42%)	1 669 (26%)	1 667 (30%)
31 July 2008	8 123 (42%)	1 868 (29%)	2 350(42%)
10 October 2008	8 579 (44%)	1 948 (30%)	2 564 (46%)
30 November 2008	9 941 (51%)	2 541 (40%)	2 962 (53%)
31 January 2009	12 541 (64%)	2 639 (41%)	3 129 (56%)
31 March 2009	12 737 (65%)	2 426 (38%)	2 669 (48%)
9 June 2009	13 455 (69%)	2 877 (45%)	3 497 (63%)



