Sudan

The Impact of Institutions on Violent Conflict

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1. Introduction

Violent conflicts couched in the language of self-determination disputes are rightly considered to be among the most intractable, violent, and destructive forms of conflict. Apparently unending conflicts have plagued Kashmir, the Great Lakes Region of Africa, the Middle East, and the Caucasus, among others. They have cost millions of lives, displaced multiple more people, wrecked entire national economies, and seem to be 'solution-proof.' Yet, not all such conflicts are violent and destructive: Quebec and Belgium are two cases in point. Nor do all violent self-determination conflicts evade solutions either: Northern Ireland, the Swiss Jura and South Tyrol are examples of sustainable peace after violent conflict; the Western Balkans have not returned to the violence experienced throughout the 1990s and early 21st century; and while constitutional arrangements in Aceh and Bougainville may not be perfect, they have ended violent conflicts. In other words, institutional design can play a key role in both preventing violent escalation and restoring peace after a period of violent confrontation. At the same time, institutions can have the opposite effect: rather than mitigating violence, they can create new grievances and/or exacerbate pre-existing ones. This dual effect of institutions, however, does not occur in a vacuum—institutions, and their effectiveness, are context dependent. They need to fit the specific circumstances of the situation to which they are applied; otherwise even well-intended institutions can have perverse effects. Thus, the study of how institutions impact on violence needs to be case-specific. It can draw on broader lessons of institutional design and contribute to understanding general patterns of how institutions can mitigate the risk of violent conflict, but it cannot offer a blueprint of 'successful' institutional design for managing conflict.

This caveat clearly applies to the case that we explore in this paper. The largest country in Africa with a size of just under 2.4 million square kilometres, Sudan has a population of slightly over 39 million people. The country is rich in natural resources (fertile land, mineral deposits, and oil), but levels of development vary significantly, with the Arab Muslim north significantly better off on most indicators than the South (and the rest of the country). This uneven development is partly a legacy of the country's colonial history and the way in which the British administered Sudan until its independence. Yet, post-independence Northern dominance, driving, in most cases unilaterally, the design and reform of the country's institutions and domestic policies, contributed a fair share to the persistence, and exacerbation, of the colonial legacy, which in turn was compounded by mismanagement of the consequences of environmental degradation and of the discovery and exploitation of oil. Unsurprisingly, violent conflict, by which Sudan has almost constantly been plagued since independence can be defined along these major geographical, social, economic, and cultural divides. Individually, neither of these underlying factors need have resulted in the intense, widespread and long-term violence that Sudan's people incurred. Yet the toxic mix of underlying problems compounded by weak and ill-suited institutions and poor government policies and an at times hostile neighbourhood, has exacerbated the severity of the problems to which Sudan eventually succumbed.

As a result, the country has had to confront three major violent internal conflicts since independence.[1] Among them, the North-South conflict is the most significant: it began in 1963, saw

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[1] Apart from the North-South conflict, Sudan has also seen sustained violence in Darfur where the Darfur-based Sudan Liberation Movement (SLM) and the Justice and Equality Movement (JEM) had begun to attack government forces in 2003.

a ten-year respite after 1972 and resumed in 1983. Over the next twenty years, neither side was able to gain a significant military advantage. Eventually, a settlement—the Comprehensive Peace Agreement (CPA)—was brokered by the Inter-Governmental Authority on Development (IGAD) in 2005,[2] subsequent to which a referendum took place in the South in January 2011 and a formal declaration of independence has been scheduled for 9 July 2011.

In order to investigate the impact of institutions on the propensity towards violent conflict, we first examine the empirically observable impact that institutions have had in mitigating and exacerbating violent conflict in Sudan by recounting the history of the North-South conflict. This narrative forms the background to our conceptual exploration of the utility of territorial self-governance and power sharing as conflict settlement mechanisms in cases like the one in Sudan We then examine in detail the 2005 CPA to analyse whether the actual institutional designs crafted in this case really address the grievances underlying the Southern rebel movements' demands. This will allow us to provide a theoretically informed and empirically illustrated answer to the question whether Sudan's lasting difficulties to achieve sustainable peace are the result of the wrong approach to conflict management (flawed institutional design of the settlements adopted) and/or whether there are other factors that account for the failure of any of the agreements to bring about sustainable peace (non-conducive context for institutional design adopted).

2. Mitigation or exacerbation: the impact of institutions on violent conflict in Sudan

The underlying assumption of the project being that institutions can mediate societal stress caused, in part, by 'shocks' and thus influence whether societal stress causes violent conflict. The project defines 'shocks' as sudden (and unexpected) changes to the distribution of resources and power. These shocks can arise from political, economic, ecological, or demographic dynamics and can either be directly linked to climate change (e.g., floods, droughts), or indirectly (migration, environmental degradation), or not at all (e.g., global economic crises, resource windfalls or shortages, elections or domestic or external events and developments, including interventions). Shocks, in the project's design, can lead to the outbreak of violent conflict, if their consequences cannot be managed; that is, if existing institutions cannot cope with shock-induced changes to the distribution of resources and power. In the case of Sudan, several such shocks have been experienced since independence. Those directly and indirectly related to factors that might be similar to future consequences of climate change include drought and environmental degradation and their respective consequences. However, as we argue below, the causation from these shocks to violent conflict is far from

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Although the Darfur Peace Agreement (DPA) was signed in May 2006, because of the fragmentation of the so-called Western Movements, fighting in Darfur continues to date with grave humanitarian consequences. The third conflict started in the east in 1996, when the Beja Congress took up arms against Khartoum in the Red Sea, Kassala and Gedaref states. Given the strategic importance of Eastern Sudan, Khartoum began to engage the Beja Congress militarily. For the next ten years, the conflict continued on a low-intensity level, before the Eastern Sudan Peace Agreement (ESPA) was signed in October 2006. Apart from these three violent centre-periphery confrontations, there has also been significant violence within the periphery, especially related to power-struggles between different groups in the South and in Darfur.

[2] The CPA was the outcome of a prolonged ten-year IGAD-mediated negotiation process, which resulted in several agreements and protocols, most of them combined in the CPA. Significantly, as part of the process, the 1998 Constitution was the first one to formally establish federal structures in Sudan. However, it reflected strong Islamic tendencies and was promulgated after elections which were boycotted by most major political parties in the North and South. Moreover, it was suspended a year later when President Bashir declared a state of emergency. For details on the IGAD process until 1999, see Hoebink (1999).

straightforward or linear, but rather betrays a complex interplay of a large number of factors. Among them, however, institutions are central. The same goes for shocks unrelated to the likely consequences of climate change. In particular, the discovery and exploitation of oil, the windfalls that it generated, and the increasingly fierce competition over control and distribution of resources and revenues have played a major role in Sudan's civil wars. Causation here is somewhat more straightforward to establish, and with it the role that institutions played in exacerbating and mitigating violent conflict. Recounting, briefly, the history of the North-South civil war, which is the focus of the following paragraphs, provides the empirical illustration to this broad claim and the background against which we examine the 2005 CPA in its ability to mitigate Sudan's long-standing propensity towards violent conflict. We focus on just one of the three civil wars in Sudan not only for reasons of space but also because the North-South confrontation, apart from being the longest and most costly to date in terms of human misery and material destruction, is highly illustrative of the complex relationship between violent conflict and the direct and indirect shocks discussed above.

North-South differences are many and have a long pre-colonial and colonial history. Over the centuries, what was the northern part of the independent state of Sudan between 1956 and 2011 went through a cultural process of Arabization which began with the arrival of nomadic tribes from Egypt. By the time Britain colonised the area, these Arab communities were firmly established and their elites favoured by the British. These elites developed a new understanding of Sudanese-Arab identity (Sharkey 2008), and the north became the centre of Sudanese nationalism (Beshir 1968). Regional disparities in Sudan were exacerbated by the British policy of administering the north and south separately, something that widened existing cultural differences (Roden 1974). These differences, while often expressed through binary concepts such as North-South, Arab-African, and Muslim-Animist/Christian, mask a far more complex heterogeneity of the populations and regions of north and south Sudan (Mitchell 1997).

The North-South civil war occurred in two phases, interrupted by a ten-year period of relative peace following the 1972 Addis Ababa Agreement. The run-up to independence in the first half of the 1950s was characterised by both violence and dialogue. A brief, but intensely violent mutiny in the South was put down by Northern troops in August 1955, followed by northern political parties promising southern activists a federal constitution in exchange for their support of independence. Yet, Northerners reneged on this promise in the first constitution coming into force upon independence in 1956 which established a highly centralised, unitary state. The memory of the brutal crushing of the 1955 mutiny, combined with Southern political and institutional marginalisation and continuing Northern reprisals and discrimination, limited Southern appetite for violent resistance for almost a decade. Yet, in light of this marginalisation and discrimination, educated southerners began to organise politically in the 1950s, foreshadowing southern regional activism and its growing militancy (Beshir 1968). What became known as the 'Southern problem', thus, did not immediately erupt into sustained violence, but as institutions failed to respond to legitimate Southern grievances, tensions began to build up. Frustrated in their demands for a federal state structure, Southern politicians were unwilling to continue to support a government coalition of Northern parties after the 1958 elections. The inability to form a stable government led to a military coup in November 1958, followed by two, albeit ultimately unsuccessful counter coups in March and May 1959. While military rule brought a degree of development and prosperity to the North, especially its urban centres, the South remained poor, and by comparison increasingly so. Politically

marginalised, culturally repressed and discriminated, and economically impoverished, discontent among Southern activists grew and soon manifested itself in various, initially localised rebel movements which, by 1964, converged to form the Anya-Nya. While militarily not a major threat to the regime in Khartoum, the latter failed to defeat them, a failure, in turn, that put the 'Southern problem' firmly on the Northern agenda. In the end, the military regime fell as a result of mass popular protests, sparked by the death of a student during riots following a public discussion of the 'Southern problem' at Khartoum University students' union in October 1964.

The subsequent establishment of a transitional government in November 1964 offered an opportunity to address, qua constitutional reform, the 'Southern problem'. Yet, the 1964 constitution, being an almost unchanged version of the 1955 version with the exception of the move to a unicameral legislature, failed to do so. Nor did more than three years of protracted negotiations in different formats lead anywhere because no consensus could be achieved on whether to treat the South as a single region, with its own security forces, and with its status protected against unilateral change through a requirement of a two-thirds majority in parliament for any changes to a prospective status law for the South. In addition, in 1967, the committee charged with drafting a new national constitution affirmed the role of Shari'a law, in clear opposition to the express wishes of southern representatives (Tier 1982).This lack of Northern concessions, in part, can be explained by the relative ineffectiveness of the Anya-Nya, the continued in-fighting within the rebel movement and between the rebels and Southern politicians in Khartoum, and the gradual ability of the Khartoum government to contain, at least temporarily the Southern rebels by arming and training tribal militias.[3] Much as a decade earlier, democracy in Sudan did not survive long after elections in 1968: in May 1969, a carefully planned military coup brought Ja'afar Numayri to power who would remain there until spring 1985.

Having consolidated his grip on power with the crushing of the Ansar (Partisans of Islam) in 1970 and of the Sudanese Communist Party in 1971, Numayri turned his attention to the South only to realise quickly that the conflict there had reached a stalemate and could not be resolved militarily, especially in light of Southerners putting up a more united front and having consolidated their military and political efforts with the founding of the SSLM in January 1971, the military equipment and training they received from Israel, and the openly expressed sympathies for the Southern movement from Ethiopian Emperor Haile Selassie (Collins 2008).[4] This encouraged him to seek an agreement to end the civil war. Through the mediation of Haile Selassie and because of both sides' willingness to make concessions and reach compromises the Addis Ababa Agreement was concluded in 1972, ending the first phase of the North-South civil war (Mitchell 1997). The Agreement established a Southern region with its own legislature and a large measure of political and economic autonomy, control of its security forces, and the presence of three Southerners as ministers in the cabinet in Khartoum.[5] While neither side showed much enthusiasm for the agreement, and

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[3] On the use of militias in the North-South civil war, see more generally Prendergast (1991).

[4] We shall consider in greater detail below the regional rivalries and super-power politics that provided further fuel to the conflicts in Sudan. See also the analysis by Richard Stevens (1976) of the positive effect that the 1972 Agreement had on Sudan's relations with its neighbours. The abrogation of the agreement in 1983 reversed many of these effects as analysed by Ronen (2002) and Mantzikos (2010).

[5] The status of the Southern region was incorporated in the 1973 Permanent Constitution in Article 8 as follows: "Within the Unitary Sudan, there shall be established in the Southern Region a Regional Self-Government in accordance with the Southern Provinces Regional Self-Government Act, 1972, which shall be an organic law, and shall not be amended except in

decreasingly so, the combination of self-governance and (a limited measure of) power sharing offered an opportunity to come to a modus vivendi between North and South that marginalised, for the time being, those who demanded independence in the South and those that argued for more central control in the North.

However, over time, the 'hegemonic preferences' of the government overruled the Agreement's provisions (Mitchell 1997). The Agreement came under increasingly intense pressure with the growing conflict over control of valuable oil resources threatening the core of the self-governance arrangements (Mawson 1991). In 1983, towards the end of the Numayri period, the gradual chipping-away at that agreement culminated in Numayri's dissolution of the Southern region and its government and legislative assembly, to be replaced with three individual states and far fewer competences. This abruptly ended a ten-year period of relative calm between North and South and ignited the second civil war between North and South.

The violent North-South conflict, the frequent alteration between military and civilian rule, the brutal repression of internal dissent in the north and the south alike all were symptoms of more deep-seated problems (Ali and Matthews 1999; Prendergast 1991): ethnic, cultural, and religious divisions, political upheaval, and economic decline, individually and collectively, contributed to the outbreak and continuation of violence in Sudan (Poggo 2009). In other words, civil war in Sudan can be seen as an intensification of the permanent tensions resulting from profound inequality, rather than a diversion from a 'normal' peacetime (Keen 2001).

Yet, while these underlying causes were continuously present, they did not result in equally permanent violence, and institutions play a key role in explaining both periods of relative calm and of intense fighting: the 1972 Agreement was a major factor in ending the first civil war, its abrogation in 1983 was similarly decisive in starting the second one. Yet, while clearly important, institutional shortcomings were compounded by a number of other factors. Islamisation, and especially an increasingly justified Southern fear of the imposition of Shari'a law, was a significant driver of conflict.[6] Economic decline during the 1970s, compounded by water and food shortages and the mismanagement of the agricultural sector in the 1970s and 1980s and exacerbated by drought and the famine that it induced in the 1980s, dramatically worsened living conditions in the South, while creating a steady stream of 'income' for Southern rebels who hijacked international food aid for their own purposes. The large-scale displacement of the civilian population from some of the areas worst-affected by drought and famine, moreover, supplied plenty of willing (and at times unwilling) recruits for both Southern rebels and government-armed tribal militias. Drought and famine, thus, were not directly linked to the outbreak of the second phase of the civil war, but contributed to its continuation. However, this does not diminish the role of institutional and policy failures in Sudan: there was a chronic lack of institutional structures and political will to intervene in order to prevent drought from creating famine and famine to lead to mass migration within Sudan. At the same time, famine response policies were at best under-developed, limiting the government's ability to make effective use of international food aid. By 1984/5, more than a decade of economic

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accordance with the provisions thereof." Further reference to the region and its powers is made in Article 184 (local self-government).
[6] See Monica Duffy Toft's (2007) analysis of the role of religion in Sudan's civil wars, as well as Alex de Waal's (2001) discussion of the conflict in and over Nuba.

decline and renewed civil war had further undermined institutional capacity to deal with this particular shock. (Teklu et al. 1991)

At the same time, the discovery and subsequent exploitation of oil reserves was a significant factor in shaping the dynamics of the North-South civil war. Similar to the exploitation of international food aid by the rebels, revenues generated from the export of oil helped the government to sustain and increase its military efforts. At the same time, this increased the strategic value of oil-producing areas which became a target of rebel attacks and of policies of forced displacement by the government (Switzer 2002). Moreover, the abolition of the Southern region in 1983, while the last and decisive strike by Numayri at the territorial arrangements established in 1972, had its precursor in unilateral boundary changes by Khartoum in 1980 connected to the discovery of significant oil reserves in southwest Sudan. Numayri created Unity State in order to bring the oilfield around Bentiu under the control of the central government, thus effectively excluding the Southern region from decisions over exploitation and revenue allocation. Unsurprisingly, this contributed further to the resentment among Southerners and their increasing disaffection with the (mal-) functioning of the Addis Ababa Agreement (Switzer 2002). In other words, the 'oil factor' worked in two ways. On the one hand, it intensified and sustained violent confrontation. On the other hand, it exposed the shortcomings in Sudan's institutions: they were weakly protected from unilateral change. Once 'reformed', they exacerbated existing tensions between North and South and became a major contributing factor in the outbreak of the second phase of the civil war. At the same time, the first and perhaps crucial breakthrough to the 2005 CPA was achieved with the Protocol on Wealth Sharing that addressed the oil factor by creating institutions to address the key issues of decision-making over oil management and revenue sharing.

Institutions, in this sense, have had both a mitigating and an exacerbating effect on the propensity towards violent conflict: lack of institutional accommodation of Southern demands for substantial autonomy at independence contributed to the outbreak of the first civil war in 1963, while the institutions put in place with the Addis Ababa agreement of 1972 brought this first North-South confrontation to an end, but only to see the abrogation of regional self-government as provided in the agreement ten years later to trigger the second civil war that was to last until 2005. In all this, environmental degradation, drought and famine, neglect and under-development, exploitation and unfair resource sharing, internal and external displacement, and outside interference are important contributing factors, exacerbating grievances and shaping the constraints and opportunities that government, tribal militia and rebel forces face. Yet, as we shall demonstrate later in our assessment of the CPA, institutions retain a pivotal role in ending or prolonging violence.

3. How context and content matter: from conflict settlement to sustainable peace?

Institutions designed to manage the conflicts underlying civil wars in practice work as a package; that is, they 'interact in complex ways' (Belmont et al. 2007: 4). What matters, therefore, is that different dimensions of institutional design fit each other and the context in which they are to be implemented to enable overall outcomes that are conducive to the success of conflict settlements. Put differently, an inquiry into 'success conditions' needs to establish when particular conflict

management tools (such as territorial self-governance and power sharing) are feasible (i.e., structurally appropriate) and when they are viable (i.e., contributing to sustainable peace).[7]

Institutions for territorial self-governance are generally useful in conflict situations involving territorially compact communities[8] willing to accept self-governance in the region they inhabit as the way in which they express their right to self-determination (Coakley 2003; Gurr 1993). In addition to territorial self-governance two types of situations will additionally require power sharing mechanisms:[9] the need to accommodate local, politically relevant heterogeneity in the self-governing territory and to reflect the significance of the self-governing territory relative to the rest of the state.

Power sharing as a result of efforts to accommodate local population diversity in the self-governing territory takes the form of a regional consociation, such as in Brussels, South Tyrol, South Sudan (during the interim period), and Northern Ireland.[10] If the significance of the territory (or territories) in question relative to the rest of the state is high and necessitates power sharing at the centre, the institutional outcome is a sovereign consociation, such as in Belgium, Sudan (especially under the provisions of the 2005 CPA), Switzerland, or Iraq.[11] Regional and sovereign consociations are not mutually exclusive but can occur together, as envisaged, for example, in the Iraqi constitution of 2005 or the Dayton Accords for Bosnia and Herzegovina.

'Significance' is one of the less straightforward, but nonetheless important, key concepts of this analysis and relates to several dimensions of what can be gained from control over, or possession of, a particular territory. For states, territory possesses certain value in and of itself, including natural resources, the goods and services produced there and the tax revenue generated from them, and military or strategic advantages in terms of natural boundaries, access to the open sea, and control over transport routes and waterways. Additionally, for identity groups, territory very often is also important in a different way – as a crucial component of their identity. Territory is then conceptualised more appropriately as place, bearing significance in relation to the group's history, collective memories, and 'character'. Yet, for identity groups, too, territory is, or can become, a valuable commodity as it provides resources and a potential power base, including in electoral terms in relation to the state overall if they are sizeable and party-politically united enough to make an electoral impact at the centre. In other words, significance can arise from the size of the local

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[7] In this section we largely draw on (Wolff 2011b, 2011a).

[8] By "territorially compact communities" we refer to groups of people who share a sense of identity that is distinct from other communities in the same state, who are neither dominant nor a numerical majority, and who live predominantly in their historic homeland or an otherwise delineated territory. Apart from adding the characteristic of territorially compact settlement, we thus rely primarily on the definition by Capotorti (1979) who defines a minority as "… a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – posses ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion, or language."

[9] Power sharing is a form governance whereby representatives of different groups make decisions jointly in one or more branches of government. Power sharing can occur as a result of guaranteed arrangements, e.g., particular parliamentary election (reserved seats, quotas) and/or government appointment procedures (d'Hondt mechanism, guaranteed posts for members of particular groups) in combination with specific decision making procedures in relevant branches of the government (qualified or concurrent majorities) or emerge as a result of the electoral process as part of coalition formation.

[10] On regional consociations, see Wolff (2004).

[11] Sovereign consociations are also possible without provisions for territorial self-governance, such as in Lebanon under the National Pact and the Ta'if Agreement.

population (of the identity group concerned), the wealth locally generated (as expressed in GDP per capita), natural resource presence, strategic location, and cultural importance.

The feasibility of territorial self-governance and power sharing is thus determined by three key structural characteristics: the compactness of groups' settlement patterns in a given state; the degree of politically salient heterogeneity in the territorial entities to which powers and competences of self-governance are to be assigned; and their significance relative to the rest of the state.[12]

The existing literature on conflict resolution also offers important insights on the viability of territorial self-governance and power sharing as institutions of sustainable conflict management. As far as territorial self-governance is concerned, consensus extends to the need for institutional arrangements to address the key conflict issues (including assignment of substantive powers to the self-governing entity, adequate financing for their discharge, clear delineation of competences held by the territorial entity and by the centre), to entrench the settlement achieved constitutionally, and to provide for effective dispute resolution mechanisms (Weller and Wolff 2005).

Moreover, the establishment of appropriate power-sharing arrangements has a direct bearing on the success of territorial self-governance: governance arrangements within the self-governing territory must contribute to the local workability of the settlement, and relations with the centre must be structured in such a way that they adequately reflect the significance of the self-governing entity relative to the rest of the state. Yet, power sharing institutions have their own 'success conditions', too.

Lijphart (1977) identified several of these success conditions, based on his study of sovereign consociations in the 1960s and 1970s: overarching, i.e. territorial, loyalties, a small number of political parties in each segment, about equal size of the different segments, and the existence of some cross-cutting cleavages with otherwise segmental isolation. The small size of the territory to which a consociational structure is applied and the direct and indirect internal and external consequences of this, as well as a tradition of compromise among political elites, are also emphasized by Lijphart as conditions enhancing the stability of the consociational settlement (1977).

McGarry and O'Leary (2004, 2009), in their further development of Lijphart's original theory of consociationalism, argue that for consociationalism to work, three conditions need to be in place: integration or assimilation of the respective other group must not be on the agenda of either of the ethnic groups in conflict with each other in the short or medium term; successive elites must be motivated to work for the preservation of the consociational settlement; and elites must enjoy a sufficient degree of autonomy within their communities enabling them to make compromises and concessions without fear of outbidding and outflanking by ethno-centric radicals. What is important about McGarry and O'Leary's analysis is that it draws on a broader understanding of consociationalism than Lijphart does, especially in the sense that they specifically acknowledge the importance of self-rule (i.e., self-governance) alongside shared rule (i.e., power sharing) (O'Leary

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[12] A fourth situational characteristic – transnational links – potentially also shapes institutional design, e.g., through provisions for 'para-diplomacy' (cf. Wolff (2007). This is, however, only of limited relevance in the case of Sudan and we shall therefore not discuss it in further detail.

2005). We will thus operationalise this dimension of conditions of success for any of the settlements considered below along their three factors.

In addition, the literature also acknowledges that favourable domestic factors are rarely enough to make a settlement work. At a minimum, a favourable, or at least non-hostile, external environment is required, i.e., external actors must not seek to undermine an existing settlement and, as necessary, support its implementation, for example financially and/or with security guarantees (Brown 1996; McGarry and O'Leary 2004; Weller and Wolff 2005, 2008; Wolff 2003). This consideration of the external context of settlement sustainability applies equally to territorial self-governance and power sharing designs.

The factors that account for the viability of each of the settlements are summarised in Table 1. As far as the impact of the content of any of the agreements goes, two dimensions matter, namely the degree to which the institutional bargain struck during negotiations reflects the structural conditions of each conflict situation and the degree to which substantive assignment of competences to territorially self-governing entities addresses the concerns and demands of the conflict parties. In addition, appropriate dispute resolution mechanisms should be part of an agreement and translated into institutional mechanisms. The proper financing of self-governance and the constitutional entrenchment of the agreement's provisions are two factors that are somewhat in a grey area between content and context. As they are quite frequently written into agreements, we consider them as part of the content factors for settlement stability, while acknowledging that they are also part of its broader context.

In terms of context, we focus on two aspects in particular: elite agendas and behaviour (McGarry and O'Leary 2004, 2009) and the external environment (esp. Brown 1996; McGarry and O'Leary 2004; Weller and Wolff 2005, 2008; Wolff 2003). Concerning elite agendas and behaviour, we will consider whether integration or assimilation of the respective other group are on the agenda of either of the conflict parties (i.e., whether they properly acknowledge each other's right to be part of the common state with their distinct identity); whether elites are motivated to work for the preservation of the agreement; and whether elites have sufficient autonomy within their communities (i.e., the degree of political heterogeneity within each conflict party).

Apart from these primarily domestic factors, it has been increasingly recognised that there is also an external dimension to the sustainability of any settlement (e.g., Brown 1996; McGarry and O'Leary 2009; Weller and Wolff 2008). Here we will limit ourselves to two factors widely accepted in the existing literature: the absence of effective external spoilers and broad international support for the implementation (and operation) of agreements, including through donor funding and international/regional security guarantees.

Table 1: The viability of territorial self-governance and power sharing as conflict management tools

Content		Match of institutional bargain to structural conditions
		Match of institutional arrangements to conflict issues
		Appropriate dispute resolution mechanisms
		Constitutional entrenchment
		Proper financing
Context	Domestic	Parties' acknowledgement of each other's right to be part of the common state with their distinct identity
		Parties' efforts towards implementation
		Degree of political heterogeneity within each conflict party
	External	Absence of effective external spoilers
		International support for implementation

4. The Comprehensive Peace Agreement of 2005

<u>Institutional Design Outcomes of the Settlement Processes</u>

Much like the 1972 Addis Ababa Agreement, the 2005 CPA incorporates, albeit to different degrees, institutions of territorial self-government and power sharing.[13] Yet, in contrast to the 1972 Agreement, the CPA is an integral part of the framework of the INC of Sudan. As per Article 225, 'The Comprehensive Peace Agreement is deemed to have been duly incorporated in this Constitution; any provisions of the Comprehensive Peace Agreement which are not expressly incorporated herein shall be considered as part of this Constitution.'

The conceptual exploration of the relationship between context and content above has already established that the details of the institutional accommodation of claims by territorially compact groups is contingent upon two further characteristics of the respective conflict environment: the significance of the territory relative to the rest of the state and this territory's degree of heterogeneity (ethnic or otherwise).

What should we therefore expect in the case of institutional design for South Sudan? The inhabitants of the region are often summarily described as Southerners, but this is merely an umbrella term for various predominantly non-Arab tribes and communities – including Dinka and Nuer as the two largest groups (Metz 1992). Overall, these groups comprise approximately 4.07 million people, equivalent to 11 per cent of Sudan's total population (Lewis 2009). The SPLM has been the primary political (and military) representative of the South. However, it was never able to substantively move beyond existing tribal divisions and construct a truly unified Southern identity. The main reason for this was that political and military support was drawn from one particular ethnic group, the Dinka (Young 2003). This led to the emergence of various ethnic splinter groups over the course of the conflict (Ali et al. 2005; International Crisis Group 2002; Young 2003; Branch

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[13] This is an example of a much broader trend, however: contemporary conflict resolution practice in cases of self-determination disputes (in both many actual and proposed settlements) involves forms of territorial self-governance and power sharing in attempts to provide institutional solutions that allow the different segments of diverse societies to realise their aspirations for self-determination while simultaneously preserving the overall social and territorial integrity of existing states. In doing so, such arrangements offer mechanisms for conflict parties to settle their disputes by peaceful means (Weller and Wolff 2005; O'Leary and McGarry 2010; McGarry and O'Leary 2010; Wolff 2009, 2010).

and Mampilly 2004; Collins 2008), many of whom are now locked in a power contest with the SPLM in the run-up to independence. South Sudan is thus a highly heterogeneous territory. It is made up of ten states[14] and roughly encompasses a third of the whole country. In contrast to the deserts and mountains of the arid North, Southern Sudan has a tropical climate. Its economy is heavily dependent on agriculture but it is also an important timber exporting region. Furthermore, the region is resource-rich, including oil. This makes the South 'significant' in terms of our conceptual discussion above. In terms of institutional arrangements of a peace settlement, we would therefore expect the CPA to provide territorial self-governance and both local and central power sharing.

The question that we now return to is central to our paper, but has so far only been discussed in the abstract: under which conditions can political institutions mitigate the propensity towards violent conflict, including in situations exacerbated by particular shocks. As we established earlier, this is essentially a question of both the content of a specific agreement (institutional design in a narrower, structural sense) and one of context (institutional design in a broader sense and contingent upon more agency-specific dimensions).

Peace as a Function of 'Content'

Given the geography and demography of South Sudan, we predicted territorial self-governance, and local and central power sharing as core institutions in the CPA, and these assumptions are confirmed. South Sudan incorporates into one legal personality the ten states of southern Sudan and as such establishes a new level of government in Sudan between the state and national levels.

As noted earlier, the North-South conflict, at least to a significant degree, is a centre-periphery conflict over power and resources (Ali et al. 2005; Collins 2008; Johnson 2003; Schmidinger 2009; Ylonen 2005). In addition, there has been an important religious dimension, especially the rejection, by the South, of the imposition of Shari'a law (International Crisis Group 2002; Zahid and Medley 2006). How do the institutions that the 2005 CPA provides (as incorporated in the 2005 Interim National Constitution – INC) address these issues?

Self –governance. The self-governance status of South Sudan is enshrined in the INC of 2005 in Article 24(b) which, pursuant to the CPA, defines a 'Southern Sudan level of government, which shall exercise authority in respect of the people and states in Southern Sudan'. Articles 25 and 26 further elaborate a number of guiding principles for the 'Devolution of Powers' to the South and 'Inter-governmental Linkages'. As far as the powers of self-governance are concerned, the South clearly gains a lot under the INC (Schedules B and D, read together with Schedules E and F) which establishes a wide range of exclusive competences for the Government of South Sudan (GoSS) in 22 areas, including adoption and amendment of the Constitution of South Sudan; police and prison services; security and military forces; health, education, and welfare services; taxation and revenue raising; reconstruction and economic development; information, publications, media and telecommunications utilities. In addition, there are 31 policy areas in which the Government of Sudan (GoS) and GoSS exercise concurrent powers.

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[14] The states of Abyei, Nuba Mountains, and Blue Nile are currently disputed territories between north and south. They are to hold a referendum in 2011 on whether to join South Sudan, which will at the same time decide upon its independence or continued membership in Sudan.

There are additional and separate provisions for security arrangements in the CPA and INC: a ceasefire agreement, provisions for the integration of rebel units into regular armed forces, and arrangements for Disarmament, Demobilization and Reintegration (DDR). Crucially, the INC acknowledges the existence of separate Southern security forces, including in Article 144 (1) which states that '[th]e Sudan Armed Forces and the Sudan People's Liberation Army shall remain separate, regular, professional and non-partisan armed forces and shall be treated equally as the Sudan National Armed Forces.'

The CPA and the INC also acknowledge the importance of respecting cultural, religious and linguistic diversity, but few concrete commitments follow from this, apart from fairly standard general language on basic human rights and non-discrimination. The CPA, additionally, mandates that 'the legislature of any sub-national level of government may adopt any other national language(s) as additional official working language(s) at its level' and limits the mandatory application of Shari'a law in the South.

Power sharing. The SPLM gains significant representation in the National Legislature and National Executive (28% of seats in each), in the civil service (20-30% of positions, including of middle and senior positions), 'equitable' representation in the National Security Service, in the Constitutional Court, the National Supreme Court and other national courts. Moreover, the SPLM gains the position of the First Vice President, which further increases its influence, including by way of a provision that requires the First Vice President's consensus for decisions about a declaration and termination of a state of emergency, a declaration of war, presidential appointments under the CPA, and the summoning, adjourning, or proroguing of the National Legislature. The SPLM gains significantly higher levels of representation at the GoSS level: 70% of seats in the legislature and executive, respectively (compared to 15% each for the NCP and other political forces in the South). At the State level, the SPLM gains 70% of seats in the legislatures and executives in the Southern states, and 10% in the Northern states (the reverse for the National Congress Party, who is also entitled to one governorship and one deputy governorship in the South).

Power sharing generally is enhanced beyond mere representation at the centre by parliamentary voting procedures requiring 75% approval in both chambers for constitutional amendments, a 2/3 majority in the upper chamber for legislation affecting the rights of States, and a requirement that no legislation affecting the CPA may be introduced without the consent of both signatory parties.

Financing and Wealth Sharing. Given the nature of the North-South conflict, wealth sharing was a key issue in the negotiations of the CPA. Moreover, comparative experience demonstrates that no peace agreement has any prospect of success if its implementation and operation are not properly resourced. While peace may be deemed 'expensive' from an institutional perspective—after all, creating and running a set of new institutions is not cheap—from a human perspective it is without alternative. Specific commitments to proper financing of the implementation and operation of peace agreements, including especially of the institutions it establishes—are therefore commonly part of peace agreements. The level of detail and the nature of the financing mechanisms, moreover, serve as a good indication of the sincerity of the conflict parties. This is especially the case for government parties: if they specifically commit to revenue allocation formulas, allocation of revenue sources, etc., this has a reassuring effect on rebel parties at the negotiation stage. The proof of these commitments, however, is in their implementation.

As far as the CPA goes, it includes a range of different provisions for financing. Leaving aside a the special arrangements for the territory of Abyei and for the Southern Kordofan/Nuba Mountains and Blue Nile States, the GoSS, due to the special status of South Sudan under the INC, has several exclusive and concurrent competences in relation to financial matters, including local tax-raising powers, as well as its own exclusive sources of revenue. Moreover, to address one of the central conflict issues—the exploitation of South Sudan's natural wealth by the North—a detailed wealth sharing agreement was the first to be concluded within the CPA process. This not only creates an important source of revenue for the GoSS (50% of net revenue from oil produced in the South is allocated to the GoSS) but also an income source for the oil-producing States who are to receive at least 2% of the revenue from oil produced in their territory. In addition, the CPA provides that the GoSS is entitled to 50% of all non-oil revenue collected in the South. The CPA also foresees the establishment of a National Reconstruction and Development Fund and Southern Sudan Reconstruction and Development Fund, but without committing the GoS to any specific financial contribution.

Apart from the core institutions of self-governance and power/wealth sharing, the institutional package of the CPA/INC extends further to include also *dispute resolution mechanisms*. These are an important factor in the long-term success of any peace agreement. They can take a variety of different forms, including special committees can be set up to work out compromise solutions to be brought back to the legislature or executive or to make a binding decision; disputants can submit to arbitration, accepting to be bound by the arbitrator's decision; and judicial mechanisms can be utilised to determine the legality of a particular decision or procedure by which it was reached.

In the case of the CPA, a whole range of such bodies is mandated in different areas. Among them, the Constitutional Court takes a prominent position, being the ultimate arbiter in under the INC, including 'constitutional disputes between organs and levels of government, with respect to areas of exclusive or concurrent competencies'. The Southern Sudan Supreme Court similarly has 'original jurisdiction to decide on disputes that arise under the Constitution of Southern Sudan and the constitutions of Southern Sudan states'. Apart from these judicial dispute resolution mechanisms, arrange of other bodies are created or enabled to deal with disputes. These include specifically created (ad hoc) technical committees to deal with disputes over government asset allocation, the Presidency as ultimate dispute resolution forum for disputes over the implementation of the ceasefire agreement if efforts by the Area Joint Military Committees or Ceasefire Joint Military Committee fail to do so, and the Joint Integrated Units JIUs command whose responsibilities include the 'resolution of disputes that may arise within the JIUs jurisdiction'. Moreover, because of the way in which competences between the GoS and the GoSS are allocated, both have different dispute resolution functions when it comes to water issues. The GoS Nile Water Commission is thus responsible for the resolution of 'any dispute between Northern and Southern states' over water management issues, while the GoSS performs the same function in relation to 'disputes arising from the management of interstate waters strictly within Southern Sudan'.

Peace as a Function of 'Context'

Based on a survey of existing literature on conflict resolution, we earlier identified three domestic and two external context factors contributing to the potential success of peace agreements which we shall treat in turn now.

Domestic Factors

The conflict parties' acknowledgement of each other's right to be part of the common state with their distinct identity is relatively well-enshrined in the CPA, by affirming the importance and recognition of such different identities and by allocating specific benefits to the SPLM and other political parties in the South). The CPA, aiming at fundamental changes of government and governance in Sudan, is furthermore properly 'constitutionalised' through its transformation into the INC (International Crisis Group 2007; Nouwen 2007).

The extent to which such an acknowledgement is sincere, however, can also, and perhaps more effectively, be measured in terms of the parties' efforts towards implementation. The CPA, at best, has been only partly implemented. Whereas institutions have generally been established and are functioning, important processes, such as the census, elections or referendum on independence have either been not properly enacted or, as in relation to Abyei, still await completion (Brosché 2007; International Crisis Group 2007, 2009; Nouwen 2007).[15] The census was conducted but widely criticised for being manipulated by the regime in Khartoum (International Crisis Group 2009, 2010a). The national elections – which have taken place in April 2010 – were also regarded as being rigged in favour of the ruling NCP (Human Rights Watch 2010). Finally, the referendum on Southern independence scheduled for, and conducted in, January 2011 led, as was widely expected, to an independent South Sudan (International Crisis Group 2009, 2010b). The simultaneous inability to resolve the Abyei issue, however, has brought both sides again to the brink of violent conflict, with the risk of severe regional implications.

The overall lacklustre implementation of the CPA, has its cause partly in the degree of political heterogeneity within each conflict party and partly in the power struggles within and between them (Ahmed 2009; Branch and Mampilly 2004; International Crisis Group 2008; Johnson 1998; McEvoy and LeBrun 2010; Young 2003, 2007). The ongoing struggle between the NCP and the SPLM over political power, territorial control, and future status in Sudan can be considered to be the main reason for this slow implementation. The NCP was trying to neutralise the SPLM as a national political player and defined it as regional actor. The SPLM, on the other hand, remained internally divided with regard to political objectives. Some of its leaders pursued a national strategy whereas other parts focused solely on the possibility of Southern secession. This weakness empowered the NCP to assert itself as the sole national player and to delay implementation of the CPA in crucial areas.

External Factors

While the CPA is far from perfect in its content and while its implementation is incomplete and its operation suffering from various problems, many of its achievements must be credited to positive external influences, including long-standing international engagement in the negotiations, sufficient funds being available for implementation and emergency humanitarian relief (e.g., El-Affendi 2001; Healy 2009; International Crisis Group 2004; Kelleher 2006). External spoilers are almost completely

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[15] Recent developments in the implementation of the CPA can be tracked with the CPA monitor of the United Nations Mission in Sudan (UNMIS) (http://www.unmis.org/english/cpaMonitor.htm) and the CrisisWatch Database of the International Crisis Group (http://www.crisisgroup.org/home/index.cfm?id=1200&l=1).

absent, too. Notwithstanding other problems, the CPA thus existed in a relatively benign external environment.

5. Conclusion

In a 2009 study for the International Institute for Sustainable Development, Brown and Crawford noted that 'it is non-climate factors (such as poverty, governance, conflict management, regional diplomacy and so on) that will largely determine whether and how climate change moves from being a development challenge to presenting a security threat' (Brown and Crawford 2009). This is largely in line with our own findings on the role of institutions in mitigating the propensity towards violent conflict in Sudan. Potentially climate change-related shocks—whether direct or indirect ones—can only partially be seen as causal factors in triggering violent conflict in Sudan. Shocks like drought, and the famine and mass population displacement that it induced, exacerbated many of the underlying problems that Sudan has faced since before, and especially after independence, while simultaneously creating opportunities for the Southern rebels to sustain their military campaign. The discovery and exploitation of oil along the internal North-South boundary similarly exacerbated long-standing tensions and disputes, but was more clearly related to the beginning of the second phase of the North-South civil war in that it prompted the unilateral redrawing of that boundary and the abolition of the unified Southern region. At the same time, it also increased Khartoum's ability to fight the Southern rebellion on the basis of income from oil revenues and raised the stakes in the struggle over territorial control.

Causation to one side, what our case study of Sudan has clearly demonstrated, however, is the pivotal role of institutions and their impact on violent conflict. The denial, after independence, of meaningful self-governance and power sharing for the South was crucial among the factors that led to the outbreak of civil war in 1963. The Addis Ababa Agreement of 1972, in turn, by providing such institutions brought an end to the fighting while its gradual undermining and eventual abrogation in 1983 reignited the violent conflict. The CPA of 2005, again based on institutions of (interim) self-government and power sharing ended the second phase of the North-South war.

Yet, it is not institutions alone that matter. Equally important are two other factors—leadership and diplomacy. Institutions do not just come into being or disappear. The 1972 Addis Ababa Agreement was an example of concessions and compromise on both sides who were helped in their efforts by the mediation of Haile Selassie. In 1983, it was the unilateral decision by President Numayri to abolish the Southern region and its legislative assembly that triggered the outbreak of violence in the second phase of the North South war. The CPA of 2005, again a North-South compromise at its heart, was facilitated by broad, global international support, which continued during the implementation phase, including by helping overcome potential major obstacles such as the referendum on independence in the South.

It is this trinity of factors—leadership, diplomacy, and institutional design—that accounts for success and failure of dealing with violent conflict in Sudan. While we must not unduly generalise this finding beyond this particular case, it is important to bear in mind that '[p]eace requires not just a balanced constitutional order but a disposition on the part of all sizable communities to accept compromise' (McGarry and O'Leary 2008), as well as appropriate external support. The relative flexibility and innovation of combining self-governance with power and wealth sharing in the institutional design

of the CPA, however, highlights that institutions, while not sufficient in themselves, are indispensable for the success of ending and preventing violent conflict.

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