Self-Determination and Unity
The Case of Sudan *

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I. INTRODUCTION

As the primary vehicle for the making and implementation of economic, political, and social policies, and as the acknowledged legal actor in international relations and trade, the nation-state is now asserting an exclusive claim to exercising the right to development on behalf of its people. Under international law, the nation-state, as represented by the government of the day, is vested with sovereignty and territorial integrity, while the right to self-determination, under which a right to development may be defined and exercised, is vested in the "people" rather than the state as an abstract entity.(1) But as the cases of some countries in Africa and Asia, and more recently Eastern Europe and the former Soviet Union, clearly illustrate, there can be a serious tension between the unity and territorial integrity of the state, on the one hand, and the right of its people(s) to self-determination, on the other. Where that tension is manifest in a prolonged and devastating civil war, as in the case of Sudan, it makes little sense to speak of a right to development, or any aspect thereof, until peace and stability are restored. This paper examines possibilities for resolving or mediating this tension as a framework for peace and political stability in Sudan, essential prerequisites for economic and social development.

The tension is primarily about competing definitions of who constitutes a people for which purposes: whether there can be several "peoples" for purposes short of separate statehood within "the People" in the national sense; and if it is possible for these overlapping conceptions of people to co-exist within a single state, how and by whom should a people within the national People be defined and recognized for which purposes? That is, would it be useful to conceive of ethnic, linguistic, or religious groups, for example, as a people for the purposes of some degree of administrative autonomy or cultural self-determination, or in support of demands for multiculturalism in education, within the framework of the People as a nation constituting an independent and sovereign nation state. Would such an

acknowledgment of the collective identity of such groups within the nation help in defusing serious political conflict short of an assertion of demands for secession, whether they succeed or not? To note the tension in the concept of "people" and indicate the possibility of overlapping senses of peoplehood, we will use the term "people(s)." In view of the complexities of the definition — who constitute a people, by what criteria, as applied by whom and to what ends — we thought it advisable not to pre-empt our subsequent discussion of these issues by attempting to give a categorical definition at this stage though we hope this approach will not be too confusing for the reader.

The premise of the paper is that national unity is an obviously desirable framework for political stability, economic development, social justice, and well-being in a given country, but we cannot reasonably suggest that unity should be maintained at all costs. In particular, we argue that unity cannot and should not be at the cost of the people's right to self-determination, that is to say, their right to choose their own system of government that is accountable to the totality of the citizens of the country in pursuing equitable economic development and social justice, protection of fundamental rights and freedoms, and provision of essential services. On the contrary, genuine and lasting self-determination should be the object and purpose of peace and unity in the country; it derives legitimate meaning and content from the daily life of all individuals and groups in society, not from a "once and for all" political function that elites perform on behalf of "the nation" at the time of independence or establishment of the state.

The assumption of the desirability of unity itself, as well as the nature and operation of principles, structures, and processes of governance, of societal values, and of institutions, should always be examined in light of this continuing and integrated conception of self-determination. Therefore, we would argue that the state should be constituted, and unity maintained, in order to realize and secure the self-determination of all the people(s) of the country. Should that ultimate objective and legitimating purpose of the state be unattainable, then one must question the basis of statehood and the assumed desirability of unity with a view either to immediately and effectively rectifying the situation or to reconstituting the state in ways that are more conducive to achieving genuine and lasting self-determination for all its people.

Neither secession nor separation is — nor need be — the only manner in which the people(s) may exercise self-determination. Both conceptually and as a practical matter, self-determination can be realized either internally, within an existing state, or through establishing a separate state. To have a choice to seek secession does net mean that exercising it will be necessary; it may even be

reasonable to expect that a people is unlikely to opt for secession and independent statehood if an existing state respects the right to self-determination. Stated in more positive terms, given die fulfilment of the right to self-determination within an existing state, the advantages of unity may outweigh those of secession.

In this light, this paper seeks to identify and formulate principles or conditions upon which unity can be sustained as a means to justice, stability, and development, and not as an end in itself. Should the essential requirements of unity fail to materialize in practice, then we maintain that the fundamental and inalienable right of a people to self-determination must prevail, even if that should lead to secession and the establishment of a separate state. The analysis we propose here can apply to a wide variety of conflicts and situations because the right to self-determination is a universal human right for all peoples of the state, but certain categories or groups may require special attention and priority because they are at greater risk than others. Such is clearly the case for the people of southern Sudan and other marginalized, non-Arab groups in the country.

Our analysis can be seen in terms of two possible scenarios: one assuming that all the ethnic, linguistic, religious, and other groups (peoples) agree to constitute a single nation and state; and the other assuming that such agreement has failed to materialize. Under the first scenario, the matter becomes one of fulfilling the terms upon which agreement on unity is based. Should that effort fail, or if there were no agreement to begin, the second scenario arises without necessarily foreclosing the possibility of agreement on unity in the future. In other words, while agreement on unity is conditional upon fulfilling its conditions, disagreement or failure to meet its conditions does not preclude agreement or fulfilment of conditions. Unity is a process to be pursued all the time, not a once and for all event.

Although the option of unity may remain open after making a prima facie determination of its unworkability, there must be agreement on clear criteria and mechanisms for evaluating developments during a transitional period: whether they indicate giving unity another chance or that arrangements should be made for peaceful and orderly separation and the establishment of separate states. Thus, with respect to the specific case of southern Sudan, the paper concludes with a set of criteria and mechanisms for applying and verifying the standards of achievement for sustainable unity within an agreed time frame, and with a clear understanding and acceptance of the consequences of success or failure in this regard. Before focusing on the Sudanese case, as an illustration for our analysis, it may be helpful to begin with a general overview of the concept and implications of self-determination.

II. SELF-DETERMINATION AS A LEGAL AND POLITICAL CONCEPT

Self-determination has traditionally been associated with the right of territories under colonial rule to achieve independence, but many ethnically or religiously based internal conflicts around the world indicate pressures to extend the principle to ethnic, religious, linguistic, or cultural minorities within a given territory under certain conditions. The former Yugoslavia and the former Soviet Union are examples of state frameworks torn apart by ethnic conflicts. Sri Lanka and the Sudan illustrate the struggle of minorities to exercise self-determination within or outside the state framework. Quebec has pursued its case peacefully within the existing constitutional framework of the Canadian state.

The objective of applying the principle of self-determination in such cases may be a positive aspiration to build on the cultural values and institutional framework of a given identity or it may be a desire for freedom from intolerable discrimination, marginalization, or the domination of "internal colonialism." In our view, a broad and more flexible conception is needed because, as noted above, "[s]ome of [the] contemporary 'ethnic' conflicts are grounded in assertions of a purported right to self-determination that goes well beyond classic human rights formulations. Others, however, stem from the violation of the fundamental legal principles of equality and non- discrimination" (Hannum 1994: 1).

Because applying the principle of self-determination implies the choice of seeking secession, its application to a group within an otherwise independent country remains a highly sensitive and contentious issue. Despite strong resistance to separatist aspirations, however, several cases of secession or partition have occurred in recent years either as a result of the break up of empires, as in the former Soviet Union and former Yugoslavia; as a result of mutual agreement, as in the case of Czechoslovakia; or through successful armed struggle, as in the case of Eritrea's secession from Ethiopia. But as we emphasize in this paper, secession is not, and should not be seen as, the only manner of exercising the right. From a theoretical as well as a practical point of view, people(s) can exercise self-determination internally, within an existing state, as well as through establishing a separate state. Moreover, a people would not opt for secession simply because they have the right to do so. Indeed, people are unlikely to opt for the usually difficult and costly struggle for secession, or the prospects of political and economic uncertainties of independent statehood, if an existing state respects their right to self-determination. For example, if a state enables the right of members of a group to effective political participation through universal suffrage in periodic and fair elections, does not discriminate against them in education and employment, and respects the group's cultural identity in national policies, it would be unlikely for

the group to seek secession and separate statehood. This will probably be the case whenever the benefits of a well-founded, mutually agreeable unity outweigh the advantages of secession and the establishment of smaller, weaker, poorer entities.

The right to self-determination is now present in various international treaties and instruments. Article 1 (2) of the Charter of the United Nations (1945) states as one of the purposes of the United Nations: "To develop a friendly relationship among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other measures to strengthen universal peace." The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and the comprehensive 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations also incorporate this principle. According to article 2 of the 1960 Declaration: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The 1970 Declaration, which is widely recognized as restating principles of customary international law, provides: "All peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development." Common article 1 of the International Covenant on Economic, Social, and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966) reiterates the principle and also provides that States Party "shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations" (art.1(3)). The African Charter on Human and Peoples' Rights of 1981 also affirms the right of "all peoples" to "the unquestionable and inalienable right to self-determination" (art. 20(1)).

Two fundamental questions that arise out of these authoritative formulations relate to who falls within the "self" and whether the exercise of the right necessarily includes secession. With respect to the first question, neither the pertinent UN instruments nor the relevant provisions of the African Charter define the term "people." But scholarly literature has addressed the question. Yoran Dinstein (1976: 104) for example, suggests that peoplehood can be seen as contingent on an objective element of being an ethnic group with a common history, a cultural identity, and a subjective element indicating itself as a people. In another approach, the term "people," for the purposes of applying the principle of self-determination, refers to "a core" of meaning that "consists in the right of a community which has a distinct character to have this character reflected in the institutions of government under which it lives" (Brownlie 1985: 104). To lan Brownlie, the concept of distinct character depends on a number of criteria that may appear in combination. "Race (or nationality) is one of the more important of

the relevant criteria, but the concept of race can only be expressed scientifically in terms of more specific features, in which matters of culture, language, religion and group psychology predominate" (ibid.: 104).

Other scholars also emphasize the attributes of commonality of interests, group identity, distinctiveness, and a territorial link. Thus, Richard Kiwanutka suggests: "It is clear, therefore, that 'people' could refer to a group of persons within a specific geographical entity (e.g., the Alur of Uganda or the Amandebele of Zimbabwe) as well as to all the persons within that entity (e.g., Ugandans or Zimbabweans)" (1988: 88). In other words, "an ethnic, religious, or linguistic minority are a 'people' entitled to its right to self-determination, within an established state or through secession under certain circumstances" (An-Na'im 1993: 112).

As reflected in the same international instruments, however, the issue of whether the right to self-determination by groups falling within this definition is exercisable within state unity or extends to secession is highly controversial (Young 1991: 320). Article 6 of the 1960 Declaration provides: "Any attempt aimed at the partial or whole disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and the principles of the Charter of the United Nations." The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (1970) also qualifies the extent of the right by providing that

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour. (1970: sec. 1)

This normatively ambiguous qualification seems to suggest that a state that discharges its responsibilities toward its citizens through democracy and respect for fundamental human rights and civil liberties is not likely to be a candidate for a fragmenting exercise of self-determination, but that a state that grossly fails to do so can expect the aggrieved groups to demand self-determination, leading to secession.

The ambiguity is largely due to apprehensions of many countries, especially in Africa, about the danger of encouraging secessionist movements if the right to self-determination applies to independent states. Most of these countries are generally perceived to be artificial creations of European colonial powers, which divided regional ethnic groups, brought diverse groups together within the newly invented borders of the modern state, and otherwise kept them unintegrated and often mutually suspicious and antagonistic. In view of political and economic

disparities among the groups and their regions within the country, conflict over power and development opportunities, which were accessible only through the state, became unavoidable after independence. Unless all governments and intergovernmental organizations strongly endorse and safeguard colonial boundaries, the argument goes, many newly independent states will disintegrate into numerous small and untenable new states. To forestall this perceived threat to national unity throughout the continent, the Organization of African Unity at its inception in 1963 resolved to maintain the colonial borders. At the Cairo Summit in 1964, the organization reaffirmed the notion of inviolability of the colonial borders, and it became a sacrosanct principle of the organization that the world also recognized and reinforced. Fear of opening a Pandora's box of secessionists claims precluded making exceptions even for the clearest and most deserving cases, like that of Eritrea. Nevertheless, the case of Eritrea itself, and other recent examples in Eastern Europe and the former Soviet Union, clearly show that secession can, in some situations, be the best way for ensuring peaceful coexistence and cooperation between the former enemies.

We suggest mediating that ambivalence about the application of the right to self-determination within an independent country by balancing two competing claims: one for the preservation of national unity in the context of racial, ethnic, religious, and cultural diversity; and the other for self-determination, whether exercised within the framework of national unity or through secession. National unity is normally desirable on a variety of grounds, but it should always be seen as the means to achieving the ends of equitable social and economic development, of equal and effective political— participation, and of protection of rights of citizenship without discrimination on grounds of ethnic, religious, linguistic, or other form of identity. Otherwise, the need for unity will be abused to justify the oppression of minorities and dissidents, or maintained at great human and material costs to the same people in whose name it is asserted.

Conversely, where conditions are so oppressive to a people's sense of identity and cultural integrity, and detrimental to their rights to political participation, economic development, access to essential services, and so forth, secession ought to be permissible in principle, subject to practical considerations of economic and political viability. But there is a minimum threshold before considering secession as a way out of oppressive situations. While the possibility of secession would not be meaningful where members of a group are dispersed throughout the country in question, it could be a meaningful option, given an appropriate level of economic and political viability, in the case of a geographically concentrated group. In the latter situation, the clearer it becomes that equitable reconciliation of the competing claims of unity and self-

determination is not possible, the stronger becomes the claim for secession and separate statehood.

> **The moral justification and the political force of the principle of self-determination are linked to the notion that government should be based on the consent of the governed: that people have a right to associate freely into an entity organized to govern itself, thereby giving expression to 'the consent of the governed.' (An-Na'im 1993: 108)**

In other words, state cannot be based on free association unless the possibility of dis-association remains open, at least as a last resort. As emphasized earlier, however, this does not mean that secession will necessarily follow in practice. Many political, economic, security, and other factors and considerations can influence the outcome, not only from within the state, but also from neighbouring countries and the international community at large.

Combining these two lines of thinking, the threat of secession could indeed enhance the prospects of exercising the right to self-determination within the framework of unity, while the difficulty and risks of achieving secession would generate stronger determination of all segments of the population to build national unity on sound foundations of equality and justice (ibid.: 106). As William Zartman put it:

> **There is no doubt that regional autonomy and federalism (when there is a sufficient balance among numerous units) are the appropriate answers to problems of self-determination. A proliferation of mini-states is in the interest neither of the smaller amputees nor of the larger body politic, no matter which unit holds special resources. Secession may become necessary as a threat (and a threat is effective only if it is real) to make governments live up to the responsibi1ity for all their people that sovereignty implies. (Deng et al.**
> **1996: 56)**

In other words, keeping the two options of securing self-determination either within a united existing state, or through secession and separate statehood, is likely to produce a strong incentive for all parties to create conditions for unity to continue precisely because they cannot take unity for granted, while the decision to seek secession will not be taken lightly because of the difficulty and risks of achieving it.

It is true that, in the final analysis, whether a "people" is entitled to exercise the right to self-determination to the extent of secession is a political question to be answered over time. Moreover, because there is no independent and impartial arbiter who will decide on the legitimacy of the claim and enforce that judgment, the outcome of a claim to secession will depend on many complex and interactive factors, including the ability of the people in question to sustain their cause and enlist sufficient internal and external support. Nevertheless, we believe that the analysis presented here can assist all parties to a conflict, and other regional and international actors, in mediating prolonged and complex conflicts, like that in

Sudan, and minimizing the human and material costs of conflict. Part of this process of mediation, we suggest, should lead to the formulation of an international law principle to facilitate one or the other form of self-determination for minorities. Should such an international law principle be recognized, we argue, a government can be held accountable for its violation of the right to self-determination of all segments of the population within the framework of the existing state. If the government fails to rectify the situation, it will suffer the consequences of violating international law, and other governments would be justified in supporting the demand of the oppressed minority to secession, as and when appropriate.

III. THE DIALECTIC 0F UNITY AND SELF-DETERMINATION IN SUDAN

The first cycle of civil war in Sudan started as a small rebellion in western southern Sudan in August 1955, few months before the country achieved independence from Anglo-Egyptian colonial rule on January 1956. That phase of the civil war persisted, at varying degrees of intensity, through the first democratic period (1956—58), the first military regime of General Ibrahim Aboud (1958—64), and the second democratic period (1964—69). It was settled during the second military regime of General Mohammed Numeiri (1969—85) through the establishment of regional autonomy for the south under the Addis Ababa Agreement of 1972 and the 1973 Constitution. However, Numeiri himself unilaterally repudiated the basic elements of that peace settlement through a series of serious violations of the express terms of the Addis Ababa Agreement during the late 1970s and early 1980s, thereby leading to the resumption of the civil war by the second half of 1983. This second and current phase of the civil war has persisted through the overthrow of Numeiri (April 1985) and the third democratic period (1986-89), and it continues now under the third military regime (1989 to the present).

Space does not permit a detailed discussion of the causes and stages of this long and devastating civil war.(2) Neither is it possible to review and evaluate the various efforts at mediation and conflict resolution by a variety of local, regional and international actors. But it is perhaps pertinent to note that the latest declaration of principles developed with the mediation initiative under the auspices of the Inter-Governmental Authority on Drought and Development (IGADD), recently named Inter-Governmental Authority on Development (IGAD), combines the three main themes discussed in this paper.(3) This declaration of principles includes self-determination as a fundamental and inalienable right, national unity as a desirable objective that should be given priority, and interim arrangements that

formulate the basis and sustainability of unity, to be tested through a referendum at the end of the stipulated period.

To give unity priority as an objective, while upholding the right to self-determination, is to emphasize the urgent need to formulate the principles or conditions upon which genuine and just unity can be sustained in accordance with the right to self-determination. Such principles and conditions will no doubt include issues of decentralization and division of powers, establishment of governance and security arrangements, sharing of national wealth, protection of fundamental rights within a framework of democratic pluralism, protection of cultural identities of minorities, and language policies. The nature of the present military regime, and its apparently strong identification with the ideological position and political program of the National Islamic Front, indicates to observers that agreement on these and related matters may depend on the resolution of the problematic question of the relationship between Islam and the state, and the application of Islamic Shari'a (traditional formulations of Islamic law) in particular. As briefly explained below, moreover, this question may be difficult for all the major political forces in the Muslim northern Sudan. But it is equally clear that the national leadership of a country like Sudan, of whatever ideological and political persuasion it may be, must have the vision and political courage to take difficult decisions in order to realize peace and unity.

The linkage between unity and self-determination may also be difficult for most Sudanese political leaders, northern and southern alike, to accept and implement. Although rarely articulated in these terms in the past by the majority of southern leadership, self-determination has more recently become increasingly seen as an essential framework for conflict resolution in Sudan (Deng 1995a, 1994: 10). Peace initiatives and general Sudanese political discourse should therefore clarify the concept of self-determination and discuss its relevance to conflict resolution in the country.

The right to self-determination has always been, and will continue to be, the foundation of any nation-state, not only for the purposes of achieving political independence from colonial rule, or at the initial stages of "nation-building," but throughout the existence of the state and in every aspect of its political, economic, social, cultural, and other institutions and processes. Self-determination is a means to ensuring a people's ability to select a government of their choice which will protect their personal security and fundamental rights and freedoms under the law, achieve sustainable and equitable economic development, secure essential services in education, health care, and so forth; it is the right of all citizens to self-governance through their freely elected agents and legally appointed officials, who are accountable for the effective and equitable performance of their obligations to the totality of the population, without any discrimination on grounds of race,

ethnicity, religion, gender, or language. At the individual, group, or community levels, self-determination is about the right and ability of all citizens to assert their ethnic or cultural identity, and to enjoy the benefits of belonging to any community or group without fear of discrimination or adverse consequences.

In this light, genuine and lasting self-determination should be the object and purpose of peace and unity in any country, deriving its legitimate meaning and content from the daily life of the state and society, and not a "once and for all" political function that elites perform on behalf of "the nation" at the time of independence or establishment of the state. The term usually comes into prominence in situations of severe conflict, strife, or civil war precisely because appropriate conditions for sustaining the existing arrangements for consensual unity are not sufficiently observed and respected in the daily functioning of the state and society at large during "normal" times. But when the right to self-determination is discussed or considered openly, political leaders and the public at large tend to react either to misconceptions of the principle, or to negative perceptions of the circumstances of its invocation in the particular context, instead of reflecting on its essential nature, obvious validity, and relevance to the situation at hand.

By focusing on secession or separation as the only possible outcome of asserting the right to self-determination, all sides to a conflict miss the essence of the right and its relevance to unity itself as well as to separate statehood. The assumption of the desirability of unity itself, and the principles, structures and processes of governance, societal values and institutions, should always be examined in light of this continuing and integrated conception of self-determination. Any state, whether old or new, should be constituted, and unity maintained or rejected, in order to realize and secure the self-determination of all the people(s) of the country. From a unity perspective, if the ultimate objective and legitimating purpose of self-determination is not achieved and sustained, then the people(s) must question the basis of statehood and assumption of desirability of unity with a view either to immediately and effectively rectifying the situation or to reconstituting the state in ways that are more conducive to achieving genuine and lasting self-determination for all its people, and every individual person or group.

A determination that existing structures and operations of unity have failed should not necessarily lead to secession and separate statehood; some form of decentralization, federalism, or confederation, coupled with appropriate division of powers and resources, protection of individual and communal rights, and so forth, may suffice. But the possibility of secession should be seriously considered when such alternative solutions have been tried and seen to have failed; otherwise, there would be no credible prospects of ending a drastic confrontation and destructive civil war of the type taking place in Sudan today, as all sides to the conflict will

continue "business as usual." As suggested earlier, this twofold approach would achieve a balance between the dangers of oppressive unity and the risk of unjustified separation: the risk of secession acting as the incentive for all parties to work harder at establishing and securing continuing self-determination within the framework of unity, while the difficulty of secession and risks of separate statehood work to deter frivolous or premature demands for separation.

This whole process of re-examination and mediation can and should be done in a peaceful and orderly manner. A mediation and negotiations stage is inevitable even where, as in the case of Sudan, one side to a conflict wages an armed struggle in the belief that it is justified in doing so in order to force the other side to acknowledge the legitimate demands of those who are denied genuine and lasting self-determination, whether within a framework of unity or through secession. Thus, a mediation and negotiation stage is bound to come into play in the case of Sudan in order to achieve agreement on the measures and stages for giving unity a chance. Should secession of a certain region of an existing state be the agreed option, negotiations will be for dealing with transitional arrangements, determination of borders, allocation of international rights and obligations between the old, unified state and the two emerging states.

Realistically speaking, and as the present case of Sudan illustrates, the positions and ambitions of parties to the conflict would probably preclude even the possibility of orderly and rational dialogue where analysis like the one we present can be considered and acted upon, to the extent it is accepted. The harder the case on the ground — where there is violence and civil war with one side or the other (or both) believing that they can win a military victory — the more difficult it will be to envisage the sort of mediation and reflection suggested here. With due regard to these realities, we note that the immediate protagonists are necessarily dependent on other supporters, inside and outside the country. Both sides to a conflict need financing for their war efforts, logistical support from neighbouring countries to secure supplies and troop movements, diplomatic support at intergovernmental organizations, and so forth. In short, there are many actors who can listen and engage in dialogue, and who, if persuaded (or pressured by the international community), can have a significant and immediate impact on the behaviour of seemingly indifferent or intransigent protagonists.

IV. ACTORS AND FACTORS IN THE SUDAN CIVIL WAR

It may be helpful at this stage to recall pertinent aspects of the recent history of the Sudan, and highlight relevant elements of its ethnic and religious composition, in

order to place the basic choice between unity and separation in context. As the Sudanese conflict has escalated considerably in recent years, the divisive issues have become crystallized, thereby relatively clarifying the options before the parties. It is imperative now, we suggest, that this clarity be transformed into successful conflict resolution through the development and implementation of a mutually acceptable solution. Who are the actors in this process, and what political and other issues and factors are likely to affect the prospects of peace and development in Sudan today?

The main actors in the Sudanese civil war at the time of writing (March 1996) may be described as follows. On the central government of Khartoum side, there is now the military regime of General Omar Hassan Al-Bashir, who came to power by a military coup d'Etat on 30 June 1989, and who receives the support of the National Islamic Front (NIF) of Dr. Hassan Al-Turabi. This military-NIF regime is opposed in the north by the National Democratic Alliance (NDA), consisting of the Umma Party of former Prime Minister Sadiq A1-Mahdi, who was overthrown by the 1989 coup; the Democratic Unionist Party; Sudanese Communist Party; and a few small regional parties, former leaders of trade union and professional associations; as well as independent personalities and intellectuals. On the southern side, there is the Sudanese People's Liberation Movement/Army (SPLM/A), under the leadership of Dr. John Garang de Mabior who initiated the second phase of the civil war against former President Numeiri in 1983. In August 1991, however, Dr. Riek Machar and Dr. Lam Akol broke away from the SPLM/A and established the SPLM/A United, which Machar subsequently reorganized into the South Sudan Independence Movement/Army (SSIM/A), while Lam Akol remained in an anomalous rebel position. Machar's leadership of the breakaway faction was later contested by William Nyuon, from Machar's own ethnic group. After joining the rebellion against Garang for some time, Nyuon returned to Garang's mainstream SPLM/A. He was, however, subsequently killed by soldiers loyal to Machar. These southern factions (and their sub-factions) have been engaged in a bloody confrontation among themselves, which has at times exceeded the intensity and destructiveness of their struggle with government forces. On 10 April 1996, Machar returned to the Sudan after reaching an agreement with the government on the basis of national unity with some vague recognition for the right of the south to a referendum. This has left the SPLM/A more or less the sole representative of the southern struggle in the war.

To appreciate some of the complexities and paradoxes of the Sudanese civil war, note that SPLM/A is now considered to be an integral part of the National Democratic Alliance (NDA) opposition, although it had engaged in a bloody conflict in 1986—89 with then Prime Minister Sadiq Al-Mahdi before he was overthrown. During that period, the government consisted mainly of a coalition

between the Umma and Democratic Unionist Party (DUP), but MF was also part of the government for part of the time. Now that the Umma, DUP, and SPLM/A are all part of the NDA in opposition to the military-NIF government in Khartoum, it remains unclear whether this is a tactical alliance against a common enemy or the expression of a genuine and lasting agreement on the basis of unity and self-determination that will survive the overthrow of the military NIF regime.

The complexity and paradox of the situation can also be seen in the large degree of agreement among most political forces on the unresolved main issues. These issues include: the sharing of power and national resources between the center and the regions; the system of government, in particular the form of democracy suitable for the country; security arrangements; the relationship between religion and the state specifically the role of Islamic Shari'a law; the definition of national identity, particularly as it relates to Arabism, Africanism, Islam, Christianity, and indigenous belief systems; and principles of foreign policy with respect to external linkages to the diverse element of the internal configuration (Deng 1990b).

Moreover, there is even a degree of consensus on the broad lines of action that need to be taken on some of the issues. Most recognize, for example, that the country is too large and too diverse to be governed through a centralized system and that decentralization in the form of regionalism, federalism, or similar arrangements would be more suitable. As we emphasize below, however, agreement on the principle of decentralization as such, even to the extent of federalism, will not be enough without agreement on the basis of the national state itself; this is true especially in relation to the issue of the application of Shari'a and its discrimination against non-Muslims and women citizens of the country at the national federal level, as well as in the regions where Shari'a is applied. Also, the peripheral regions of the country in the west, the east, the far north, and particularly the south, have suffered in the past from gross inequities in the sharing of power and the distribution of wealth, services, employment opportunities, and programs of social and economic development. Although most Sudanese leaders would now see the need for affirmative action and remedial preferences in any future arrangements for these regions, they would probably strongly disagree on the precise nature and scope of those measures.

There is also an increasing recognition, though probably short of national consensus, that past experiences have afflicted the country with a vicious cycle. Parliamentary democracy (on universal suffrage, often not conducted in all parts of the country because of the civil war) has always brought into power religiously based sectarian parties that were more preoccupied with factional infighting and petty squabbles than with addressing the pressing problems of the country. Each time, the military steps in to "save" the country but only manages to degenerate

into its corrupt dictatorship, which, on two occasions (October 19M and April 1985), has provoked popular uprisings that forced the government out of power and restored liberal democracy. Regardless of the "civilianization and normalization" of the military government that came to power in the 1989 coup d'etat through to non-party elections in March 1996, there appears to be wide consensus, including those opposed to the present government and those committed to pluralistic democracy, on the need for developing alternative models to what the country has been experiencing in these vicious cycles (Deng 1995b: 2—3). It remains to be seen what this emerging consensus will mean for the content of genuine self-determination for all the people(s) of Sudan in the terms discussed in this paper.

The most controversial issue, we suggest, is the relationship between religion (Islam in this case) and the state. This issue first arose in Sudanese political and constitutional discourse immediately after independence, and it remained a source of tension during both civilian and military cycles of governments. With the imposition of Shari'a as the sole legal system of the country by former President Numeiri in September 1983, and especially since the military-NIF regime came to power in June 1989, the issue became whether to transform Sudan into an Islamic state in which women and non-Muslim Sudanese cannot enjoy equal rights as citizens of their own country. (4) While the present regime is the most openly committed to this ideological position, the other two major traditional parties in the north (Umma and DUP) are also closely associated with this view by virtue of their constituencies and the rhetoric of their leaders. Other significant political forces in the north, including the so-called "modem forces" (trade unions and professional associations), are either ambivalent on the issue, or unable to articulate and openly defend an alternative position.

In response to objections to establishing an Islamic state, Sudanese advocates of Shari'a argue that the consequences of the negative application of Shari'a are exaggerated, or that *ijtihad* (juridical reasoning) can be exercised by Muslim jurists to modify the most serious negative consequences for non-Muslims and women. It is important to note, however, that none of the major political parties in Sudan to date, whether in government or opposition, has produced a clear statement of its position on these issues, or has addressed the question of the jurisprudential foundations of full and complete equality for non-Muslims and women. Some individual leaders, including Sadiq Al-Mahdi of the Umma Party and Hassan Al-Turabi of the National Islamic Front (NIF), have expressed the wish for reform and have speculated about its possible outcome.

But all those individual calls for reform are open to two serious objections. First, they lack a clear statement of the Islamic jurisprudential methodology of reform, and as such can only be characterized as wishful thinking, if not cynical

"double-discourse" to appease external opponents of those leaders without antagonizing their internal or party supporters. Second, and to the extent that tentative and unsubstantiated reform proposals have been articulated in hypothetical form, they clearly fail short of achieving equality for non-Muslims and women as full citizens of their own country.

It is in this context that the SPLM/A and most of the parties, including the Umma party — but without the DUP or NIF — agreed on abrogation of the Islamic "September Laws," promulgated by former President Numeiri in September 1983, in the Koka Dam Declaration of March 1986.(5) But the DUP was generally believed to have already committed itself to the abrogation of those laws at the time of the 5 April 1985 uprising that led to the overthrow of Numeiri, and it has subsequently reaffirmed its opposition to the September Laws. Moreover, all parties to NDA, including the Umma and DUP, seem to have accepted the separation of Islam and the state in principle in the so-called Asmara Declaration of March 1995, although the actual text of the declaration does not say so explicitly. This sort of ambivalence, we suggest, is characteristic of the behaviour of all northern Sudanese political forces.

In fact, Numeiri's government intended the use of the euphemism, "September Laws," to insinuate that those laws were not really "Islamic," but, quite the contrary, a perversion and exploitation of Islam. The implication was that only on that ground could they be abrogated. Even then, the position of the Umma Party and DUP was that they would be replaced by more genuine Islamic laws. Nevertheless, the so-called "September Laws" were never abrogated as agreed. And yet, it was the pressing need to accommodate the south that led to the agreement between Sayyid Mohamed Osman Al-Mirghani and Dr. John Garang de Mabior, leader of the SPLM/ SPLA, on 16 November 1988 to "freeze" the "September Laws."(6) However, that agreement generated considerable controversy and a series of political crises between the DUP, on the one hand, and the Umma and NIF, on the other hand, and also between the Umma and NIF.

Whatever may be the strategic or tactical position of northern political parties and groups in the past and whatever the possibilities of Islamic law reform (see generally, e.g., An-Na'im 1990), the real challenge facing the national leadership of Sudan is how to secure the foundations of unity with equality and justice for all citizens, without distinction on grounds of religion or gender. From the point of view of the analysis of this paper, the real issue is whether full and complete equality for women and non-Muslim Sudanese is achieved and maintained not only as a matter of law and official policies and practice, but also through educational and other efforts to realize a genuine sense of national unity in social and cultural terms. If the government of the day, and other major political forces in the north, fail to consistently and systematically secure such equality for

any segment of the population, then it repudiates the principle of self-determination as the fundamental foundation of national unity, whatever may be the reason for that failure.

In any case, as suggested at the beginning of this paper, the issue should not be seen in terms of enabling leaders to act with impunity, because responsible leadership necessarily involves making decisions that can have negative political consequences that leaders are willing to accept in the national interest. By failing to abrogate the Islamic laws in the 1980s, northern leaders were calculating that they can afford to disregard the objections of southern and other opponents of those laws. The question now is whether northern leadership, both in government or opposition, is willing to accept the political consequences of decisions and policies that are deemed necessary for achieving unity and peace in the country. Responsible leadership should never mean always following so-called popular sentiments and wishes, regardless of the consequences for the national interest.

V. COMPETING VISIONS IDENTITY

We also believe that it would be seriously misleading moreover, to see the issue of religion in isolation from all the other issues and, in particular, the critical question of national identity.(6) Indeed, religion has become a symbol of everything that identifies the parties and determines their relative position in the power hierarchy and in the distribution patterns. Religion has also become a critical factor in foreign policy and external linkages to internal symbols of identity. This is the outcome of a historical evolution that has shaped the contrasting and now conflictual perspectives from the north and the south. In terms of our analysis, however, all these dimensions and implications of the role of religion must be addressed, if self-determination within a framework of national unity is to be maintained in Sudan today.

To appreciate the role of religion in the composite of identities of race, ethnicity, and culture which now divide the country into "Arabs" and "Africans", Muslims and non-Muslims, it is necessary to have a closer look at the processes of Arabization and Islamization in the north, the limits of their extensions to the south and the conflicting perspectives on the nation that have resulted from the tow-track evolution of identities. Space does not permit a full examination of theses processes, but the following brief review should suffice for our purposes here.(7)

The present cleavage between the north and the south is the outcome of a historical process characterized by stratification and the grading of races, ethnicities, cultures, and religions in favour of Arabism and Islam. However, from

an ethnic and cultural perspective, the north was not uniformly affected by Arabization and Islamization to the same degree as was the south. In racial, cultural, and religious terms, what emerged from the process is an integrated mold that is uniquely Sudanese. Most of the Arab tribes of the north do not resemble their fellow Arabs in North Africa and in the Middle East, but they are intensely proud of their Arabism and seek to support it by tracing their genealogies back to Arabian and in some instances to the tribe, indeed the immediate family, of the Prophet Mohammed, though such claims cannot be substantiated. Moreover, some parts of the north, notably the Fur and the Nuba, in the west, and to a lesser extent Beja in the east, were not much affected by Arabization, although they adopted Islam with a zeal that was reinforced by their indigenous belief systems. Even in the far north, the Nubians have retained their language and sense of identity, despite the adoption and integration of Arab elements. What makes these non-Arab anomalies in the north particularly significant is that Islam in the Sudan, unlike in many African countries with Muslim majorities, tends to be associated with Arabism as a composite concept of race, ethnicity, and culture.

Despite the concerted efforts, at least since the Ottoman-Egyptian rule and Mahdist state of the last century, Arabization and Islamization did not extend to the south, even though a degree of cross-cultural influences took place. Contact and interaction between the two parts of the country were characterized by hostilities ranging from invasions by slave hunters to incursions by successive governments trying to expand their domain southward. As a result, although some cross-fertilization took place, the two parts of the country remained distinct, seeing hardly anything in common.

Therefore, two factors complicate the issue of religion as a barrier to the resolution of the conflict. First, the Islamic agenda represented by the present government has been shared in varying degrees by successive regimes since Numeiri; and that agenda is not only integral to the political foundation and orientation of the major parties (Umma and DUP), but also difficult for other political forces in the north to confront. Indeed, the debate over the issue of an Islamic constitution and scope of application of Shari'a goes back to the earliest constitutional discussions since independence. Second, religion is also integral to ethnicity and perceptions of individual and collective self-identity.

Judging from the historical dynamics of identity among southerners and northerners, it is not so much integration or assimilation into the Arab-Islamic mold as it is the domination associated with the imposition of integration or assimilation that southerners resent and resist. That resistance has in turn proved to be the most formidable barrier to the establishment of an Islamic state in the Sudan. Even those northerners who oppose the application of Shari'a tend to

express their objection in terms of consequences to the south, without adding their own grounds.

From the perspective of the non-Muslims in general, and of the south in particular, however fair, just, and magnanimous the Arab-Islamic framework advanced by NIF and the dominant political forces in the north may appear to be, it can never provide for full equality. Advocates of an Islamic state argue that the non-Muslim minority should accept the will of the Muslim majority in this regard. Once the majority concedes its "democratic" right to establish an Islamic state to enforce Shari'a, it promises to guarantee minority rights. But given the nature of an Islamic religious state, and the detailed content of Shari'a, the majority's conception of minority rights will not conform to the requirements of a united Sudan where all citizens would enjoy equality and respect for their fundamental rights without discrimination on grounds of religion or gender. Besides, Islam in Sudan implies Arabism as a racial, ethnic, and cultural concept, which inevitably discriminates against non-Arabs, even if they are Muslims.

In this light, it also becomes clear that federalism alone will not resolve the issue of the relationship between Islam and the state in general, and the problems associated with the application of Shari'a in particular. By its very own terms and fundamental premise, the consequences of the application of Shari'a cannot be confined to any unit within a federal state without repudiating the fundamental rights and freedoms of non-Muslim and women citizens throughout the country. If Shari'a is applied in any region of the country or at the level of federal or central government, then non-Muslim Sudanese and women will certainly suffer inequality and discrimination in that region as well as at the national federal or central level. This repudiates the principles of equality before the law, freedom of movement, access to employment throughout the country, and many other rights and benefits of federalism. But while this issue is national, the problem for the south is particularly acute and deserves special and urgent attention.

In discussions about the so-called "federal solution" in Sudan, some cite the example of the United States to indicate that various states in a federal union can have their own specific legal systems. The implication of this comparison is to say that Shari'a can be the legal system of northern states while southern states can have their own "secular" systems without violating the federal principle of the union. This argument is fundamentally false and misleading in that it fails to account for the role of the federal constitution. In the United States and other federal democratic governments in the world today, the federal constitution prevails over state legal systems in order to guarantee the fundamental rights and freedoms throughout the country, without discrimination on grounds of religion, race, gender, ethnicity, culture, or Language. No state law in Australia, Canada,

India, the United States, or any other federal system anywhere in the world today may violate the federal principle of equality and non-discrimination on these grounds. Yet, such discrimination is the necessary and unavoidable consequence of the application of Shari'a in any part of the country.

To conclude this section, we suggest that the basic choice facing the people (and peoples) of Sudan is: either secure self-determination for all Sudanese within the framework of a united Sudan, or be prepared to concede separation if a people who are denied their fundamental rights as equal citizens of their own country choose to assert their right to self-determination through secession. As indicated earlier, whether or not a certain "people" of Sudan constitutes an entity entitled to exercise the right to secede raises questions about demographic concentration, and economic and political viability of the proposed new state, as indicated earlier. Responses to such a claim, inside the country as well as by other governments and the international community at large, are also relevant. If our argument is accepted, responses to claims for secession should include consideration whether circumstances are such that an international law-based claim to self-determination can be raised in the particular case. It is clear that the people of the south are the most disadvantaged by the status quo and are the ones asserting this right through armed struggle, or at least demanding an acknowledgment of their right to do so, pending agreement on the process and timing of its implementation. But it should be emphasized that asserting the right to self-determination, or demanding its acknowledgment, does not necessarily and categorically mean exercising it in favour of actual and immediate secession.

VI. TOWARD A RESOLUTION

In this section, we wish to expound the requirements of achieving genuine and lasting self-determination for all Sudanese, as a permanent and fundamental principle of all and every aspect of the political, economic, social, and cultural life of the country. We will then finish by elaborating on the specific steps, stages, and process by which this can be done and the success or failure of efforts to satisfy these requirements can be verified, with the clear consequences of either achieving sustainable unity or implementing separation in a peaceful and orderly manner. However, it may be helpful to begin by highlighting the most urgent needs and recalling certain factors and considerations.

The most urgent need is to end all hostilities, facilitate the delivery of relief assistance, and enable people to return to their normal life in the war-affected zones. Longer term needs would include wider rehabilitation and reconstruction,

provision of health care, education and other essential services, and the establishment of an appropriate administration for the south.

But none of these obvious humanitarian objectives can be achieved except within the framework of a comprehensive peace settlement acceptable to all significant political forces in the country. Any agreement that does not command the support of all major political parties and forces within the north, south, and in the country as a whole is doomed to failure sooner or later. This is probably one of the lessons to be drawn from the failure of the Addis Ababa Agreement of 1972.

The implementation of short and long term objectives would require a combination of pressures and incentives for all parties to engage in serious peace making. But the international community should not invest in such a package without assurances of a lasting and just peace.

Yet, the nature of the political situation in the north, with the present exclusion of major political parties from power, is unlikely to permit the emergence of a genuine, widely based consensus, whether in negotiating agreement or in its subsequent implementation within the north, south, or country as a whole.

In light of the analysis and conclusions of earlier sections of this paper, and with due regard to these last-mentioned factors and considerations, we propose:

A. All parties must accept and follow an immediate comprehensive and internationally supervised cease-fire, followed by the implementation of specific interim measures according to an agreed timetable and subject to periodic international verification. The tasks to be undertaken during the transitional period should seek to implement:

>(1) a comprehensive program of reconstruction and recovery for the south from the devastation of civil war: infrastructure, economy, education, health, and other vital services;
>
>(2) concrete and specific plans for fair and equitable development of the whole country, with compensatory measures for the south and other disadvantaged regions to make up for earlier neglect;
>
>(3) arrangements for political participation and power sharing (federal structures can assist here, subject to guarantees of fundamental rights and freedoms), without distinction on grounds of race, ethnicity, religion, culture, or gender, yet with affirmative action for the south and other disadvantaged regions of the country;
>
>(4) clear programs to promote a uniting national identity while respecting ethnic and cultural diversity, and to combat racism, cultural chauvinism, and negative stereotyping of non-Arab peoples and cultures, or the reverse.

B. A southern interim government should pursue these tasks in cooperation with the central/federal government in Khartoum. While the precise nature and composition of such an interim government is to be agreed between the parties, it must be a government of southern unity, including all factions and political forces within the south and southerners in other parts of the country. The conception, structure, powers, resources, and personnel of this interim government of southern unity should also reflect the spirit and content of the right to self-determination as defined in this paper.

C. At the end of the interim period, the length of which is to be agreed, but which should be long enough to allow for development of tangible results of the programs, there should be an internationally supervised referendum in the south, whereby all the peoples of that part of the country would decide whether they wish to maintain unity with the north, or seek secession and the establishment of a separate state.

D. Periodic internationally supervised verification would be crucial for allowing the government and other concerned parties every opportunity to identify and rectify any defect of planning or failure in implementation of interim programs. Ultimately, it will be the people of the south who will decide whether it is in their best interest to continue with unity or opt for secession, but periodic verification would facilitate the acceptance of the verdict of the people and allow time for preparing the political and material resources for its implementation from internal and external sources of support.

E. In view of the painful and tragic history of the civil war in Sudan, and the serious credibility gap between the southern and northern parts of the country, it is extremely important to provide for internal and external guarantees for safeguarding the integrity of the transitional process and the effective implementation of its outcome. To this end, we also suggest a system of mutually agreed upon security measures, together with supervision by regional and international guarantors of the peace process.

F. The same history and current political conflict within the north also make it imperative to find ways of promoting and sustaining a genuine national consensus on the transitional strategies and peace process. Otherwise, the agreement and process will not survive a change of government or any other major political developments in the north, south or the country as a whole. Ways and means must therefore be found for involving all significant forces in the negotiation and implementation of the peace process. Moreover, the need to promote national consensus must be observed at every subsequent stage of implementation and verification.

While the situation of the civil war in Sudan appears zero-sum, the people of the country, particularly in the south, have suffered for far too long, and the devastating consequences of war have so engulfed the international community with so much demand for humanitarian assistance that the war must not be allowed to continue. The involvement of the IGADD (now IGAD) countries and the Friends of IGAD(D) is certainly a positive development in this direction. We believe a formula that promises peace is one that reconciles the right to self-determination for the south with the aspiration for unity in the north. This can be done by creating conditions conducive to the exercise of self-determination internally within the framework of unity or else the north must be prepared to have the south exercise self-determination externally through secession.

VII. CONCLUSION

In this paper, we explored the possibilities of mediating the tension between national unity and self-determination in order to bring about just and lasting peace to Sudan. But although the case of Sudan may be deserving of special attention and consideration because of the excessive devastation of its civil war, and the complexity of the underlying political, ideological, and identity issues, we suggest that the situation in other countries can benefit from similar analysis. The precise nature and dynamics of local actors and issues would of course differ from Somalia to Liberia, from Rwanda to Bosnia; but in all cases, it seems to us, the basic tension and conflict is about the relationship between unity and self-determination. In all cases, we suggest, the outcome should not be seen as an either/or proposition. Unity and self-determination can and should be reconciled, but for that to materialize, the option of peaceful and orderly secession and separate statehood should remain open both as an incentive for striving for just unity as well as a last resort, should the right to self-determination within unity prove to be unattainable.

NOTES

1. As embodied in common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of 1966.
2. There is extensive literature on the subject, and from different perspectives. See, for example, Beshir (1968, 1975); Oduho and Deng (1963); Albino (1970); Alier (1990); and Deng (1995c).

3. This East African regional cooperation agency was used in the early 1990s by the governments of Eritrea, Ethiopia, Kenya, and Uganda as a framework for their efforts to mediate between the Sudan Government and the Sudanese People's Liberation Movement/Army. The parties achieved some progress, including the formulation and adoption of the declaration of principles, but negotiations stalled in 1994, initially because of differences between the position of the two Sudanese sides, and subsequently due to the severe deterioration in the relations of Sudan with Uganda, Eritrea, and Ethiopia.

4. For a detailed discussion of the precise consequences of the application of Shari'a in a modern nation state for constitutional governance, criminal justice, international relations and human rights, see generally, An-Na'im (1990).

5. For the text of The Koka Dam Declaration, see Ahmed and Sørbø (1989) and Deng and Gifford (1987).

6. For more on the national crisis of identity, see Deng (1994, 1990b, 1995e, 1990a).

7. This has been a major theme in the published work of Francis M. Deng (1995e, 1973, 1989, 1986), both in scholarly and fiction forms.

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