

SOUTH SUDAN: OPTIONS IN CRISIS

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SOUTH SUDAN: OPTIONS IN CRISIS

TUESDAY, SEPTEMBER 20, 2016

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:45 p.m., in Room SD-419, Dirksen Senate Office Building, Hon. Bob Corker, chairman of the committee, presiding.

Present: Senators Corker [presiding], Flake, Gardner, Cardin, Shaheen, Murphy, and Markey.

OPENING STATEMENT OF HON. BOB CORKER, U.S. SENATOR FROM TENNESSEE

The CHAIRMAN. The Foreign Relations Committee will come to order. We thank our witnesses for spending their time with us and sharing insights that I know will be valuable.

It has been nearly a year since we last discussed the unwillingness of the South Sudanese officials to govern responsibly. Despite the significant efforts of the U.S. and the international community, violent impunity persists.

As this crisis erupted in July, President Kiir's forces apparently fired on U.S. diplomatic vehicles, shot and injured a U.N. official, terrorized American and other aid workers, and executed a South Sudanese journalist.

President Kiir consolidated control after yet another contrived military action against his former deputy, Riek Machar. Kiir's recent replacement of Machar with a poorly supported opposition alternative likely invalidates the unity government and the August 2015 peace agreement itself.

I think it calls into question what our U.S. commitment should be with others. I know there is a range of options that we will explore today as we hear from you.

South Sudan achieved independence in 2011 after a desperate effort to break free from a violent and oppressive Sudanese Government. Tragically, South Sudan's leaders followed a similar repressive path targeting women and children, killing civilians, and targeting refugees and humanitarians for rape, torture, and death.

Five years on, South Sudan remains desperately reliant on international assistance, yet its government persists in inflaming the circumstances for famine and war. One in five South Sudanese have fled their homes, and over 1 million refugees have fled their country to safer places, unbelievably such as Darfur, which just a few years ago was certainly not perceived as that.

The international community has long held off imposing sanctions with vague hope that responsibility will somehow emerge. The inclination to rob, cheat, and kill has persisted, as evidenced by recent violent events and legitimate reports of gross corruption of Kiir, Machar, and their cronies who continue to divert dwindling resources.

Let me just say an exclamation point here. This has turned out for both of them to be all about one thing, and that is money, using their own people against each other, who are being systematically killed over their desire, each of their desire, from my perspective, to loot their country and to enrich themselves personally.

July's violence once again exposed limitations of South Sudan's U.N. peacekeeping mission, which is unable to meet the mandate to protect civilians under U.N. protection, including those being raped yards from their gate.

Again, I don't know how many times we are going to hear of our peacekeeping efforts falling short. I know this is a unique circumstance, but I believe the U.N. has been totally feckless as it relates to addressing this issue. Again, I know these people are overstretched right now in South Sudan, but it continues to be a persistent problem with U.N. peacekeeping troops.

UNMISS is tested and already stretched the limits of peacekeeping missions, and with the addition of Protection of Civilians sites and a proposed regional protection force, one must ask, is this a recipe for failure?

I am interested in hearing today from our distinguished witnesses how the international community can sustain humanitarian effort in South Sudan while fundamentally changing the dynamic with actors in South Sudan, including regional sanctions.

I welcome our witnesses, two of whom bring a critical on-the-ground perspective as well as perceptions of international efforts to date as we consider what is happening and alternative options.

I want to thank you for being here and turn to our distinguished ranking member, Ben Cardin.

**STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Chairman Corker, first of all, thank you very much for convening this hearing.

The question is whether the youngest country in the world can survive, and I think I am not overstating our concerns. The hearing we held last December we thought would focus the different stakeholders into a plan that will allow the people of South Sudan to have a government that can protect their interests. Instead, we see a circumstance that was bad last December get worse, where it has used attacks on the civilian population as a military tactic.

You mentioned Darfur. And although every circumstance is different, the human tragedies that we are witnessing in South Sudan do remind us of what was happening in Darfur. It cannot continue, and the international community cannot allow these atrocities to continue forward.

I can give you many examples. The July fighting between the warring factions, the U.N. High Commissioner for Human Rights estimates hundreds of civilian deaths, including over 200 raped ci-

vilians by the militaries. International aid workers in the Terrain compound beaten, shot, and gang raped by government forces while the national security forces stood by and did nothing. U.S. Embassy personnel, as you pointed out, being fired upon by government officials. The government refusing to allow medical evacuation of wounded peacekeepers. That is so contrary to any established international protocols or rules.

And then the status of forces agreement of the United Nations, the use of the Rapid Protection Force, which, Mr. Chairman, I will tell you I think is critically important for South Sudan to have the presence of the international body. And yet the government is restricting what equipment they can take, what countries they come from, and preventing them from doing their mission. So how can they operate? How can they do their work without the government help and support?

And it is a failure of the leaders in the peace process. We had great hope about the peace process moving forward, and President Kiir and Vice President Machar, replaced now by Mr. Deng, none have shown true leadership, and all, I believe, are complicitous in the atrocities that have taken place.

And then there is no accountability. There is impunity for these actions. We have seen no effective way in which the government has held those who have committed these abuses accountable for their actions.

Last December, I asked whether the peace process was viable and what the international community plans to do should the parties abandon it.

The peace agreement, if not dead, is certainly on life support. The economy is in shambles. Nearly 5 million people need food aid, which will be difficult to deliver in wake of the alleged looting of the World Food Program compound and increasing threats against humanitarian personnel.

Violence continues to flare in various parts of the country, and the credibility of the South Sudan leaders has been severely compromised by their attacks on their own civilians.

You add that all up, if South Sudan is not a failed state, it is certainly a state which has badly failed its people.

The question is, what can we do to help the people of South Sudan from the suffering that they are currently being subjected to?

I look forward to hearing from our witnesses as to how we can help the people of South Sudan.

The CHAIRMAN. Thank you, Senator Cardin.

We will now turn to our witnesses. On the panel today we will hear from private witnesses representing South Sudan civil society as well as academic and advocacy institutions.

Our first witness is Jok Madut Jok.

I hope I pronounced that correctly.

Dr. JOK. You got that right.

The CHAIRMAN. I am surprised at myself. Thank you.

He is co-founder and executive director of The Institute of South Sudan and currently a professor at Loyola Marymount University in Los Angeles, California.

Thanks for traveling that far to be with us.

Our second witness is the Honorable Kate Almquist Knopf, the director for the Africa Center for Strategic Studies at the National Defense University and the former assistant administrator for Africa at USAID.

Thank you.

Our third witness is Dr. Luka Biong Deng Kuol—how did we do? Again, a surprise—the global fellow of the Peace Research Institute at Oslo, Norway, as well as a fellow at Rift Valley Institute, South Sudan.

Thank you for being here.

Our last witness is Mr. Peter Yeo—thank you for that simplicity—the president of the Better World Campaign and vice president for public policy and advocacy at the United Nations Foundation.

We are very fortunate to have all of you here. If you would just begin your testimony in the order that I introduced you.

Without anybody objecting, your full written testimony will be entered into the record. So if you can summarize, we would encourage you to do so in about 5 minutes.

With that, if you would begin, we would appreciate it. Thank you.

STATEMENT OF JOK MADUT JOK, PH.D., CO-FOUNDER AND EXECUTIVE DIRECTOR, THE SUDD INSTITUTE, LOS ANGELES, CALIFORNIA

Dr. JOK. Thank you very much, Chairman Corker, Ranking Member Cardin, and committee members. Thank you very much, indeed, for inviting me here today. I also want to thank the committee for keeping South Sudan a topic of discussion in Washington for quite a bit of time now.

The views I express here are my own and not those of The Sudd Institute, where I am the executive director.

In addressing the crisis of South Sudan, I would like to shift the discussion slightly away from the focus that has been put on the contending leaders of South Sudan and try to show a little bit about what life is like for South Sudanese.

Much of the crisis that is engulfing the country today is one of two issues, really. The first is the burden of the war of liberation, which went on for so long and made South Sudan one of the most destroyed corners of the world since the Second World War.

There were promises made at the end of the war that the burden of that war would be offloaded by programs of government, and that program was not forthcoming. It didn't happen. There were no programs put in place to manage the expectations of the South Sudanese.

And the country was born into too much wealth, resources that fell into the hands of liberators who had really not seen such an amount of money ever in their lives. And they went on a shopping spree and did not invest in the future of the country and the people of the country.

These individuals had undoubtedly done so much to make the birth of the country possible, but nearly all of them quickly became disconnected from the realities of everyday citizens. They did not think that the oil money would ever run out.

And I am talking about those people who are in office today as well as people who are no longer in office who were party to that looting and corruption, and siphoning off of national resources into foreign businesses, and buying of homes and other kinds of investments outside the country.

Now the second of course is that while we might focus on the peace agreement and the people who signed this peace agreement, my reading of the situation is that the country is becoming undone at the seams. And the conflict that is engulfing the country, while we are struggling to reconcile the political-military elite, these leaders are only able to continue to draw from their supporters to continue this useless war because of their ability to divide people, and the divisiveness that removes the political loyalties from issues and onto personalities, personalities that come from a specific ethnic background.

And as a result, I say that the situation that I describe as causing the country to become undone at the seams can be represented by what is going on since 2007, 2008, where in Jonglei, for example, and in Eastern Equatoria in Warrap state, and Lakes, South Sudanese killed each other more than northern Sudan was able to kill in a single period.

And all of this is because the expectations of the people were not prioritized by these leaders once they got the country.

Now I was recently in Wau State and Gogrial State, which is the home state of the President. I was also in the northern part of Tonj State. And my assessment of the situation there was that the recurring sectional warfare that has plagued the country over the years is continuing to affect people and their ability to produce crops and to look after their livestock and to look after their entire livelihood. Even in places that have not been impacted directly by the violent crises going on in Juba, these areas are now also drawn into the conflict because of the inaction at the national level.

On the diplomatic front, there has been no marked progress since the U.N. Security Council Resolution 2304 to deploy an additional 4,000 forces. This issue has become a very divisive issue as well.

The verdict is still out, and I don't think we will ever get a collective verdict on this. But it seems that South Sudanese agree that they are not holding their breath on this issue. Those who are opposing it say that it will not solve the problems. It will cause division. Those who are supporting it say that it does not give them confidence that it will protect their lives, since it will be strictly based in Juba.

So what could the world community do to help South Sudan? It is my considered position that the country has been on life support for over 2 decades already. And this has produced two glaring realities that are usually not discussed with honesty.

First, the international community has always bailed South Sudan out—

The CHAIRMAN. Has always what? I didn't hear that.

Dr. JOK. The international community has always bailed the leaders of South Sudan from their responsibility to protect the welfare of their people. They have always had somebody intervening to help the people.

As a result, the international community assistance, especially the humanitarian assistance, may be keeping some people alive, but it has really become an alibi for failure of the leadership in South Sudan.

The South Sudanese have never really been pushed very hard against the wall to the point where they have to step back and say let's think for ourselves.

And so I suggest that the humanitarian aid has contributed to prolongation of this conflict and to leaders not being able to really have a program of welfare for their people.

So we should really renew discussion on what to do with the humanitarian aid. Yes, it has kept some people alive, and there are people who are living in very miserable conditions right now who are living because of the international aid. But they still get killed in the end.

So if the international aid is prolonging conflict, I am willing to suggest that we rethink this even at the risk of some people dying.

Finally, I am not suggesting that aid is bad, but aid that does not show results and does not have massive impact, even despite the massive investments—the United States Government has invested close to \$11 billion since 2005 in South Sudan.

The CHAIRMAN. We have four panelists, if we could come to a close, that would be helpful.

Dr. JOK. I'll conclude.

[Dr. Jok's prepared statement follows:]

PREPARED STATEMENT OF DR. JOK MADUT JOK

Chairman Corker, ranking member, and members of the committee, thank you very much for inviting me here today. I also want to thank this committee for its steadfast support and focus on keeping discussions going on within the American government about the crises facing South Sudan. The views I express here are my own and not those of the Sudd Institute, where I am the executive director.

In addressing the crises of conflict, failure of political settlements, the violence that is unnecessarily taking the lives of South Sudanese and the humanitarian problems that confront a vast number of South Sudanese, I would like to slightly shift the focus away from the elite-centered neo-liberal peace-making and onto the level of what life is like for the ordinary people of South Sudan and how I see them being best assisted to tackle the violence that is imposed on them.

Much of the crises confronting South Sudan today, insecurity, poverty, economic decline, violent political conflicts, disunity along ethnic or regional fault lines, are really born of two sources. First, the burdens left behind by the long wars of liberation, which made South Sudan the most war-devastated corner of the world since the World War. Second, South Sudan started on the wrong foot at the time of independence. There were no programs put in place to manage the expectations of South Sudanese who had suffered so terribly and for so long. The country was born into too much wealth, resources that fell into the hands of the liberators who had not seen such wealth before and who clearly opted to pay themselves and went on a shopping spree, showing very little willingness or ability to develop programs to lift the country out of its war time miseries.

These individuals had undoubtedly done so much to make the birth of their country possible, but nearly all of them quickly became disconnected from the realities of everyday citizens. They did not think the oil money would ever run out. These include many people who held high positions in security agencies, the military and cabinet portfolios, and who are no longer part of the government today or are in opposition but were a part of that corrupt system that put the country on the wrong path from the beginning. They kept making promises to their people that roads, basic services, security, economic development and political stability would all accrue, but no clear programs to give people reason to hope and to be patient. Instead, South Sudan was plagued by corruption that quickly ushered the country into a deeply divided society between the small class of new rich and the vast majority of

citizens who had nothing. A very strong corruption-insecurity nexus developed straight away and South Sudanese were hammering each along ethnic lines immediately following the end of north-south war. From Jonglei to Lakes, Warrap to Eastern Equatoria, more South Sudanese were killed by their own than had been the case at the hands of the north in a similar period. These were the realities that catapulted the country onto the path of war that exploded in December 2013, a war whose triggers had been in the making since 2005.

So while the conflict that has engulfed the country today is essentially a struggle for power between the politico-military elites at the center, these leaders are only able to draw everyone into their senseless war because the country's citizens have long been so deprived of basic necessities and so pitted against one another along ethnic lines that so many ordinary people came to think that their survival rests with giving support, military and otherwise, to their ethnic leaders. This means that even as the world struggles to reconcile the leaders and help them sign peace agreements and create power-sharing arrangements and make plans to develop professional security agencies, the truth remains that these leaders in essence hijack and appropriate ordinary people's real grievances and turn them into stepping stones into public office. The result is that their peace agreements never really address the question of why people join these wars in the first place, why these agreements collapse as soon as they are signed. The answer is that the real grievances at the level of everyday people get swept away during the political settlements, only for these grievances to keep brewing, waiting for a few disgruntled politicians or military leaders who feel excluded from the settlements to return to their already unhappy constituencies with appeals to fight whoever they believe has kept them out of power.

This situation is the main reason why there may be a peace agreement in place and the political leaders might agree to work together, divide power and resources, especially in Juba and in state capitals, but never manage to stop violence in the rest of the country. As we speak, the political arrangements that the SPLM-lead government in Juba and the various opposition parties that have joined it to form the Transitional Government of National Unity (TGoNU), are sitting on a powder keg of turmoil that is bound to explode throughout the country. For example, Riek Machar is in Khartoum and no one knows what he and his fighting forces are up to. Most likely, they are planning to resume the war, as signalled just two days ago by an attack on a town called Nhialdiu, not so far from Bentiu, the state capital of Unity, which saw some of the worse episodes of violence in 2014. If Riek is determined to get his position as First Vice President back, this would plunge the country, especially the whole of Upper Nile, back in the kinds of vicious violence we witnessed in 2013–2015. In Equatoria, people traveling on the road linking Juba to the Uganda border, the country's life line, have been attacked numerous times, killing people and destroying property being transported on this road. Other roads in the region, especially the ones linking Juba to Yei, Morobo, Kaya and on to Koboko in Uganda, another vital route for the citizens and traders of this region and the country at large, have also come under attack numerous times, particularly in the past 2 months. The government has not been able to assure people that it has the capacity to protect life and property. The government has not even admitted that it is fighting widespread rebellion throughout the country.

I was recently in Wau State, Gogrial State, the home state of the country's president, Salva Kiir Mayardit, and in Tonj State, and my assessment of the situation there is that the recurrent sectional warfare that has plagued the region over the years is continuing to affect people's ability to produce crops and look after their livestock. Even in places that have not been impacted directly by the violent crisis between the government and opposition are being impacted by the broader national crisis. Areas that are not part of the "current war" are affected by other types of violence, like ethnic feuds and crime. In Jonglei, ethnic rivalries and violent confrontations between the Murle, Dinka and Nuer ethnic groups, have continued to wreak such havoc in that region that large numbers of the Dinka sections have continued to flee the area. All these ethnic or sectional fights are not only making life unbearable in these areas but are also a sign that the country is becoming undone at the seams. Juba might be able to consolidate political power and get the best of the various power contenders, but the country is likely to remain ungovernable, if it does not disintegrate entirely.

On the diplomatic front, no marked progress has been made since UNSC resolution 2304 to deploy an additional 4000 regional force to join the existing UNMISS to protect civilians better. The visit of the UNSC ambassadors, the threats to impose an arms embargo on the country, should the government prove uncooperative on the deployment of this force, and the likelihood that this force would make a difference in protection of civilians, have been subject of much debate among South Sudanese

and people in the region. There can never be a collective verdict, as the issue of an intervention force is a very divisive issue, but both the opponents and supporters of such a force seem to agree that they are not holding their breaths on two accounts. First, deployment of the force might not actually come to pass, given that there is still uncertainty about troop contribution, financing and agreement on the modalities of deployment. Second, the fact that the force would be strictly based in Juba does not provide much confidence, especially among civilians living in all the various embattled communities throughout the country, that they would feel any benefit from a force based so far away.

What could the world community do to help the people of South Sudan? It is my considered position that the country has been on a life-support for over two decades and this has produced two glaring realities that hardly anyone has thought of or explore with seriousness.

First, the international community has always bailed South Sudanese leaders out of their responsibility for the welfare of their people. In other words, international assistance, especially the humanitarian interventions, may be keeping some citizens alive, but will never amount to a solution to what is essentially a political and social crisis. So, to keep going with it is to merely keep the country on a life-support, without any conception as to how long and to what end this approach should be maintained; or to sever it at the risk of losing lives of so many people who have come to rely on food aid for quite sometime.

Second, South Sudanese have never really been pushed tightly against the wall to the point where they have to think for themselves. It has always been a story of crisis, followed by a bail out from the world community, and another crisis, followed by another intervention. I suggest that there should be a discussion on ways to wean South Sudan from food aid, not as a punishment to the citizens who are still living in very disastrous circumstances, but as a challenge to South Sudanese leaders to come up with their own plan about how they see their country able to steer its way out of this crisis. It does not make sense that the country remains with the same programs that have kept the country from taking responsibility for its own future should be supported by the global community.

I am not suggesting that aid is bad, but aid that shows very little impact for the massive investments made is a waste of resources and a straight jacket for the country. If aid must continue as a way to maintain a moral posture, if the West must continue to be seen to be taking responsibility and a mere symbolic gesture from the world community, then we should at least try to do it differently, not in the same way we have done it since 1989 when Operation Life-line Sudan was created. The approach since 2005 has been state-building, strengthening the institutions of the state, with the hope that the state would then turn around and take responsibility for the provision of goods and services. While it is important to build institutions, this is a process that takes a generation or more. Why should communities living far away from Juba or other cities be waiting for these goods and services until such time the state is ready to do it?

A new approach would be to inject aid directly into small community-run projects, not channeling it through the bureaucracy of the government. If you take a look around the country, one observes that community-run projects or those championed by local NGOs, are the only products of foreign aid that you see all around the countryside. Peace should not be seen as an act of signing peace agreements between the elite but more a process of addressing the drivers of conflict at the level of society, including investing the youth in the country's success and economy so that they have a future to look forward to, an investment they would fear to lose if they respond to anyone's war drums.

If the international community, particularly the American people and their government, continue to see a crucial role for the U.S. in stabilizing South Sudan, it would be best to engage with an eye to challenging the leaders of South Sudan produce their plan so that the role of outsiders to support a clear project that is well-developed, addressing the priorities of South Sudan from the perspective of the people of South Sudan. Such a plan should focus on security, addressing the massive humanitarian crisis (IDPs, refugees and famine), stabilizing the economy, including a robust anti-corruption mechanism, justice and reconciliation and respect for human rights and civic liberties. It is then and only then would this leadership have a moral ground for requesting help from the international community. Such help if, it is well-justified and credible, would only be a support to that which is a national plan. If the people and government of the United States are going to continue to stand by the people of South Sudan, as they have done for many decades, there has to be a seriousness on the side of U.S. law makers and the executive branch of the government to put in place strong mechanisms to ensure accountability for U.S. resources and to ensure that these resources actually make a

measureable difference in the lives of South Sudanese—in Juba and across the country. Quoting how much money the U.S. has spent on South Sudan for the last ten years is not sufficient, we must ask what it was spent on and what are the results.

The CHAIRMAN. Thank you so much for being here. I appreciate it.

Ms. Knopf?

STATEMENT OF HON. KATE ALMQUIST KNOFF, DIRECTOR, AFRICA CENTER FOR STRATEGIC STUDIES, U.S. DEPARTMENT OF DEFENSE, WASHINGTON, D.C.

Ms. KNOFF. Chairman Corker, Ranking Member Cardin, members of the committee, thank you for convening this hearing and for inviting me to speak today. The views I express are, of course, my own and not those of the U.S. Government.

After 2 decades of experience with South Sudan, I remain firmly convinced that the United States' support for the self-determination of the people of South Sudan was and still is necessary for lasting peace for the country.

I am equally convinced, however, that Americans and South Sudanese alike must acknowledge that South Sudan has failed its people. It is past time to abandon the myths regarding the health of South Sudan's political culture, the capacity of its leaders, and the potential impact of technical interventions alone from development assistance to peacekeeping. Just as many of these myths misled us during the interim period, they continue to underpin U.S. policy today.

Mr. Chairman, as my written testimony discusses these myths in more detail, I will bypass that now in order to focus on an alternative way forward for South Sudan.

Suffice it to say, however, that I do not believe that the agreement signed in August 2015, remains a viable path toward peace, nor that Salva Kiir and Riek Machar can be part of a solution to ending the war. They are irredeemably compromised among broad segments of the population, and they are innately divisive, rather than unifying.

Let me also underscore that neither Kiir nor Machar can be excluded while the other remains. The United States' tacit support for Kiir's removal of Machar from the transitional government, an effort to isolate him, has unwittingly given Kiir a blank check to pursue an increasingly militant policy of Dinka domination. It has also signaled to all those who oppose Kiir that there is no political pathway to end the war and that violent overthrow of Kiir's regime is their only means of self-preservation.

We should not, therefore, underestimate that the already horrific war could escalate into genocide at any time. Too many of the warning signs are already there.

My proposal, therefore, is predicated on a clear diagnosis that South Sudan has failed at great cost to its people and with increasingly grave implications for regional security, including the stability of important U.S. partners in the Horn of Africa.

Mr. Chairman, South Sudan has ceased to perform even the minimal functions and responsibilities of a sovereign state. Nearly one-third of the country has been displaced or sought refuge out-

side, and at least 200,000 people are sheltering under the U.N.'s protection inside. Forty percent of the population faces severe hunger, including pockets of famine.

Sadly, there has been no methodical effort to calculate the number of civilian deaths caused by South Sudan's war, even though there are indications that hundreds of thousands of civilians may have already died.

U.S. policy must be calibrated commensurate to the magnitude of this challenge. A fundamentally different approach is needed, one that protects the South Sudan sovereignty and territorial integrity while empowering the citizens of South Sudan to take ownership of their future absent the predations of a morally bankrupt elite.

Mr. Chairman, in light of the absence of any national unifying political leaders, the only remaining path toward these objectives is to establish an international transitional administration under a U.N. and African Union executive mandate for the country for a finite period of time.

Though seemingly radical, international administration is not at all unprecedented and has been previously employed to guide countries out of conflict, including sovereign states. Cambodia, Kosovo, East Timor are some of the most prominent examples.

Brokering such a transition will require committed diplomacy by the United States in close partnership with African governments, but it would not necessitate an investment costlier than the current approach, and, in fact, promises a better chance of success. Like a patient in critical condition, restoring South Sudan to viability can only be done by putting the country even more so on external life-support and gradually withdrawing that assistance over time, as Ambassador Lyman and I have written.

Since 2005, the United States has, in fact, devoted more than \$11 billion to help South Sudanese secure self-determination, and there is currently no end in sight. While these contributions have saved millions of lives of South Sudan citizens, U.S. taxpayers deserve a better return on that investment than the catastrophe that we see today.

The U.N. and AU transitional administration could only come about if Kiir and Machar are induced to renounce any role in South Sudanese politics, which they will do if presented with a sufficiently robust package of disincentives for remaining on the scene.

These would include the credible threat of prosecution by the International Criminal Court or the hybrid court envisioned under the current peace agreement, but presently stalled; the imposition by the U.N. Security Council of time-triggered travel bans and asset freezes; the imposition of preemptive contract sanctions to cast a shadow on the validity of oil and other resource concessions by Kiir's regime; and a comprehensive U.N. arms embargo, which is long overdue.

Spoilers could be marginalized through a combination of politics and force, first by leveraging important constituencies' antipathy against Kiir, Machar, and their cronies to gain their support for the transitional administration, and second by deploying a lean and agile peace intervention force composed of regional states that can combat hardline elements once they have been politically isolated.

Mr. Chairman, some will inevitably attempt to mischaracterize U.N. and EU transitional administration as a violation of South Sudan sovereignty. But given the increasing threats that South Sudan's dissolution poses to the interests of its immediate neighbors, the question of whether foreign governments will intervene militarily is becoming irrelevant. The more urgent question is what form that intervention will take.

South Sudan's current trajectory is increasingly intolerable for its neighbors. Uganda, Ethiopia, Sudan, Kenya, they are bearing the brunt of the more than 1 million refugees that have fled South Sudan, stimulating simmering ethnic rivalries in these states. Interregional tensions abound and are worsened and worsened by South Sudan's conflict.

The United States, therefore, has two choices: Stand by while these states back armed opposition groups against Kiir's increasingly militant and intransigent regime, or undertake their own unilateral military intervention or otherwise carve out spheres of influence as South Sudan slips into a deeper morass. Or we can pursue a strategy that accommodates these states' legitimate interests while preserving South Sudan sovereignty and territorial integrity and providing South Sudan citizens with an opportunity to take ownership of their future.

Mr. Chairman, a diplomatic initiative toward an U.N.-EU transitional administration can succeed. Such an administration is, in fact, the only hope that the people of South Sudan have left to put an end to their unrelenting nightmare.

Thank you again for inviting me here today. I look forward to your questions.

[Ms. Knopf's prepared statement follows:]

PREPARED STATEMENT OF KATE ALMQUIST KNOFF

Chairman Corker, Ranking Member Cardin, and members of the committee, thank you for convening this hearing and for the opportunity to speak to you today. The views I express here are my own; they do not represent those of the Africa Center for Strategic Studies, the National Defense University, or the U.S. Department of Defense.

In January 1994, a senior official in the United Nations Department of Peacekeeping Operations met with the staff of the U.S. mission to the U.N. in New York. According to a summary of that meeting, which was later cabled to Washington, the U.N. official warned of a "potentially explosive atmosphere" as a result of the political stalemate between the parties to a recently signed peace agreement, of the ongoing arming of the president's forces concurrent with the deployment of an opposition battalion to the capital, and of the deteriorating economic situation. Three months later, the downing of President Habyarimana's plane was the final match that sparked the Rwandan genocide.

While there are of course significant differences between Rwanda in 1994 and South Sudan in 2016, this report sounds eerily familiar in light of recent developments in Juba, and we should not underestimate the real possibility that the already horrific war in the world's newest state could escalate into genocide. Too many of the warning signs are there: extreme tribal polarization fueling a cycle of revenge, widespread and systematic attacks against civilians, hate speech, atrocities intended to dehumanize particular populations, and targeting of community and tribal leaders, among others.

I first visited South Sudan in 1995 while working for the international nongovernmental organization World Vision, which provided humanitarian relief to the areas held by the Sudan People's Liberation Movement/Army (SPLM/A). Later, I served as the USAID mission director for Sudan and South Sudan and then the head of USAID's Africa bureau during some of the crucial years leading up to South Sudan's independence. For part of this time, I represented the U.S. government on the inter-

national Assessment and Evaluation Commission charged with overseeing implementation of the Comprehensive Peace Agreement.

Based on my two decades of experience with South Sudan, I remain firmly convinced that the United States' support for the self-determination of the people of South Sudan was, and still is, necessary to bring lasting peace to South Sudan.

I am equally convinced, however, that Americans and South Sudanese alike must acknowledge that the state of South Sudan has failed its people and that it is past time to abandon several myths regarding the health of South Sudan's political culture, the capacity of its leaders, and the potential impact of technical interventions—from development assistance to peacekeeping—in a country that has for all intents and purposes had no meaningful historical experience with governance. Just as many of those same myths misled us during the interim period, they continue to underpin U.S. policy today and are increasing rather than decreasing the likelihood of ever greater atrocities, human suffering, and regional insecurity.

Mr. Chairman, let me outline some of these myths and then suggest a more productive way forward for U.S. policy.

The first myth is that power-sharing governments work in South Sudan. They do not. They have spectacularly failed twice now, and the escalating violence, the de facto collapse of the August 2015 peace agreement, and the fighting in Juba in July were as inevitable as they were predictable. The Transitional Government of National Unity—both before and even more so after the flight of Riek Machar from Juba in July—is neither nationally representative nor unifying. It was premised on divvying up the political and economic spoils of the state, and it will therefore never be the basis for a transition to a more secure, peaceful, and sovereign South Sudan. In addition, with the expulsion of Machar from that transitional government at the end of July, President Salva Kiir co-opted any meaningful opposition representation that remained in the government and ensured that whatever transformative reforms existed in the peace agreement would not advance.

Beyond the specific flaws of the agreement or the senseless game of musical chairs over who holds which position in a national government that exists only in name, the more fundamental fact is that war and conflict do not persist in South Sudan because of an imbalance of political power that can be rectified by putting the right individuals on either end of a see-saw. War and conflict persist in South Sudan because there is a complete deficit of legitimate power and legitimate institutions.

To a degree nearly unrivaled in Africa, South Sudan has no nationally unifying political figures with credibility or a constituency beyond their own tribe—or in most cases, beyond even a segment of a sub-clan of their tribe. There is no national identity in most of the country—something that South Sudanese leaders since independence have invested very little effort to redress. Instead, the regime in Juba consists only of a loose network of individuals with varying degrees of coercive force at their disposal but no political center of gravity. The country's one unifying political force—the Sudan People's Liberation Movement, which was the vanguard of South Sudan's struggle for independence—has imploded as a result of its leaders' competition over power and resources.

South Sudan also suffers from an acute lack of institutions. As the African Union's Commission of Inquiry led by former president of Nigeria Olusegun Obasanjo concluded in 2014, "the crisis in South Sudan is primarily attributable to the inability of relevant institutions to mediate and manage conflicts, which spilt out into the army, and subsequently the general population . . . [U]nlike many African states, South Sudan lacked any institutions when it attained independence." The Commission further found that previous state-building initiatives in South Sudan, which had focused on capacity-building, appear to "have failed," a conclusion, it notes, that was not arrived at solely by foreigners but was in keeping with the results of a comprehensive review commissioned by Kiir's office before the outbreak of the war in December 2013.

Under these conditions, ending the war in South Sudan will require not merely balancing or dispersing power but a viable framework to inject power, authority, and legitimacy into South Sudanese politics and South Sudanese institutions over the long term.

The second myth is that Kiir and Machar are part of the solution to South Sudan's war. They are not. They are in fact key drivers of the conflict. Kiir and Machar have sat together in government twice and have disastrously failed their country on both occasions. The reports of the AU Commission of Inquiry and several U.N. bodies have provided ample evidence of their complicity in war crimes and crimes against humanity. They and their inner circles, including the chief of general staff, Paul Malong, are irredeemably compromised among broad segments of the population and are innately divisive rather than unifying. Peace and stability in

South Sudan will only come if and when Kiir, Machar, and those closest to them are excluded from the political life and governance of the country.

Let me underscore, however, that neither Kiir nor Machar can be excluded while the other remains. The United States' tacit support for Kiir's removal of Machar from the transitional government and effort to isolate Machar has unwittingly given Kiir a blank check to pursue an increasingly militant policy of Dinka domination. It has also signaled to all those who oppose Kiir-Nuer, Shilluk, and Equatorial alike—that there is no political pathway to end the war and that violent overthrow of Kiir's regime, which they already view as responsible for ethnic cleansing, is their only means of self-preservation. This policy has accelerated rather than defused the centrifugal forces that are tearing at the social fabric of the country. Kiir displays no concern for the repeated threats of sanction that are never realized; he and his government are clearly pursuing an ethno-nationalist agenda. It is not subtle, and they have not been deterred.

I have known Salva Kiir for many years, and I worked closely with him during the interim period of the implementation of the Comprehensive Peace Agreement. Initially, he helped steer his traumatized country through its turbulent early years of autonomous rule, including the critical moments after the death of Dr. John Garang that threatened to plunge South Sudan into civil war. But nearly three years of war have shown that he was never able to make the transition from soldier to statesman.

No man who arms youth militia to perpetrate a scorched earth campaign against civilians or who sends amphibious vehicles into swamps to hunt down women and children who have fled from violence or who orders attack helicopters to shell villages or U.N. protection of civilian sites can play any part in leading South Sudan to the future its people deserve. The international community recognized the sovereignty of South Sudan on its Independence Day on July 9, 2011. This sovereignty is vested in the people of South Sudan, however, not in Salva Kiir, not in his hand-picked ministers and advisers, and not in his tribe.

There is also no evidence to suggest that the replacement of Riek Machar with Taban Deng Gai will result in the Kiir regime voluntarily changing course to act in the interests of its people rather than against them. To the contrary and despite repeated promises and commitments to do otherwise, Kiir is not only pursuing full-scale armed conflict against civilian populations deemed to be supportive of the opposition, his government continues to increase obstruction of life-saving humanitarian aid and peacekeeping operations and to close political space by intimidating and harassing local and international journalists, civil society representatives, aid workers, and foreign diplomats alike. Unthinkable, brutal assaults, rapes, and even assassinations are commonplace. Indeed, Kiir's regime demonstrates regularly that it has learned the worst lessons from Khartoum—to buy time, to obfuscate and deny the gravity of the humanitarian and human rights crisis, to take three steps back and then a half step forward, confusing the international community and deferring any consequences.

The third myth is that a peacekeeping operation deployed without a workable political arrangement can succeed in bringing peace. It cannot. Since the war in South Sudan began in 2013, the number of U.N. peacekeepers has nearly doubled, the mandate of the force has been strengthened to include the most robust authorities necessary to protect civilians, and yet the scope and scale of the war has expanded unabatedly. Even if the government agrees to the deployment of the 4,000 troops envisioned under the regional protection force, which it has signaled time and again it will not do, another increase in force levels or mandate adjustments is not likely to be any more successful when the political arrangements that the force is designed to support have collapsed.

Moreover, deploying the regional protection force in the current zero-sum political context presents a dangerous dilemma. The force will inevitably be called upon either to side with the government against the opposition or with the opposition against the government, thereby aligning the U.N. with one tribe against another in a tribal war. For example, if the government perpetrates further attacks against the U.N. protection of civilian sites, which it has characterized as strongholds of Nuer rebels, should the protection force engage the government militarily in its capital? This is a government that has already characterized the protection force as a violation of its sovereignty and as "invaders," that flagrantly violates the existing U.N. status of forces agreement on a daily basis, and that maintains at least 25,000 uniformed SPLA in Juba, in addition to plain clothes national security personnel. Conversely, if opposition forces attack Juba, as Equatorial militia have done at the city's outskirts in just the last two weeks, should the protection force fight them in concert with the Dinka-dominated government?

The fourth myth is that piecemeal, technical investments—financial bailouts, security sector reforms, disarmament and demobilization programs, or development initiatives—are sufficient for confronting South Sudan’s systemic failure as a nation state. An economic package without an accountable and functional government or a peacekeeping mission when there is no peace to keep, or security sector reform when the military is run by war criminals is unlikely to yield dividends for the people of South Sudan.

Mr. Chairman, the fact that South Sudan’s collapse ranks among one of the most severe humanitarian and security challenges in the world today is perhaps hard to comprehend at a time when multiple crises compete for international attention. Yet the scale and scope of this war is nearly unparalleled.

Last week, South Sudan became one of only four countries with more than one million refugees, alongside Syria, Afghanistan, and Somalia. This is in addition to the 1.7 million people who are internally displaced, including at least 200,000 sheltering under the U.N.’s protection. Forty percent of the population faces severe hunger; 250,000 children are severely malnourished; and there is famine in parts of Northern Bahr el Ghazal state and likely elsewhere. A study undertaken by the South Sudan Law Society last year based on the Harvard trauma questionnaire concluded that the incident rate of post-traumatic stress disorder in South Sudan equaled that of post-genocide Rwanda and Cambodia.

Sadly, there has been no methodical effort to calculate the number of civilian deaths caused by South Sudan’s war, even though there are indications that a comparable number of civilians may have been killed in South Sudan in nearly three years of war as in Syria, a country with twice the population enduring a war that has ground on for twice as long.

In Syria, three-quarters of the estimated half million deaths are combatants, whereas the war in South Sudan disproportionately affects civilians. The only estimate of deaths in South Sudan thus far placed the total at 50,000 in November 2014, less than a year after the war began.¹ Without a more accurate estimate of the rising death toll in South Sudan, regional and international responses fail to appreciate the full severity of the crisis and underestimate the urgency of the response needed.

South Sudan is not on the brink of state failure. South Sudan is not in the process of failing. South Sudan has failed, at great cost to its people and with increasingly grave implications for regional security, including the stability of important U.S. partners in the Horn of Africa. South Sudan has ceased to perform even the minimal functions and responsibilities of a sovereign state. The government exercises no monopoly over coercive power, and its ability to deliver public services, provide basic security, and administer justice is virtually nonexistent. While the Kiir regime may claim legal sovereignty, in practice domestic sovereignty is entirely contested and discredited.²

U.S. policy must be calibrated commensurate to the magnitude of this challenge, which will require a different approach that accounts for South Sudan’s unique political realities. Such a strategy must have two objectives: First, protect South Sudan’s sovereignty and territorial integrity and, second, empower the citizens of South Sudan to take ownership of their future absent the predations of a bankrupt elite.

Mr. Chairman, given the extreme degree of South Sudan’s state failure, the only remaining path toward these objectives is to establish an international transitional administration under a U.N. and African Union executive mandate for the country for a finite period of time.

Though seemingly radical, international administration is not unprecedented and has been previously employed to guide other countries, including sovereign states, out of conflict. Cambodia, Kosovo, and East Timor are some of the most prominent examples. While it will realistically take at least ten to fifteen years for South Sudanese to develop a new vision for their state as well as the institutions to manage politics nonviolently, it is more sensible to plan for this duration at the outset than drift into an accumulation of one-year peacekeeping mandates over decades, as has been done in the eastern Democratic Republic of the Congo, Darfur, and elsewhere.

Brokering such a transition will require committed diplomacy by the United States in close partnership with African governments. But it would not necessitate an investment costlier than the current approach—in assistance dollars or in political capital—and in fact promises a better chance of success. Like a patient in critical condition, restoring South Sudan to viability can only be done by putting the country on external “life support” and gradually withdrawing assistance over time.

A calculation of all State Department and USAID assistance to South Sudan from fiscal year 2005 to 2016 shows that the United States alone has devoted more than \$11 billion in humanitarian, peacekeeping/security sector, and transition and recon-

struction assistance to help the South Sudanese secure self-determination. And Secretary Kerry's announcement last month of an additional \$140 million dollars in humanitarian aid shows that this trajectory is set to continue. While U.S. contributions have unquestionably saved millions of lives, South Sudan's citizens—and U.S. taxpayers—deserve a better return on that investment than the humanitarian and security catastrophe we see today.

A U.N. and AU transitional administration could restore order and public security, provide basic governance, administer essential public services, and rebuild the economy. Vitality, it would also provide the time and space to establish the political and constitutional framework for the return to full sovereignty. Elections—which under the current polarized circumstances can only be expected to drive further conflict—would be delayed until after reconciliation, accountability, and national dialogue processes culminate in a new permanent constitution, thereby removing the prospect of a winner-takes-all electoral process overshadowing crucial political, security, and institutional reforms.

The depth of the country's economic collapse—the state is entirely bankrupt and inflation hit 661% percent last month—will require a substantial donor assistance effort. However, macro-economic stabilization is unrealistic with the current regime in power. The same elite that has compromised South Sudan's sovereignty is responsible for squandering tens of billions of dollars in oil revenue since 2005, and there is no evidence to suggest they would improve their financial management practices in the future.

Under a U.N. and AU transitional administration, however, the World Bank could manage South Sudan's oil revenues in a transparent and accountable manner to partially fund service delivery to the South Sudanese. Major donors and international financial institutions such as the IMF would be reassured by the accountability and transparency mechanisms governing the delivery of non-humanitarian assistance under the transitional administration. This would in turn bolster confidence that donor resources are supporting national strategies to meet the needs of South Sudan's citizens and unblock generous aid packages that provide additional incentives to South Sudanese constituencies to support the transition. Any services the people of South Sudan receive today are already being provided by the international community. A U.N. and AU transitional administration would remove the political and security impediments to these operations.

Even more critically, a transitional administration would provide space for the kind of genuine national dialogue process prescribed by the AU Commission of Inquiry, "to provide a forum for dialogue, inquiry, and to record the multiple, often competing narratives about South Sudan's history and conflicts; to construct a common narrative around which a new South Sudan can orient its future; to uncover and document the history of victimization and to recommend appropriate responses," including through a truth and reconciliation commission. It would also allow for an internal discussion on the structure of the state.

Opposition to a U.N. and AU transitional administration could be mitigated through a combination of politics and force by (1) negotiating Kiir and Machar's renunciation of a role in South Sudanese politics; (2) leveraging important constituencies' frustration with Kiir, Machar, and their cronies to gain these constituencies support for the transitional administration; and (3) deploying a lean and agile peace intervention force—composed of regional states—to combat and deter the remaining spoilers once they have been politically isolated.

Kiir and Machar can be peacefully excluded from South Sudan's political and economic life if they see the walls closing in on them and are offered a pathway that ensures their physical safety outside the country. This will require a sufficiently robust package of disincentives for their opposition to the transitional administration. Such a package could include the credible threat of prosecution by the ICC or the Hybrid Court envisioned (but stalled) under the current peace agreement, the imposition by the U.N. Security Council of time-triggered travel bans and asset freezes, pre-emptive contract sanctions to cast a shadow on the validity of oil and other resource concessions by Kiir's regime, and a comprehensive U.N. arms embargo, which is long overdue.

The exclusion of Kiir and Machar from the transition would defuse much of the impetus to continue the war or to oppose a transitional U.N. and AU administration among the Nuer, Dinka, and other forces fighting for revenge, retribution, or in self-defense. U.N. and AU administration would also provide assurances to all sides that they would not be excluded and therefore could participate in the national political process.

Some powerful individuals, including Kiir and Machar's core partisans and family members, would still of course have an incentive to obstruct the transitional administration in pursuit of personal or narrowly tribal ambitions. As the most instru-

mental and consistent supporter of South Sudan's independence, the United States could assist with marginalizing these potential spoilers in three important ways.

First, by harnessing the significant concern among senior SPLA officials and other national security actors that the continuation of the war will inevitably lead to direct military intervention by neighboring states; the carving up of the country as happened in eastern DRC; and consequently an open-ended loss of sovereignty to persuade them that the U.N. and AU administration is the least bad option. Additionally, many of these actors would welcome the opportunity to build a professional, inclusive national army and police force afforded by a U.N. and AU administration. Second, by mobilizing individuals and tribal constituencies that have been alienated by Kiir's policy to promote Dinka territorial dominance in contested areas through his 28 states decree. Third, by deploying a peace intervention mission with credible coercive force.

Mr. Chairman, attempts to mischaracterize the U.N. and AU transitional administration as a violation of South Sudan's sovereignty or an attempt at neocolonialism are inevitable, particularly from the most hardline Dinka elements in the country who benefit—financially and politically—from the current situation. These elements have already mounted a concerted effort to block the Regional Protection Force as an alleged violation of sovereignty, which has raised the stakes for international involvement in South Sudan without raising the likelihood of significant political or security gains for its people. Given the increasing threats that South Sudan's dissolution poses to the interests of its immediate neighbors, however, the question of whether foreign governments will intervene militarily is becoming irrelevant. The more urgent question is what form that intervention will take.

Uganda, Ethiopia, Sudan, and Kenya are bearing the brunt of the more than one million refugees that have fled South Sudan. Over 370,000 South Sudanese have sought refuge in Uganda, 100,000 since July 8th alone, and Ethiopia now hosts another 290,000. The refugees' presence has stimulated simmering ethnic rivalries in these states. For instance, communal fighting broke out on Ethiopia's side of the border with South Sudan in early 2016, and Ethiopian troops deployed into South Sudan's Jonglei state in April 2016 following a particularly brazen incursion into Ethiopia's Gambella state by a South Sudanese tribal militia. Intra-regional tensions—such as the long-standing rivalry between Sudan and Uganda and the competition for regional hegemony between Uganda and Ethiopia—abound, and both worsen and are worsened by South Sudan's conflict.

The United States therefore has two choices: We can stand by while these states make facts on the ground by backing armed opposition groups against Kiir's increasingly militant and intransigent regime, taking unilateral military intervention against civilian populations it wishes to subjugate, or otherwise carving out spheres of influence as South Sudan slips away into a deeper morass. A policy that helps Kiir to consolidate his position will not address the security concerns of South Sudan's neighbors over the long term, thereby making this trajectory more likely.

Or, in partnership with neighboring governments, the United States could pursue a strategy that accommodates their legitimate interests while at the same time preserving South Sudan's sovereignty and territorial integrity and providing South Sudan's citizens with an opportunity to take ownership of their future.

For Uganda, the credible security architecture of a U.N. and AU administration would provide a buffer against the extension of Sudanese influence, the prevention of which is a core Ugandan strategic interest, as well as prevent a security vacuum that could be exploited by the Lord's Resistance Army or extremist groups. The return to a more stable security environment—particularly in the Greater Equatoria region, which is more turbulent than at any time during the civil war with Khartoum and lies along Uganda's border—would also revive opportunities for Ugandan commercial activity.

By reducing insecurity and mitigating conflict drivers, an effective U.N. and AU transitional administration would stem the flow of South Sudanese refugees into Ethiopia and would ultimately facilitate their return home. This would ease the strain on the limited resources of an Ethiopia struggling to cope with a severe drought and lessen ethnic conflicts in eastern Ethiopia caused by the refugees' presence at a time of increasing ethnic unrest in other parts of the country.

An international transitional administration would provide Sudan with increased and more regular oil production at a time when its economy is struggling and provide a new impetus for breaking the stalemate between Sudan and Sudanese armed opposition groups that have received support from Juba. A U.N. and AU administration would also serve Kenyan interests by stabilizing the long-standing commercial ties between South Sudan and Kenya, where much South Sudanese wealth is held, and by mitigating the possible exploitation by extremist groups of a security vacuum in South Sudan.

Mr. Chairman, a diplomatic initiative toward a U.N. and AU transitional administration can succeed. Such a transitional administration is in fact the only hope that the people of South Sudan have left to put an end to their unrelenting nightmare. The alternative is to flounder from one tactical step to another—conferring legitimacy on individuals who have long since lost it among their own citizens—while the state for which the South Sudanese people fought so bravely dies five years after its birth.

Thank you again for inviting me here today. I look forward to your questions.

Notes:

1. In the one part of South Sudan where a statistically rigorous study has been conducted as a proof of concept, the conservative estimate enumerated 7,165 civilians deaths by violence in just five counties in one state during a 12-month period between 2014 and 2015—twice the number of civilians killed in all of Yemen in the first 12 months of that country's civil war.
2. The legal basis for Kiir's role as president of South Sudan is highly questionable. He was elected as president in 2010, prior to South Sudan's independence, and the elections scheduled for 2015 was postponed as a result of the war, which itself was sparked over an internal party dispute centered on the electoral contest. Kiir's term was extended to 2017 by a national assembly from which the opposition was excluded.

The CHAIRMAN. Thank you very much.
Dr. Kuol?

STATEMENT OF LUKA BIONG DENG KUOL, PH.D., GLOBAL FELLOW, PEACE RESEARCH INSTITUTE OSLO, OSLO, NORWAY

Dr. KUOL. Yes, Mr. Chairman, thank you very much. I am so delighted to have the opportunity again to make a statement before your committee.

I hope I can make sense of the complex situation and to paint what the future holds for South Sudan.

I want to reiterate that the peace agreement that was signed, although it is in bad health, remains the only viable option of putting South Sudan on the track of peace. Any other option, in my view, is a recipe for more human suffering and loss of innocent lives.

It is an agreement that has been unanimously approved by the parliament. It is facilitated by the IGAD, as well as by the African Union, TROIKA, including the U.S. Government, and the international community. It is an agreement that enjoys the unanimous support of the member states of the Security Council.

Indeed, as you rightly put it, the eruption of conflict in July 2016 showed that this agreement lacks political will, particularly from a small group of elements, anti-peace-agreement, that are actually championing the opposition to the peace and driving an agenda of violence, and to benefit themselves from this violence.

In the case of the Government of South Sudan, these elements use not only political rhetoric and sentiment against the friends of South Sudan, but they have been exploiting public initiatives during the war to benefit themselves. I hope that the U.N. panel of experts on Sudan will take out the link between these elements and how they benefit from this war.

These anti-peace elements also actually are not respecting the President of the Republic, their own President, producing contrary statements about the President's reconciliatory positions.

Then the question is how can we reengineer the political will. A few suggestions.

The U.S. should aim at assembling the supporters of peace, winning over the undecided in the government, and isolating the anti elements both in the government and in opposition.

The SPLM-IO opposition is divided after the appointment of Taban Deng as the new First Vice President. Although we are seeing some positive signs that they are working together and developing a new spirit for the full implementation of this agreement, yet the U.S. Government through the Joint Monitoring and Evaluation Commission should abide by this provision of the agreement and work toward maintaining stability and unity among the warring parties. It is in the interest of the people of South Sudan and the peace that the parties to the agreement must be united.

Also, the United Nations Mission in South Sudan, UNMIS, plays a very important role. Despite its shortcomings, South Sudan is better off with the presence of the United Nations Mission in South Sudan. However, it needs to consolidate its mandate and to work effectively with the transitional government to fully implement this peace agreement.

The deployment of regional forces is one of the ways of strengthening this mandate of the United Nations mission. And with the consent of the Government of South Sudan, we should expedite the deployment of these forces.

After the cooperation that was shown by the government and the President himself to the Security Council, I think the U.S. Government should start now building a new relationship with the government in order to commit themselves for implementing the peace agreement.

Yes, it is true that peace is in bad health. What if it fails? The violent conflict will continue more human suffering. Currently, the SPLM opposition seems to be planning for the option of war if peace is declared dead. But even Dr. Lam Akol, who was championing the nonviolent opposition, is left with nothing but to opt out from this nonviolent opposition.

So what can the international community do?

First, we should not expect the international community to be watching, but they should act in order to prevent the eruption of new violence in South Sudan. The recent IGAD initiative of deployment of these U.N. forces, of regional forces, and the consent of the Government of South Sudan, is a very important step to rescue this peace agreement from collapsing.

And with these efforts, with the U.S. Government, I think—maybe I disagree with Kate, not in terms of direction, but in terms of whether this proposal is currently an option, given the international community is focusing on the implementation of the peace agreement. But it should be an option that we should be keeping in our minds, if worse comes to worse.

On the other hand, the prospect that the international community might at a certain point have to intervene should encourage the parties to the agreement to implement it, because that threat is very important.

But equally important, I think, even with political will, we need robust technical and financial support to sustain the commitment and make this peace attractive and have the dividends of peace. But we need people to work together.

And in this regard, the recent legislation to facilitate the return of qualified South Sudanese diaspora is a positive and good step, and should be encouraged.

Now on the political reforms, who to supervise it, I know there is a lot of debate. We have the options of either the two leaders to supervise the political reforms. This is provided for in the peace agreement; or either of them to step down; or the third, two of them.

But, Mr. Chairman, I know you cannot do this one without the consent of these people because the peace agreement and these two leaders, they should be included, to be held responsible to implement this peace agreement because these are the options available ahead of us. Failing to do that, then we can talk about other options.

Or if possible, the international community, through its diplomatic leverage, to convince either of them or two of them to give way for new leaders to come, but with the consent of the political parties.

I think there is that opportunity with the region. Like what Kate said, we can use the region in order to do the same.

Let me conclude by saying that people of South Sudan are great people, and I think from the civil war, they may rise up from ashes of civil war to pursue the God-given potential to build the country. Thank you.

[Dr. Kuol's prepared statement follows:]

PREPARED STATEMENT OF LUKA BIONG DENG KUOL, PH.D.

INTRODUCTION

I am extremely honoured again for this timely opportunity today to make this statement before your committee. Last April, I had opportunity to make testimony on the South Sudan's Prospects for Peace before the U.S. House of Representatives Committee on Foreign Affairs, Subcommittee on Africa, Global Health and Human Rights. Since that time things have changed considerably. I was optimistic that things will improve and that South Sudan will be on the right track in implementing peace agreement. Unfortunately I was wrong as violent conflict erupted again in July 2016, many innocent lives were lost, thousands fled the country and took refuge in the neighbouring countries, the economy at the verge of collapse, and peace agreement is not at all in good health. I hope I will be right this time to make sense of this complex situation and to paint what future holds for South Sudan.

I will address the four issues in the order I have been asked by the committee: first, on the viability of the Peace Agreement; second, on international and regional administration of South Sudan; third, on accountability and reconciliation; and fourth, on sustainable political reforms.

VIABILITY OF PEACE AGREEMENT AND THE ROLE OF INTERNATIONAL COMMUNITY

I want first to reiterate affront that the peace agreement, although it is in bad health, remains the only viable option of putting South Sudan on track of peace and stability. Any other option will be a recipe for more loss of innocent lives and human suffering. It is an agreement wanted by the people of South Sudan as it has been unanimously approved by the national parliament of South Sudan without reservations. It is a peace agreement that came as a result of concerted efforts of the region (IGAD), African Union, TROIKA and International community represented United Nations Security Council. It is a peace agreement supported and endorsed unanimously by the permanent members of the United Nations Security Council.

However, the eruption of violent conflict in July 2016 shows that the peace agreement was backed by an incomplete political will. The real challenge now is how to nurture the real political will to support peace agreement as the best and the only hope for the people of Sudan. There are elements both in government and opposition

that are against peace and they are the ones igniting violence and influencing public opinion against the friends of South Sudan such as the region, AU, U.N. and Troika countries.

The voices of these elements became very clear in government as they started even undermining the reconciliatory positions of President of South Sudan towards friends of South Sudan as clearly stated in his recent speech in the parliament and his meeting in Juba with members of the U.N. Security Council. These elements are driven more by wartime vendettas and narrow self-interest. They have actively encouraged conflict ever since. When the big tent collapsed along the old dividing lines it became obvious that the Government of South Sudan includes some officials who are working hard to implement the Agreement; some who are undecided; and others who are against the peace because it doesn't serve their agenda. In terms of achieving the much-needed environment of political will, the challenge is to strengthen the supporters of peace, win over the undecided and isolate the anti-peace elements.

The recent atrocities being committed in Juba by unknown armed men, including against foreigners, their actions were seen as a deviation from the SPLA's history and its code of conduct. Why has military discipline changed for the worst since the independence? Mean speech by unscrupulous politicians that casts the international community as an enemy of South Sudan is misleading the soldiers and stirring up anger in the social media. These anti-peace elements in the government are the ones need to be targeted with specific sanctions that may limit their influence.

It is a fact that the SPLM-IO is divided and Gen. Taban Deng has been appointed as a new First Vice President to act in the position of Dr Riek until he returns back to Juba. There are early signs that suggest that President Salva and his new First Vice President are working in harmony and with new spirit towards the full implementation of peace agreement. Despite such progress, the international community should abide by the terms, provisions and institutions provided for resolving differences in the peace agreement. It is within the interest of peace to see the parties to the peace agreement united rather than divided and they should be helped to remain united. The Joint Monitoring and Evaluation Commission (JMEC) is the only institution mandated to resolve differences in the peace agreement and members of JMEC including U.S. are expected to support the smooth function of JMEC. The current difference in SPLM-IO can only be resolved through JMEC or SPLM-IO itself rather than through individual members of JEMC.

Also smooth implementation of peace agreement rests with the role to be played by United Nations Mission in South Sudan (UNMISS). There are concerns about the role of UNMISS in discharging its mandate under Chapter VII of protection of civilians as many including U.N. reports have clearly shown its underperformance since the eruption of violent conflict in December 2013 and recently in July 2016. Besides its inability to protect civilians, UNMISS even failed to protect U.N.'s properties as the warehouses of World Food Programme (WFP) full with food items were looted in daylight in Juba.

Despite this underperformance of UNMISS, the counterfactual question remains what would have been the situation in South Sudan with these violent conflicts without the presence of UNMISS? What would have been the fate of thousands of people who took refuge in PoC? Is the performance of UNMISS different from other missions with similar mandate in other countries? What would be the level of knowledge and awareness of international community about gross human rights abuses and atrocities committed by the warring parties? With these questions and despite its shortcomings, South Sudan is better with the presence of UNMISS. However, there is a need to strengthen its mandate and to perform differently for building peace.

The deployment of the Regional Protection Forces is one of the ways of strengthening the mandate of UNMISS. The way these Regional Protection Forces was initially presented as "intervention forces" created anxiety and serious and right concerns about the sovereignty of their state. As well articulated recently by the U.S. Secretary of State that the Regional Protection Forces are only to complement the sovereign authority of South Sudan rather than taking it away. This is the message that is needed to be passed to the authorities in Juba and people of South Sudan by the international community and to silence the voices of anti-peace in the government. Also the cooperation of the Government and people of South Sudan should be secured based on the fact that these Regional Protection Forces are not an effort to undermine sovereignty, but rather to consolidate security, in order to facilitate development for the country. It is in that sense a reinforcement of sovereignty, but must be undertaken with local understanding and support. The commitment that was given by the President in Juba to the members of U.N. Security Council may not be respected if these anti-peace elements remain in their influential public positions.

INTERNATIONAL ADMINISTRATION OF SOUTH SUDAN

During my congressional testimony last April, I posed a fundamental question of what if the parties failed to implement the peace agreement? The clear and straight answer is that parties will scale up violent conflict. Currently, SPLM-IO seems to be planning for the option of war if peace agreement is dead. Even some of the political leaders such as Dr Lam Akol who championed the non-violent opposition seems to be left with no option but to abandon the peaceful means given the unhealthy status of peace agreement to which he anchored his non-violent opposition. Also other national voices for peace will be pushed to the extreme of violence as the only way of bringing change in South Sudan.

While it is natural that the international community cannot be watching such unfolding human suffering caused by the acts of elites who are not interested and have no political will to implement peace agreement, it is important that any action in lieu of peace needs to be carefully assessed within the context of South Sudan, regional dimensions and international context. The international administration of South Sudan relies on few assumptions that the region and international community will be united and have a consensus over such option and that people of South Sudan, if not all of them, will accept it as the best option for putting their country on the path of peace and stability.

It is a fact that the region is divided with each country guided by its narrow and incompatible strategic interests and even some of them such as Sudan may be ready to support the opposition parties in waging war against Juba. So IGAD and even more difficult the AU may not reach a consensus on the international and regional administration of South Sudan. One is not sure how the international community, particularly UNSC, will reach consensus on the international and regional administration of South Sudan; given the fact that the members of UNSC are unable to reach a consensus even on arms embargo. The people of South Sudan and particularly the anti-peace elements in the government may see such international administration as targeting certain ethnic groups and may use such option as a way of mobilizing themselves against such administration and that may result in violent confrontation and more human suffering.

On the basis of these facts, the option of international administration should be seen as the cost of non-implementation of peace agreement and as effective way of encouraging the parties to the full implementation of peace agreement and to encourage them to have the necessary political will to implement the peace agreement. Besides this threat of international administration of South Sudan, the parties to peace agreement should be encouraged diplomatically to isolate the anti-peace elements or to impose targeted sanctions on these elements.

ACCOUNTABILITY AND RECONCILIATION

The peace agreement is very clear on these two issues as different mechanisms have been provided for how they should be implemented. Also the African Union Commission of Inquiry on South Sudan has come up with specific suggestions of how to achieve justice, accountability and reconciliation. The role of international community is to see the full implementations of the provisions related to accountability and reconciliation. There is no doubt that both accountability and reconciliation require a stable political environment and that can begin from the bottom up building on local institutions to popularize the Agreement, mobilize the people and launch the constitutional process framed in the Agreement. Accountability and reconciliation can extend upward at a time when there is no risk to the Agreement.

THE SUSTAINABLE POLITICAL REFORMS

As I mentioned in my testimony last April that the peace agreement has provided unprecedented and detailed reforms that are better than those provided in the Comprehensive Peace Agreement (CPA). If these reforms are fully implemented, South Sudan will not be the same again.

However, there are challenges of who to oversee the implementation of these reforms. Although peace agreement is very clear that the principals of the peace agreement (President Salva Kiir and Dr Riak Machar) are to oversee these reforms, there are voices calling otherwise. In fact there are three options: first is the peace agreement option of President Salva Kiir and Dr Riek Machar as principals to the Agreement; the second is for one to step down; and the third is that both step aside to give others a chance to oversee these reforms. Despite the fact that President Salva and Dr Riak Machar are unlikely to work together after the recent violent conflict in July 2016, there is no option that can be imposed on them. Given the fact that peace agreement is a win-win situation, the two principals should be en-

couraged to work together as did Dr John Garang and President Bashir and later on President Salva and President Bashir to implement the CPA. If international community can use its diplomatic leverage to convince either of the principals or both principals to give way voluntarily with necessary exit packages and guarantees that may provide a new leadership to champion the political reforms in South Sudan.

Besides, the option of who to supervise these reforms, The United States Government is an honorable friend of South Sudan and your help is needed now more than ever. The challenge is to continue the political, economic and security reforms that began in earnest with the CPA, but were diverted upon independence by a convergence of factors. The U.S. can mobilize the region and the international community to support this continuing process of reform and to make peace agreement attractive by providing peace dividends. USAID's work across all sectors and areas of South Sudan, including in agriculture, needs to be deepened, and that is why Secretary Kerry's pledge of an additional funding for those purposes is most important. Financial and technical assistance can be conditioned on these reforms, and sanctions should only be targeted at those who are against the peace.

CONCLUSIONS

In conclusion, I reiterate that the best option for the government and people of the United States of America is to support the full implementation of peace agreement and to make the cost of non-implementation very high by targeting anti-peace elements with specific sanctions that will limit their influence in public affairs. Also, the U.S. can still help diplomatically, financially and technically, to:

- implement the Agreement, with necessary political reforms,
- support core functions of the Transitional Government of Unity, with targeted assistance in areas of finance and management,
- plan for long-term development and better donor coordination, particularly in areas of infrastructure and agriculture,
- and, most importantly, implement security sector and economic reforms.

Thank you for allowing me to share with you my optimism and concerns about the prospects of peace and security in South Sudan. I strongly believe that the people of South Sudan will one day rise up to their expectations and God-given potentials and to put their country on the path of peace and prosperity with the usual support of their friends; the people of the United States of America and their government.

The CHAIRMAN. Thank you, sir.

Mr. Yeo?

STATEMENT OF PETER YEO, PRESIDENT, BETTER WORLD CAMPAIGN, AND VICE PRESIDENT, PUBLIC POLICY AND ADVOCACY, UNITED NATIONS FOUNDATION, WASHINGTON, D.C.

Mr. YEO. Thank you, Chairman Corker and Ranking Member Cardin and members of the committee. Thank you for the opportunity to testify before you today regarding South Sudan.

I will focus today on the role that the U.N. Mission in South Sudan plays in protecting civilians at a level unprecedented in human history, and my belief that the U.N. mission should have taken more action to protect civilians during the fighting last July.

Last November, I traveled to South Sudan with a congressional delegation to meet with U.N. peacekeepers, including visits to the largest U.N. civilian protection sites in Bentiu and Juba.

The U.N. Mission in South Sudan, which began in 2011, remains the thin blue line protecting many South Sudanese civilians from government troops and a myriad of other heavily armed militias intent on harming them. As Congressmen Capuano and Higgins noted in their op-ed shortly after the delegation's return, there are almost 200,000 civilians in the six U.N. peacekeeping bases, and many of them would not be alive today if not for the U.N.'s presence.

The U.N. did not anticipate protecting 200,000 civilians when the mission was created 5 years ago. But when conflict erupted in December 2013 and civilians rushed into U.N. sites to avoid attack by troops and militias, the U.N. moved to protect them at a scale unprecedented in U.N. history and informed by the tragedies in Rwanda and Srebrenica.

When I visited in November, I met a young woman who had just arrived at the Bentiu camp gate looking for protection only the U.N. could provide. She had left her burned-out village with her two children, twin baby girls, after her husband was killed and she had survived a gang rape by government forces. Unfortunately, only one of her daughters lived through the arduous 80-mile journey.

For the past 3 years, the U.N. mission has been severely limited in its ability to carry out its mandate. The South Sudanese Government has repeatedly violated its status of forces agreement, which guarantees free movement to U.N. peacekeepers.

With the violent attacks on U.N. Protection of Civilians sites by government soldiers in Malakal in February, Bentiu in April, and Juba in July, the government has now moved from being a partner to a predator.

At times, the U.N. Mission in South Sudan has failed to protect civilians, and it is imperative that it learns from its mistakes.

In February, at the Malakal U.N. base where over 40,000 South Sudanese still reside, at least 30 camp residents were killed before U.N. peacekeepers adequately responded. The recent attacks in July by government soldiers on international aid workers and South Sudanese civilians were also unconscionable. Those responsible for those horrendous crimes must be punished.

U.N. peacekeepers should have done more to protect the civilians in Juba both at the Hotel Terrain and for the women leaving the camp in search of food. They did not.

The U.N. is conducting an independent inquiry, headed by Major General Patrick Cammaert from the Netherlands as we speak, which will result in a report with recommendations.

It is worth noting several factors which contributed to the U.N. mission's inability to protect in these circumstances.

While the dirt road between U.N. House and Hotel Terrain is only a kilometer—I drove it in November—it was ground central for the fighting between government soldiers and opposition. Hundreds of soldiers lined the road along with government tanks, and government attack helicopters hovering above U.N. House firing into the nearby opposition base. U.N. peacekeepers were working to protect the 35,000 South Sudanese civilians inside the two Protection of Civilians sites located at U.N. House, which had been hit by more than 200 rounds during the fighting.

Furthermore, the Chinese battalion's quick reaction force was responding to soldiers who were severely injured by government attacks the previous day, two of whom later died.

Given the U.N.'s extremely limited medevac capabilities, the government's belligerence toward the mission, and the worsening security situation, some U.N. peacekeepers believe that they would have been left to bleed to death if they had to fight their way to the Hotel Terrain.

As the U.N. conducts its inquiry, the U.N. mission, troop-contributing countries, and the Security Council must consider some important questions to resolve key issues: Is the mission willing and able to engage in active combat against the government, the U.N.'s host in South Sudan, to protect civilians? What are the implications of large-scale active combat between the U.N. and the SPLA to the long-term future of the mission and its ability to protect civilians? Can the Security Council finally move toward an arms embargo?

The possible deployment of 4,000 new U.N. peacekeepers could be a positive development in an otherwise bleak landscape. If the government continues to place severe restrictions on the mission, then the new troops may not have an impact on security in Juba.

Mr. Chairman, Ranking Member Cardin, members of the committee, these are, indeed, dark days for innocent civilians in South Sudan. Those who have already been attacked and the hundreds of thousands still in need of protection. The U.N. mission, troop-contributing countries, and the Security Council must thoroughly review the mission, its mandates, military capacities, command-and-control structure, and rules of engagement to ensure that it can best protect civilians.

All global players must continue to press the Government of South Sudan, in fact, all warring parties, to stop the killing of civilians and return to partnership with the United Nations. Thank you.

[Mr. Yeo's prepared statement follows:]

PREPARED STATEMENT OF MR. PETER YEO

Chairman Corker, Ranking Member Cardin, thank you for the opportunity to testify before the committee today regarding South Sudan. I serve as President of the Better World Campaign and Vice President for Public Policy and Advocacy at the United Nations Foundation.

My statement today will focus on the role that the U.N. Mission in South Sudan (or UNMISS) plays in protecting civilians—at a level unprecedented in U.N. history—and my belief that the U.N. Mission should have taken more action to protect civilians during the fighting last July.

Last November, I traveled to South Sudan with a congressional delegation to meet with U.N. peacekeepers, including visits to the large U.N. civilian protection sites in Bentiu and Juba.

The U.N. Mission in South Sudan, which began in 2011, operates throughout the country, tasked with a range of vital responsibilities. Mission personnel report on human rights violations and child recruitment into the military, educate civilians about gender-based violence and ending child marriage, and provide security for the delivery of vital humanitarian assistance. On the humanitarian front specifically, in a country where six million people need assistance, which is half the population, the U.N. and NGO partners have reached three million this year and aim to reach another two million by year's end.

Most notably, UNMISS remains the thin blue line protecting many South Sudanese civilians from government troops and a myriad of other heavily armed militias intent on harming them. As Congressmen Michael Capuano (D-MA) and Brian Higgins (D-NY) noted in an op-ed published shortly after their trip to the country last year, "There are almost 200,000 civilians in the six U.N. peacekeeping bases and many of them would not be alive today if not for the U.N.'s presence."

The U.N. did not anticipate protecting 200,000 civilians when the mission was created five years ago. But when conflict erupted in December 2013, and civilians rushed into U.N. sites to avoid attack by troops and militias, the U.N. moved to protect them at a scale unprecedented in U.N. history and informed by the tragedies in Rwanda and Srebrenica.

While in South Sudan, I met a young woman who had just arrived at the Bentiu camp gate looking for protection only the U.N. could provide. She had left her

burned-out village with her two children—twin baby girls—after her husband was killed and she had survived a gang rape by government forces. Unfortunately, only one of her daughters lived through the 80-mile journey.

For the past three years, the U.N. Mission has been severely limited in its ability to carry out its mandate. The South Sudanese government, as I will detail later, has repeatedly violated the Status of Forces Agreement, which guarantees free movement to U.N. peacekeepers. With the violent attacks on U.N. Protection of Civilian sites by government soldiers in Malakal in February, Bentiu in April, and Juba in July, the government has now moved from partner to predator.

At times, the U.N. Mission in South Sudan has failed to protect civilians, and it is imperative that it learns from its mistakes. In February, during an attack at the Malakal U.N. base, where over 40,000 South Sudanese reside, at least 30 camp residents were killed before U.N. peacekeepers finally responded. An internal U.N. review of the incident found that peacekeeping forces failed to respond to the violence through a “combination of inaction, abandonment of post, and refusal to engage.” The U.N. Mission has accepted responsibility for its failure in Malakal after this investigation, and steps are being taken to resolve command and control issues, a major element in the mission’s inability to protect.

The recent attacks in July by government soldiers on international aid workers and South Sudanese civilians were also unconscionable. Those responsible for these horrendous crimes must be punished. U.N. peacekeepers should have done more to protect civilians in Juba—both at the Hotel Terrain and for the women leaving the U.N. bases in search of food. In light of these circumstances, the U.N. rightly announced that it would launch an independent investigation—headed by Major General Patrick Cammaert from the Netherlands—to assess the mission’s actions and offer recommendations.

Nevertheless, it is also important to contextualize the actions of the peacekeepers in terms of the challenges and obstacles they faced. First and foremost, it must be noted that there was heavy fighting in the immediate vicinity of the main U.N. base in Juba between July 8th and July 11th, due to the presence of a large SPLA-IO cantonment site and an SPLA base in the area. SPLA armored personnel carriers, tanks, and several hundred troops were positioned on the road outside of the U.N.’s gates, making it difficult for peacekeeping troops to leave. Moreover, during the fighting the U.N. base and POC site were struck by more than 200 rounds of ammunition, including tank shells, mortars, and RPGs.

This government fire led to casualties among South Sudanese civilians and U.N. personnel alike. On July 10th, an RPG struck an armored vehicle inside the POC site, seriously injuring six Chinese peacekeepers. Since the clinic at the main U.N. base did not have a surgical team present or the capability to perform blood transfusions, the wounded needed to be evacuated to a Level II trauma center located 10 miles away at another U.N. base in Juba’s Thongping neighborhood.

Unfortunately, for nearly 22 hours after the incident, the South Sudanese government refused to provide the mission with the necessary assurances that its troops would not be fired upon if they tried to evacuate their fellow soldiers. As a result of these delays, two of the wounded peacekeepers died from their injuries. As reported by Matt Wells of the Centers for Civilians in Conflict, the mission’s inability to ensure medevac for wounded personnel due to obstruction by South Sudanese officials contributed to a lack of willingness among peacekeeping troops to leave the base or engage forcefully. Specifically, in the case of the Terrain Hotel, some U.N. peacekeepers understandably believed that they would be left to bleed to death if they had to fight their way to it.

To be sure, the fighting outside the camp and concerns over medical care and evacuation are not solely responsible for peacekeepers’ inability or unwillingness to protect civilians. There were serious inadequacies with UNMISS’s response in July irrespective of the medevac problem. Nevertheless, it is an important element of the situation to understand.

Overall, while there are changes the mission must adopt to reduce the chance of this happening again, there are also larger issues at play here as well as a broader set of changes that must be adopted, involving not only the mission but also troop contributing countries, the United States, the South Sudanese government, and the U.N. Security Council.

ACCOUNTABILITY FOR CIVILIAN PROTECTION FAILURES

With regards to the February attack in Malakal, the U.N. Secretary-General established a board of inquiry to examine the circumstances surrounding the incident. Their final report, released in early August, found serious deficiencies in the peacekeepers’ response to the massacre, and made a number of recommendations for cor-

rective action. These include, among other things, the need for better command and control and accountability for underperformance, including the possible repatriation of peacekeeping commanders and/or entire military units found to have demonstrated a lack of will to implement their mandate.

At this stage, the U.N. should act swiftly to fully implement this recommendation. Repatriation of peacekeeping military contingent commanders and units has been an important element of the Secretary-General and Security Council's effort to address sexual exploitation and abuse within peacekeeping; it should also be a pillar of any policy regarding individuals or units that do not honor their mandate to protect civilians. Moving forward, poorly performing individuals or units should be withdrawn if the situation warrants. The Security Council must ensure that the U.N. Secretariat follows through, as accountability will help restore civilians' trust in UNMISS.

TROOP CONTRIBUTING COUNTRY PARTICIPATION

The level of willingness on the part of peacekeeping commanders and individual personnel to actually risk their lives in implementing a mission's civilian protection mandate is a crucial component of peacekeeper performance. According to George Washington University professor Paul Williams, an expert on African peacekeeping operations, civilian protection "is a very hard ask of troop and police contributing countries, many of whom will not want to die for the U.N. in South Sudan." This gets to the heart of what happened in Malakal and Juba, where as noted, U.N. peacekeeping troops stand accused of failing to implement their Security Council mandate, namely, protecting civilians who are under imminent threat of violence.

While there are tens of thousands of troops who serve bravely and admirably under extremely difficult circumstances, many Troop Contributing Countries (TCCs)—no matter where they're from—are risk-averse when it comes to the safety of their own personnel, regardless of the directives handed down by mission leadership, the Department of Peacekeeping Operations, or the Security Council. For example, during the July outbreak of fighting in Juba, the United Kingdom, Germany, and Sweden evacuated a dozen nationals serving as part of UNMISS without even consulting the U.N.—a move that, according to a U.N. memo, affected the peacekeeping mission's operations and dealt a "serious blow to the morale" of the force. This is to say nothing of the U.S., which—in the wake of the Black Hawk Down incident in Somalia in 1993—withdrew almost entirely from providing uniformed personnel to U.N. peacekeeping missions. The fact is, no amount of training, force enablers, or field experience can be effective in the absence of willingness on the part of peacekeeping troops themselves and officials in their home countries to fully carry out the responsibilities laid out in any given mission's mandate.

That being said, one underlying issue that the attack in July exposed is the medical and casualty evacuation limitations faced by the missions, which has contributed to TCC unwillingness to venture beyond their bases or conduct more dangerous patrols. In the case of the fighting in July, while there were air assets and road convoys available, the South Sudanese government refused to provide the mission with necessary assurances that its troops would not be fired upon if they tried to evacuate wounded personnel.

But there is also a larger issue of UNMISS and other U.N. peacekeeping missions having limited air assets for medevac and casevac. As has been documented, U.N. missions have lacked vital air assets like helicopters.

Last year in advance of the Leaders' Summit on Peacekeeping—convened by President Obama and held at the United Nations—I wrote an op-ed which noted that the inability to ensure that wounded personnel can be quickly evacuated is understandably leading some peacekeepers to be risk-averse in their projection of force, inhibiting longer-range patrols and undermining civilian protection. It also leads to troop contributing countries being reluctant to put their personnel in harm's way. It has been made clear to me in trips to U.N. missions that peacekeepers place fundamental importance on every effort being made to get them immediate medical care, and that the inability to do so is highly detrimental to soldiers' morale.

Medical and casualty evacuation is an area where the United States could assist missions, by either deploying U.S. specialist military contingents to U.N. peacekeeping operations in support roles with air and medical assets, or via existing National Guard Partnership Programs. It would be inconceivable for U.S. troops to conduct patrols without medical or casualty evacuation capability and it should not be the case for U.N. soldiers either. Enhanced medevac and casevac capabilities would send peacekeepers a message of support and increase the likelihood that Troop Contributing Countries would back robust engagement by their personnel.

OBSTRUCTION BY THE SOUTH SUDANESE GOVERNMENT

Since the outbreak of civil war three years ago, the Government of South Sudan has gone to extraordinary lengths to restrict UNMISS's freedom of movement. As Samantha Power noted during a visit to South Sudan by Security Council Ambassadors in early September, "The number one obstacle for the peacekeepers fulfilling their mandate has been the severe restrictions on their movements." To be clear, the Status of Forces Agreement (SOFA) signed by UNMISS and the South Sudanese government gives peacekeepers the right to move and patrol throughout the country unhindered. In practice, however, the government routinely violates these understandings, putting up roadblocks to impede U.N. patrols, requiring the mission to obtain permission to fly its own helicopters or risk these aircraft coming under fire, and harassing, intimidating, or even physically assaulting UNMISS civilian staff. In addition to movement restrictions, the South Sudanese government has repeatedly rejected requests from UNMISS to bring in certain types of technology that could improve the ability of peacekeepers to project force, including surveillance drones, communications equipment, and some weapons. These obstructions have seriously hampered the mission's day-to-day operations and placed the safety of U.N. personnel at unnecessary risk.

On August 12th, in response to the July violence, the Security Council voted to deploy a 4,000-soldier Regional Protection Force (RPF) to help stabilize Juba. The Force, which will be under the command of UNMISS, is tasked with protecting major lines of communication and transport into and out of the capital, securing the airport and other key facilities, and taking robust action to "promptly and effectively engage an actor that is credibly found to be preparing attacks, or engages in attacks, against United Nations protection of civilians sites, other United Nations premises, United Nations personnel, international and national humanitarian actors, or civilians."

While more troops are certainly needed to help secure the capital, it is doubtful they will have much of an impact absent a fundamental change in posture by the government towards the mission more generally. Since the adoption in August of Security Council Resolution 2304 authorizing the RPF, South Sudanese authorities have made a series of contradictory statements, at first rejecting the force as a colonial intrusion, then agreeing to its deployment during the Security Council visit earlier this month.

Since then, however, South Sudan has placed a number of problematic conditions on its acceptance of the RPF, stating that the government should be able to determine the number of troops deployed, the countries allowed to contribute to the force, and the types of weapons they are able to bring. These statements raise serious questions about whether, once on the ground, the RPF will be subject to the same obstruction tactics as the rest of UNMISS.

As a result, the international community must urgently prioritize efforts to combat this long-running pattern of intransigence on the part of the Government of South Sudan. As a first order of business, the Security Council must be more willing than it has been in the past to forcefully and publicly condemn the Government for violations of the SOFA—their collective silence only emboldens the government to continue its obstruction. The Council should make clear that attacks on U.N. peacekeepers and humanitarian personnel—70 have been killed to date—constitute war crimes, and it should name and shame those who carry out these illegal acts. In addition, UNMISS leadership itself needs to do a better job of regularly reporting when peacekeeping troop movements are blocked or soldiers are targeted. Such transparency measures are critical to assuring peacekeepers that they enjoy the full backing of the international community as they seek to implement their mandate.

In addition, the Security Council, U.N. Mission and Troop Contributing Countries must be prepared for the challenging implications stemming from a more forceful policy towards the South Sudanese government i.e. Is the mission willing and able to engage in active combat with the government—the U.N.'s host in South Sudan—to protect civilians? What are the implications of large-scale, active combat between the U.N. and the SPLA to the long-term future of the mission? Will the Security Council finally move forward with an arms embargo?

ARMS EMBARGO AND TARGETED SANCTIONS

Since its independence in 2011, the U.S. and its international partners have prioritized productive relationships with the country's leadership but that has failed to deliver the anticipated dividends. Consequently, it is critical that the Security Council take action against the South Sudanese government to incentivize cooperation with the international community. First and foremost, the Council should heed repeated calls made over the last several years by U.N. Secretary-General Ban Ki-

moon, other senior U.N. officials, and numerous civil society organizations, and establish a long overdue arms embargo on South Sudan. This type of measure could help shore up the peacekeeping force, which, as it stands, is severely outgunned by the parties to the conflict, particularly the South Sudanese government. Indeed, a recent article published by IRIN quoted an unnamed U.N. official as stating that, "The firepower in the hands of the SPLA thanks to the absence of an arms embargo is overwhelming in terms of its superiority to what the mission has." The article went on to note that, "According to recent analysis carried out by the Small Arms Survey, an embargo would in particular impact the fearsome Mi-24 attack helicopters the government has in its inventory, as the foreign contractors that keep them flying would be outlawed." Earlier this month, a report put out by a U.N. Panel of Experts bolstered this argument, concluding that, "the continued influx of weapons contributes to spreading instability and the continuation of the conflict." In addition to an arms embargo, the Security Council should consider expanding the list of individuals subject to targeted sanctions—namely asset freezes and travel bans—to include Salva Kiir, Riek Machar, and other high-ranking South Sudanese officials responsible for the violence.

While it is highly unlikely that imposition of an arms embargo or targeted sanctions alone would be sufficient to end the conflict, they could help reduce the flow of critical resources that have allowed both parties to act with virtual impunity. At the very least, they would send a strong signal that the international community has lost patience with Kiir and Machar, and expects them to return in earnest to the negotiating table and cooperate fully with the peacekeeping mission.

CONCLUSION

Mr. Chairman, Ranking Member Cardin, these are indeed dark days for innocent civilians in South Sudan—those who have already been attacked and the hundreds of thousands still in need of protection. The U.N. Mission, the United States, Troop Contributing Countries, and the Security Council must thoroughly review the mission—its mandate, military capacities, command and control structure, and rules of engagement—to ensure that it can best protect civilians. All global players must continue to pressure the Government of South Sudan—in fact all warring parties—to stop the killings of civilians, and return to a partnership with the U.N.

The CHAIRMAN. Thank you.

And thank all of you for that great testimony.

I want to commend the ranking member on an excellent op-ed that was just published on this very topic and defer to him now on questions.

Senator CARDIN. Well, thank you, Mr. Chairman.

I thank all four of you for your insight. You certainly raised a lot of questions as to how we can be effective.

One thing is clear to me. We will not abandon the people of South Sudan. They are in critical need, and they need the international community.

But it does raise whether our aid program, whether the U.N. peacekeepers, are effective or not. I am all for peacekeepers. I am all for humanitarian assistance and good governance assistance. But if it is not carrying out its purpose, then we have to look for other means to accomplish those ends.

Imposing sanctions may very well be needed, including arms embargoes and governance issues. So we will look at all these issues.

Quite frankly, I agree with you. The circumstances are challenging. I am not sure that they are that complex. You have corrupt leaders in a corrupt country where they are more concerned about themselves than their people. You have leaders who are committing war crimes.

When you use your civilian as military tactics, that is a war crime. When you allow your military to gang rape civilian populations, that is a war crime.

I appreciate, "We should threaten to hold them accountable." No, we shouldn't. We should hold them accountable. Too many times, we said we are going to hold perpetrators accountable, and we have not held them accountable.

So the current leadership needs to be held accountable, because it is impossible for me to believe this type of conduct is taking place without the President or Vice President fully complicitous in these operations.

So culpability needs to be accounted for, and we need to move forward.

Now, several of you mentioned looking for a new governance structure and imposing an arms embargo. I would like to perhaps drill down a little bit on an arms embargo and what impact it would have as a practical matter. But I also want to get into the governance issues, imposing some type of a trusteeship to the country.

The historic examples normally follow international forces or a country—East Timor, if I am correct. I think Australia went in originally and then the U.N. came in later. Certainly, in Kosovo, NATO was actively engaged before the governance structure.

We don't have that capacity in South Sudan, so I am not exactly sure how you get to that point where you could have an effectively controlled U.N. trusteeship of sorts imposed.

So I would just ask, briefly, if you could respond to whether a U.N.-imposed arms embargo could effectively change the equation here, whether it is realistic to expect that we could impose a governance structure, considering the current status on the ground, and whether there are any other significant changes in strategy that we should be considering in order to protect the people of South Sudan.

You can just start. I can't pronounce your names as well as the chairman.

Dr. JOK. Thank you very much. My position on the arms embargo or any kind of sanction is that having listened and read the pulse of South Sudanese politics for many years, I feel that it would be very, very divisive and not just divisive between the political leaders, those in government who are opposing and those opposition are for it, but also among the population, in the sense that those who are supporting it would be seen as the ones who are selling the country to the international community. There is a lot of anti-intervention rhetoric rising in South Sudan, all across South Sudan.

So I think it would inflame those differences much further. Especially if it is something that the government is opposed to, the government can always rally people behind it and say those people over there are selling our country.

Ms. KNOFF. Thank you very much for the question.

I do think an arms embargo is necessary, can be effective. It is long, long, long, long overdue, the fact that either side, any side—there are more than two at this point in the conflict—can continue to procure weapons. We know, in fact, that the government most particularly is procuring heavy weapons, including jets, since the formation of the Transitional Government of National Unity and

that they are using these heavy weapons against their civilian population.

So the fact that we would even discuss any more peacekeepers in that scenario where we are not also stopping them from procuring weapons seems completely disconnected.

A second point on the effectiveness of an arms embargo, there are not that many points of entry in South Sudan where you can bring in truly heavy equipment and munitions. Yes, small arms and light weapons can move across the border. It is very porous. That we won't have a good chance at monitoring and probably stopping very much of. But this other kind of procurement that is going on, there aren't that many airstrips that can handle that level of equipment. The roads don't exist outside the one that the United States helped to build, for the most part, from Uganda into Juba.

So it is not as complicated as it might seem in other places, and it has been done effectively in Cote d'Ivoire and other circumstances.

Thirdly, in an arms embargo, it is necessary as a signal to all the parties and to the people of South Sudan that the international community, the United States, we find this conflict utterly beyond the pale morally. There is no right side here, and no one should be continuing to arm themselves to pursue violence as a means toward their political ends.

And so I do think it is an important part of the overall calculus that gets us to a place where we could then discuss an alternate form of governance for South Sudan. A trusteeship, an international transitional administration, can't be imposed on South Sudan. That is not what I am suggesting. I do think that is beyond any realm of possibility, or usefulness, frankly.

But I do think that the people of South Sudan, they want to be fed. They want to be able to feed themselves, more importantly. They want to go about their lives the way they do, whether that is fishing, herding, going to a business in the city, whatever that is. They don't have the daily safety and security to do that. They don't have any services from their government to support and enable their livelihoods.

And an international administration would, in fact, make it easier for the international assistance that already does provide most of that assistance that exists.

Senator CARDIN. I know my time is up. I would just make the observation that I agree with your assessment, but if the leaders are not going to agree to it, it is hard to mobilize the people in the current political security situation in the country to be able to get the people effectively to encourage international action for a trusteeship. So I just think it is going to be very challenging to bring that about.

Ms. KNOPF. Senator Cardin, it is going to take more than sanctioning six individuals. That is what we have done so far.

Senator CARDIN. I agree with that.

Thank you.

The CHAIRMAN. Senator Shaheen?

Senator SHAHEEN. Thank you, Mr. Chairman.

I want to make sure I understood what each of you were saying.

As I understood Dr. Kuol—am I pronouncing your name correctly?

Dr. KUOL. Yes.

Senator SHAHEEN. You argued that the peace agreement was still viable. As I understood everybody else on the panel, you all disagree with that. Is that correct?

Mr. YEO. Yes, I believe that is correct.

Senator SHAHEEN. And I understood the rest of you correctly?

Dr. JOK. I am saying that there is room for South Sudanese leaders to be pushed to come up with a program that would steer their country out of this crisis.

Senator SHAHEEN. Under the current agreement?

Dr. JOK. Under the current agreement, yes.

Senator SHAHEEN. I didn't understand you to say that.

The CHAIRMAN. If I could, how would you push them? It just sounds—

Dr. JOK. Okay. So already the country is now broke, right? And they are relying on foreign aid to feed their people. Continuation of this support can be predicated on them coming up with a program, which is a national, homegrown program that will help the country get out of this. Then what they will do is ask for support, which will be based on producing the credible prioritized program that says by year one, we will have achieved this, by year two, we will have achieved this, so that what they are doing is actually their own plan.

What the international community is doing as supporting that plan, after the international community has verified it and investigated it and found it credible and implementable.

The CHAIRMAN. Thank you for letting me intervene there.

Senator SHAHEEN. Thank you. It is still not clear how we achieve that.

Maybe it is through what you suggested, Ms. Knopf, which is the transitional administration. You suggested that in order for that to be successful, it would have to be supported by the U.N. and African Union. Is there support at the U.N. and the AU to do that?

Ms. KNOPF. It is currently not under discussion at the U.N. and the AU. It is a proposal that has been made publicly now by Ambassador Lyman, the former special envoy, and myself in an op-ed in July after the outbreak of this fighting.

There are private discussions taking place about it, and I do think there is support that can be found within the region and that it is not outside the realm of possibility for both regional, and certainly it is not outside of precedent for the U.N. Security Council to do this, to help a country out of conflict.

Senator SHAHEEN. Mr. Yeo, you are agreeing with that?

Mr. YEO. I agree. At the moment, the discussion at the Security Council is around stabilizing the situation in South Sudan through the deployment of this regional protection force, which has some upsides and some significant downsides if it still has to operate under the same conditions that are facing U.N. peacekeepers in South Sudan.

But I do think that if the regional protection force is not agreed to by the Government of South Sudan and there are not any other type of meaningful steps moving forward in terms of the peace

process, then the Security Council will indeed have to consider whether there should be discussion around moving toward the next step, which is toward more of a protectorate.

Senator SHAHEEN. I understood you to say that the special envoy, as well as yourself, is arguing for that. Is there anyone at the Security Council at the U.N. who is arguing for that? Is that the position of the United States and our policy to try to make that happen?

Ms. KNOPF. Just to be clear, the former special envoy, not a sitting official. And it is not the policy of the United States to push for this at this time.

Senator SHAHEEN. What is the policy of the United States at this time?

Mr. YEO. As I said, at the moment, the administration continues to focus on trying to move forward with this stabilization effort through the regional protection force and then ultimately trying to move all of the political parties back toward a negotiated solution. But I would think that it is important to ask the State Department and the U.N. mission directly as to what they realistically see are next steps.

The Security Council will next consider this in mid-October. At the moment, the Secretary General of the U.N., Ban Ki-moon, is awaiting a report from the former President of Botswana, who has been tasked to put together a report on how to deploy this regional protection force.

As you know, the Security Council went to South Sudan. They got an agreement from the government to deploy 4,000 new troops. And since then, there have been extensive discussions about where the troops are going to come from and how they are going to be armed and what their mission will be.

So there is a report due to the Secretary General, and the Security Council will consider this again in mid-October.

Senator SHAHEEN. And is it fair to say that approach is not working?

Mr. YEO. From my perspective, I do not believe the approach is working.

Senator SHAHEEN. Does anybody think it is, on the panel?

Dr. JOK. We haven't seen much progress since, because, as the timeline that he has described, there is no report that says, yes, this has been achieved. What was supposed to happen after the visit of the Security Council ambassadors was for a negotiation of the modalities of implementation of deployment, but that has not happened yet.

Dr. KUOL. Maybe just let me, I just want to make a counterfactual statement. Your point is very valid.

I think most important is what can we do rather than what we intend to do. This I believe—how shaky is this peace agreement? It is something that we should invest in. It is something we can do.

That is why I focus on this element, anti-peace. If the U.S. Government, through its influence, to have sanctions on these few elements, I think we are likely to see the difference.

Senator SHAHEEN. But there's disagreement among your panel members as to whether that is in fact what might happen. As I un-

derstand the other members of the panel, they don't agree with that.

Dr. KUOL. But equal important, given the option of having what other options—I just want to give you an example of the U.N. Security Council.

I was working on Abyei, and I pursued it from The Hague to wherever until I reached New York. No consensus. Even among the people of Abyei, they conducted their own referendum. Look at what happened to Crimea. Russia refusing even to accept the referendum of the people of Abyei while they accepted the one of Crimea.

It is a very clear difference—that may not move. That is why I believe the U.S. Government has a chance of doing through its own what they can be able to do.

One of them is the issue of sanctions on these individuals. As of now, people are not even hearing what you can be able to do because if you talk about something very big, the region must have consensus we cannot have.

The Sudan Government has its own interests to finish the Government of South Sudan. You cannot have a consensus in the region. If you go to the Security Council, you may not get it.

Even the sanctions, an arms embargo is so difficult to build a consensus, even some people committing, violating, the agreement, not even an action to impose sanctions. That consensus is not there.

Senator SHAHEEN. I know my time is up, Mr. Chairman, but can I just ask, what happens if the international community leaves entirely?

Mr. YEO. Well, I can address the specific issue of the U.N. mission. As I said, there are 200,000 civilians currently being protected by U.N. peacekeepers in South Sudan. If the mission there were to leave, then those 200,000 would be very much at risk in terms of their personal security, either from the government or from other militias that are heavily armed throughout the country. And certainly, if the U.N. mission were to wind down, we would need a plan to make sure that those 200,000 civilians have a place to go, so that they would not be killed as the peacekeepers left the country.

Senator SHAHEEN. Does everybody agree with that, basically?

Ms. KNOPF. Certainly that there are some individuals receiving protection from the international presence at the moment. But I think to Jok's point in his statement, there is a very serious question as to, are we, in the long-term, prolonging the situation by Band-Aid approaches, right?

So while some people's lives are being saved, and we don't want to minimize that, we really, on every metric, the situation in South Sudan has deteriorated. And it continues to deteriorate.

Since the signing of the peace agreement, since 9 months later the formation of the transitional government, since several months after that, the First Vice President was replaced by the other First Vice President, nothing improves the situation. It continues to get worse.

And so we have a choice to stay where we are on the path that is not seemingly effective, move toward a path that I am sug-

gesting, or the alternative is that we pull back and we let the conflict take its course at pretty significant cost to the people of South Sudan, but maybe in the longer run then will be forced to come back around to some other solution that helps restore South Sudan to viability. Or it will be Eastern Congo or Somalia for a long, long time.

Senator SHAHEEN. Thank you.

The CHAIRMAN. Senator Murphy.

Senator MURPHY. Thank you very much, Mr. Chairman.

Thank you all for some really great testimony. I think you can hear us trying to divine the differences between the four of your recommendations. To a certain extent, it seems to come down to what mix of carrots and sticks we are trying to use to change behavior.

Dr. Jok, I think you heard some pushback from the chairman on this notion that things will change if we just apply conditionality to aid. A lot of people would suggest that that is essentially the policy that we have tried so far, that we have put in almost \$2 billion worth of aid, we have attached conditions on it. We never give that away for free. And yet we are still in a state of spiraling crisis.

So if you could just maybe specifically respond to some of the things that Ms. Knopf was saying, in that she is recommending this is the moment in which you have to use more sticks, or at least a lot of sticks, in addition to carrots here.

You suggested that maybe the arms embargo is not the right move. But what are the roles for a message of consequence versus a message of conditionality attached to aid? And speak to our reluctance to support that path forward, given that it hasn't worked so well in the past.

Dr. JOK. Thank you, sir.

I think the idea that the international community pulling away from South Sudan as a way to force them to think for themselves, there are avenues to it. One is that the government is engaged in discussion with the IMF right now, because without any international financial assistance, that government is not going to have the capacity to deliver anything. There is no money in the country whatsoever.

So in that discussion, where the government might get some financial assistance, a loan or what have you, it should definitely be put through to the government that you can only get it if you do X, Y, and Z.

Senator MURPHY. But haven't we done that?

Dr. JOK. Not really. You might have done it in terms of direct assistance to the government, into the bureaucracy of the government. But the flow of money into humanitarian aid is still benefiting the government, the country as a whole.

And so one way you might push that conditionality without compromising the lives of South Sudanese is actually to inject that aid directly into projects run by South Sudanese, probably South Sudanese Americans, the programs that many South Sudanese Americans have created, schools and hospitals and many kinds of local projects. And if money was injected directly into those programs, and these are the programs that you see in the countryside all over South Sudan. These are programs that are showing results, and

money doesn't get wasted through the government bureaucracy, doesn't get stolen because it goes directly into the projects. So that might be a balance.

Senator MURPHY. The threat of withdrawing humanitarian aid is only so good as the concern that leaders show for the people who are receiving the benefit of that aid. There is not a lot of evidence to suggest that the leaders today are persuaded to change their behavior in order to effectuate better living conditions for the people of South Sudan.

Ms. Knopf, can I just ask you to talk about what happens on the other side of the transitional government that you are recommending?

You have thrown some cold water in your testimony on the possibility of power-sharing, and maybe power-sharing doesn't work today, but won't there have to be some power-sharing agreement on the other side of a transitional international government? How do you get around the inevitability of different elements being part of a government coming on the backside of what you are recommending?

Ms. KNOFF. Sure. I think the point for me, the critical thing about international transitional administration, is that we would be borrowing both capacity and borrowing legitimacy in terms of delivering services, administering basic public governance for the people of South Sudan, which is at a very, very low level right now. Again, most South Sudanese are just trying to survive.

So we are trying to stabilize that situation, create some space for the economy to come back for daily safety and security to exist for the people of South Sudan, and then critically for several important processes to take place, a constitutional process where the people of South Sudan can participate in a dialogue and a conversation on what they want from their government. That has never happened. It has never happened. And so what the state should look like on the other end of a transitional administration should come from the people of South Sudan, and what they want from the central government, what they want from state and more local level government.

And by taking the competition over the prize of the presidency, and the very few resources that one gets by winning that prize at the moment, take that off the table for a long breathing space, 10 to 15 years, and reconciliation and accountability have to happen. This conversation and a constitutional process has to happen, while an advisory committee of South Sudanese, of course, have to be part of the overall advice of the country and the technical administration of it. But the efforts and the focus need to be on these other processes.

Senator MURPHY. Ten to 15 years is what you're recommending?

Ms. KNOFF. Absolutely, yes.

Senator MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Just to pursue that a little further, first of all, I appreciate everyone's testimony today.

But how do you get a government that is enriching itself presently, how in the world do you get people to agree? I mean, this

is the way they want things currently. They are doing it with armed forces and genocide and rape.

So how do you just impose some kind of transitional government? It seems nice but undoable.

Ms. KNOPF. So I don't think we can impose it without sending much tougher messages to the leadership of South Sudan and putting hard constraints on their behavior, which we have not done. We haven't done that.

We have targeted sanctions on six individuals of medium significance, shall we say. And for the rest of them, they all continue to prey upon their country at will.

This is a government now that we need to think about, like we thought about Khartoum with Darfur, like we think about other countries where the government preys on its people. That is what it does.

It is not a partner for development assistance. We should not be supporting IMF financial bailout packages for them. We should not be entertaining anything that we would in a normal development relationship.

I was the first USAID mission director for Sudan and South Sudan when we reopened the mission of the United States in 2005, 2006, after the signing of the comprehensive peace agreement. Everything that we used to fight against Khartoum for the people of South Sudan, this government is now doing against its own people, and we are not sending clear signals and messages back to them.

So of course they will resist, but we have to change their calculus, and we have to put something that is attractive and what the people of South Sudan, I think, ultimately want. They want the space to resume their lives.

So it does require a pretty fundamental change in approach to get from here to there. We can't do it from where we are right now.

The CHAIRMAN. How would you assess the U.S. role right now in South Sudan and whether our role there today is constructive or destructive?

Ms. KNOPF. I think that the United States is a critical partner for South Sudan. We truly have been, as you well know. And this Congress has supported over the years the \$11 billion of assistance, the political support to get to the comprehensive peace agreement for self-determination for the people of South Sudan, on and on and on. And ongoing aid levels are still significant.

The CHAIRMAN. But in your earlier comments, you were talking about withdrawing.

Ms. KNOPF. I do think that we have crossed a lot of redlines lately. The attacks on the Terrain compound, on aid workers, on journalists, South Sudanese and American and others alike, beyond the pale, completely outrageous, never mind all the other harassment and obstruction that this government is placing on the aid operation. I truly find it astonishing that we tolerate that level—

The CHAIRMAN. How would us withdrawing our Ambassador from the country affect things on the ground?

Ms. KNOPF. I think Jok and others could answer, but I think that would send a very significant message.

The CHAIRMAN. Would that be a positive message?

Ms. KNOFF. I think, in my view, things are so bad and the situation can get so much worse that we need to send every difficult message that we can think to send at this point, but it has to be in the context of an overall policy to back that up.

So just withdrawing the Ambassador as a one-off piece of policy does not necessarily improve the situation. But if we undertake to send a clear message to President Kiir, to his current advisers and leadership, to the leadership of the opposition, that this situation cannot and will not be tolerated, then that message could well be advanced by withdrawing the Ambassador.

Mr. YEO. And I think any type of discussion of the withdrawal of the Ambassador has to be done in the context of the key players, both in the Security Council and in the region, so that there is an effective approach toward the next step in terms of South Sudan, as opposed to withdrawing American leadership in terms of resolving this very difficult situation.

I would just agree that everything that we do in terms of our own diplomatic presence has to be done in close coordination with other key players in the region and as part of a broader American strategy as to what is the next step in terms of our approach toward resolving this horrendous situation in South Sudan.

I would just note that at every possible stage in terms of the humanitarian aid situation, the government continues to throw up massive hurdles to the delivery of aid to its own people. There are 1.4 million, 1.6 million people that have been displaced from their homes in South Sudan, and their primary lifeline is U.N. humanitarian assistance. And the government at every stage makes it difficult through rules and regulations and other procedures to actually deliver this aid.

So this is something that really needs to be considered as part of a broader strategy in our next step with South Sudan.

The CHAIRMAN. Senator Cardin defined a war criminal earlier, and it seemed that the entire panel agreed that the leadership there now, by definition, they are war criminals.

Does the panel agree with that a hundred percent?

Dr. KUOL. Let me—I will come back to this peace agreement.

The CHAIRMAN. Let me just ask you that question first.

Is the current President of South Sudan, by definition, a war criminal?

Dr. KUOL. That is what is provided in—because it is—there is a commission of inquiry, African Union Commission of Inquiry. That is the basis upon which you can have evidence, and that is why it needs to be implemented.

And the commission came out with a very clear recommendation about this hybrid court. This hybrid court will use the evidence provided by the commission, as well as the human rights reports. It is on the basis of that that now you can talk about the issues of who is to be brought to justice.

Ms. KNOFF. The African Union Commission of Inquiry, led by former Nigerian President Obasanjo, did find that President Salva Kiir and Riek Machar are both guilty of war crimes and crimes against humanity. And one of the steps that that report recommends that has not been acted upon is the establishment of hy-

brid court that would then look at all the perpetrators and decide who should be prosecuted for what.

Dr. JOK. There is no question that horrible things have been done and that somebody has to account for them. And the only judgment we can make can only be based on the investigation to assign blame, because right now blame can be assigned generally to SPLA or to opposition armies, but those are not human persons to be held accountable. We have to pin some of these things on individuals, and that can only be done through these investigations.

Mr. YEO. I would just associate myself with Kate's remarks that this determination has already been made. When you look at the specific issue of, for instance, what happened to the South Sudanese soldiers that actually conducted the attacks on the innocent civilians at the Terrain compound, but also outside the peace-keeping camp, they have yet to be punished in a meaningful way.

So we know that at the highest levels in the Government of South Sudan, there is unwillingness to move forward with meaningful justice, even when presented with overwhelming evidence of crimes.

The CHAIRMAN. Dr. Kuol, earlier in your testimony, you were saying we need to encourage the leadership along. It seems inconsistent. I mean, you have people who are conducting on both sides war crimes against the populations that show an affinity to the other leadership in opposite directions. It is hard for me to see how that is a path forward that makes a lot of sense.

Let me ask it maybe in a different way. So we represent the American people, and I know we have all these aspirational discussions about the international community and the United Nations, but the people that we represent are the people here in our own country. I don't know, I would assume audiences tuning in from across America having someone advocate that we continue to support people who are conducting genocide and mass rape and other kinds of things against their people, encouraging them along, they would have some issue with that.

Again, at the same time, not to be offensive, the imposition upon people who are not willing for some kind of transitional government or neo-trusteeship government also sounds somewhat far-fetched, no offense.

I just don't see a solution here that makes a great deal of sense. But you still think we ought to encourage them along on the peace process?

Dr. KUOL. Let me go back to the issues of the peace agreement generally in the world. It is usually an agreement between the elites.

The CHAIRMAN. Elites.

Dr. KUOL. Elites. Power-sharing of elites. It is a fact of the matter. These very elites in most cases participated in war.

Look for the comprehensive peace agreement. It was signed by the Sudan Government, Bashir, and the SPLA, but there was no other option except that they have to work together in order to implement the peace agreement, the comprehensive peace agreement.

So I see the fact that some of these leaders who actually participated in war becoming the makers of peace, depending on what leverage that we have on them, because at the moment the other op-

tion is, can we do without them? That is the question. Because if we do without them, it would be the easiest way. But if you cannot, the peace agreement, in fact, is providing the issues of accountability and justice.

That is why there is this hybrid court even in the peace agreement. The problem is what we do in order to influence these leaders.

I want to build on what Kate said also on this issue of the leverage you can have in the region. These two leaders, if you have all these accounts of what they had committed, it is high time the region exert diplomatic pressure on them based on the facts on the table so that they can give way for new people to come. Otherwise, when we say we cannot impose anything on them, but you cannot even use violence in order to remove them, and the only possible option for us then is this peace agreement that we can exploit first to bring justice to expose them and to make sure that they are known and the people they know, that there are internal dynamics of making them accountable.

Senator CARDIN. Mr. Chairman, I would just observe I think the chances of the current leaders in South Sudan holding the perpetrators of atrocities accountable, including themselves, is close to zero. And I think that is the reality.

You can have all the findings. It is going to be more and more challenging as time goes by to have the necessary documentation preserved for accountability. There is going to be more and more pressure to try to work out some accommodations with existing leaders, and they are not going to be interested in holding their leaders accountable for the atrocities that they have committed.

And it is also very clear, it has been documented not just by the commission you are referring to, but by so many first-party accounts of what happened and who was there, who watched it, who allowed these atrocities to take place, that this was condoned by the leadership of South Sudan.

So I thought your suggestion, recalling our Ambassador for that type of conduct, would be an appropriate response to show that we don't want to have a mission headed by an Ambassador where there is impunity for that type of conduct. I think that is just one aspect of this.

I said earlier we don't want to abandon the people of South Sudan. I think the U.N. mission, which is the most active international effort, that we really need to work to see whether we can get the cooperation so the mission can do its work in South Sudan.

Obviously, if they cannot do it safely, then we have to look at plan B, and we have to look at removing the mission and safely protecting the people who are currently under the protectorate. But I think it is important, if we can get that mission effectively operating in South Sudan.

I think we also have to empower and protect the civil societies who are providing most of the humanitarian aid and we have to support that strongly because we know their intentions are to help the people and not just to divert the resources for their own gain. So I think there are things that can be done.

But fundamentally, I have lost confidence in the peace process. I think Senator Shaheen's question, I really don't think this peace

process can go forward. I think we are going to have to look at a restart here. I don't believe the current leaders are capable of bringing their country into peace.

We haven't talked about, I think it is Mr. Deng, the new Vice President who, as I understand it, has no constituency, is part of corruption that has been pretty well-documented, and is terribly unpopular. If I am right on those assumptions, I don't see how he is a healing force to try to bring together the type of respect for the process.

So I think in all those areas, we need to really rethink where we are.

One thing is also clear to me, Mr. Chairman, continuing the current policies without change makes little sense. I am for protecting as many people as we possibly can. But long term, we are not doing a service if we don't have a game plan for the country to be viable.

I personally believe an arms embargo is something that should have been a long time ago, and I really do think the United States should pursue that, and I hope that we can be somewhat helpful with our delegation to see whether we can move that along a little bit further.

On a personal note, if I might, one of our staff people, Mr. Chairman, this is her last meeting with us, Janelle Johnson. She has been here for 3 years doing great work and is moving on to the U.S. Holocaust Museum. We would like to wish her the best. [Applause.]

The CHAIRMAN. Thank you and best wishes. It is an outstanding organization, and I know you will make it even better than it is. Thank you for your service here.

I am going to ask a couple more questions. I know we had a lot going on, and please don't feel like you need to stay.

I don't want to give the impression that I think withdrawing our Ambassador is the solution. I realize there has to be follow-ons that go with that.

And I will say there have been numbers of people that, as we talk about an arms embargo, believe that much of it will still flow into the country from Uganda. That doesn't mean that it is not something that should be taken up.

I think about U.S. foreign policy. We have been really involved in the creation of South Sudan. We have had a long history. Jack Danforth was highly involved and then people came on behind. I remember one of my first trips to Sudan and Darfur, this was really the focus, the future of South Sudan and how the central bank, how all this was going to be set up, and how they were going to get oil out of the country. They were landlocked, how they were going to negotiate a transport agreement through Sudan itself.

But just to step back, since all of you are experts in this area, we haven't had, and this is through different administrations over 15 or 16 years, we just haven't had a lot of foreign policy successes. It is not a partisan statement. We just have not, as a Nation.

I am just wondering, I know we have some critical issues that need to be dealt with here. You all shed a lot of light on it. We are going to talk further and probably enlist your help in some areas.

But just stepping back 10,000, 20,000, 30,000 feet, we have been highly involved here—highly involved—through every step of the

way, the vote, the peace process, and we have chaos on our hands. We have people who are being harmed greatly right now by brutal people who are very self-serving.

Can you shed some light just on some observations, in this particular focused area, just some observations about our leadership and some of the things that we might think about differently as we move through troubled areas like this?

Mr. YEO. Do you mean foreign policy generally?

The CHAIRMAN. As it relates to just here. That would take days, I think. Just on Sudan itself, South Sudan.

Mr. YEO. Yes, I would say that what happened in terms of the successes in terms of moving Liberia forward and Timor-Leste are important messages as we think about moving forward with South Sudan. In both cases there was a focus on making sure that the regional players were willing to be leaders to resolve the situation in terms of a country on the border.

So we need regional players, as they have been, to continue to step up in a meaningful way.

Second of all, the Security Council ends up becoming the most important place to coordinate global policy and approaches toward sanctions, common issues relating to peacekeeping. And when you think about all of these countries moving out of Civil War, it is a role of the humanitarian actors and development actors moving together.

So multilateral approaches combined with bilateral aid is going to be ultimately essential.

Whatever the political approach is determined to move South Sudan from point A to point B, eventually we will have to cross the bridge of meaningful work with them on the humanitarian and development space. And the Security Council together with coordination mechanisms that are effective between the bilateral donors have enormous potential to make sure the money is effectively spent and done in a transparent way and, most importantly, actually have measurable results over a long period of time.

At the moment, we don't have that for South Sudan because we are in a humanitarian phase where, at the moment, we are just trying to keep people alive.

But over 5 to 10 years, if we can find a political settlement, these types of coordination mechanisms on bilateral aid together with multilateral approaches have great potential to move the needle.

Ms. KNOPF. I have spent a fair bit of time thinking about this, having worked very closely with Senator Danforth, with all of our envoys during the last administration, and being on the ground myself as the AID director and as the U.S. representative on the Assessment and Evaluation Commission in the early years of the CPA implementation.

A couple of things. One, I think it was an incredible victory for the South Sudanese people that the longest running civil war in Africa ended, and that was the war between the north and south that cost more than 2 million lives, displaced more than 4 million people. It was a really tremendous thing to bring that to closure.

There is a lot of second-guessing. Should we have supported self-determination? Isn't this worse? It is not worse. It is very bad. It is pretty terrible for the people of South Sudan, and it can still get

worse. But they deserve the chance at self-determination, and they do not deserve to be held hostage now to the leadership that has misused this moment.

So I think in reflecting on how we got from there to where we are now, we did miss some things along the way in terms of the United States and the international support. We missed that there needed to be a glide path after independence to full statehood.

The CHAIRMAN. And that seems to be a problem we continue to repeat over and over again. Is that not correct?

Ms. KNOPF. I think in other places, we have done it. That is why there are some precedents for the international transitional administration. We have done it in whole and in part. We did it differently in Liberia. We did it differently in Namibia. We did it differently in East Timor. We did it differently in Kosovo. We did it differently in Bosnia.

Each circumstance does have its own peculiarities and own solutions, and there are problems and challenges with each of them. But that shouldn't stop us from trying something that is more effective for the people of South Sudan now going forward.

And we did miss that for South Sudan. We focused during 6 years of an interim period on getting to a referendum and seeing if that would really come to pass. It was not a sure thing. It was not a sure thing when the CPA was signed in 2005.

So much of that 6-year interim period was spent on the critical benchmarks of the CPA that would get us to the referendum and then get to the actual independence of the country. It was a divorce agreement between the north and the south. It was not focused on a social contract in South Sudan itself on what is the relationship between the state and its citizens.

And it missed the point that Jok made at the beginning of his testimony about the liberation struggle and leadership coming out of that, and a lot of resources on the table very quickly. And with no history of governance and institutions to put the checks and balances in place to constrain the impulse to use those resources for other ends, that is where we are today.

The CHAIRMAN. The Sudanese view?

Dr. KUOL. Let me focus on the U.S. because I have been in the peace agreement with CPA, how it was negotiated. We did some work with the NDI, the National Democratic Institute, a focus group discussion to see the feeling of people toward the people of the U.S. and the others.

To tell you the truth, it has been a consistent feeling of the people of South Sudan how they really have a very strong feeling toward the people of the United States.

It was reflected very well, especially President Bush had shown a personal attachment to the people of South Sudan. At that level, I think we reached the people of South Sudan. And it is still remaining in the minds of people.

That is why it is very important for us to know how people of South Sudan feel toward the people of the United States. That could imply also the foreign policy, as to what level it reaches the heart of the people of South Sudan.

The second thing we did some work on the evaluation of Operation Lifeline in Sudan.

Operation Lifeline was the one managed during the war. This Operation Lifeline Sudan, to a certain degree, contributed a lot. The international community showed solidarity with the people South Sudan. And even the independence of South Sudan, I could say U.S. Government played a very important role.

What we missed is this issue assumed having an independent country, everything would be smooth. We did not dig inside into the dynamics of how South Sudan would govern itself. Maybe the perception was in such a way, these are the people—indeed, the people of South Sudan, they show a civility when they conducted their referendum. These are great people that are misled by their leaders.

That is why some of us have been saying, as part of the whole thing, that Africa, what they need is the liberation of the liberator because you need to liberate Africa from the liberators themselves because the liberators, when they come in, it is called the liberation curse.

This is something I think we miss in the process, if we ourselves in the government miss that point.

The CHAIRMAN. Do you want to close us out, Dr. Jok?

Maybe not. I don't know. Senator Flake and Senator Markey may have questions. But go ahead.

Dr. JOK. I think one additional observation from what has been said, and that is the focus was very strong on building the institutions of South Sudan, building the state. Much of the U.N. aid has gone to building the state, building the institutions, so that the state is strong enough to be able to turn around and offer services to its people.

What was missed was that—that state-building was a vertical process. What was missed what might be called a horizontal nation-building process so that the people of South Sudan develop more affinity with their nation rather than with their ethnic groups.

So have people who have not graduated from their citizenship in their tribes into citizenship in the nation. And that was something that could have been done. The U.S. could have had a two-step project of state-building and nation-building, so that people have expressed loyalty to their state, to their country, rather than to various ethnicities.

The other, of course, is accountability for U.S. money in South Sudan. We could have kept track of what the money has produced for South Sudanese, something tangible to be shown. Like now the road from Juba to Nimule is the one big visible thing that has been done.

So a lot of U.S. money has been wasted in giving contracts to subcontractors, and a lot of that money has very little to show that is tangible. I think there could have been a way for the U.S. to be able to say \$11 billion in 10 years, this is what we have shown for it, this is what we can show for it, this is what was wasted. So that there is accountability both within the administration of USAID as well as the Government of South Sudan.

The CHAIRMAN. Senator Flake?

Senator Markey?

Senator MARKEY. Thank you, Mr. Chairman.

Dr. Jok, can you talk a little bit about climate change, deforestation, famine in South Sudan? Can you talk a little bit about that and what that impact is on the people but also on the ability to resolve the conflict?

Dr. JOK. Thank you, sir.

There is definite evidence of degradation of the environment. It is very noticeable that the rain pattern has changed. You might still get the same amount of rain, but it is concentrated and not as spread throughout the year as it used to be.

When I was a herd boy, I knew some of the plants that grew on my grazing terrain. Those plants are no longer there, so there is clear evidence that population movements, displacement of people, and new agricultural programs, extensive slash-and-burn agriculture, and the increase in the number of cattle, have definitely had a major impact on the environment.

Senator MARKEY. So what can international partners do in order to ensure there is protection of the natural resources within South Sudan? Is there any role for the international partners on that issue?

Dr. JOK. Certainly, there is a role, especially on the extractive industries to be made more responsible in terms of how they extract oil particularly. The oil areas have been devastated by oil production.

Senator MARKEY. By deforestation?

Dr. JOK. No, the oil production itself has polluted the area.

Senator MARKEY. Yes.

Dr. JOK. So in that area, there are things that the international community can do to ensure that the oil companies are doing it responsibly.

Deforestation is also a function of livelihoods changing.

Senator MARKEY. Which international companies are in South Sudan and not protecting the environment while they drill for oil?

Dr. JOK. At the moment, it is all Asian companies. You have the Chinese CNPC, and you have Malaysian companies, and you have Indian companies.

Senator MARKEY. So should we be attempting to put pressure on the Chinese companies, the Chinese oil companies, to act in a more responsible fashion?

Dr. JOK. Yes, there our processes in place already. There is a Natural Resources Management Act in place in South Sudan, which could be supported to ensure that oil companies do what they say they are going to do.

Those can be supported so they are implemented. At the moment, you pass legislation and make it into law, but it does not get implemented for whatever reasons. That is the problem.

So I think working together with the government, with the oil companies to ensure that the legislation that has been passed have been implemented would be the way to go.

Senator MARKEY. Okay, is South Sudan close to a widespread famine? Is there a risk that that could break out?

Ms. KNOPF. Yes. Yes, it is. It is very close. Forty percent of the population is already at a severe level of food insecurity from the way that food insecurity is classified and studied by technical experts, that is considered. A large part of the country is at what

they call a Level 4. Level 5 is famine. There are already pockets of famine of Level 5 food insecurity in South Sudan, including in Northern Bahr el Ghazal, which notably is the home area of the chief of general staff of the Army. So even in his home area, people can't eat and they are fleeing north to Darfur, as you pointed out in your opening statement.

In fact, we don't fully know the level and extent of the crisis because the government blocks access and the government blocks some of the data from being released to appreciate the severity of the crisis.

Senator MARKEY. Well, just 2 months ago, it is reported that government soldiers looted the World Food Program's main warehouse in Juba and just took all the food that was there. Tell us what that says about the government, what it says about the situation there, and how the government itself was exacerbating the famine, the hunger, amongst its own people.

Mr. YEO. Indeed, that is correct. The World Food Program warehouse was raided. The food was taken. As a result, there was insufficient food to feed the civilians inside the Protection of Civilians sites that are being run by the United Nations and are protecting in Juba alone 35,000 civilians.

Women actually had to leave the sites to get food for their families because of what happened with the government taking the food. And in fact, it is a statement that the government is solely interested in making sure that its troops are fully fed and that, in fact, the civilians who depend upon the World Food Program are not receiving the assistance they should be providing.

And it is more than just stealing the food out of the warehouse. In fact, they erect barriers throughout the country that make it difficult at times for the World Food Program to not only deliver the food that it wishes to deliver, but to monitor the delivery in a way that it should be monitored.

So it is a very difficult and challenging situation for humanitarians, including the World Food Program, which continues, despite these challenges, to do their best to try to deliver food to up to 40 percent of the population in the entire country.

Senator MARKEY. Well, that is incredible. Thank you.

Thank you all for everything that you are doing.

The CHAIRMAN. Thank you.

My staff was sharing with me that enough food was taken to feed 250,000 people for 3 months. You say 1 month, a period of time.

So listen, thank you all for being here and discussing this harrowing topic with us. We appreciate it. And the record will remain open until the close of business Friday. If you would fairly promptly answer questions that will come to you, we would appreciate it.

The CHAIRMAN. Again, thank you for your testimony and for your interest in this issue.

With that, the meeting is adjourned.

[Whereupon, at 4:26 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

MATERIAL SUBMITTED FOR THE RECORD BY DR. PAUL R. WILLIAMS, REBECCA I. GRAZIER PROFESSOR OF LAW AND INTERNATIONAL RELATIONS, AMERICAN UNIVERSITY, WASHINGTON, DC¹

INTRODUCTION

Given the ongoing conflict and perceived state failure in South Sudan, experts and members of the international community have proposed the establishment of an international trusteeship in South Sudan. Princeton Lyman, former American Special Envoy for Sudan and South Sudan, recommended that the United Nations (U.N.) and the African Union (A.U.) establish and administer an executive mandate over South Sudan.² Hank Cohen, the former Assistant Secretary of State for Africa, has similarly called for the “intensive U.N. tutelage” of South Sudan until it is prepared for self-governance.³ Additionally, the former Secretary-General of the Sudan People’s Liberation Movement, Pagan Amum, has advocated for a direct intervention from the international community to prevent South Sudan from “collapsing.”⁴ In light of these recommendations, this paper examines the history of U.N. trusteeships, provides an overview of neo-trusteeship approaches, and examines the feasibility of and core considerations in creating such a mechanism in South Sudan.

Although different terms have been used, the current calls for an international administration in South Sudan amount to the establishment of a neo-trusteeship. A neo-trusteeship is a governing arrangement that involves the transfer of some or all sovereign powers to a trustee with the goal of creating institutions capable of administering the state and providing services to citizens. At the end of the trusteeship, powers are returned to the state. Neo-trusteeships have been utilized in a number of post-conflict and transitional settings in the past 25 years, including in Bosnia and Herzegovina (Bosnia), Kosovo, East Timor, Cambodia, Iraq, and Afghanistan. These contemporary examples provide insight into best (and sometimes worst) practices in establishing and implementing neo-trusteeships. In general, neo-trusteeships are more effective when the trustee is provided sufficient power to effectively govern the state, when clear benchmarks are established for the return of powers to the state, and when a robust peacekeeping presence is authorized to establish conditions conducive to institutional development.

A neo-trusteeship could be introduced in South Sudan in three ways: (1) by a U.N. Security Council Resolution under Chapter VII of the U.N. Charter; (2) by negotiating a neo-trusteeship as part of the peace process; (3) or as a complementary effort to a regional peacekeeping force. Establishing a neo-trusteeship in South Sudan requires full and thorough consideration of the conditions necessary to promote government support for the establishment of a neo-trusteeship, the resources required to establish a secure environment in which institutions can be developed, the powers necessary for the trustee to effectively develop these institutions, and the strategy for the return of powers to local officials.

THE HISTORY OF U.N. TRUSTEESHIPS

Neo-trusteeships are the contemporary iteration of the U.N. Trusteeship Council system. The U.N. Trusteeship Council was created in 1945 to facilitate the transitions of post-colonial territories to self-rule.⁵ The creation of the U.N. Trusteeship Council was rooted in the desire to further international peace and security; promote economic, social, and political advancement; and enhance respect for human rights.⁶ The Council focused on ensuring that “there [was] a peaceful and orderly means of achieving the difficult transition from backward and subject status to self-government or independence, to political and economic self-reliance.”⁷ In this system, a trustee exercised sovereignty over a territory for a limited period of time for the ultimate benefit of the population of that territory.⁸ Under Article 77 of the U.N. Charter, the U.N. Trusteeship Council was empowered to create a trusteeship when: (1) a colonial state voluntarily relinquished its control over a territory; (2) a territory was already under a League of Nations’ mandate; or (3) a territory was taken from

a state defeated during World War II.⁹ Following the closure of its final trusteeship in Palau in 1994, the U.N. Trusteeship Council ceased all activity and remains inactive today.¹⁰

Although the era of the U.N. Trusteeship Council has come to a close, the international community continues to utilize a variety of contemporary manifestations of that trusteeship system, which fall broadly under the category of “neo-trusteeships.” In contrast to the uniform approach developed under the U.N. Trusteeship system, no formal framework or practice exists for these modern approaches, which are generally developed *ad hoc*.¹¹

While neo-trusteeships continue to be a method used to create functioning political institutions and to establish the conditions necessary for peace and security, these modern approaches can be highly controversial, particularly given the varying degrees of success experienced. Amid this debate, this paper does not address the validity of neo-trusteeships as a general approach. Rather, this paper is focused on providing an overview of how neo-trusteeships operate, while identifying the factors that have contributed and hampered the ability of neo-trusteeships to achieve their goals.

CONTEMPORARY EXAMPLES OF NEO-TRUSTEESHIPS

Neo-trusteeships are typically designed with the intent to support the development of democratic institutions based on the unique context in each state. This has resulted in considerable diversity in their form and structures. As policymakers consider how a potential neo-trusteeship could be structured in South Sudan, lessons can be drawn from the experiences of previous neo-trusteeships as described in this section.

Bosnia & Herzegovina

The Dayton Peace Agreement, which ended the conflict between Bosniaks, Serbs, and Croats in Bosnia & Herzegovina in 1995, established a neo-trusteeship administered by an internationally-appointed High Representative. The High Representative was authorized to oversee and coordinate the efforts of parties working to implement the peace agreement, provide technical assistance to Bosnian efforts to implement the agreement, and resolve disputes among the parties over implementation.¹² Peacekeeping support was first provided by the NATO-led International Force (IFOR) and subsequently by the Stabilization Force (SFOR). Following several years of limited implementation of the peace agreement, the High Representative reinterpreted its powers to play a more direct role in Bosnian governance and to further Bosnia’s development.¹³ The result was a broad neo-trusteeship that maintained significant sovereign powers, including promulgation of laws and removal of officials. These increased powers allowed the High Representative to overcome several major political roadblocks in post-conflict governance in Bosnia, but have had limited effect in pressuring Bosnian authorities to fully implement key components of the Dayton Peace Accords, including the passage of a new constitution. The Bosnian neo-trusteeship has operated largely without benchmarks for evaluating Bosnia’s progress in assuming governance powers and determining when the neo-trusteeship would end, leading to significant criticism from domestic and international observers.

Kosovo

The United Nations Mission in Kosovo (UNMIK) was established by the U.N. Security Council in 1999 following a military intervention by the North Atlantic Treaty Organization (NATO) to halt ethnic cleansing of Albanians by Serbian militias and the Yugoslav National Army in Kosovo.¹⁴ At the time UNMIK was established, Kosovo was an autonomous province within Serbia. The goal of the neo-trusteeship was to restore order and provide its citizens with institutions capable of self-government and autonomous rule pending a political settlement to the conflict. The NATO-led Kosovo Force (KFOR) provided peace keeping support. The foundational document of UNMIK provided for an interim international administration of Kosovo until the status of Kosovo was determined and self-governing institutions were established.¹⁵ The transfer of power to Kosovo institutions was not subject to a defined timeline, but rather was subject to the fulfillment of certain conditions.¹⁶ Kosovo is frequently recognized as one of the most effective instances of a political trusteeship.¹⁷ It received strong support from the majority Albanian population of Kosovo, which bolstering its legitimacy and increased the capacity for dialogue among the parties to the conflict.¹⁸

East Timor

A neo-trusteeship in East Timor was installed following the outbreak of armed conflict after voters resoundingly supported a referendum on independence from Indonesia. Australian-led peacekeeping troops of the International Force of East Timor (INTERFET) ended the violence and restored basic law and order to the state. The U.N. Transitional Administration in East Timor (UNTAET) was subsequently established through a U.N. Security Council resolution with the consent of Indonesian officials. There was no formal consent from East Timorese leaders who were under the governing authority of Indonesia. However, high voter turnout and support for independence in the referendum indicated that most East Timorese supported U.N. involvement.¹⁹ The purpose of UNTAET was to act as an “integrated, multidimensional peacekeeping operation fully responsible for the administration of East Timor during its transition to independence.”²⁰ To achieve this purpose, UNTAET was given a relatively extensive mandate, which included both political administration and peacekeeping.²¹ Under UNTAET’s supervision, local institutions were developed in East Timor, including an elected Constituent Assembly, Council of Ministers, and President.²² UNTAET exercised this UNSC-mandated authority until East Timor’s independence in May 2002. Similar to Kosovo, the intervention in East Timor was largely considered a success by the international community.²³ The powers granted to UNTAET exceeded those granted to many other neo-trusteeships, which provided UNTAET considerable authority in fulfilling its mandate and developing institutions. UNTAET has been criticized, however, for its significant international presence, which is thought to have limited its efforts to build the capacity of local officials.

Cambodia

The United Nations Transitional Authority in Cambodia (UNTAC) implemented the neo-trusteeship in Cambodia. Following the conflict in Cambodia and the subsequent peace settlement, the primary goal of UNTAC was to assume internal administration of the country during its transition to an elected government to create the conditions in which peaceful national elections could be conducted.²⁴ UNTAC’s institution-strengthening efforts included managing foreign affairs, defense, security, finance, and communications.²⁵ In addition, UNTAC-supervised elections resulted in a widely supported government. Although UNTAC’s mandate was far smaller than the robust mandates of UNMIK and UNTAET, its efforts have largely been deemed successful.²⁶ Cambodia’s post-conflict elections were conducted peacefully, and the government that resulted from the elections assumed power over a relatively stable, functioning state.

Iraq and Afghanistan

Neo-trusteeships have been used to facilitate the development of democratic governments in Afghanistan and Iraq following the removal from power of the Taliban and the regime of Saddam Hussein by U.S.-led military coalitions. In Afghanistan, the Bonn Agreement outlined the role of the United Nations Special Representative of the Secretary General in the Afghani administration, which included: “monitor[ing] and assist[ing] in the implementation of all aspects of [the Bonn] agreement”; “advise[ing] the Interim Authority in establishing a politically neutral environment conducive to the holding of the Emergency Loya Jirga in free and fair conditions”; attending the meetings of transitional authorities; facilitating the resolution of disputes or disagreement among transitional authorities; and investigating human rights violations and recommending corrective actions.²⁷ The U.N. was supported by a NATO-led International Security Force (ISAF), whose mandate was to maintain security in Kabul and in surrounding regions, while also supporting the free movement of U.N. personnel and the implementation of the Bonn Agreement.²⁸

In Iraq, the U.S. established the Coalition Provisional Authority in 2003 to administer the state. Through Coalition Provisional Authority Regulation 1, the Authority enumerated its mandate, which include restoring security to the state and facilitating conditions appropriate for the Iraqi people to govern the state through Iraqi-led institutions.²⁹ To do so, the Authority assumed full executive, legislative, and judicial authority over the state. Coalition forces also assumed the power to restore security of the state and assist in carrying out the policies of the Authority.³⁰ As the Authority handed off power to local institutions, the U.N. assumed many of its roles in supporting the development of Iraqi institutions through the United Nations Assistance Mission for Iraq.

Afghanistan and Iraq are complicated instances of neo-trusteeships. Both required a heavy military component to establish the neo-trusteeship and to maintain an environment that enabled the neo-trusteeship to effectively operate, particularly in Iraq where the neo-trusteeship has been plagued with security complications.³¹

Nonetheless, these instances of neo-trusteeships provide valuable insight into the challenges that emerge in administering a neo-trusteeship when an extensive and sustained military force is required.

ELEMENTS OF A NEO-TRUSTEESHIP

While there is great diversity in the goals, structure, and powers of neo-trusteeships, several common elements exist among them. These include: (1) the need for a legal basis establishing the neo-trusteeship; (2) selection of the trustee; (3) powers granted to the trustee; (4) accountability mechanisms for the trustee; and (5) a process for terminating the trusteeship and returning powers to the host state.

Legal Basis for Neo-Trusteeships

Neo-trusteeships have been established through peace agreements, declarations, and U.N. Security Council Resolutions. Regardless of the legal basis, neo-trusteeships typically receive recognition, if not authorization, from the U.N. Security Council. In Bosnia and Afghanistan, for instance, the neo-trusteeship was formalized and received the consent of state leaders through peace agreements that established the structure of each state's transitional administration. These agreements subsequently received support from the U.N. Security Council through Security Council Resolutions providing peacekeeping support through member-led military coalitions.

The neo-trusteeship in Iraq was imposed through a declaration following the removal of the regime of Saddam Hussein. When General Franks, as Commander of the Coalition Forces, declared Iraq's liberation, he announced the creation of the Coalition Provisional Authority (CPA). The CPA served, in effect, as the acting government pending the Iraqi people's creation of a new government. General Franks was the initial head of the CPA.³² While the legal framework under which the CPA was initially created is unclear, the declaration that established the CPA was subsequently recognized by U.N. Security Council Resolution 1483.³³ Based on the declaration and Resolution 1483, the U.S.-led CPA issued CPA Regulation 1, which established its powers to administer Iraq.³⁴

Neo-trusteeships authorized by the U.N. Security Council Resolution have been used to overcome impasses in political negotiations or when the infrastructure of the state has been destroyed by the conflict. In Cambodia, for instance, UNTAC was established by U.N. Security Council Resolution 745 in agreement with Cambodian officials as a compromise after negotiations on interim power-sharing arrangements failed.³⁵ Similarly, in Kosovo, UNMIK was established through Security Council Resolution 1244 to put an end to the ethnic cleansing in Kosovo and to allow political negotiations between the warring parties to continue.³⁶ In East Timor, UNTAET was established by U.N. Security Council Resolution to address the critical need to restore East Timor's institutional infrastructure in the aftermath of the conflict. Basic rule of law was restored by INTERFET, which subsequently handed off its operations to UNTAET.³⁷

Selection of the Trustee

The selection of the trustee is critical to the success of the neo-trusteeship. To effectively fulfill the trustee's mandate, the trustee must build and maintain the confidence of the local population in its authority, decision-making processes, and long-term vision for building the state. If the trustee does not have the confidence of the local population, the trustee's decisions are less likely to receive public support, which may negatively impact the trustee's efforts.

Most neo-trusteeships have been administered by a special representative appointed by the United Nations or an international coalition of states supporting the implementation of the trusteeship or peace agreement. In states where the trustee has played a positive role in ending the conflict or providing protection to civilians, the trustee has received support from the local population. For instance, when UNMIK assumed the administration of Kosovo, the intervention was welcomed by the public, who had a positive opinion of the U.N. as result of the U.N.'s role in halting the ethnic cleansing of Kosovar Albanians. This public trust increased the public's respect for UNMIK's decisions among Kosovo's majority Albanian population.

Similarly, the identity of the trustee can be critical to the effectiveness of a neo-trusteeship. For instance, part of the success of UNTAC is attributed to its administrator, Yasushi Akashi, a Japanese diplomat. As a regional actor and diplomat, he understood the cultural norms and how best to pursue consensus among the parties. At the same time, he did not hesitate to push back on the political actors and the U.N. when needed.³⁸ Based in part on the administrator's popularity, UNTAC was able to forge an alliance with the Cambodian people that enabled it to "overcome

the intrigues of their faction leaders and deliver an opportunity to them to break free from the prolonged cycle of fear and coercion.”

Powers Granted to the Neo-Trusteeship

While state practice varies in the scope of powers granted to the trustee, two models emerge: (1) neo-trusteeships in which complete sovereignty is transferred to the trustee; and (2) neo-trusteeships in which only certain powers are transferred to the trustee. In the second model, sovereignty is retained by local institutions, rather than by the trustee. The invitation for assistance may be revoked at any time, and the sovereign is empowered to transfer either part or all of its sovereign powers to another actor. These powers may be transferred either for a set period of time or until certain conditions exist.⁴⁰

These two models have been blended in recent trusteeships, and the results of these blended frameworks have been mixed.⁴¹ These mixed results have led some analysts to conclude that in cases where substantial intervention is necessary, the neo-trusteeship’s effectiveness may be enhanced by placing full sovereignty clearly with the trustee for a temporary period of time.⁴² For instance, UNMIK’s mandate provides for full authority over “basic civilian administrative functions where and as long as required.”⁴³ Similarly, UNTAC is judged to be most effective in the areas where it had the greatest degree of independence and control.⁴⁴

Even when broad powers are granted to the neo-trusteeship, however, the administration can benefit from explicit limitations on its power. For instance, UNTAET was “endowed with overall responsibility for the administration of East Timor and [was] empowered to exercise all legislative and executive authority, including the administration of justice.”⁴⁵ UNTAET’s authority was extensive, exceeding that of other neo-trusteeships, including UNMIK.⁴⁶ While its far-reaching powers allowed UNTAET to promote conditions conducive to East Timor’s political development, the extent of these powers also led to suspicion of the U.N.’s motives. Although the public was initially supportive of the intervention, the lack of clarity regarding the limitations of the U.N.’s authority under international law, the U.N.’s obligations to respect human rights, and the conditions upon which the trusteeship would terminate resulted in significant domestic and international criticism of the trusteeship.⁴⁷

Neo-trusteeships can assume a range of powers depending on their mandate and the scope of their powers. These powers can range from observation, technical advice, and dispute resolution to more robust powers such as institution building, promulgating legislation, and removing officials. More robust powers provide the trustee with more control over the day-to-day administration of the state.

Monitoring Implementation of Peace Agreements

A neo-trusteeship can be empowered to oversee and monitor the implementation of political aspects of peace agreements. For instance, in Bosnia, the High Representative was initially vested with the powers to oversee implementation of the civilian aspects of the Dayton Peace Agreement. These powers included promoting the parties’ compliance with the terms of the agreement, coordinating the activities of Bosnia institutions to promote the implementation of the agreement while respecting their autonomy, and facilitating “the resolution of any difficulties arising in connection with civil implementation” of the agreement.⁴⁸

Providing Technical Advice and Assistance

Neo-trusteeships may also be empowered to provide technical assistance to local authorities in the implementation of the peace agreement or in day-to-day governance. For instance, the Bonn Agreement provided that the Special Representative of the Secretary General would advise Afghan transitional authorities in promoting an environment conducive to effective decision making and facilitating disputes that arose among them. Similarly, the High Representative in Bosnia was mandated to advise officials on how best to implement the Dayton Peace Agreement and to resolve disputes arising among officials.

Creating Institutions and Promoting Democracy

In situations where the state’s infrastructure has been largely destroyed by the conflict, the neo-trusteeship may also support the creation of institutions of democratic governance. For instance, in East Timor, the U.N. trusteeship developed local institutions, including an elected Constituent Assembly, Council of Ministers, and President.⁴⁹ Similarly, UNMIK was mandated to provide an interim administration for Kosovo while “establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for peaceful and normal life for all inhabitants of Kosovo.”

In addition, the trusteeship is often simultaneously responsible for promoting democracy through initiatives such as long-term mentoring programs to rebuild civil

society and institutional capacity-building measures.⁵¹ Particularly in host states that were previously under repressive regimes that stifled civil society, these parallel efforts are essential in ensuring a functioning democracy.

State practice indicates that neo-trusteeships are most effective in installing democratic institutions when there is a coordinated, actionable, and timely plan for instituting reforms. Swift, coordinated, and transparent action decreases the likelihood that criminal elements or remnants of the previous regime will influence the new system, thereby hindering the development of institutions. For instance, UNTAC in Cambodia is frequently criticized for acting too slowly in assuming control and implementing necessary reforms in key areas of civil administration.⁵² These delays in implementation left UNTAC unable to deal with corruption and the intimidation by political figures.⁵³ Further, UNTAC's administration did not fully consider or address institutions at the provincial level. As a result, UNTAC struggled to provide oversight to sub-national institutions where provincial governors and civil servants proved to be "very independent-minded."⁵⁴

Conducting Democratic Elections

Conducting elections is often an important power of the neo-trusteeship, as it represents the reconstitution of a local government in the wake of a conflict. For that reason, it is often one of the final duties of the trustee. For instance, elections were the cornerstone of the neo-trusteeship in Cambodia.⁵⁵ UNTAC was established for an 18-month period, and it needed to complete elections and transfer power to the newly elected government before the end of that period.⁵⁶ In May 1993, almost the exact date provided for in its initial timetable,⁵⁷ UNTAC supervised Cambodian national elections. Over 4.2 million Cambodians (90% of those registered) participated in the UNTAC-supervised elections that were declared to be free and fair.⁵⁸

Incubating the Rule of Law

The powers of several neo-trusteeships have included establishing and promoting rule of law in their mandates. This power is not often specifically outlined within the trustee's mandate, but is instead generally accepted to be a part of the creation of effective governance institutions. For instance, as part of their broader mandate to develop institutions of local self-governance, both UNTAET and UNMIK were charged with establishing institutions to uphold the rule of law, including judicial institutions, police, and prison services.⁵⁹ Similarly, in Bosnia, following a failed attempt at judicial reform, the High Representative instituted a process of judicial vetting through which all sitting judges and prosecutors were asked to resign and reapply for their positions.⁶⁰

Exercising Legislative and Constitutional Authority

A neo-trusteeship can be vested with broad legislative and constitutional powers, including the power to repeal and enact legislation. For instance, UNMIK's mandate provided for full authority to govern Kosovo, including the power to amend or repeal any previously existing laws that were not compatible with the mandate of UNMIK.⁶¹ Similarly, the reinterpreted powers of the High Representative in Bosnia permitted the High Representative to pass, repeal, or amend legislation. These powers have allowed the High Representative to overcome several significant political roadblocks in the implementation of the Dayton Peace Accords, including passing the Law on Citizenship.⁶² Following deadlock in the Bosnian Parliament, this law was signed into force by the High Representative.⁶³ The neo-trusteeship in Bosnia also annulled several existing laws, standardized Bosnian legislation with EU standards, and established the Bosnian state courts.⁶⁴

Removing Political Officials

A neo-trusteeship may also be empowered to remove political officials and bar these individuals from seeking future office. Following the reinterpretation of the High Representative's mandate in Bosnia, the High Representative was provided with the ability to exercise power over legislative and executive functions, including the authority to remove local officials under certain circumstances.⁶⁵ While these powers have been exercised on only a limited basis, they provide the High Representative considerable authority to address political spoilers.

Implementing Economic Reforms

Neo-trusteeship can also be empowered to undergo a range of economic reforms, including promoting economic reconstruction and development. For instance, UNTAC was responsible for the rehabilitation of Cambodia's essential infrastructure and the commencement of economic reconstruction and development. However, UNTAC initially paid little attention to the economy or the financial impact of its mission on the country, which led to high inflation rates.⁶⁶ Amid a serious budget

deficit, UNTAC belatedly committed to careful monitoring and handling of the economic situation and appointed an Economic Adviser.⁶⁷ Despite this initial hurdle, UNTAC jumpstarted the reconstruction and rehabilitation of Cambodia's infrastructure, approving 51 development projects during its tenure.⁶⁸

Accountability Mechanisms

Even when the trustee is granted full sovereignty over the state, the trustee is a fiduciary that is accountable to the population of the host state.⁶⁹ When exercising its powers, the trustee must therefore be able to justify any changes that it makes to preexisting laws and institutions as benefitting the population.⁷⁰ Judicial review and internal complaint systems are mechanisms that can ensure the accountability of a neo-trusteeship.⁷¹ The trusteeship in Kosovo established an internal complaint and accountability mechanism designed to provide transparency and accountability to Kosovo citizens. To support the implementation of the UNMIK mandate, UNMIK established a Human Rights Advisory Panel to consider complaints from Kosovo citizens related to alleged human rights violations committed by UNMIK.⁷²

Termination of the Trusteeship

A clearly defined exit strategy promotes the likelihood of a successful neo-trusteeship and stronger relationships between the trustee and the host state. An exit strategy may be delineated in the initial trusteeship agreement, which may specify a finite period of time for the neo-trusteeship. This finite period may promote confidence in the host state population that the neo-trusteeship will end, and that power will be handed to host state officials. However, to be effective, such a time period must be reasonable to accomplish the goals of the trusteeship. If the time period is too short, the neo-trusteeship may not bring about the desired result—a sustainable, self-governing host state. Alternatively, the initial trusteeship agreement may establish a series of benchmarks that must be attained before the trusteeship ends and power is handed over to host state officials.⁷³ Such a model may permit the trusteeship to continue if the state is not prepared for self-governance when the trusteeship is anticipated to end. However, state officials may be less likely to agree to an arrangement that does not have a pre-determined end date out of concern that powers may never be handed over.

For instance, the neo-trusteeship in Bosnia has operated largely without benchmarks for evaluating Bosnia's progress in assuming governance powers and determining when the neo-trusteeship would end. The Dayton Peace Agreement provided no end date for the High Representative's term and listed no benchmarks for handing powers over to Bosnian officials.⁷⁴ As the neo-trusteeship continues into its 21 year, and progress toward full implementation of the Agreement and EU membership for Bosnia has been limited, both domestic and international observers have criticized the High Representative as lacking an effective exit strategy.

Exit benchmarks can address political development, economic development, and security infrastructure development.⁷⁵ Political benchmarks that may be used to assess the appropriateness of transferring sovereignty back to the host state include:

The existence of political parties capable of competing with each other; demonstrated capacity to hold peaceful and fair elections; demonstrated capacity of political institutions, such as an executive, ministries, and an assembly, to make decisions and carry them out; the existence of a rule of law, including functioning courts, reasonable access to those courts, reasonable promptness in making decisions, and the capacity to decide controversies that might paralyze the government or impair its implementation of decisions consistent with basic individual rights in private arrangements; and demonstrated capacity of institutions of a civil society, including a free press, universities, and voluntary associations and legal and accounting professions capable of holding political actors accountable.⁷⁶

In addition, a number of economic indicators may serve as benchmarks for a transition of sovereignty back to the host state. These include the establishment of basic infrastructure such as transportation and telecommunications systems, the existence of dispute resolution mechanisms, the ability to channel investment funds into the state, and the development of a national business strategy.⁷⁷ Finally, benchmarks for security are also necessary to ensure that the crimes perpetrated by former regimes do not reoccur and physical security is provided for all segments of the local population.⁷⁸ These benchmarks may include the establishment of a police or security force trained to uphold the law and respect the rights of all citizens and the establishment of a functional and effective system of criminal justice that will provide accountability for crimes committed.

Peacekeeping Support

To provide a stable environment where the trustee can create the foundation for democracy and related reforms, neo-trusteeships typically require a robust and sustained peacekeeping presence.⁷⁹ Similar to the neo-trusteeship arrangement, a peacekeeping force can maintain a range of powers depending on the political and security context, from peacekeeping to policing to engaging combatants. This presence can be provided by the U.N. or by a regional organization such as NATO or the AU. For instance, UNTAET's mandate included both civil and peacekeeping authority. The secure environment created by the peacekeeping troops was central to UNTAET being able to achieve its goals, particularly given the extent of the destruction of East Timor's infrastructure resulting from the post-referendum violence.⁸⁰ By contrast, NATO forces led the security presence in Kosovo.⁸¹ A multinational Kosovo Force (KFOR) entered Kosovo following a series of aerial bombardments that put an end to violence occurring in 1999. The 50,000-strong force provided security to the Kosovar population of roughly 2 million inhabitants and created conditions that allowed UNMIK to be established on the ground.⁸² KFOR presence in Kosovo continues today, although its troop presence has significantly diminished, and it has delegated significant police and security powers to Kosovo authorities.⁸³

In the Democratic Republic of Congo (DRC), the U.N., in partnership with the AU, implemented an additional mechanism for addressing instability in the eastern DRC—the Force Intervention Brigade.⁸⁴ The Force Intervention Brigade, which fell under the authority of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), was mandated to work closely with the Congolese army to not only protect civilians, but also to directly address the security challenges facing the eastern DRC, including “neutralizing rebel groups.”⁸⁵ This is the first such initiative by a U.N. peacekeeping force, one that has been lauded by the members of the international community as reinvigorating the efforts of MONUSCO and the reputation of U.N. peacekeeping missions.⁸⁶ In fulfilling this mandate, the Force Intervention Brigade worked collaboratively with the DRC army, which allowed the Force Intervention Brigade to fulfill a dual function of combatting rebel groups and strengthening the capacity of the DRC army.⁸⁷ The DRC consented to this collaborative effort as part of its commitment to continued security sector reform.⁸⁸

The Force Intervention Brigade has been credited with making progress in returning key strategic towns to the control of the DRC government and disarming rebel groups such as M23.⁸⁹ However, the expanded mandate of the Force Intervention Brigade was not universally welcomed by U.N. member states and humanitarian organizations, who expressed concern that the increased mandate of U.N. peacekeeping troops would put their soldiers and employees at greater risk of being targeted by combatants.⁹⁰

COMMON TRAITS OF SUCCESSFUL NEO-TRUSTEESHIPS

Several common themes emerge when evaluating the conditions necessary for a successful neo-trusteeship. First, developing a full and thorough understanding of the needs of the host state is critical to ensuring that the neo-trusteeship has the full mandate and supporting powers to administer the state. As the instance of Bosnia demonstrates, if the trustee lacks the mandate to support institutional development in a state where institutions are weak and the political will of officials to reform them is low, the neo-trusteeship is unlikely to make significant progress in strengthening the state. Second, the selection of a trustee should be conducted with due regard for public opinion concerning both the implementing organization and its leadership. If public confidence in the trustee is low, then the trustee's work will become considerably more difficult. Third, the powers transferred to the trustee must be sufficient to allow the trustee to not only administer the state but also to overcome obstacles and challenges to institutional development. The neo-trusteeships in Kosovo and East Timor are typically considered to be successful because each maintained broad powers to govern the state and fulfill their mandate. Fourth, to gain the confidence of the local population and to administer the neo-trusteeship transparently, the trustee should consider its exit strategy and benchmarks for returning power to local authorities. UNTAC's success in Cambodia can be attributed to the clear benchmarks set for its success—which included a democratically elected government—and a measurable timeframe for returning power to the state. By contrast, the lack of measurable benchmarks and an exit strategy resulted in suspicion of the trustee's motives in East Timor and Bosnia. Fifth, transparent, accountable administration of the neo-trusteeship can play a critical role in building public confidence in the trustee's work. In Kosovo, for instance, the Human Rights Advisory

Panel provided accountability to UNMIK's work by allowing Kosovo citizens to challenge the trustee's decisions in administering the territory.

Finally, state practice indicates that successful neo-trusteeships require an environment conducive to the creation of new institutions. Two key factors play into this: consent of local officials and the local population to the neo-trusteeship and the presence of a robust peacekeeping force. Consent of local officials to the neo-trusteeship promotes acceptance of the administration and supports a positive public perception of the trustee, facilitating the trustee's work and building public buy-in to the process. Further, almost every contemporary neo-trusteeship has been supported by a peacekeeping or stabilization force that establishes and maintains some basic rule of law. The mandate of this force may differ depending on the needs of the state, from peacekeeping to policing to engaging criminal elements, but should maintain sufficient powers to address obstacles arising from the neo-trusteeship and the stability of the state.

NEO-TRUSTEESHIP IN SOUTH SUDAN

Following a period of considerable political and economic instability, experts and members of the international community have called for the establishment of a neo-trusteeship in South Sudan, in one form or another. The current government of South Sudan has failed to develop institutions capable of providing effective services to citizens or of improving the state's economic situation. Further, infighting among South Sudanese officials has resulted in increasing violence, ongoing human rights violations, and a severe humanitarian disaster.

The implementation of a neo-trusteeship in South Sudan could address these failures and fill the current governance gaps. At a minimum, the intervention of a peacekeeping force, such as the one called for by U.N. Security Council Resolution 2304, could provide the necessary stability to bring peace to the state and improve the economic situation.⁹¹ A neo-trusteeship could act where South Sudan is currently failing to perform, including creating a stable economy, establishing the rule of law, and building political institutions. As the capacity of South Sudanese institutions increases over time, these powers would be transferred back to the state.

However, the establishment of a neo-trusteeship in South Sudan may also face significant challenges. South Sudanese government officials have strongly opposed any effort that might compromise their sovereignty, including the peacekeeping force provided for in Security Council Resolution 2304. Suspicion of U.N. motives in South Sudan may also limit public acceptance of a neo-trusteeship. In addition, South Sudan's fighting groups have increasingly splintered since Riek Machar's departure, and regional and local conflicts have continued unabated. Combined with limited infrastructure and difficult terrain, these dynamics would make establishing a secure environment outside of Juba difficult and highly costly. Endemic corruption and patronage systems within South Sudan would present further challenges in establishing the rule of law.

Developing the Framework for a Neo-Trusteeship in South Sudan

In considering whether a neo-trusteeship would support the development of a successful South Sudan, policymakers may evaluate a number of core considerations in the implementation of such a mechanism, drawing on lessons learned from previous neo-trusteeship arrangements. Key considerations in developing a framework for how to structure a neo-trusteeship in South Sudan include:

Process for establishing a neo-trusteeship: The process for establishing a neo-trusteeship may determine the degree of legitimacy it receives from officials and members of the public. As discussed above, neo-trusteeships may be established by U.N. Security Council Resolution, with or without the consent of the host state, or through a negotiated agreement. A Security Council Resolution will establish a clear mandate for the neo-trusteeship, particularly if South Sudan gives its consent to the trusteeship. If the state does not consent to the trusteeship, however, the trustee may face difficulties, if not outright opposition, in assuming power. A negotiated agreement may provide more public legitimacy to the trusteeship as it requires the consent of the officials in power.

Form of the neo-trusteeship: The form of the trusteeship is typically determined by the goal to be accomplished and the needs of the state. Trusteeships that provide the most power to the trustee are typically most effective in states where the governing infrastructure is limited or has been destroyed by the conflict, as was the case in Kosovo and East Timor. Trusteeships that serve a more advisory role are more effective in states where institutions exist, but have not fully developed the capacity to exercise their authority and would benefit from oversight and collabora-

tion with the trustee. Both types of trusteeships may establish benchmarks and a timeframe for the incremental return of powers to the host state government.

Powers delegated to the trustee: Along with consideration of the form of the neo-trusteeship, state practice indicates that careful consideration of the powers delegated to the trustee may be determinative of its success. Decision makers may consider whether a possible neo-trusteeship will be complete, providing all governance power (legislative and executive) to the trustee, or partial, splitting governance powers between the trustee and local institutions.⁹² A complete delegation of governance power may promote the smooth implementation of institutional reform or formation, as in East Timor. However, a complete delegation of governance power may be difficult to negotiate with a host state that holds some degree of sovereign power over its territory, as it will require sitting officials to transfer their authority to the trustee. In addition, policymakers may consider who would maintain the governance powers of sub-national institutions.

Trustee: The trustee who assumes power over a neo-trusteeship in South Sudan will be of considerable importance to its legitimacy in the eyes of South Sudanese citizens. Public acceptance of the trustee is critical to allowing the trustee to fully and effectively assume power over the host state, as in Kosovo. If the trustee is seen by the public as biased or not able to act in the best interest of the state, then the neo-trusteeship is less likely to have the confidence of the public. At present, there is widespread suspicion of the U.N. in South Sudan—this may considerably affect the acceptance of a U.N.-led neo-trusteeship.

Relationship with local institutions: State practice indicates that neo-trusteeships are more effective when institutions are formed before local participation begins.⁹³ As such, decision-makers may benefit from considering whether the installation and development of state institutions under the guidance of the neo-trusteeship will precede popular, local participation in decision-making.

Oversight and accountability mechanism: Transparent oversight and accountability mechanisms can bolster the legitimacy and acceptance of a neo-trusteeship by providing a means of recourse for citizens when they feel their rights have been violated. These mechanisms may be similar to the Human Rights Advisory Panel established by UNMIK in Kosovo, which had the power to receive, investigate, and adjudicate citizen complaints against UNMIK.⁹⁵ While the Joint Monitoring and Evaluation Commission (JMEC) already exists to oversee the implementation of the peace agreement in South Sudan, the mandate of JMEC would need to be expanded to undertake this function related to a neo-trusteeship. The JMEC may also continue to be impeded by the opposition it has experienced to date.

Timeframe and process for returning powers to the state: Decision-makers may also consider the timeframe and process for the eventual transfer of full governance power to local institutions,⁹⁶ including whether this will be a gradual process and whether any specific benchmarks must be met to trigger the transfer of authority. The contemplation of including a mechanism for extending the timeframe or mandate of the neo-trusteeship may also be beneficial.

Funding and available resources: Finally, decision makers must carefully consider whether there are resources available to support a neo-trusteeship prior to onboarding a new neo-trusteeship. In addition to ensuring that there is sufficient funding, a neo-trusteeship would also require a sustained commitment in terms of military support and additional resources.

Steps to Creating a Neo-Trusteeship in South Sudan

In addition to developing a framework for a neo-trusteeship in South Sudan, there are several preparatory steps that could be taken to aid in the development of an effective neo-trusteeship. One of the most important preparatory steps is to undertake efforts to obtain support for such a mechanism. Regardless of the pathway used to create it, support from key players in South Sudan, including the political leadership, would be critical to the trusteeship's success. These individuals are likely to interpret the formation of a neo-trusteeship as a direct attack on South Sudanese nascent sovereignty or an admission that they have failed as leaders. Key political stakeholders, the majority of whom were directly involved in the liberation struggles, would need to be convinced that a trusteeship is appropriate. While a neo-trusteeship does not require the consent of political leaders, consent may make the implementation of a neo-trusteeship less burdensome and costly for the intervening force. This may increase the political will among members of the international community to engage in the process.

In addition to trying to gain the support of key political players, local support for the neo-trusteeship would need to be cultivated. The people of South Sudan are fa-

tigated by the relentless cycle of violence, and there appears to be growing local support for an alternative, including a neo-trusteeship, but it is unclear how far such support would extend, particularly given the typically high political polarization of South Sudan's population and influential diaspora. While it is difficult to predict how readily the people of South Sudan would accept a neo-trusteeship, increased local support would strengthen its effectiveness.

An additional prerequisite to creating a neo-trusteeship in South Sudan is sufficient planning and preparation to address the challenges of implementation in the context of South Sudan. This would include identifying the actors that retain political and military power in South Sudan and developing a strategy for their productive engagement in the system. This could be done through a conflict mapping exercise that analyzes the current in-country dynamics. As it remains unclear that the two political leaders have complete control over their forces operating in support of them, it may be difficult to identify the players that actively maintain power. Notably, without command and control, the removal of key political figures would not guarantee an end to violence. It would be especially important to identify the spoilers who could derail the process. Further, it would be important to determine detailed strategies on how to mollify these spoilers that are operating both in and outside of Juba. This is because if rival factions perceived a potential power vacuum, there could be additional fighting as groups seek to take control of territory within South Sudan.

Based in part on the results of the conflict mapping, another step in creating a neo-trusteeship in South Sudan would be to onboard strong leadership for the trusteeship that contributes to popular support for the mechanism. Throughout South Sudan's struggle for independence, its political leadership has created political parties and military operations heavily dependent on their leadership and personality. These "cults of personality" have resulted in persistent infighting and detracted from the parties' ability to operate effectively in governance roles. However, the leadership still has the strong support of the South Sudanese public, and even stronger support in South Sudan's highly polarized diaspora. A neo-trusteeship may benefit from the exit of the political leadership, as the trustee could focus on cultivating the next generation of South Sudanese leaders unencumbered by past political dynamics. But convincing the leadership that their exit is in South Sudan's best interest would be difficult. Former Ambassador Princeton Lyman has suggested that they might be offered amnesty from prosecution as an incentive to step down,⁹⁷ but such amnesty would jeopardize post-conflict accountability efforts, especially in light of the strong interest in a hybrid court.

A neo-trusteeship in South Sudan would also benefit from generating strong international support to sustain a neo-trusteeship. Starting at the onset, this process would require an increased military presence to create an environment where the trusteeship could be created. This is likely to be viewed as a violation of South Sudan's sovereignty, particularly given the current resistance to the regional AU force and the reluctance to commit troops. There continues to be uncertainty as to whether more troops would be provided to support the need for an increased military presence. In addition, if a peacekeeping force with a more robust mandate is installed, it will likely be heavily burdensome on the contributing countries. Policing South Sudan will be no easy feat, and the U.N./A.U. would need to be prepared for the challenge. Moreover, the neo-trusteeship would need to be prepared to address the complex economic crisis in South Sudan, including the backlog in pay to civil servants.

As a neo-trusteeship's success will also rely on the perception of the U.N. in South Sudan, it would be important to consider how to increase its credibility. While those seeking protection by the U.N. tend to support the institution, those whose enemies are being protected are more likely to have a negative view of the U.N. If not addressed, the divisive perception of the U.N. could hamper the effectiveness of an AU/U.N. trusteeship in South Sudan, and potentially fuel more conflict.

CONCLUSION

Trusteeships provide an opportunity to intervene in a state long enough to enable it to develop politically and economically and to create security. While the dynamics of a trusteeship are complex, if undertaken with forethought to its legitimacy, clear definition, transparent and accountable implementation, and exit strategy, the trusteeship has the potential to be effective in shepherding a state through a conflict setting. Although there are several steps that would be required to create an environment in South Sudan where a neo-trusteeship could be effective, a neo-trusteeship may be a viable means of creating peace and stability in the country.

Notes:

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