

The Heglig Oil Conflict:

An Exercise of Sovereignty or an Act of Aggression?

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and
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This policy brief examines the hostile interaction between the Republic of Sudan and the Republic of South Sudan triggered by South Sudan's invasion of the Heglig oilfield. The cumbersome nature of the Comprehensive Peace Agreement (CPA) and the apparent ineffectiveness of the African Union (AU) High Implementation Panel have led to the adoption of unilateral policy positions by both parties to the disputed areas. South Sudan's occupation of Heglig is perhaps rooted in the tardiness with which the implementation process has been carried out. Suffice it to note that the religious, sociological and political discontinuities between the north and south of Sudan presuppose the display of antagonistic cleavages which have persisted to post-colonial times. The Sudan was a colonial construct which lacked the necessary ingredients for a strong and united country. The post-colonial political elite's marginalisation of the periphery has eroded any sense of national belonging within the Sudanese psyche. For the southerners, a sense of alienation from the centre is rooted in the history of the plundering of its natural resources and slavery by northerners and a continued policy of cultural oppression since independence. This brief provides an analytical narrative to ascertain whether South Sudan's occupation of the Heglig oilfield was an act of aggression or an exercise of sovereignty. We conclude with some policy recommendations.

Introduction

Complications arising from the ineffective implementation of the CPA, which ended decades of armed conflict between Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), has

had far-reaching consequences for the economy and people of Sudan and the recently independent Republic of South Sudan. Since the January 2011 referendum, unilateral action by actors to the conflict has been the norm rather than the exception. It is perhaps through this unilateralism,

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and possibly because of the slowness of the implementation committee of the CPA, that the army of the Republic of South Sudan entered the Heglig oil-producing border region on 10 April 2012, sparking what has become known as the Heglig oil conflict with the Republic of Sudan. The ensuing confrontation left about 500 casualties on both sides. The question is, 'How did it get to this point? Why are certain parts of their common border in dispute?'

The present stand-off with the Republic of Sudan is the end result of a complex of unresolved issues penned in the CPA. The CPA was a comprehensive, landmark peace agreement signed in January 2005, bringing to an end more than 20 years of armed conflict between the Arab North Sudan and the animist and Christian South Sudan. This brief attempts to assess whether the unilateral occupation of the Heglig oil region was an act of aggression or an exercise of sovereignty by the Republic of South Sudan.

Background to the Sudan conflict

To better appreciate the present impasse, a brief overview of the Sudan conflict is imperative. History suggests that Sudan has been inhabited since antiquity. Modern Sudan owes much to Napoleon Bonaparte, who upon the defeat of the Mamelukes in 1797 paved the way for Muhammad Ali to establish some form of foothold in present-day Sudan.¹ By 1884, Sudan was under the control of Muhammad Ahmad, who proclaimed himself Mahdi, the second great prophet after Mohammed. He rallied all the Sudanese ethnic groups and declared war against the infidels, who at this time were the Egyptians and the British. Though the British attempt to retake Sudan failed, Britain did nevertheless establish some form of authority over the territory through the Anglo-Egyptian Condominium Agreement of 1899.²

The joint Anglo-Egyptian administration suffered an enormous setback in 1924, when Sir Lee Stack, the Governor-general of Sudan, was assassinated in Cairo, Egypt. This resulted in the expulsion of all Egyptian officials from Sudan and a further deterioration of Anglo-Egyptian relations after the First World War. Anglo-Egyptian relations were, however, restored after the 1936 understanding, which saw the deployment of Egyptian colonial personnel to Sudan. The Anglo-Egyptian entente roused Sudanese nationalists, who objected both to the return of Egyptians and the fact that important decisions concerning the future of Sudan were decided by foreigners without

a robust input from the Sudanese themselves. Expression of this national feeling was seen in the formation of the Graduates' Congress under the leadership of Ismail al-Azhari.³

The years after 1945 saw the transformation of the Graduates' Congress to the National Unionist Party, which clamoured for independence of the Sudan, with a union with Egypt. Several religious groups and personalities, including the powerful Sayed Sir Ali al-Mirghani, supported the Unionist party. On the other hand, the Umma Party, backed by Sayed Sir Abdur-Rahman al-Mahdi, demanded unqualified independence of the Sudan with no links to Egypt.⁴ Though the Unionist party won the 1953 general elections, the constituted parliament voted unanimously that Sudan should become a fully independent sovereign state on December 19, 1955. On January 1, 1956, Ismail al-Aihari, leader of the Unionist party, was appointed as prime minister and led a five-man Council of State which was to take over the powers of the governor-general until a new constitution was agreed upon.

As the new leaders were preparing to put the state machinery into place, especially by filling civil-service posts with the returning British expatriates, General Ibrahim Abboud staged a bloodless army coup that toppled the government of Ismail al-Aihari. The newly independent democratic state was therefore sacrificed for selfish political expediency, as the constitution was suspended and the assembly dissolved.

Sudan therefore started on a bad footing the process of post-colonial nation building. Part of this nation-building exercise led to the main concentration of business and development opportunities only in the – incidentally, Moslem – North. Though Sadik al-Mahdi was appointed as prime minister in 1966, with the main aim of reconciling the southern part of the country with the North, little reconciliation was achieved. Successive prime ministers visited the South to try to bring the warring belligerents into mainstream Sudanese politics, but to no avail. The Ministry of Southern Affairs equally sought to restore normalcy to those parts in the South under government control; the Equatoria province, however, proved hard to please.

Conceptualising the Sudan conflict: Why the South voted for separation

The Sudan conflict stemmed from the fact that the departing colonial masters had failed to resolve outstanding political, social and cultural

differences between the Moslem North and the Christian and animist South Sudan. This persisting conflictual situation between the North and the South is born of the fact that the northern Moslem political elites inherited a complicated developmental process that had begun just before and after the Second World War. The mass populist and nationalist movements which these political elites inherited could only hold the country together for a short while; after independence, these cracks became more visible.⁵

In fact, the political differences between the North and the South actually began before independence. It should be recalled that on 18 August 1955, a mutiny of southern soldiers in the Equatoria Corps broke out, 84 miles from Juba.⁶ The principal reason for the dissatisfaction with the decolonisation process was that southern politicians were completely sidelined and Moslem northerners were installing themselves, like the new colonisers, in the South. There was in fact a general understanding in the South that the decolonisation process was more a negotiated settlement between the colonisers and northern elites.⁷

During the colonial period, the two territories had been largely separate in terms of the nature and structure of the government. The two territories were ruled separately and were only united some nine years before independence. The reunification of the two Sudans was hurriedly arranged in order to prepare the territory for independence. But the stark differences between the two territories made this unity unattainable and unworkable. To accentuate this unworkability, northerners were not allowed to hold government positions in the South, and southerners were also not accepted in the North. Little attention was given to the cultural, political, social and religious exigencies of the southerners. The fact that the South was ruled as a different political and cultural reality from the North made the debate even more interesting and intriguing. Southerners were therefore indifferent to Sudan's independence; it did not lead to massive jubilation and nationalistic celebrations, as was the case in several other African countries.

The turning point of the relations between the north and the south was the introduction of Sharia law in September 1983. President Jaafar Mohammed al-Numeiry announced that the penal code had been revised in order to link it organically and spiritually with Islamic law.⁸ According to the new penal code, theft, adultery, murder and related offences would be judged according to the Koran, and alcohol and gambling were prohibited.

The introduction of the new law necessitated the mobilisation of large sums of money, which many in the South saw as a waste of taxpayers' money and a drain on the scarce resources of the country.

The introduction of Islamic law led to widespread protests by students, industrial workers and medical doctors. By the end of 1983, the country was ungovernable, and members of the Southern Sudanese insurgents resumed their armed struggle against the central government. Lt.-Col. John Garang was sent to quell the uprising. He ended up rallying all the armed groups in the south and formed the SPLA in 1983. By 1991, these troops numbered almost 60 000 armed militia, with logistical support from the United States' (US) army.⁹

Victory for both sides on the divide has seemed untenable, and the various subregional organisations have been busy from 1984, trying to bring the two parties to the negotiating table. However, in 2005, the Intergovernmental Authority on Development (IGAD) facilitated the signing of the CPA, which was a set of agreements signed between the SPLM/A and the government of Sudan. The CPA was aimed at ending the Sudan civil war, developing democratic governance countrywide and sharing oil revenues. It was also aimed at setting a timeline for South Sudan's self-determination within the future Sudan. The CPA is made up of several protocols that deal with specific issues relating to the conflict. Prominent among the protocols are the Machakos protocol, the protocol on power sharing, the agreement on wealth sharing, the Abyei protocol, South Kordofan and Blue Nile protocol, the agreement on security arrangements, the permanent ceasefire and security arrangements, the implementation modalities and global implementation matrix and appendices. Most of the protocols have been implemented; however, the Abyei and wealth-sharing agreements have been the most contentious since the coming into force of the CPA in January 2005. These are the ones that have led to the current impasse in Heglig.

The Heglig crisis

In order to convey a better understanding of the cause of the conflict in Heglig, it is important to revisit the history of Heglig. The oil town of Heglig is located inside the disputed Abyei region. The region is home to the Greater Nile Oil Project, which began in 1996 and is currently run by the Greater Oil Petroleum Operating Company (GNPOC) consortium.¹⁰ Heglig, it is argued, is still

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a disputed region, claimed by both the Republic of Sudan and South Sudan, partly because of the 2009 ruling by the Permanent Court of Arbitration in The Hague, which states that Heglig is *not* part of the disputed Abyei region.¹¹

Abyei has been for many decades an area of great contestation between the Misseriya ethnic group and the Ngok Dinka. Though the Misseriya are nomadic Arab cattle herders, their yearly presence in Abyei with their cattle has been a constant source of discord with the Ngok Dinka, stemming from the vast destruction caused by the cattle to Ngok Dinka arable land and unmaturing food crops.¹² The Misseriya claim ownership of the Abyei region, principally because Abyei is located between the Bahr-el-Ghazl and South Kordofan provinces, which geographically, ethnically and politically are caught between North Sudan (Sudan) and South Sudan. Secondly, the Abyei region is rich in oil reserves, making it an important area of contestation between both peoples for the oil resources it possesses.¹³

The fundamental issue of identity and ownership of the Abyei region was one of the sticking points of the 2005 CPA agreement, which promised Abyei a referendum to decide whether the territory would join northern or southern Sudan, in conjunction with the recent vote on South Sudan's independence.¹⁴ The Abyei referendum did not, however, take place, partly because of continued attempts by the National Congress Party (NCP), which from the beginning had sought to derail the process, and had initially rejected the report by the Abyei Boundary Commission. The report was accepted by the SPLM/A. One important drawback of the report was that it failed to determine the original inhabitants of Abyei and who was eligible to vote in the Abyei referendum.¹⁵ As a result, Abyei's boundary with the North is ill-defined, and the question of identity and belonging has equally not been resolved.

**Identity, citizenship and belonging
in the area**

This brings to the fore the fundamental question of identity, citizenship and belonging in the area. This should be seen within the greater and wider context of the imperfections of the CPA and the AU High Implementation Panel and the guarantors of the agreement. The conflictual relationship between the North and the South is a clear manifestation of these imperfections. Thus, in order to 'right' what the CPA failed to do, the South unilaterally occupied the Heglig

oil region. This occurred on April 10, 2012, when the South moved close to 5 000 soldiers to the disputed area, pushing its soldiers about 25 km into the Republic of Sudan. Several international actors, including the US, the United Nations (UN) and the AU, condemned the move and called for an unconditional withdrawal. Initially, the South refused, convinced that it had a legitimate claim on Heglig (which had been ethnically cleansed by the North during their civil war). However, after enormous international pressure, the South voluntarily withdrew from Heglig after holding the oil-rich territory for 10 days.

But why would the South embark on such a bellicose move just a year after seceding from the North? The argument was very clear; the South was exercising its sovereign right over a territory it had always maintained belonged to the South. The occupation took place some few weeks after the South stopped producing oil as a sign of disapproval of the exorbitant transportation fee which the North was imposing on the South, which amounted to about 80 per cent of all oil revenue from the South. This fee the South considered outrageous and a sign of outright greed on the part of the North administration.

The South thus protested by shutting down all oil transportation through the North, and started negotiations with Kenya for the construction of a new oil pipeline from the South to the Kenyan port of Mombasa. The occupation of Heglig was also seen by the South as a sequel to the oil shutoff, which deprived the North of a major source of its revenue. The timing could not have been better for the South, because it occurred at a time when the North was facing an armed uprising in Darfur, South Kordofan and the Blue Nile. The northern opposition has grown very organised and coherent in articulating fundamental economic and political issues affecting the country. International sanctions and multiple International Criminal Court indictments have also rendered President Bashir particularly vulnerable.¹⁶

The Heglig oil crisis revealed three fundamental issues about North and South relations. The first is that the North is not ready to let the South go, and is ready to even use force to reverse the January 2011 referendum. Secondly, there are deep-rooted cultural, socio-political and religious issues which have not been resolved. Thirdly, the South has built a strong and formidable army which can stand its own against the North; by invading the Heglig oil region the South was sending a strong message that it was ready to take on the North militarily and assert its independence. And fourthly, the invasion is

a clear sign that South Sudan is truly a member of the community of nations empowered to make consequential decisions and defend its perceived interests, regardless of where these decisions might lead.¹⁷

Contending arguments: Aggression or an exercise of sovereignty?

This brings us to the question of whether the actions in Heglig by both the governments of Sudan and South Sudan are acts of aggression or sovereignty. What are the arguments and counter-arguments of both parties? To answer this we must first define what is meant by the terms *aggression* and *sovereignty*. *Aggression* is defined as a forceful action or procedure which is usually unprovoked but can be retaliatory, for example a country continually making encroachments into another country or violating the territorial integrity of another.¹⁸ *Sovereignty*, on the other hand, can be defined as supremacy of authority or rule as exercised by a sovereign or sovereign state over a geographic area.¹⁹ This is a complex question, because despite the claims by the Ngok Dinka ethnic group of South Sudan to have the legitimate rights to the Abyei area, history shows that the Misseriya, who are said to come from the north, have also a legitimate claim to the Abyei area, as for many decades they criss-crossed between the south and north to graze their cattle.²⁰ So one could argue that both the governments of Sudan and South Sudan have a legitimate claim to the Abyei area, and thus their actions should neither be seen as aggressive nor exercising sovereignty over the disputed area. Rather, South Sudan's occupation of the Abyei region should be seen as a continuation of the bellicose relationship that has characterised the relations between the SPLM/A and the NCP. In a nutshell, the Heglig crisis could be seen as an act of mutual aggression, as both parties have not proved beyond doubt the ownership of the region. Yes, the South can claim ownership; transhumanism is a reality in Africa which must be accepted. Needless to say, the African states are an artificial creation, which bears little resemblance to the ethnic and geographical reality on the continent.

Despite recent efforts by the United Nations Security Council (UNSC), which unanimously backed a US-drafted resolution threatening to sanction both governments if they did not immediately cease hostilities and enter into AU-mediated peace talks, the Republic of Sudan is still engage in bombing South Sudan's positions

in the Equatoria province, and rebel positions in South Kordofan and Blue Nile.²¹ The Sudan government accuses South Sudan of intentionally damaging the Sudanese pipeline that connects Heglig's oilfields to Port Sudan, while South Sudan counters this accusation by pointing out that Sudan had bombed the Heglig area at random, which resulted in damage to the pipeline and heavy civilian casualties in the neighbouring region.²² South Sudan has maintained that its actions in the Heglig region were in self-defence, while the government of Sudan maintains that its actions were a reaction to the provocation by the Republic of South Sudan; this has led AU mediator Thabo Mbeki to describe the current tense situation in Sudan and South Sudan as being one in which both sides are locked in a 'logic of war'.²³

Recommendations and way forward

In conclusion, one would recommend that in order for there to be lasting and sustainable peace in Sudan and South Sudan, the Abyei dispute should serve as an eye-opener regarding all the other CPA protocols which have not been implemented. Particular attention should be paid to the situation in Darfur, South Kordofan and the Blue Nile. The questions of identity, ethnicity, land redistribution, grazing rights and oil-sharing ratio should be resolved once and for all. The international guarantors who played a key role in the drafting of the CPA must act swiftly and decisively in implementing these policies.²⁴ Furthermore, one would recommend the following measures in order to achieve sustainable peace and development in Sudan and South Sudan:

- The voluntary withdrawal of South Sudan from Heglig should be lauded, and a more effective and constructive communications channel should be opened between the two capitals.
- The international community should reconsider the warrant of arrest issued for Sudan's President Bashir, on condition that he renounces supporting terrorists and terrorists' activities in South Sudan and across the globe.
- Pressure should equally be brought to bear on Sudan to revisit the protocol relating to wealth sharing and to monitor the activities of multinational oil companies operating in the region.
- South Sudan should also be encouraged to renegotiate the oil transportation rights it had with the North, and should equally be willing to pay market-related prices for such transportation.

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The Heglig crisis could be seen as an act of mutual aggression

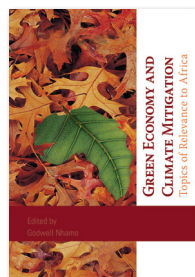
The people of both Sudans must understand that by accident of history and geography, they are bound to live together

- The sharing of the national debt of the country prior to the January 2011 referendum should be carried out in such a way that the economy and gross domestic product (GDP) of the South can support it over time. An equitable format would disadvantage the South, as most of the debts were incurred by the North's political elites.
- The people of both Sudans must understand that by accident of history and geography, they are bound to live together, because over the years people from both sides of the divide have established personal relationships that have transcended racial, cultural and religious differences.
- Pressure should be brought to bear on both governments to implement the remaining protocols of the CPA; if there is failure to implement these, targeted sanctions should be contemplated.
- The international community, particularly the AU and IGAD, should facilitate dialogue between the Misseriya and Ngok Dinka people in order to strengthen relationships between both ethnic groups and guarantee the grazing rights of the Misseriya in the fertile Abyei plains and surroundings.²⁵ Care should, however, be taken that such rights should not infringe on the rights and privileges of the Ngok Dinka as the indigenous ethnic group of Abyei.

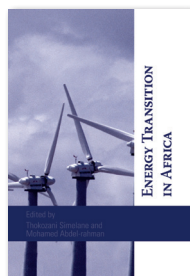
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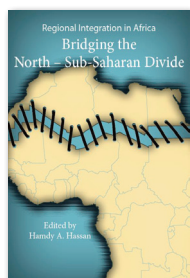
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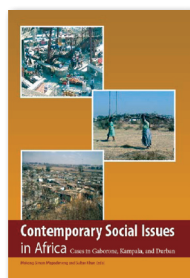
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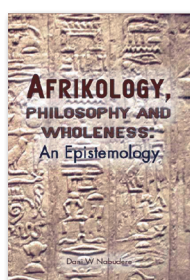
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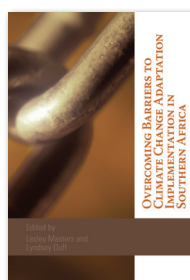
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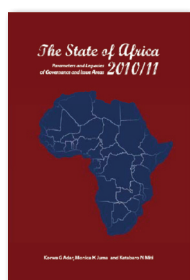
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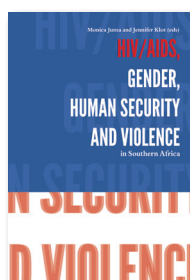
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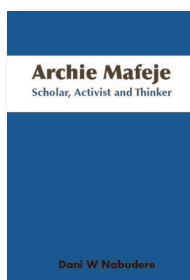
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