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Quo vadis bilād as-Sūdān?
The Contemporary Framework for a National Interim Constitution**

Abstract

Due to the idiosyncratic momentum of the developments in the State of Sudan, this article is limited to the proceedings until the signing of Sudan's Comprehensive Peace Agreement between the *Government of Sudan* (*GoS*) and the *Sudan People's Liberation Movement* (*SPLM*) on January 9th, 2005. The following discourse is then limited to the North/South-Relation and does not cover the endeavour in Dārfūr and parts of Eastern Sudan directly. After a succinct introduction to relevant aspects for the imminent constitution making process with references laid down in certain protocols mediated by the protagonists, this essay focuses on assorted issues of Sudan's ongoing constitutional debate. Furthermore, the article attempts to illustrate alternative concepts of constitutional implementation suitable to Sudan's distinctive needs.

I. Introduction / Short Background Information

Post-colonial Sudan, currently Africa's largest country covering about two and a half million square kilometres, is not only vast by size, but also blessed with a great diversity of natural resources as well as cultures and social structures. This diversity involves a wide-ranging mixture of population groups exercising different languages, customs and lifestyles. Aside from the 11-years' timeframe from 1972 until 1983, the Sudanese have been continuously involved in one of the longest-lasting, internal, armed conflicts on the African Continent. The cause for this deplorable circumstance cannot be reduced to one single factor. Pivotal to the conflict have been miscellaneous interrelated geo-strategic-, economic-, ethnic- and religious factors[1] as well as substantiated ideological discrepancies, the increasing claim con-

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1 See also Hanspeter *Mattes*, Sudan, in: Udo *Steinbach* [ed.], Politisches Lexikon – Nahost/Nordafrika, München 1994 (3rd edition), pp. 242–244; Hanspeter *Mattes*, Sudan Sommer 2004: Frieden im Süden, Krieg im Westen, Konflikt mit der Opposition, in: Nord-Süd aktuell, 18/2 Hamburg (August–September) 2004, at 276 (277–280): He cites in this particular context three major factors: "The Arabic-Islamic identity, primarily of the Northern Sudanese; the aftermath of colonial times; as well as the characteristic nature of Southern Sudan, in the sense of its certain religious-, ethnic- and economic conditions". Additionally: Rainer *Tetzlaff*, Bürgerkrieg und Staatsbildung im Sudan: Ein Land auf der Suche nach seiner kulturellen Identität, in: Markus *Wauschkuhn* / Karl *Wohlmuth* [eds.],

cerning the oil revenues in southern parts of Sudan and the control and exploitation of natural resources, such as the vital Nil water.[2]

The just recently signed *Comprehensive Peace Agreement* (*CPA*) in Nairobi (Kenya) on January 9th this year finally marks an end to a challenging negotiation phase between the *Government of Sudan* (*GoS*) and the *Sudan People's Liberation Movement/Army* (*SPLM/A*). This particular 'Sudanese Peace Process' has been extended over nearly three years, begun about a decade ago and was initiated by the *Intergovernmental Authority on Development* (*IGAD*[3]).[4] The conflict resolution on this specific Sub-region of the African continent is genuine in its kind. It has demonstrated one truism about conflict intervention; that it can work only if the parties themselves are committed to achieving peace and if the countries of their region are willing to work for peace. Thus, these African-based and African-led negotiations under the auspices of the *IGAD* may inaugurate a historic moment of great opportunity for a solid and long-lasting peace.

Of course, regional efforts in accomplishing peace in Sudan are not new from a historical perspective. Many foreign public figures tried to settle the north-south conflict. But the efforts of the heads of state of Kenya, Zimbabwe, Egypt, Zaire, Ethiopia, Libya as well as the Archbishop of Cape Town, Desmond *Tutu*, and various other dignitaries of religious institutions were not granted the opportunity to enjoy significant success. Even the 39th US-President Jimmy *Carter* negotiated several times with the current Sudanese President, Lieutenant General ʿUmar Ḥasan Aḥmad *al-Bašīr*, and the leader of the *SPLA*, Dr. John *Garang de Mabior*[5]. A summit meeting arranged by Jimmy *Carter* on December 1989 in the Kenyan capital Nairobi also failed.[6] Only Emperor *Haile Selassie*'s (Ḫāyla Śellāsē) efforts

Die Sudanforschung in der Bundesrepublik Deutschland, München / Hamburg 1995, at 383 (389).

2 For more detailed information's: Paul *Goldsmith* / Lydia A. *Abura* / Jason *Switzer*, Oil and Water in Sudan, in: Jeremy *Lind* / Kathryn *Sturman* [eds.], Scarcity and Surfeit – The Ecology of Africa's Conflicts, Pretoria 2002, Chapter 5, pp. 187–236; Douglas H. *Johnson*, The Root Causes of Sudan's Civil Wars, Oxford 2003, at 151; Theo *Riedke*, Erdölförderung verschärft den Bürgerkrieg, DED-Brief, Bonn 2000, at 28; Ulrich *Delius*, Öl heizt den Krieg im Sudan an, Pogrom (210), Göttingen 2001, pp. 16–17; David *Lomeling*, Ewiger Kampf um Wasser und Öl, Pogrom (195/196), Göttingen 1997, pp. 36–37. Moreover: Human Development Report 2004 [commissioned by the UNDP], Chapter 3, at 65; and Harker Report, Ottawa 2000.

3 The Intergovernmental Authority on Development *(IGAD)* in Eastern Africa was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (*IGADD*) which was founded in 1986. Members of the *IGAD* are: Ethiopia, Djibouti, Kenya, Somalia, Sudan, Uganda and since 1993 Eritrea.

4 See *IGAD(D)-Declaration of Principles* between the *GoS* (Government of the Republic of Sudan) und der *SPLM/SPLA* (Sudan Peoples' Liberation Movement / Sudan Peoples' Liberation Army) in Nairobi, on July 20th, 1994.

5 Dr. John Garang de Mabior is chairman/political leader of the Sudanese People's Liberation Movement (*SPLM*) and commander in chief of its armed wing, the Sudanese People's Liberation Army (*SPLA*).

6 The official statement of Jimmy *Carter* (President from 1977–1981) is printed in: Steven *Wöndu* / Ann *Lesch*, Battle for Peace in Sudan. An Analysis of the Abuja Conferences 1992–1993, New York / Oxford / Lanham 2000, Appendix E, pp. 223–225.

7 Press Release/Commentary by the IGAD-Secretariat on Peace in the Sudan posted on July 23, 2002.

8 Machakos Protocol, Part A (Agreed Principles), 1.3.

marked a positive era in this context. The Sudanese government of that time and the *Southern Sudan Liberation Movement* (*SSLM*), under his auspices, were signing the *Addis Ababa Agreement* in 1972, which ended the civil war in South Sudan until 1983.

Still, there is an eminent difference between those parallel-run initiatives and the latest *IGAD*-negotiations: Such a consolidated mediation effort for a single country has never occurred on this politically fragile sub-region of Africa before. Because almost all *IGAD*-member states are facing similar internal difficulties or at least having comparable experiences with internal and definitely with bordering conflicts, the bases for constructive consultations are obviously a promising alternative in conflict resolutions not only for an optimistic Sudanese future, but also for a growing and enduring peaceful environment at the broader Horn of Africa.

II. The (Broader) Framework for an Interim Constitution

Such a critical development has to be accompanied by necessary transformation of the basic legal system. Where civilian and military dictatorship took turns, the search for a constitutional formula acceptable to the various contending political forces in the Sudan has been a stumbling block since independence in 1956. Nevertheless, the reached framework agreements and the Comprehensive Peace Agreement are both encouraging signs towards the establishment of a viable interim regime that leads to a functional basic legal system for Sudan.

1. The Machakos Protocol

After five weeks of consultations between the *GoS* and the *SPLM* in the Kenyan Machakos, the so-called *Machakos Protocol*[7] was signed. Contrary to a widespread view, this document itself is not a peace agreement, but a landmark protocol meaning a 'broader framework for governance'. It must be said here that this document has to be considered as starting point for further negotiations. It therefore determines the basic principles of the agreements to be concluded, as well as of the future constitutional framework.

a. Part A (Agreed Principles)

At the very beginning of the Machakos Protocol the right of self-determination *"expressis verbis"* entitled the people of South Sudan many rights; for example a right for referendum to determine their future,[8] i.e. either confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement, or to vote for secession. The people of South Sudan also have the right

to control and govern affairs in their region and participate equally in the National Government.[9] In addition to this, and based on historical experience, the establishment of a democratic system of governance which takes into account the cultural, ethnic, racial, religious and linguistic diversity and gender equality of the people of Sudan, had been set as one of the goals for future (pre-) constitutional documents.[10] After all, Part A (Agreed Principles) of the Protocol closes with a proclamation of designing and implementing the Peace Agreement so as to make the unity of the Sudan an attractive option especially to the people of South Sudan.[11]

b. Part B (The Transition Process)

While having this in mind, a roadmap was set up to remain valid until the holding of the definite referendum by the South-Sudanese population. There shall be a *Pre-Interim Period* lasting six months upon the conclusion of the peace talks and the just recently signed *Peace Agreement (CPA)*.[12] During this upcoming stage, mechanisms to implement and monitor the *CPA* as well as a constitutional framework shall be established. If not already in force, a cessation of hostilities with appropriate monitoring mechanisms shall be established and preparations for the implementation of a comprehensive cease-fire shall be made.[13]

The *Interim Period* will commence at the end of the *Pre-Interim Period* and shall last for six years[14] ending with the mentioned, internationally monitored and jointly organized referendum for Southern Sudan by the *GoS* and *SPLM/A*.[15] Institutions and mechanisms established during this *Pre-Interim Period* shall be operating in accordance with the arrangements and principles set out in the Peace Agreement.[16] Likewise, if not already accomplished, the negotiated comprehensive cease-fire will be implemented and international monitoring mechanisms shall also be established.[17] Subsequent to the first three years of the *Interim Period,* there shall be mid-term evaluation of the unity arrangements established under the Peace Agreement conducted by an *Independent Assessment and Evaluation Commission*[18] in order to monitor the implementation of the Peace Agreement.[19]

[9] Machakos Protocol, Part A (Agreed Principles), 1.2.
[10] See Machakos Protocol, Part A (Agreed Principles), 1.6.
[11] Machakos Protocol, Part A (Agreed Principles), 1.10.
[12] Machakos Protocol, Part B (The Transition Process), 2.
[13] See Machakos Protocol, Part B (The Transition Process), 2.1 (a) – (f).
[14] Machakos Protocol, Part B (The Transition Process), 2.2.
[15] Machakos Protocol, Part B (The Transition Process), 2.5.
[16] Machakos Protocol, Part B (The Transition Process), 2.3 (a).
[17] Machakos Protocol, Part B (The Transition Process), 2.3 (b).
[18] The composition of the *Independent Assessment and Evaluation Commission* shall consist of equal representation from the *GoS* and the *SPLM/A,* and not more than two representatives, respectively, from each of the following three categories: 1) Member states of the *IGAD Sub-Committee on Sudan* (Djibouti, Eritrea, Ethiopia, Kenya und Uganda); 2) Observer States (Italy, Norway, United Kingdom and the United States of America); 3) Any other countries or regional or international bodies to be agreed upon by the parties.
[19] Machakos Protocol, Part B (The Transition Process), 2.4.

c. Part C (Structures of Government)

The separations of powers, principles of state structures and functions have been negotiated in the last part of the protocol. The approached *(Interim-) Constitution* shall therefore settle the correlation between the different state-levels and assigns their respective authorities and anticipated functions, for instance.

The National Constitution shall be the Supreme Law of the Land; all laws must comply with it.[20] Nationally enacted legislation having effect only in respect of the states outside Southern Sudan shall have as its source of legislation *šarīʿa* (Sharia) and the consensus of the people. In the southern States and/or the Southern Regions, nationally enacted legislation has as its source of legislation popular consensus, the values and the customs of its peoples including their traditions and religious beliefs.[21]

In order to draft a legal and constitutional framework governing the *Interim Period* that incorporates the Peace Agreement, the formation of a representative *National Constitutional Review Commission* is planned. It shall be established at the interim between the just-signed *Comprehensive Peace Agreement* and the six-month lasting *Pre-Interim Period.* This short timeframe is described as the *Pre-Transition Period.*[22]

Due to the distinctive character mentioned above – as a landmark protocol meaning a 'broader framework for governance' – central crucial aspects were held open in this particular agreement. Numerous regulations were intentionally constructed for further negotiations in the sense of a constructive ambiguity. Details regarding the territorial demarcation to Southern Sudanese regions were not determined as well as statements as how economic resources and its revenues are allocated.

2. The Follow-up Protocols

a. Memorandum – Aspects of Structures of Government

Some of those central crucial aspects were brought up on the agendas of the following months. Finally, after several rounds of negotiations, the *Memorandum of Understanding on Aspects of Structures of Government* was signed on 18 November in the Kenyan capital Nairobi too. The parties formally reaffirmed their commitment to a negotiated, peaceful and comprehensive resolution to the Sudan conflict within the context of the *Machakos Protocol.* And, from a substantive point of view, it elucidated many of the issues in a more precise, but still general manner. Among them were, e.g., the agreement to the general principles for sharing revenue and natural resources; the mutual consent to establish a Government of National Unity during the Interim Period and a collegial decision-making process within the

[20] Machakos Protocol, Part C (Structures of the Government), 3.1.1.
[21] Machakos Protocol, Part C (Structures of the Government), 3.2.2 and 3.2.3.
[22] Machakos Protocol, Part C (Structures of Government), 3.1.2. This legal- and constitutional framework shall (finally) be adopted as shall be agreed upon by the parties,

Presidency[23]; that the national civil service and cabinet ministries shall be representative of the people of Sudan, and that specifically the people of Southern Sudan shall be equitably represented at the senior and middle levels; and that there shall be a bicameral national legislature with equitable representation of the people of Southern Sudan in both legislative chambers.

b. The Naivasha Protocols

Starting of in September 2003 First Vice-President *Taha* and *SPLM*-Chairman *Garang* met in Naivasha (Kenya) for continuing consultations. Numerous significant Agreements have been signed in the course of those summits: The *Agreement on Security Arrangements during the Interim Period*[24], the *Agreement on Wealth Sharing during the Pre-Interim Period and Interim Period*[25], the *Power Sharing Agreement*, the *Resolution of Conflict in Southern Kordofan / Nuba Mountains and Blue Nile States* and the *Resolution of Abyei Conflict*[26]. They all are usually united under the abstract concept of the "Naivasha Protocols".

Dealing with all the provisions in particular and detail of these circa hundred pages in total would be beyond the scope of a regular article in a law journal; it is rather subject to a somewhat broader-hold descriptive monograph. Hence, the essay is an excerpt focusing on assorted issues of Sudan's ongoing constitutional debate as already initially indicated.

III. Prospects of Constitutional Implementation Concepts

1. The Right to Self-Determination

The right to self-determination constitutes a cornerstone principle of substantive public international law. It is now expressively mentioned in Article 1 and Article 55 of the Charter of the United Nations. Article 1 (2) of the UN-Charter states it as one of the purposes of the United Nations:

> "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

This principle is also constituted in the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* and *the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States* of 1970 as well as in the 1974 *United Nations General Assembly Definition of Aggression* and in the *African [Banjul] Charter on Human and People's Rights* which

accordingly to 3.1.3 Machakos Protocol.

[23] The proposal of the *GoS* envisaged the nomination of Dr. John *Garang* as Vice-President whereas a rotated model of presidency was pursued by the *SPLM*.

[24] Dated on September 25th, 2003.

[25] Signed on Wednesday, January 7th, 2004. (Officially announced on Sunday January 10th, 2004). Hereinafter referred to as the *Wealth Sharing Agreement*.

[26] All signed in Naivasha on May 26th, 2004, also.

was adopted in 1981 and entered into force in 1986. The latter fixed the right in Article 20 (1):

> "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen."

The right to self-determination is vested in the "people" rather than in the nation-state represented by the respective government of the day. The more precise scope of the right to self-determination has both an internal and an external dimension. One can differentiate these two dimensions in terms of the way either is exercised; one is offensive, the other, defensive.[27] According to this widely accepted classification, the internal dimension right to self-determination pertains to a people's free determination of their form of government; after creation of the said group of people become a common national entity. It also covers the perpetuation of distinctive characteristics of minority groups. In contrast to this defensive form, is the offensive internal dimension of the right to self-determination, an example of which is the secession of a minority group out of an existing state territory.[28]

The statement "unity in diversity"[29] reflects in this context the factual tension between the unity and territorial integrity of the state on one hand, and the protection of people in pluralistic societies in the sense of an internal-defensive right to self-determination, on the other. In order to achieve an adequate and viable balance between the opposite poles of secession like internal-offensive dimension of the right to self-determination and the territorial integrity, there are, e.g. at the broader Horn of Africa – multicultural/multi-ethnic nations *par excellence* – efforts with an increasing tendency in progress for quite some time to face the circumstances with feasible constitutional approaches:

a. The internal-defensive Dimension of the Right to Self-Determination

The Sudanese efforts for feasible constitutional approaches in the last decades are, at least from a theoretical standpoint in a progressive internal-defensive dimension as an improvement of the right to self-determination, remarkable, albeit it had been affected with relapses over time.

[27] Felix *Ermacora*, Autonomie als innere Selbstbestimmung, ArchVR 38, Tübingen 2000, pp. 285–297; Dietrich *Murswiek*, Offensives und defensives Selbstbestimmungsrecht, in: Der Staat, 23, Berlin 1984, pp. 523–548.

[28] For the sake of accuracy, the external dimension is generally understood to be the right of a sovereign state to join another state-entity. These minority groups are, for example, in the same way entitled to rely on such a right, as far as they are granted the right to secession. For further references to this particular subject see Kristin *Henrard* / Stefaan *Smis*, Recent Experiences in South Africa and Ethiopia to Accommodate Cultural Diversity: A Regained Interest in the Right of Self-Determination, in: Journal of African Law 44, London 2000, 17, at footnote 22 on page 22.

[29] This notion was included into the *Power Sharing Agreement*. See for instance Part I (General Principles), 1.4.2.

The aforementioned *Addis Ababa Agreement* was ratified and embodied in the *Regional Self-Government Act* in March 1972, and incorporated in the Sudanese ('Permanent') Constitution of 1973. The Agreement conceded autonomy to the Southern Region, i.e. the Southern Provinces of the Sudan of Equatoria (al-ʾIstwāʾīa), Baḥr al-Ġazāl und Upper Nil (currently ʾAʿālī an-Nīl) by considering them a self-governing Region.[30] The main institutions created by the Agreement were the People's Regional Assembly and the High Executive Council.[31] The legislative body in the Southern Region exercised by the People's Regional Assembly had to be elected in direct, secret ballot by Sudanese Citizens residing in the Southern Region,[32] whereupon the regional executive authority was vested in the High Executive Council[33] whose members (including the President of the High Executive Council) were appointed and relieved of office by the President either on the recommendation of the President of the High Executive Council or on the recommendation of the People's Regional Assembly in the case of the President of the High Executive Council himself.[34]

However, in spite of this substantial progress, the complete transformation never took place in the timeframe from 1972 on. The issues of corruption and inefficiency within the southern civil service and growing tensions in regional politics under consideration of the 'Dinka Domination', disputes with the central government over the Southern Region's boarders[35] as well as the role of the Southern Regional Government in developing the region's resources, and more particularly, the benefits that were to accrue to it through the exploitation of its oilfields[36] stood in the way. The *Presidential Decree No. 1* in June 1983 subdivided the Southern Region into three regions corresponding to the former provinces of Baḥr al-Ġazāl, Equatoria und Upper Nil, ultimately. The subdivision not only constituted the destruction of the political, administrative and constitutional unity of the South Region, but also re-established a centralized system of substantial powers that the Southern Region used to exercise under the *Regional Self-Government Act* of 1972. Instead of the

[30] Addis Ababa Agreement on the Problem of Southern Sudan, Article 3 (iii) and Article 4.

[31] Addis Ababa Agreement on the Problem of Southern Sudan, Chapter II (Definitions), Article 3 (iv) – (v).

[32] Addis Ababa Agreement on the Problem of Southern Sudan, Chapter IV (The Legislature), Article 8 and Article 9.

[33] Addis Ababa Agreement on the Problem of Southern Sudan, Chapter VI (The Executive), Article 17.

[34] Addis Ababa Agreement on the Problem of Southern Sudan, Chapter VI (The Executive), Article 19; Chapter V (Legislature), Article 13 (i) and Chapter VI (The Executive), Article 20.

[35] As raised in Article 3 (iii) of the Addis Ababa Agreement.

[36] The Southern Region's main asset is oil, but this was discovered only after the Addis Ababa Agreement was signed and the regional government was established. The regional government was also not consulted in the granting of concessions to the Chevron and Total oil companies for prospecting and drilling for oil within the Southern Region. Moreover, the refineries were constructed outside the Southern Region, and a dissent over the claim for the regional government to levy a corporation tax on any non-government owned factory in the region, as well as to tax the profits from the export of products from the region started.

President of the High Executive Council being elected by the People's Regional Assembly and appointed by the President, the three new regions were put respectively under three governors appointed by the President and answerable primarily to Khartoum. New Regional Assemblies were set up consisting of the members of the former People's Regional Assembly and new members appointed by the President.[37] The increment influence of Khartoum led to the removal of important powers over security, central legislation competences, certain financial entitlements and the relevant promotion of its own culture and languages.[38]

b. The internal-offensive Dimension of the Right to Self-Determination

For example, the third constitution since 1931 in Ethiopia, the Constitution of 1994 indicates new attempts comparing it with other constitutional efforts on the African Continent, and especially in the Sudan. Based on *Article 2 of the Transitional Period Charter*[39], the constitutional interim regime of Ethiopia from 1991 to 1994, *Article 39* [40] *of the Ethiopian Constitution* guarantees as ultimate consequence the

[37] The President could appoint up to 10% of the Regional Assembly members, a clear contradiction to the former legal system, where he had no power to appoint a member of the People's Regional Assembly.

[38] See also Peter Adwok *Nyaba*, Politics of Liberation in South Sudan: An Insider's View, Kampala (Uganda) 1997, pp. 19–21; Peter Nyot *Kok*, Governance and Conflict in the Sudan, 1985–1995, Hamburg 1996, pp. 72–74; Girma *Kebbede*, Sudan: The North-South Conflict in Historical Perspective, in: Girma *Kebbede* [ed.], Sudan's Predicament: Civil War, Displacement and Ecological Degradation, Aldershot / Brookfield 1999, pp. 19–20; Edgar *O'Ballance*, Sudan. Civil War and Terrorism. 1956–99, London / New York 2000, at 206; Douglas H. *Johnson*, The Root Causes of Sudan's Civil Wars, Oxford 2003, pp. 39 –58; Mohamed H. *Fadlalla*, Short History of Sudan, New York / Lincoln / Shanghai 2004, pp. 140–143.

[39] Article 2 of the Transitional Period Charter:
The right of nations, nationalities and peoples to self-determination is affirmed. To this end, each nation, nationality and people is guaranteed the right to:
a) Preserve its identity and have it respected, promote its culture and history and use and develop its language;
b) Administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation;
c) Exercise its rights to self-determination of independence, when the concerned, nation/nationalities and people is convinced that the above rights are denied, abridged or abrogated.

[40] Art. 39 of the Ethiopian Constitution:
(1) Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.
(2) Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.
(3) Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.
(4) The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:
(a) When a demand for secession has been approved by a two-thirds majority of the

right to self-determination in the sense of an internal-offensive dimension in form of the *ius secessionis*[41].[42] Even South Africa and Namibia[43] have not driven their conceptions of decentralization so far forward.[44]

c. *Sudan: Defensive versus Offensive Shape of the Internal Dimension*

Whether the plebiscite after the *Interim Period* will induce secession or perpetuate the territorial integrity of Sudan is by no means foreseeable at present. For this reason, the hitherto achievement should not be hastily rated as definite scheduling for a partition into two (or even more) sovereign state-entities; in the sense of an ultimate offensive form of the internal dimension of the right to self-determination. As the case may be, the aftermath of secession should not be underestimated. Suspiciousness and stereotypical views with regard to the respective affiliation to a conflicting party or group left their mark in their general dealing with each other, admittedly. Not just because the "trenches" have been deepened since the failure of the *Addis Ababa Agreement*, but also because sensitive issues such as definite demarcation lines – not only between the Northern and Southern parts of Sudan – are still controversial and/or unsettled. Concerns of bordering countries regarding a remaining fragmented sovereign state in the north, governed by a regime with an increasing orthodox islamistic perception, and the contingency of security instability affecting the politically fragile Horn of Africa and North-East Africa have to be taken seriously.[45] Sudan's future is intrinsically tied to the unbalanced and just as

members of the Legislative Council of the Nation, Nationality or People concerned;
(b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;
(c) When the demand for secession is supported by a majority vote in the referendum;
(d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to secede; and
(e) When the division of assets is effected in a manner prescribed by law.
(5) A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

[41] As to this term see Felix *Ermacora*, supra, note 27, at 287.

[42] Just for reasons of clarification: Eritrea did not make use of this constitutional provision of secession. Eritrea achieved independence through a referendum under UN-supervision on 24th May 1993, the acknowledgment by Ethiopia, and its membership to the United Nations on 28th May 1993.

[43] Namibia experiences a (territorial) change and is also challenging the formation of regional administrative bodies at the peripheries since independence in 1990.

[44] Heinrich *Scholler*, Societal Script und Verfassungsrecht als konkurrierende Grundlagen der Herrschaftsordnung Äthiopiens, VRÜ (1993), Hamburg 1993, pp. 166–181; Heinrich *Scholler*, Die neue äthiopische Verfassung und der Schutz der Menschenrechte, VRÜ (30), Hamburg 1997, pp. 181–188.

[45] Similar evaluation: Iğlāl *Ra'fat*, iḥtimālāt al-waḥda wa-l-infiṣāl ʿalā ḍaūʾ ʾittifāqiyya as-salām, in: as-siyāsa ad-dawliyya, Cairo 2005, 160, pp. 116–119.

fragile peace of its region. The use of the Nil-water resources on the basis of the relevant agreements/treaties of 1929[46] and 1959[47] is likewise still a highly sensitive matter of dispute[48] between almost all Nile-Basin[49] countries.[50] This could be aggravated in the view of some states through a reallocation after secession. Just as much will depend on the economic development, in particular a successful post-war reconstruction in the South. The confident basis for it has been already established; the *Wealth Sharing Agreement* stipulates in 5.4 and 5.5 that

> "[...] at least two percent (2%) of oil revenue shall be allocated to the oil producing states/regions in proportion to output produced in such states/regions"

and that

> "after the payment to the Oil Revenue Stabilization Account and to the oil producing states/regions, fifty percent (50%) of net oil revenue derived from oil producing wells in Southern Sudan shall be allocated to the Government of Southern Sudan (GoSS) as of the beginning of the Pre-Interim Period and the remaining fifty percent (50%) to the National Government and States in Northern Sudan".

In every respect, the *Interim Period* has to be bestowed the significance for which it is meant; namely, to start off in mutual force under the premise of an internal-defensive dimension of the right to self-determination towards a repacified state-unity.[51]

[46] See: Exchanges of Notes between Her Majesty's Government in the United Kingdom and the Egyptian Government on the use of the waters of the Nile for irrigation, Cairo, 7 May 1929.

[47] Agreement between the Republic of Sudan and the United Arab Republic on the full utilization of the waters of the Nile, signed on 8 November 1959.

[48] See Michael A. *Lange*, Strategische Bedrohung aus dem Süden – Umverteilung des Nilwassers?, in: Kairo-News No. 3, Konrad Adenauer Stiftung, Cairo 2004, pp. 5–7.

[49] See in this context: Ashok *Swain*, The Nile River Basin Initiative, in: SAIS-Review 22/2, Washington D.C. (Summer-Fall) 2002, pp. 293–308.

[50] In more detail to this topic: Omaia *Elwan*, Nile River, in: Rudolf *Bernhardt* [ed.], The Encyclopedia of Public International Law (EPIL), 3, Amsterdam 1997, at 589 (590–591).

[51] This guiding axiom is stipulated clearly and precisely in the *Power Sharing Agreement*, which in turn is a direct outgrow of the basic principle of the *Machakos Protocol*:
Machakos Protocol, Part A (Agreed Principles), 1.1:
That the unity of the Sudan, based on the free will of its people democratic governance, accountability, equality, respect, and justice for all citizens of the Sudan is and shall be the priority of the parties and it is possible to redress the grievances of the people of South Sudan and to meet their aspirations within such a framework.
Power Sharing Agreement, Part I (General Principles):
1.4 The Parties agree to that the following principles shall guide the distribution of powers and the establishment of structures:
1.4.1 Recognition of both the sovereignty of the nation as vested in its people as well as the need for autonomy of the Government of Southern Sudan and States throughout the Sudan;

2. Some Legislative Considerations

a. Law-Making: Distribution of Powers

There shall be a bicameral national legislature comprised of a *National Assembly* and a *Council of States*.[52] The *National Assembly* shall be elected in accordance with the procedures set forth by an impartial and representative *Electoral Commission* and in accordance with fair electoral laws,[53] whereas the *Council of State* will be consisting of two representatives from each state.[54] However, the formation has not been regulated so far. Neither the fact of whether these two representatives from each state are going to be elected, nor if they will be appointed has been set out in writing.

Furthermore, in the opinion of marginalized parties, their representation in the *National Assembly* is not equitable prior to elections and may produce turmoil.[55] According to the ruling, the *National Congress Party* (*NCP*) will be represented with 52%, the *SPLM* with 28%, other Northern political forces with 14% and other Southern political forces with 6%. It is to be hoped that the relative low percentage for the (so far) uninvolved Northern- and/or Southern political forces will not hinder the implementation of the described 'roadmap'.[56]

The intended law-making system between the national level and the state/regional level (in the South) can be compared with German perceptions. South African constitutional conceptions – which are similar to German constitutional principles – have been the basis of the Sudanese conceptual design.[57] That is no surprise. The constitutional development in 'New South Africa' is to be considered, quite remarkable for a country with significant influence over one hundred years of British (colonial) constitutional law, in most parts, as one of the paradigm for the 'reception[58] of German constitutional law.[59] The current Sudanese conceptual design

1.4.2 Affirmation of the need for both national as well as state and Southern norms and standards so as reflect the unity of the country and the diversity of the Sudanese people;
1.4.4 Recognition of the need for the involvement and participation of the people of South Sudan at all levels of government and National institutions as an expression of the national unity of the country; [...]
1.4.5 Pursuit of good governance, accountability, transparency, democracy, and the rule of law at all levels of government to achieve lasting peace; [...].

52 Power Sharing Agreement, Part II (Institutions at the National Level), 2.2.1.

53 Power Sharing Agreement, Part II (Institutions at the National Level), 2.2.3.1.

54 Power Sharing Agreement, Part II (Institutions at the National Level), 2.2.3.2.

55 See provisions 2.2.5 and 2.5.5 of the Power Sharing Agreement (dealing with allocation of seats in the National Assembly and the allocation in the national executive prior to elections).

56 See Muḥammad ʾAbū-*l-Faḍl*, al-mu'āraḍa aš-šamāliyya wa-ʾittifāq as-salām, in: as-siyāsa ad-dawliyya, Cairo 2005, 160, at 90 (91).

57 Rüdiger *Wolfrum*, Föderalismus als Beitrag zur Friedenssicherung: Überlegungen zu einer Verfassung für Zypern und den Sudan, in: Michael *Brenner* / Peter M. *Huber* / Markus *Möstl* [eds.], Der Staat des Grundgesetzes – Kontinuität und Wandel (Festschrift für Peter Badura zum siebzigsten Geburtstag), Tübingen 2004, at 1245 (1262).

58 The process is usually (and therefore hereinafter) described as 'reception', although 'adoption', 'migration' and 'introduction' are also occasionally used.

59 André *Thomashausen*, Demokratie und Rechtsstaatlichkeit: Südafrika, in: Ulrich *Battis* / Philip *Kunig* / Ingolf *Pernice* / Albrecht *Randelzhofer* [eds.], Das Grundgesetz im Prozess europäischer und globaler Verfassungsentwicklung, Baden-Baden 2000, at 163. See also François *Venter*, Constitutional Comparison – Japan, Germany, Canada and South Africa as Constitutional States, Cape Town 2000, inter alia pp. 32–33. Johan *de Waal* stated also (with regard to the South African interim constitutional regime) that "[...] it is not possible to understand the Interim Constitution itself without appreciation of the German origin [...]", see thereunto: Johan *de Waal*, A Comparative Analysis of the Provisions of the German Origin of the Interim Bill of Rights, in: South African Journal of on Human Rights (SAJHR), 11, Johannesburg / Cape Town 1995 at 1 seqq.

therefore intends exclusive legislative powers for the national legislature[60] alongside the concurrent legislative powers[61] and residual legislative powers[62].

b. Conflict of Laws and the Interim-Constitution

In addition, every legal system has to have a prevailing rule reconciling conflicts between inconsistent laws. It is essential in this context to distinguish clearly between the prevalence of the Constitution and federal/national legislation over the constitution, and legislation of the component parts of a federal dispensation on the one hand; and the predominance of the Constitution as the documentation of law and principle superior to the rules contained in the rest of the legal system, on the other. The Canadian doctrine makes a clear distinction between *Federal Paramountcy* and *Constitutional Supremacy*. The doctrine of paramountcy applies where there is a federal/national law and a provincial law which are (1) each valid, and (2) inconsistent.[63] This may be provided expressly in Article 31 *(Bundesrecht bricht Landesrecht)* Basic Law (*Grundgesetz*), as is the case in Germany; or, it might be derived from a constitutional 'supremacy clause' as it is the case of the United States,[64] or, as in the case of Canada, may be a doctrine that is developed judicially[65].[66]

The *Constitutional Supremacy* is insofar clearly stipulated that the Sudanese Interim Constitution shall be the Supreme Law of the land and the Southern Sudan Constitution, State Constitutions, and the laws of all levels of government must comply with

60 Power Sharing Agreement, Part II (Institutions at the National Level), 2.2.9; Part V, Schedule A.

61 Power Sharing Agreement, Part II (Institutions at the National Level), 2.2.10; Part V, Schedule D.

62 Power Sharing Agreement, Part II (Institutions at the National Level), 2.2.11; Part V, Schedule E.

63 Peter W. *Hogg*, Constitutional Law of Canada, 4th edition, Toronto 1997 – (loose-leaf update 2003), 16-3.

64 Article 6 of the US-Constitution:
(2) This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made; or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

65 Peter W. *Hogg*, Constitutional Law of Canada, 4th edition, Toronto 1997 – (loose-leaf update 203), 16-2.

66 François *Venter*, Constitutional Comparison – Japan, Germany, Canada and South Africa as Constitutional States, Cape Town 2000, at 59.

it.[67] This concept does not differ from the constitutional regulations such as Article 9 in Ethiopia, Article 2 in Uganda, Section 1 in Nigeria or Section 2 in South Africa.

Rather, there might be a further discussion concerning *Federal Paramountcy*. The only agreed text in this context states that

> "if there is a contradiction between the provisions of Southern Sudan law and/or a State law and/or a National law [...] the law of the level of government which shall prevail shall be that which **most effectively deals with the subject** matter of the law ...".[68]

It is therefore entirely unsettled which of the abovementioned concepts shall be applicable to the upcoming Sudanese Interim-Constitution. It will be interesting whether (and to what extent) the Sudanese concept will follow comparable provisions of African states. The constitutions of Ethiopia and Uganda remain silent, for example. Whereas the Nigerian Constitution[69] and South African Constitution[70] tend to follow the distinct German-/ US-concept.

[67] Power Sharing Agreement, Part I (General Principles), 1.5.1.2. See also: Machakos Protocol, Part C (Structures of Government), 3.1.1.

[68] See Power Sharing Agreement, Part V, Schedule F (Resolution of Conflicts in Respect of Concurrent Powers).

[69] Section 4 of the Nigerian Constitution:
(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

[70] Section 146 of the South African Constitution:
(2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:
(a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.
(b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing –
(i) norms and standards;
(ii) frameworks; or
(iii) national policies.
(c) The national legislation is necessary for –
(i) the maintenance of national security;
(ii) the maintenance of economic unity;
(iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
(iv) the promotion of economic activities across provincial boundaries;
(v) the promotion of equal opportunity or equal access to government services; or
(vi) the protection of the environment.
(3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that –
(a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or
(b) impedes the implementation of national economic policy.
(5) Provincial legislation prevails over national legislation if subsection (2) or (3) does not apply.
Section 148 of the South African Constitution:
If a dispute concerning a conflict cannot be resolved by a court, the national legislation prevails over the provincial legislation or provincial constitution.

3. The (Constitutional) Significance of *šarīʿa*

As already mentioned above, the *Machakos Protocol* expresses clearly in its wording that

> "nationally enacted legislation having effect only in respect of the states outside Southern Sudan shall have its source of legislation Sharia and the consensus of the people"[71].

Taking the above-mentioned regulation literally, the national-capital Khartoum[72], located in the north, will definitely be part of the application of *šarīʿa*-legislation. This obviously contradicts the prevailing *SPLM*-expressions referred to the status of the national-capital. A conceptual design of a state/district *sui generis* more or less comparable to Washington D.C was initially considered, in which *šarīʿa* should not be applicable. This crucial concern is by no means as simple and unimportant as it might seem considering the presence of over 2 million non-Muslims and inner Sudanese refugees, who settled in (and around) northern cities, in particular the larger Khartoum metropolis.[73]

Furthermore, a relevant consideration is the fact that a term as to what *šarīʿa* shall be the main source (*al-maṣdar ar-raʾīsī*) of legislation has not been used in the current Sudanese documents, so far. The influence of such a phrasing in constitutional texts[74] is generally larger than the indefinite formulation of a source (*maṣdar raʾīsī*) of legislation[75].[76] But decisive factors for the use of either term as firm constitutional establishments and its practical relevance, as well as theoretical classification are existing constitutional histories and the *status quo* of respective

[71] Machakos Protocol, Part C (Structures of the Government), 3.2.2.

[72] See Power Sharing Agreement, Part I (Institutions at the National Level), 2.4.1.

[73] Marina *Peter*, Vertriebene im eigenen Land – "displaced persons" aus dem Südsudan im Großraum Khartum, in: Hanspeter *Mattes* / Sigrid *Faath* [eds.], Wuquf 7–8, Hamburg 1993, at 547 (549 seq.); Richard *Gray*, Epilogue, in: Yusuf Fadl *Hasan* / Richard *Gray* [eds.], Religion and Conflict in Sudan, Nairobi 2002, at 195 (198); Melha Rout *Biel*, Geschichte des sudanesischen Konflikts, in: Melha Rout *Biel* [eds.], Der Sudan zwischen Krieg und Frieden, Marburg 2003, at 30; Ahmed T. *el-Gaili*, Federalism and the Tyranny of Religious Majorities: Challenges to Islamic Federalism in Sudan, Harvard Int'l L.J., 45/2, Cambridge (Summer) 2004, at 503 (543).

[74] As to equivalent formulations in contemporary constitutions see Article 2 of the Egyptian Constitution, Article 2 of the Constitution of Bahrain, Article 2 of the Kuwaiti Constitution, Article 3 of the Syrian Constitution, Article 2 of the Constitution of Oman, Preamble of the Mauritanian Constitution, Article 7 of the Constitution of the United Arab Emirates and Article 3 of the Yemeni Constitution.

[75] See in this context Omaia *Elwan*, Gesetzgebung und Rechtsprechung, in: Udo *Steinbach* / Rüdiger *Robert* [eds.], Der Nahe und Mittlere Osten, Opladen 1988, p. 237 seq. concerning the constitutional amendment of 1980 in Egypt that replaced the term *maṣdar raʾīsī* by *al-maṣdar ar-raʾīsī*.

[76] Hanspeter *Mattes*, Moderne Arabische Verfassungsentwicklung, at 49 (70).

socio-economic-, political- and religious situations in some countries too. It all depends on social conditions and orientates towards certain models.[77] All this does not indicate that the imminent constitutional formulation denotes just a programmatic role of the *šarīʿa*, nor does it only mark the character of a general respectful manifestation without substantial relevance on one hand, and that it will not (in the contrary) mount up to an absolute and comprehensive social-system of legally political validity on the other hand. A valuation in how far a constitutional corpus meets with the principles of *šarīʿa* cannot be carried through to a final and binding conclusion in general terms, anyhow, because *šarīʿa* does not provide firm and clear indications as to the form of the state.[78] The Iranian Constitution corpus seems to conform the most to the Islamic legal tradition. But it should be taken into consideration that, *inter alia*, the dogma of Imamat settled down in this constitution is not acceptable for the Sunnitic dominant nations,[79] thus also for the Sudan.

The agreements more likely indicate therefore the tendency towards a reinforcement of the reception of secular and federal systems.

4. Unresolved Issues, to be further clarified

a. Asymmetric Decentralization of National State-Structure

The issue of the establishment of a Government of National Unity and the process of collegial decision-making within the Presidency[80] was not resolved by the *Memorandum of Understanding on Aspects of Structures of Government*, but later found resolution in the *Power Sharing Agreement*. The *Power Sharing Agreement* states that the government shall consist of the presidency and a council of ministers, and that an institution of the presidency shall consist of the president and two vice-presidents.[81] According to clause 2.3.5 of the *Power Sharing Agreement*, the current incumbent President, ʿUmar Ḥasan Aḥmad *al-Bašīr*, will be the President and Commander-in-Chief of the *Sudan Armed Forces* (*SAF*) and that the current *SPLM*-chairman John *Garang de Mabior* (or his successor) will be the First Vice-President and will, at the same time, hold posts of President of the *Government of Southern Sudan* (*GoSS*) and Commander-in-Chief of the *SPLA* until the holding of elections[82]. At the present state, while Sudan undergoes constant upheaval almost daily, the current First Vice- President, designated Second Vice-President and chief negotiator ʿAlī ʿUṭmān Muḥammad *Ṭaha* might not be very influential compared to the status

[77] See Hans-Georg *Ebert*, Die Interdependenz von Staat, Verfassung und Islam im Nahen und Mittleren Osten in der Gegenwart, Frankfurt a.M. 1991, at 146 and at 202.

[78] See also ʿAbd al-Ḥamīd *Mutawallī*, mabādiʾ niẓām al-ḥukm fi l-islām, Cairo 1966, at 493.

[79] See also Omaia *Elwan*, Gesetzgebung und Rechtsprechung, supra, note 75, at 251.

[80] The proposal of the *GoS* envisaged the nomination of Dr. John *Garang* as Vice-President whereas a rotated model of presidency was pursued by the *SPLM*.

[81] Power Sharing Agreement, Part II (Institutions at the National Level), 2.3.1 und 2.3.2.

[82] After national elections, the president elected shall appoint two vice-presidents, one from the South and one from the North. If the president is from the North, the position of the first vice-president shall be filled by the person who has been elected to the post of president of the *GoSS*. In the event that a person from the South wins the presidential elections, the president elected shall appoint the first vice-president from the North.

of the future First Vice-President who shall have a veto vis-à-vis to the president as per a catalogue of competencies defined.[83]

Following this first level in state-structure, a *GoSS* with the National First Vice-President as its president shall be established constituting the linkage between the *GoS* and the states in Southern Sudan.[84] The *GoSS* shall function in accordance with a Southern Sudan Constitution, which shall be drafted by the inclusive *Southern Sudan Constitutional Drafting Committee*. It shall conform to the Interim National Constitution.[85] In accordance to this Southern Sudan Constitution, an *Executive Council of Ministers* shall be appointed by the President of the *GoSS* in consultation with his/her Vice-President and approved by the *Assembly of Southern Sudan*.[86] Thus, the structural framework for Southern Sudan on the second level is therefore somewhat similar to the established structure on the first, national level.

Even more astonishing is the fact that particularly on the second level of state-structure, a defined equivalent apparently has not been determined in Northern Sudan so far. Whether the second level in the state-structure will be omitted, having the *GoS* therefore exercise a kind of dual function for the time being, or whether the Khartoum potentates assume tacitly that their previous authority will persist to a large extent in a self-contained Government of Northern Sudan, remains to be seen. The fist alternative seems hardly realistic. This would mean, from a factual point of view, that through the hybrid composed *GoS*, considerable influence could emerge which would curtail the hegemony of northern Sudanese elites. However, not just the northern elites, but also other northern fractions might oppose such a design because of inequitable significant influence of Northerners in southern matters. Despite the political issue, this raises alternative, additional, remarkable constitutional questions. The legal system in the north, for instance, is based largely on *šarīʿa* principles. Correspondingly, the *GoS*, as far as it acts for the North, should take those *šarīʿa* principles into account. This is inconsistent with the conciliations made thus far, and with the perception of the *SPLM*, accordingly, the Government of National Unity has to act neutral in matters of religious concern.[87] The already mentioned second alternative – a tacit assumption of continuity of governmental offices – might lead to extensive resistance through almost all northern political movements with reasonable certainty.

b. Factual Endeavours in creating a living, viable Legal System

The elaborated text of the Interim National Constitution requires an adoption by the National Assembly and *SPLM National Liberation Council* in order to persist as constitutional force until the end of the *Interim Period*.[88] Amendments to the Interim National Constitution affecting the provisions of the peace agreement may also be

[83] Power Sharing Agreement, Part II (Institutions at the National Level), 2.3.6.

[84] See Power Sharing Agreement, Part I (General Principles), 1.5.1.3.

[85] Power Sharing Agreement, Part III (Government of Southern Sudan), 3.2.

[86] Power Sharing Agreement, Part III (Government of Southern Sudan), 3.6.1.

[87] Rüdiger *Wolfrum*, supra, note 57, at 1262.

[88] According to Power Sharing Agreement, Part II (Institutions at the National Level), 2.12.7.

introduced only with the approval of both parties, the *GoS* and the *SPLM*.[89] These regulations elucidate the privileged position the *GoS* and the *SPLM* have. One has to become aware that such a bilateral conception involves a latent risk, which may be a serious hindrance for a comprehensive pacification and for a living, viable, legal system.

It has expounded not only the awful incidents in Dārfūr,[90] but also the relative unstable Biğā-region in northeast Sudan.[91] Northern Sudanese parties and civil societies that oppose the military regime and/or the factual exercise of the Islamic legislation are gaining participation and want to have a say in e.g. matters of the establishment of the interim constitutional regime binding the whole Sudanese nation. However, it is to be considered that the diverse intellectual-political forces in Northern Sudan might put obstacles in the path of a comprehensive pacification without their inclusion.[92] Southern Sudan itself is, presumably to large degree unknown, a politically contested space with no unified Southern Sudanese identity. What common identity does exist seems to be based primarily on common repression by, and resistance to, the Khartoum regimes. The conflicts during the 1990s, for instance, between the Dinka-dominated mainstream *SPLA* and various Nuer-dominated *SPLA* factions produced sore bloodsheds.[93] While the Dinka-Nuer conflict has been addressed by scholars, the conflict between Dinka and Equatorian groups, especially the recent history of that conflict, has been sidelined.[94] At present, a number of different political trends are visible in Equatoria, ranging from regional solidarity amongst Equatorians based on anti-Dinka sentiments, to secessionism, anti-SPLA armed movements such as the *Equatorian Defence Forces* (*EDF*), and pro-*SPLA* armed factions.[95]

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[89] Power Sharing Agreement, Part II (Institutions at the National Level), 2.2.7.2.

[90] See for example: Alex *de Waal*, Briefing: Darfur, Sudan: Prospects for Peace, African Affairs 2005, pp. 127–135; Khalid Y. *Khalafalla*, Der Konflikt in Darfur (Translated by Martina *Boden*), in: APuZ 4/2005, Bonn 2005, pp. 40–46; Hanspeter *Mattes*, Sudan Sommer 2004: Frieden im Süden, Krieg im Westen, Konflikt mit der Opposition, supra, note 1, pp. 288–290.

[91] Even though currently relatively calm, the flare-up of an armed conflict is once again not out of the question; especially Port Sudan at the Red Sea has an important strategic significance because it is the only harbour through which the state exports oil and imports goods.

[92] See to this context: Muḥammad ʾAbū-*l-Faḍl*, al-muʿāraḍa aš-šamāliyya wa-ʾittifāq as-salām, in: as-siyāsa ad-dawliyya, Cairo 2005, 160, pp. 90–93.

[93] In addition, many of those who belong to the smaller Equatorian ethnic groups – the Bari, Zande, Acholi, Madi, Moru, Kuku, and others – view the *SPLA/M* as a vehicle of Dinka domination and complain about their treatment at the hands of the *SPLA*.

[94] Recognising the explosive potential of the situation, the *SPLA/M* has made attempts to address the conflict between Dinka and Equatorians in the last few years, particular through an ongoing South-South dialogue, culminating the Equatorian Conference of 2001 and the Equatorian Convention of 2002.

[95] Adam *Branch* / Zachariah Cherian *Mampilly*, Winning the War, but Losing the Peace? The Dilemma of SPLM/A Civil Administration and the Tasks ahead, in: Journal of Modern African Studies, 43, No. 1, Cambridge 2005, at 1 (4–6).

Thus, as a matter of fact, the *GoS* as well as the *SPLM* have to furnish proof in implementing the promising agreements on their respective part. Since both provide the major political protagonists for the Government of National Unity, they have to take an important, common responsibility towards a sustainable pacification and more justice in Sudan, as well. In doing so, the people will proceed to a much more optimistic future in each of the national regions.