The unexpected deal

Oil and the IGAD process

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Sudan’s oil resources have been viewed as a major catalyst for the outbreak and prolongation of the north-south war in Sudan. A high percentage of the country’s oil resources are located in southern Sudan, for which the Sudan People’s Liberation Movement/Army (SPLM/A) began demanding self-determination in the early 1980s. In 1999 when the Government of Sudan (GoS) started to export oil, it strengthened its financial base and gained new international allies. Under these conditions there seemed to be few reasons to expect any peace process between the Sudan government and southern resistance movements to succeed. It was expected that oil would prove a difficult issue to resolve in the Intergovernmental Authority on Development (IGAD) peace process, yet a combination of mediation strategies, international pressure, progress in security talks and the motivations of the parties to reap the benefit of Sudan’s oil resources led to the GoS and SPLM/A signing the Agreement on Wealth Sharing during the Pre-Interim and Interim Period in January 2004, a year before the final Comprehensive Peace Agreement (CPA) was signed.

Ownership of land and subterranean natural resources

At the heart of negotiations was the question of land ownership. The SPLM/A claimed in its September 2003 position paper that land in southern Sudan (both surface land and subterranean natural resources) is owned by the community. Although customary land rights exist within Sudanese law, the SPLM/A argued that these laws had effectively been abolished by various governments in Sudan and demanded that new land laws be introduced in the south, based on the legal traditions of the peoples of the region. The GoS, on the other hand, argued that surface land and subsurface land (including subterranean natural resources) were different matters: it accepted in principle the SPLM/A’s demand for community-based rights of use of surface land, but it held firmly to a position of national ownership of subterranean natural resources, claiming that when natural resources are unequally distributed the central government is best suited to distribute revenues equitably relative to the needs of the different regions.

Fearing the two parties’ positions irreconcilable, mediators and resource persons at the November 2002 round of talks in Machakos proposed that the ownership of subterranean natural resources remain undecided in a peace agreement and that the parties eventually agree to a process to resolve the issue later. This position, enabling the parties to resolve the issues...
of revenue sharing and the management of the petroleum sector independently of ownership, was finally accepted by the parties just a week before the agreement on wealth-sharing was signed.

In a parallel argument, the GoS also pushed for a single national commission to control oil resources and handle rights to subsurface land, functioning as a national body which would ensure that the interests of all Sudanese people were served, while the SPLM/A insisted on a separate commission for southern Sudan. In the final agreement, the parties agreed on a single petroleum commission for the whole of Sudan: the National Petroleum Commission (NPC). The functions of the NPC are to formulate public policies and guidelines for the petroleum sector and to approve and supervise all oil contracts in Sudan. The NPC consists of five members from the Government of National Unity (GNU) and five members from the Government of Southern Sudan (GoSS) in addition to a maximum of three non-permanent members from Sudan’s oil-producing states. This may have represented an SPLM/A concession, but it did give the GoSS a de facto veto in the NPC, was arguably a trade-off for the government’s agreement to give the SPLM/A 50 per cent of oil revenues, and was in any case more in line with the Machakos Protocol’s notions of establishing unity-based and integrated institutions. In allowing the new commission the GoS also took a calculated risk that the GoSS would not discourage oil development. Given the weak position of the NPC almost two years after the signing of the CPA, it can also be suggested that the GoS calculated that the powers of the NPC could be manipulated in its favour.

The status of existing oil contracts
The Sudanese government has negotiated and signed petroleum contracts with several oil companies since exploration started in 1974. In September 2003, the position of the SPLM/A was that contracts should be renegotiated if they are ‘deemed to have fundamental social and environmental problems which can not be rectified by remedial measures.’ The SPLM/A argued that the oil contracts had been negotiated without southern consultation and participation, and were illegal business contracts as the land in which the oilfields are located is owned by the communities living there.

The government, on the other hand, stressed that existing contracts should not be renegotiated, as breaking sound contracts would seriously damage the climate for future foreign direct investment. With companies already facing high risks in Sudan, the government argued that both parties to the talks should have a common interest in protecting the business climate during the interim period.

In the agreement of January 2004, the SPLM/A accepted that existing contracts would not be subject to renegotiation, while the GoS accepted a wording to the effect that necessary remedial measures would be taken if contracts were found to have fundamental social and environmental consequences. This was sufficient to address the concerns of the SPLM/A, which also recognized the importance of not damaging the Sudanese private sector. While the SPLM/A was ultimately willing to give up its position on renegotiation of the oil contracts, the government,
which had established relationships with oil companies and was dependent on the continuous flow of oil revenues, held firmly to its position.

Sharing of revenues
Petroleum revenues are the major source of income for the Sudanese state, constituting approximately 15 per cent of national government revenue in 2002 and expected to constitute as much as 60 per cent of revenue in 2005-07. Although this revenue is from oilfields in which oil production is likely to decline after 2006, a durable peace will create an opportunity for increased oil production in hitherto unexplored areas of southern Sudan. The projections for future oil reserves from new oilfields are highly uncertain, not least because of the doubling of the price of crude oil. The PFC Strategic Study presented to the parties in August 2002 predicted that the government would receive a share of about US$30 billion over the lifetime of these fields, but this was based on a wildly low price range for oil of US$18–US$25 per barrel.

The parties argued over revenue sharing at Naivasha: the GoS argued that it had already invested in the development of the oilfields and had attracted international partners, and that this should be taken into account when revenues were shared, while the SPLM/A claimed that the oil which was rightly southern had already been exploited and southerners should therefore be compensated accordingly.

In suggesting a revenue-sharing model, the resource persons at the talks had to strike a balance between the enormous needs for reconstruction and development in the south, on the one hand, and the limited ability of the central government – highly indebted and in considerable financial problems – to share revenues during the first years of the interim period, on the other. Both the GoS and the resource persons therefore argued that if the central government were to be able to carry out basic government tasks after a peace deal, it could not afford to share a high percentage of oil or other revenues, at least not in the beginning of the interim period.

Specific revenue-sharing arrangements were suggested in the IGAD mediator’s ‘Nakuru Document’ of July 2003, which proposed that a major source of revenue for the GoS should be transfers from the national government based on a percentage of Gross Domestic Product (GDP) that would increase throughout the interim period. Granting the GoSS revenues defined as a percentage of GDP rather than simply a percentage of all oil revenues was intended to establish a predictable and stable flow of revenues to the south, as well as to create an arrangement for equalization within a federal system. In addition to such transfers, the Nakuru proposals would have entitled the GoSS to 48 per cent of revenues from petroleum contracts signed after the start of the interim period. The federal government would collect the revenues from existing or ‘old’ contracts, but parts of the revenues from these contracts would be indirectly shared with the GoSS through transfers defined as a certain share of GDP.

Interestingly, however, the parties agreed neither to share oil revenues nor to establish transfers from the federal government. The parties agreed not to differentiate between ‘new’ and ‘old’ oil contracts, but instead to share revenues from oil produced in southern Sudan by allocating 2 per cent of the net revenue from oil to the oil-producing states, then dividing the rest of the oil revenues equally between the GNU and the GoSS. Instead of establishing transfers from the centre to the GoSS, the parties agreed to a 50:50 split of national revenues (including different taxes and non-oil revenues) collected in the south. These arrangements mean that the revenues of the GoSS will primarily come from oil and that resources originating in the north will not be transferred to the south.

This agreement was acceptable to the SPLM/A because it was of greater importance to secure a significant percentage of oil revenues than to secure for the GoSS a high level of transfers from the federal government. Securing a high percentage of oil revenues took on an overall importance for the SPLM/A during the negotiations as they realized the symbolic aspect of the oil for southern constituencies. As most people in southern Sudan see the land and the oil as southern assets, the SPLM/A needed a deal that would secure at least 50 per cent of the oil revenues in order to be able to sell an eventual agreement to rank-and-file commanders and the southern constituency in general.

A second motive for the SPLM/A position of prioritizing a high percentage of oil revenue was its lack of trust in federal transfers after the experience of the Southern Sudan Regional Government (established after the Addis Ababa Agreement) from 1972 to 1982, which convinced them that the south should not count on receiving revenues from the north. The oil percentage was regarded as less open to manipulation than a federal transfer. In addition, separatist motives mesh well with a position of prioritizing direct oil revenues over federal transfers. In a political discourse on secession for Southern Sudan, secessionists can claim that the northern government showed little will to share federal revenues in the peace talks, and that there is therefore no economic reason to cooperate with the northern government after the interim period.
Thus, those in the SPLM/A in favour of secession were able to accept the deal, as it gives them a strong argument when the referendum comes up at the end of the six-year interim period.

The Sudanese government sees the oil in the south as a national resource, hence its claim that a significant part of Sudan’s national revenues has been shared with the south in the final agreement. However, in the CPA few sources of revenue are mentioned that originate in the north. This is likely to be perceived by southerners as a lack of willingness by the government to make unity attractive. It seems that the government’s priority was to safeguard central government revenues, even if that incurred political costs in not committing to explicit revenue transfers from the federal government to the GoSS. Possibly, they concluded the south would vote for secession anyway, and that attempts to ‘make unity attractive’ would simply be a waste of resources. At the very least, the reasoning of the government can be understood as one where sharing state revenues with the new southern government was problematic, as the central government is heavily indebted, the war in Darfur is costly, and reduced revenues to the central government were perceived as threatening the survival of the National Congress Party.

Instead of asking why the government did not share more revenues originating in the north in order to reap political benefits, it can thus be asked why the Sudanese government could agree to share as much as a 50 per cent of the oil revenues of Southern Sudan, as that was regarded as a significant fiscal challenge for the government in the first years of the interim period (before the oil price rose to over US$40 per barrel in 2004). One reason might simply have been that government representatives expected that they would not necessarily have to pay the full 50 per cent during the first years of the interim period, or that the pot from which the share would be taken could be manipulated in the government’s favour. Such reasons may have played some role given the pattern of broken agreements earlier in Sudan. However, the government felt under massive international pressure to finalize a deal around the beginning of 2004. In the last weeks of the negotiations, the government suggested that the Nakuru revenue-sharing arrangements should be applied, but then the SPLM/A held firmly to a position of a direct sharing of the oil revenues. In this situation, international pressure may have contributed to a reduced willingness on the part of the government to hold on to its position, forcing them to give in to the SPLM/A position of direct sharing of oil revenues. Finally, when the division of oil only from southern Sudan rather than from the whole country became an option, 50 per cent became an acceptable formula of revenue-sharing for the government.

What made the unexpected deal possible?

Oil was one of several issues in the IGAD talks. The analysis above on how the different oil issues were addressed pointed to the different considerations that the parties had during the negotiations on wealth sharing. The approach of leaving the ownership of subterranean natural resources unresolved paved the way for a deal, enabling the parties to focus on ‘divisible’ issues such as revenue sharing and petroleum sector management. When ownership of petroleum was left undecided, the parties could work through a bargaining process on a joint petroleum commission and a 50:50 sharing of oil revenues from the south.

However, these arrangements on petroleum came about as part of a larger peace process. To explain why a deal on petroleum issues became acceptable for the parties as well as to explain the signing of the CPA, a broader perspective on the IGAD talks must be adopted. The changed international situation after 11 September 2001 can be regarded as a central contextual factor in the Sudanese government’s decision to attend the rejuvenated IGAD talks. A clear signal from the US that a break of the peace process would not be accepted was important at later stages of the talks as well. Furthermore, both the Machakos Protocol and the security protocol made an agreement to oil issues easier. After the signing of the Machakos Protocol it was hard for the parties to legitimately withdraw from the process as fundamental issues had been agreed to. Machakos was also important as it put in place a political framework for further negotiations. Both parties feared for their survival in the aftermath of a peace agreement and the security protocol addressed these concerns. The fact that Sudan could be split into two territories and that the parties agreed to a solution of two armies within one country was important for overcoming the problem of credible commitments in the talks. Ultimately, however, international pressure and the mediation process were decisive in reaching an agreement.