

United States Institute of Peace
Association for Diplomatic Studies and Training
Sudan Experience Project

Interview # 87 - Executive Summary

Interviewed by: W. Haven North
Initial interview date: June 8, 2007
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The interviewee served as an adviser to Ambassador Mboya and later General Sumbeiywo who were Inter-Governmental Authority on Development (IGAD) facilitators. He attended the talks between the Southern Peoples Liberation Movement/Army (SPLM/A) and the Government of Sudan, which led to the Machakos agreement and later the Comprehensive Peace Agreement (CPA). He has served as an independent facilitator with a reputation as an international advisor and conflict resolution expert.

On root causes to the North/South conflict, he referred to the “fault line” on perceived religious and racial differences, and the perception among people of the South that they were a marginalized community and religious minority. The informant notes that the negotiations were the seventeenth unsuccessful initiative in a recent period. The two sides were motivated to negotiate, in part, because of pressure from the region (IGAD) as conflicts can have a broader impact on regional stability.

The main impediment initially to serious negotiations was the inability to agree on a relationship between state and religion—a federal structure and the exemption of the South from the North’s Sharia law. The breakthrough leading to the Machakos agreement came as a result of a series of workshops as problem-solving exercises for the participants—North and South delegations and later the two principals. Two important considerations to getting a result: evidence of the possibility of solutions and the will to find a solution. Once the issues of state and religion were resolved, it was possible to deal with issues of power and wealth sharing and security arrangements.

The CPA is a compilation of successive agreements across six or seven topics. When the negotiations on these broke down, the parties agreed to have the facilitators put forward compromise proposals; and, in most cases, the facilitators “got it right.” The interaction between the facilitation team and the international community—U.S., UK, Norway, Italy and General Sumbeiywo (Kenya) and IGAD members: Ethiopia, Eritrea and Uganda—was an important ingredient. The issue that the facilitation team insisted be addressed was the implementation of the agreement. This envisioned a separate protocol which dealt with who would do what, when and how, article by article.

On the question of inclusiveness (including North and South parties other than the SPLM/A and Government of Sudan), the facilitators raised the question. It was not

accepted owing to the limited mandate of IGAD. In addition, the conflict was overwhelmingly between North and South forces, and the CPA agreement would provide modalities for the involvement of other parties subsequently. They did not anticipate the problems resulting from the Darfur situation.

Lessons learned had to do with the usefulness of workshop problem-solving exercises and small committees to generate solutions, facilitators making proposals when negotiations break down, the impartiality of the facilitators, the importance of turning to the principals when delegations cannot agree, the importance of a protocol on implementation. It also came clear that facilitators have to accept the good faith of the parties and the importance of revisiting the question of inclusiveness.

The facilitation successful partly due to external factors and the ripeness of the timing, but credit should go to General Sumbeiywo. He had a firm grip on the process, was not prescriptive on substance, protected the parties from outside influences, and he was accepted as neutral. Also significant was the interplay between facilitation and the international community. Garang and Taha deserve some credit when they bought into getting a result from the negotiation.

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Q: What has been your association with Sudan and with the Comprehensive Peace Agreement, and other aspects of your Sudan experience?

A: My first involvement with Sudan came through Inter-Governmental Authority on Development (IGAD), when I was requested to provide both written and in person consultation and advice to Ambassador Mboya, when he was the facilitator. After his replacement by General Sumbeiywo, I was asked to attend the first of the talks between the Southern Peoples Liberation Movement/Army (SPLM/A) and the Sudanese government in Machakos. From there I became the main advisor to General Sumbeiywo. I was asked to attend the negotiations with him throughout the following two years as his advisor. In the course of that, I ran workshops for the participants, helped draft and negotiate some of the agreements and was thoroughly involved in the development of the four or five protocols.

Q: Were you doing this in a personal capacity or in some organizational relationship?

A: No, I have a reputation as an international constitutional advisor and conflict resolution expert. I had recently before that been involved in negotiating the Burundian peace agreement and had been involved in the South African negotiations and had worked for five years as President Mandela's legal advisor in his office.

Q: What was your understanding of the root causes of the conflict in Sudan? That is a big question, but maybe we can get your view of that.

A: Sudan has undoubtedly a fault line based both on perceived religious and racial differences. The exact nature of those fault lines is perhaps not as important as the perception in the South that they were a marginalized community and a religious minority. That had, of course, been since colonial times the subject of a request for a demarcation of the country into a federal structure from the 1950s.

Q: What brought the two parties — North and South — together to finally agree to negotiate?

A: This was the seventeenth initiative in the recent period. On the number of initiatives to resolve the conflict between the North and the South, I cannot comment, but it could run

to twenty or thirty. But this was the seventeenth unsuccessful initiative, so I am told, after the coup, which put the existing government in place. The IGAD authority had been in place, as the regional country bloc. It had been given the authority to attempt to pursue a settlement between the parties on what was called the North-South conflict.

Q: What motivated the North or the South to decide to negotiate?

A: There was undoubtedly some regional pressure to find a solution to this ongoing conflict, because conflicts tend to have a broader regional impact, both in political and economic terms, also in terms of general stability. The persistence of this conflict—bear in mind that it had been running off and on since 1955 and that there had been previous attempts, some more successful than others, to forge some sort of common structure and constitutional compact between the North and South.

Once IGAD was seized with the issue, they charged Kenya to take the lead in convening talks, which it had attempted to do under Ambassador Mboya, unsuccessfully. There had been a number of barriers that had been put up as impediments to serious negotiations, the chief ones being an inability to agree on a relationship between state and religion.

Q: And then you were involved in the Machakos Protocol?

A: That is right. The Machakos one, interestingly...

Q: What brought that about?

A: Machakos really was an attempt to try and forge an understanding of what the issues were, and to try and reach some sort of agreement on a federal structure, but it knew that it would have to get through the initial blockage around the question of the relationship between state and religion. In other words, whether the South would accept participation or implication in a state structure, which was officially pronounced an Islamic state.

Q: You were involved in that?

A: Deeply. In fact, the breakthrough really came after a set of exercises, which General Sumbeiywo had asked me to run with the participants, in which we had looked at trying to generate alternative solutions in a problem-solving exercise to this particular issue. A solution began to suggest itself, but it would only be acceptable provided it was related to some agreement, basic agreement, on a federal structure. And once both parties had accepted a rather strange and asymmetrical federal structure which we proposed, on the one hand, and, on the other hand, the parties were able to agree on an exemption for the South from the application of the principle that the Sharia or Islamic law would be the source of legislation in Sudan and would be able, within a federal structure, to determine its own rules regarding religion and personal law in the South.

Q: Who were the participants in these workshops?

A: They were the delegations, the official delegations, from the SPLM/A, and the government of Sudan.

Q: They were not the principals, John Garang and...

A: No. What happened then was that there was a distinction drawn between the principals and the negotiating teams. The virtue of that, following the South African example, was that if the talks were to break down it would give you a further layer to which to refer disputes. However, owing to a serious impasse which arose about a year later after the Machakos talks, the leaders did become implicated, precisely because there had been a breakdown and from then on until the end of the talks they were directly involved in face to face negotiations but they did not start off that way.

Q: Describe how these workshops went, because that is a very important step. How you structured them and so on.

A: The General had asked me, would it be of any use to give the participants a common presentation on problem-solving techniques and finding solutions in deeply divided conflicts. So on that basis the parties had agreed to it and I gave a presentation, firstly on the South African transition and how across great divisions parties had been able to find each other, and, then secondly, techniques in approaching matters on a problem-solving basis.

Q: And that worked well?

A: It worked quite well. As a model we had taken the state and religion issue and collectively ran workshops on how one would approach this question from a problem-solving angle, and by generating alternative solutions. By looking at criteria about what to do and applying those criteria, we came up with suggested options which the parties would explore. But it became clear that the state and religion issue could not be isolated from the more general question of what would be the state structure within which the South would have autonomy, or would be insulated, at least, from some of the constitutional prescription in the Sudanese constitution.

Q: Did you find it difficult to bring the two parties together on a conclusion?

A: Quite frankly, at the end of the Machakos Protocol, it seemed that there had been for the first time evidence of the real possibility of finding a solution, evidence of a will to find that solution. The two are both important, solutions without the will generally do not lead to a successful result. But at the end, it became clear that the parties had become apprehensive of reaching an agreement without the backing of their principals. They started to balk, I think, at signing any declaration, which reflected the kind of agreements, which had emerged at workshops, at the discussions.

Q: So how did you overcome this problem?

A: At a particular crucial stage the General said, “Look, I do not know what to do. Clearly there is a solution here and the only way I am going to get it is by leaving the two principal leaders of the delegations together in a room for two hours to get the authority or finding a way in which “you can overcome the narrowest of differences which currently exist between you.”

Really what took place... instead of a discussion taking place between the two principal leaders, what took place was a telephonic discussion between the two delegation leaders and their two principals to secure the authority to make the initial breakthrough.

Q: And then Machakos became a basis for future negotiations, is that right?

A: That is right. We were told at Machakos that this was the make or break issue and once we had resolved it everything would be down hill. It is very much like hiking. When you get to the top of the one hill, it only gives you a vantage point to see even higher hills behind. And that was very much the experience. Once we had dealt with state and religion, which we had been told was the major issue, then, would come successively oil and power sharing and security arrangements and each one would then have been elevated to an issue of even more importance than the last.

Q: Then they moved on essentially to the CPA negotiations and you were involved in that?

A: Basically, the Comprehensive Peace Agreement was nothing more than a compilation of the successive agreements across six or seven topics or protocols. What did happen that is worth mentioning, though, is that at a particular point when the conflict between the parties had sharpened and at least some of the relationship between them had broken down, we suggested to the parties that they allow the facilitator to put forward a compromise proposal, based on an informed discussion with the principals and with the negotiating teams on all the critical areas on which there were still differences. And the parties agreed to that.

So in about May, the facilitation team did put forward a proposal. In most cases, I think we got it right.

Q: You were part of putting that together?

A: Yes, I was. What happened was that when we unveiled it there was a very hostile reaction from the Sudanese government. It really did threaten continuation of the talks, because amongst other things it challenged, according to the Sudanese government, the neutrality or impartiality of the facilitation team. That is of course the risk which goes with a facilitation team putting forward a compromise position. I would defend the positions we put forward, because they reflect more or less exactly where the parties came to agree at the end, and, if anything, slightly favored probably the Sudanese government, in comparison to the CPA. However, at the time it was put forward, the Sudanese government was not prepared for the kinds of compromises which would be

required to reach a comprehensive agreement. In the end, it would take another twelve months of face to face negotiations, to get to that place.

Q: What were the atmospherics of these negotiations, in terms of relationships?

A: In the face-to-face negotiations, the rapport between Garang and Taha... there were times when the mood really just degenerated, and it certainly degenerated in the aftermath of the facilitators' proposal. It was as a result of that that the decision was taken to try and involve the leaders directly to kick the process off again.

Q: What were the techniques that the General used or you all used to try to bring the negotiations back on track?

A: The one that was used was to bring the leaders in eventually. We tried a number of other techniques during the course of the negotiation, some of which worked well and some of which did not. It depended largely on the will of the parties.

Q: What are examples of some of those things that you used?

A: We would use small committees to generate solutions. Sometimes, one must massage the problems so as to generate consensus progressively on more technical and less political issues, and then move to the more political questions. Sometimes we posed solutions to the parties when they could not find solutions themselves, particularly, let us say, process solutions, deferring some of the issues just so that we could maintain the momentum in the talks.

Q: There were several protocols. Could you describe anything about each of the protocols, or at least some of them?

A: I said earlier that, no sooner had we managed to secure some agreement on a particularly important set of issues, when a new set of issues would arise which had all the potential to derail the talks. Persistence was also an important ingredient. If I had to look at some of the important ingredients in the Sudanese talks, it would be the interaction between the facilitation team and the international community, so that international players could play a role, either in exercising leverage, particularly on the parties with which they had some special relationship

Q: What was the makeup of the facilitation team?

A: It really consisted of the General, he had his own secretariat and as advisors he had myself, a Swiss facilitator with whom I had worked previously and had requested his involvement; there were the special envoys, in particular the Ethiopian, Eritrean and the Ugandan special envoys to the talks, who really worked closely with the General. And then, in addition, the international mechanism was really a group of four countries, which played a leading role in supporting the talks, attending the talks and talking to parties. That was the U.S., the UK, Norway and, then to some extent, Italy.

Q: What was the value of having the international group there? What did they do?

A: They were able both to assist the facilitation team and also to some extent finance the facilitation team. They were there also to talk to the parties, either directly or even through their principals and through their embassies. But it was particularly important for them all also to talk with one voice.

Q: On the CPA itself, on the particular protocols, can you offer views on any particular protocol that was significant, like the wealth sharing and the power sharing?

A: Each one had its particular thorny issues. In some cases, it was clearly a case of just finding a midline and in others, one had to find new perspectives and encourage the parties to develop new perspectives in how to treat the topics. In particular, what was relatively new in the Sudanese CPA would have been the treatment of the two armies, the particular asymmetrical federal model which was adopted, which I do not think has really many similarities, although some of the issues which arose there I have noticed have reemerged in my current position, which is an advisor in the Iraq process.

An issue that we in the facilitation team insisted should be taken most seriously was the question of the implementation of the agreement. We argued strongly for the talks to be extended, in this instance against the advice of some of the international players, who wanted, for domestic political reasons, an expedited agreement. We warned against an expedited agreement, because of the pattern of failure of peace agreements, particularly in Africa, and because of a lack of attention to implementation modalities after the agreement was signed and the breakdown in the agreement, which necessarily follows.

Q: What did you envision?

A: A separate protocol, which dealt comprehensively with who would do what, when and how, on an article-by-article basis. We have seen that failure to properly deal with that had led to the breakdown of a number of peace agreements.

Q: And this did not occur in the CPA?

A: In the CPA, they still are experiencing some problems in implementation, so I hear; I am not on the ground at the moment, which indicates at least we were right in identifying this as an important issue. And we did not anticipate the Darfur development.

Q: But the international group did not favor extending the talks to further?

A: They were not thoroughly enthusiastic, because they saw it delaying the signing off on the CPA.

Q: What brought the two parties together to decide to agree?

A: There were external factors, the geo-politics, the post-9/11 environment, all might have had an influence on both parties, quite frankly; but also the capacity of the facilitation team to properly bring the parties together. Process is important. To some extent, the continued engagement of the parties builds greater degrees of trust, or sufficient degrees of trust, for the parties to move forward.

Q: There was some comment that this was just a negotiation between the North and the South, and that a lot of other groups who have an interest were not included. We are now seeing the results of that. Is this your view or should they not have been included?

A: No, I do not think any of us saw precisely the Darfur development, and that has been the principal problem. But we did foresee problems arising out of the non-involvement of certain parties. It was raised certainly by us as advisors. But in defense of the facilitation team, let me say a couple of things. First, when we ourselves raised this issue we were informed that the mandate of the IGAD facilitation was confined to the two parties. So we had no authority to bring in external parties. Second, the conflict in Sudan was overwhelmingly between the principal Northern force and the principal Southern force.

To the extent that we could get an agreement between them, it seemed that we could only get an agreement, at least initially, between those two, by having those two engaged directly.

Third, we envisaged that the agreement itself would provide, within its machinery, for the modalities of the involvement of some of the parties which had not been involved. And indeed, those parties were sounded out and said that they would abide by the general terms of this agreement, provided it was envisaged as an agreement which would open the process to a much more inclusive political involvement. Democratic elections in which they would be entitled to participate was a particular concern of Northern opposition groups.

Q: Who were some of these parties that you talked with?

A: Northern opposition groups. Their views were also solicited through the parties themselves. The parties were also expected to canvass the views of those who stood on the same side.

Q: It did not include groups from Darfur or from the east or within the South?

A: No. Bear in mind, the Darfur conflict had not really erupted when the talks had started. It was also envisaged that the agreement provides for a significant decentralization and federalism within a previously quite centralized state. The model provided for an autonomous exercise of powers by the different regions, which would more than address, and I believe really does more than address, the aspirations of the west and the east. The dynamics in those conflicts, though, are not necessarily about finding a solution for the west and the east. They also involve an intra-northern dispute.

Q: Do you have any views on how the CPA is being implemented?

A: I have revisited the notion of whether it should have been more inclusive. I am not sure we had the option as facilitators to make it more inclusive, but I would acknowledge that best practice suggests maximum inclusiveness in political negotiations. Generally, I have theoretically drawn a distinction between peace agreements and constitutional compacts. Peace agreements are always between men in the field and the men in the field in this case were the South and the North. Constitutional compacts are agreements which affect everybody in the country and require inclusive participation. In a sense, the CPA was the peace agreement which was supposed to give rise to a more inclusive constitutional engagement.

Q: Do you think that took place?

A: No, I do not think so. The Darfur situation has really slowed down the implementation. But what was envisaged in the CPA is an all-inclusive constitutional commission, which would start to engage on a more enduring constitution.

Q: Part of the implementation of the CPA included having a census and elections and a referendum. Do you have any sense of how those are progressing?

A: I do not. In a sense, I have moved pretty far from the CPA and have been involved in other areas now. In general, in my world, those who are involved in facilitating such agreements tend to step aside in regard to implementation.

Q: What was your sense of the characteristics of the Northern government and the characteristics of the Southerners that either help or does not help the implementation process? You must have had some sense of what kind of a government they run.

A: As a facilitator you have got to accept the good faith of the parties. If you start off questioning whether they have good faith, I am not sure you are going to be up to the task of trying to find an agreement between them.

Q: Is there anything else we have not covered?

A: Let me just say, why was this facilitation successful and others not? As I have said, there may have been external and “ripeness” factors, as they are sometimes referred to. But also I would give credit to the General [Sumbeiywo]. He was able to take a relatively firm grip on the process, while not being prescriptive on the substance on what facilitators need to do. He was firm enough to protect participants from outside influences. He was accepted as neutral, although people may have felt from time to time that he had issues wrong or accused him of that. In the end, people accepted that he wanted nothing more than an enduring settlement, which both parties could live with.

Significant was the interplay between the facilitation and the international community. Garang and Taha deserve some credit. They eventually bought into getting a result from the negotiation.

Q: What would you consider to be major lessons from this process that you were involved in? What stands out?

A: One would want to revisit the question of inclusiveness. This was not something we did not point out to the parties, but the parties themselves were quite adamant that they wanted to keep out other players who could be seen as competition to them. This was one issue in which they were both in agreement.

I do not think the SPLM /A, for example, wanted to be involved in talks with groups which were opposed to it in the South and the government did not want to be involved in the talks together with northern opposition groups. On the one hand, they may have tried to reserve to themselves the task of finding peace, to their advantage or alternatively they may have realistically recognized that, at that stage, to have broadened the base of the talks would have prejudiced reaching any outcome at all.

Q: The lesson from that...

A: The lesson, not from that but the lesson we see now, is that the principal queries that were raised for example, were whether the process for incorporating militias into the Southern army would take place if the militias themselves had not been involved in the talks. That is an important issue to address. I have not followed it too closely but as far as I could see while it has been a difficult process that has not been the major problem. The major problem has been Darfur and the east.

Q: Are there other lessons related to the negotiation process that stood out in your mind?

A: I am not close enough to comment on whether the implementation modalities that we agreed were adequate. However, it certainly supports our general concern that implementation modalities are an art form in negotiating peace agreements, and must be taken very seriously. There tends to be a rush to get to the signing ceremony, without looking at what is going to happen the day after.

Q: But going back to the process itself, was there any particular point that stood out, as to what worked or what did not work? You have mentioned some already. Does anything else that stand out in your mind that we have not touched on? What would be the main message about your experience?

A: At a general level, what appear to be intractable conflicts can be resolved and — certainly the Sudan was yet another case where prophets of gloom predicted another failed negotiation — if one brings realistic engagement to it one can find a solution to almost any conflict.

Q: Anything else that we ought to touch on?

A: No, I do not think so.

Q: This interview has been very helpful, very useful. Thank you