

Talisman's Sudanese Oil Investment:
The Historical Context Surrounding Its Entry, Departure,
and Controversial Tenure

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Acknowledgements

At the beginning of this school year, I sat with Professor Ewald in her office for one of our first thesis advising meetings. Many great ambitions and ideas came out of that first meeting. Indeed, it was that time of the school year when classes are still interesting and homework has not yet become an unbearable burden. Specifically, I remember talking to Professor Ewald about my motivations for writing a thesis. I explained to her that although many of my friends were basking in the free time of a light senior year course schedule, I wanted to do something important in my final months in college. “I didn’t come to Duke to sit on the couch and watch TV,” I told her. Almost nine months later, I only vaguely remember desiring such lofty goals. Stressed out and sleep deprived, I’ve hit the point that most of my friends had already reached at the beginning of the year. Now I can honestly agree with them when they say that nothing sounds better than sitting on the couch.

However pathetic this anecdote might sound, it actually serves a specific purpose as the opening of this acknowledgements section. Although, as I wrote it, I could barely focus my eyes on the computer screen, in writing it, I have finished my thesis. Thus, my current fatigue demonstrates two important points. First, that within this experience, I have pushed myself completely to my limits. And second, that I could have never reached this end point on my own. Indeed, through writing this thesis, I have become indebted to various people in contexts that span emotional, academic, and motivational support.

Stemming from the subject of sleep deprivation, I must first thank my friends for the continuous emotional support they have provided me over the course of the year.

Although said support was often concealed in comments such as “You don’t really have to work on your thesis, just come out” and “The library? Again? Really??”, their actions spoke louder than their words. I will not name names, but I am immensely grateful to everyone who brought me Diet Coke, or a muffin, or kept me awake on late nights through instant messenger conversations, text messages, or their own company. Over the last few months, I have vented a lot, and I’m fortunate to say my rants have always fallen on patient, nonjudgmental ears.

Next, I would like to thank Professor Ewald, who provides a perfect transition (she taught me this, but might have preferred I place such a tangent in a footnote...) from emotional to academic support, as she whole-heartedly and unwaveringly provided both. Since I first became interested in this project, she has graciously shared with me her time and extensive knowledge on Sudan. She has patiently worked around my busy schedule and always been supportive of my activities and interests outside of thesis work. I thank her for all of the conversations between us that pushed me beyond my comfort zone and allowed me to write what I hope is a new and exciting piece of scholarly work.

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Finally, and perhaps most importantly, I want to pay the due respects to my motivations for this thesis. When I started this project, I knew only vaguely about the destruction that oil development has wrought on the people of Southern Sudan. As I

continued my research, I encountered a growing number of quotes and testimonies which all reflected the same pain. These people told of losing their families and their homes to oil developments from which they would never receive a penny. Furthermore, the underdevelopment and ongoing fighting in Sudan have prevented many of these testimonies from reaching wide audiences. Although I did not write my thesis to convict a perpetrator of the crimes against these people, I did try to analyze the historical factors that facilitated these crimes, which will hopefully prevent their reoccurrence in the future. Ultimately, I have been motivated to write this narrative by the words a Southern Sudanese chief who was one of many of the voiceless victims displaced to Leek:

We know that oil can bring us development, but we also know that it cannot do so until there is peace. There must be peace first. We need peace before oil. And we rely on you, the foreigners, to take these words back to where you come from.¹

¹ Georgette Gagnon and John Ryle, *Report of an Investigation into Oil Development, Conflict, and Displacement in Western Upper Nile, Sudan* (October 2001):46.

Introduction

Oil is a driving force. It drives our cars, subways, planes, trains, and boats, our entire transportation system. It drives our economy and investments and our role in international affairs. It drives up our gas prices. It drives our grassroots organizations to unite against big business in the name of corporate responsibility. It also drives the buses that take those protestors' children to school. In Sudan, oil has driven drills deep into Southern soil to further tap this precious resource. In Sudan, oil has driven the development of half the country and the destruction of the other. In Sudan, oil has driven almost four million people out of their homes.

In 2002, Talisman Energy sold its 25% stake in the Greater Nile Petroleum Company to the Oil and Natural Gas Company (ONGC) Videsh, Ltd., of India, for approximately \$1.13 billion.² The Canadian company's withdrawal marked the end of its four-year stay in Sudan, where it found itself enmeshed in an ongoing civil war between rebels in southern Sudan and the northern-based central government. During this short tenure, Talisman became inextricably linked to international discussions of human rights abuses and corporate responsibility. The company drew the attention of the media and suffered criticisms from non-governmental organizations (NGOs) such as Amnesty International and Human Rights Watch, which argued that foreign oil investments in the country have played an insidious role in the progression of the civil war.³ In this thesis, I will do my best, not to judge whether Talisman is the villain of the corporate world or the victim of biased Western media, but to analyze the historical context in which it reached such a controversial position and the forces that led to its withdrawal.

In my first chapter, I will examine the nature of the relationship between Talisman and the northern-based government of Sudan (GoS) by analyzing what Talisman

² John Harding and Claudia Cattaneo, "Talisman wins latest Sudan ruling: Calgary energy firm accused in," *National Post* (Canada), 29 March 2005, 11(A).

³ Eric Reeves, "Oil Development in Sudan," *ACAS Bulletin*, 167.

specifically did during its tenure in Sudan. For example, what type of infrastructure did Talisman construct and how was this infrastructure utilized by the northern government? From that point, I will also describe how the southern rebels responded to Talisman's presence, both as an international company operating on their soil and as a potential war aid to their GoS enemy.

From this description in the first chapter, it should become clear to the reader that Talisman can be linked to many controversial events in Sudan. How could a company who publicly touts the benefits of its investment to the host country deteriorate into such ethical complicity? Chapter Two answers this question. In fact, the historical development of the international oil industry made Talisman's entry into its controversial position much easier than it should have been. The oil industry evolved largely at the prerogative of big business, with little to no regulation by many host countries and international governing bodies. Indeed, Talisman was not the only company to enter Sudan and involve itself with the GoS. Companies from China, Malaysia, and Sweden established contracts in the country similar to Talisman's and were often involved with even more controversial acts. This second chapter will attempt to examine Talisman's role with respect to the historical factors that facilitated its involvement and with respect to other companies operating under similar circumstances.

Ultimately, however, while these other oil companies remained in the country, Talisman was forced to leave. What types of organizations could have interacted to pressure Talisman to abandon its profitable Sudanese interest? As the largest Western company operating in the region, Talisman suffered significantly more media and NGO attention than its East Asian and even European counterparts. Indeed, religious groups,

such as the Presbyterian Church, combined with NGOs, including the American Anti-Slavery Group, were part of the grassroots movement that helped to develop both a class action lawsuit and a piece of American legislation directed at the company's divestment from Sudan. Chapter Three examines the connections between these groups and how they were able to wield such substantial power against Talisman.

Together these three chapters illustrate the historical context that facilitated Sudan's oil exploitation, a situation that has devastated the southern region of the country with more than four million deaths and displacements, a disaster by any standards. Nonetheless, this contemporary situation, having peaked only within the last decade, remains blissfully outside the radar of many educated people. When I think back to the time period on which this thesis mainly focuses, 1998-2002, I recall taking current events courses in middle and high school that left almost the entire African continent unmentioned. Indeed, the majority of my peers at Duke University could tell me little about Sudan outside of the alleged genocide in Darfur.

Although several sources have attempted, as I also will, to put the Sudanese oil exploitation on the radar of these educated people, none have done so with quite the same methodology or intentions. Many historical narratives on Sudan treat oil exploitation as just another facet of Sudan's complicated recent history, speaking about it in a general way which, while filling pages with facts and figures, does seek to evaluate the motivations or mindsets of the major oil companies. Alternatively, other narratives, including documented reports written by non-government organizations such as Human Rights Watch and Amnesty International, focus disproportionately on the oil companies' motivations. These sources, however, tend to portray oil companies as profit-hungry

corporate villains in dramatic fashion in order to further their own objectives of eliciting public response and international aid for the Sudanese crisis.

My thesis strikes a middle ground between these two extremes. It does not view the Sudanese oil exploitation as a situation devoid of corporate responsibility nor does it attempt to assign corporate responsibility as a product of malicious intent. Instead, this thesis examines the historical factors that propelled Talisman Energy, one specific oil company, headfirst into the center of Sudan's second civil war. It looks at why this company was vulnerable to international pressures—that both facilitated its entry and forced its departure—and how this company responded to those pressures. This paper's narrow focus clearly demonstrates the connections between the pressures Talisman faced, including those of international business, the Sudanese civil war, and U.S. activism. Thus this thesis will contribute to current scholarship a new perspective on Sudanese oil exploitation, a very contemporary and important issue, which has continued to evolve even as this paper was written.

Overall, the story of Talisman in Sudan is an intricate problem, rooted in conflicting versions of he said-she said. Two factors have specifically complicated my analysis of the situation. First, as the analysis deals with such a contemporary time period, some of evidence used in this paper has only been released within the period of my research. Thus this paper draws source material more from newspapers, magazine articles, internet resources, and the mission reports of activism groups than books. Additionally, due to many factors—including the only recently-ceased civil war, terse diplomatic relations between Sudan and many Western countries, and extreme underdevelopment and destruction in the South—there are very few primary sources

coming out of the Southern Sudan. Thus, much of my primary source material must come from NGO missions, such as those from Human Rights Watch, Christian Aid, and Amnesty International, or oil company sources, both of which can often demonstrate a biased perspective. While these sources have been helpful in reflecting the attitudes, values, and desires of a particular party, they must be analyzed quite objectively to derive appropriate factual information.

In addition to the NGO missions, in 1999 the Canadian government also sent a mission to assess the situation in Sudan which has been particularly helpful in my research. This mission, named the Harker report for John Harker, the representative sent on behalf of the Canadian Department of Foreign Affairs and International Trade and published in 2000, provided excellent source material as it sought to evaluate the oil development's impact on the civil war in order to determine whether Canada should establish economic sanctions against Sudan. Harker, a former representative for the UN International Labor Organization in Canada and a former advisor to both the Canadian and South African prime ministers, traveled to Sudan with five other specialists in international law and three foreign service advisors.⁴ On his mission, Harker met with representatives from all sides of the conflict, including the GoS, rebel forces, displaced Southern Sudanese, human rights activists, and diplomats. He also visited oil developments and community projects established by the oil companies.⁵ While the Harker Report—which seemed to be significantly more informed and less sensationalized than most other NGO reports—did conclude that oil development was exacerbating Sudan's conflict and needed to be halted until peace was established, Canada did not

⁴ John Harker, *Human Security in Sudan: The Report of a Canadian Assessment Mission* (14 February 2000): 79.

⁵ *Ibid.*, 3.

establish sanctions but rather chose to reopen diplomatic connections with the country.⁶ Therefore, the Harker Report provided significant source material not only through what it said but also through how it was received.

Indeed, the variety of sources included in this thesis reflect that Talisman's experience in Sudan involved many different evolving factors. Perhaps the most important was the civil war which had begun in 1955, ceased in 1972, and broke out again in 1983. Although this war was largely fought over oil territory and using oil revenue, oil was not the only factor in the fighting that resumed in 1983.⁷ In fact, the historical progression of Sudan towards the fighting that seemed to climax over the international oil companies' developments provides important context for both the role Talisman's investment played in the war and the role the war played in Talisman's investment.

Sudan: Physical Environment

Sudan, the largest country in Africa, includes most of the Nile River and its tributaries: the White Nile, Blue Nile, Bahr al-Ghazal, and Bahr al-Arab [Appendix Map 1]. In the west, the Bahr al-Ghazal marks the boundary between the northern region of the country, inhabited mainly by Arabic-speaking Muslims, and the South, where non-Muslims speaking Nilotic languages dominate. The Nuba Mountains exist in an isolated patch in central Sudan, right along the North-South boundary. This range includes areas of isolated hills intermixed with large hill masses. It also includes high valleys that, while lower than the mountains, stay high above the surrounding plains. With their location on

⁶ Africa Action, Africa Policy E-Journal, 21 February 2000, available from <http://www.africaaction.org/docs00/hark0002.htm>; Internet; accessed 14 April 2007.

⁷Jemera Rone, *Sudan, Oil, and Human Rights*, (New York: Human Rights, 2003), 723.

the northern periphery in southern Kordofan, these mountains and their people have historically been a primary slave-raid target.⁸

Aside from geographic borders, the North and the South are also divided by their differing climates and economies. The desert region of the North receives only slightly more than 6 inches of rainfall throughout the year but, in stark contrast, the South receives heavy seasonal rainfall. Southern rainfall averages around 47 inches, increasing in more southerly latitudes. The rainy season often lasts for eight or nine months in the southern Sudan and can make many areas in the region impassible to travel.⁹ Such rainfall dictates that migration patterns of cattle herders—the occupation of approximately 10% of the people in the south/central Sudan—follows the lush grasslands and avoids the flooding. Additionally, it provides the Northern economy with fuel for its own irrigation systems and mechanical agriculture.¹⁰

As of July 2006, Sudan's population numbered at 41,236,378, however, that number was far from evenly-distributed across the country. Indeed, regardless of the lack of rainfall, riverfront regions along the Nile had facilitated major urban development in Northern cities and the three biggest cities—Khartoum (the capital), Omdurman, and Khartoum—housed approximately 15% of the country's population.¹¹ In total, approximately 66% of Sudan's population lived within three hundred miles of Khartoum, mostly in the rural areas surrounding the cities, a figure which, along with describing the North, demonstrates the sparse population in the South.¹²

⁸ Sudan, Countries of the World, available from <http://www.country-studies.com/sudan/geography.html>; Internet; accessed 10 April 2007.

⁹ *Encyclopedia Britannica*, s.v. "Sudan: The Land → Climate."

¹⁰ *Ibid* and Sudan, Countries of the World.

¹¹ *Encyclopedia Britannica*, s.v. "Sudan: The People → Demographic Trends."

¹² Sudan, Countries of the World.

Two Colonial Regimes: The Turkiyya (1820-1885) and Anglo-Egyptian Rule (1898-1956)

The two main colonial periods in Sudan spanned over a hundred years. Beginning with the last decades of the Turkiyya, they both claimed to rule southern Sudan and contributed to the differentiation between North and South. Even before it claimed the South, the Turkiyya encouraged a commercial and military diaspora that exploited the South. While the people in the North struggled with new taxes and land ownership policies, they looked to the South for resources. Many Northerners became traders or soldiers, engaging in the expanding slave trade in the South¹³ In fact, the Turkiyya government often required that these soldiers and traders pay a form of tax by delivering non-Muslim southern slaves to the Muslim North.¹⁴ Therefore, in the eyes of Muslim northerners, non-Muslim southerners acquired a religious, racial, and socio-economic stigma associated with their role as exploited slaves of the Muslims in the developing Northern region.

The religious divide between the North and the South was exacerbated by the briefly-empowered Muslim Mahdiyya government. Led by the Mahdi prophet Muhammad Ahmad and his successor Khalifa Abdallahi from 1883 to 1898 and based on Islamic tenets, its focus on distinguishing between Muslim followers and disbelievers and provided a gateway for the Anglo-Egyptian conquest.¹⁵

¹³ Douglas H. Johnson, *The Root Causes of Sudan's Civil Wars*, (Indiana: Indiana University Press, 2003), 5.

¹⁴ Ibid.

¹⁵ Ibid., 6.

In 1898 these Mahdiyya disbelievers aided in the Anglo-Egyptian takeover and formation of the Anglo-Egyptian Condominium, which would be run by British officials, with the help of some Egyptians and local Sudanese leaders.¹⁶ Within this conquest, the British found the southern Sudan more difficult to pacify.¹⁷ The period of pacification, finally ending in the 1920s, resulted in a Southern policy of indirect rule which placed indigenous leaders in control of their local governments but discouraged any form of unity between neighboring southern groups and between the North and South. During this colonial period, Southerners did not suffer the same violence and underdevelopment as they had under the Turkiyya, however; their region remained largely neglected and underdeveloped.¹⁸

As a result of their neglect, the South lagged behind the North in economy and education. In this underdeveloped region, education was largely left to missionaries who established schools for the non-Muslim population from the South.¹⁹ Similarly, the South received no economic assistance from the Anglo-Egyptian government, although the government did sponsor northern agricultural projects in the Gezira region between the White and Blue Niles. There, the government established a high-quality cotton industry to provide cotton for the British textile industry.²⁰ In addition, although several foreign investors established interests in the Northern Sudan during the Anglo-Egyptian regime, no attempt at investment in the South occurred until after the World War II.

¹⁶ Ibid., 7.

¹⁷ Ibid., 9.

¹⁸ Ibid., 11-12.

¹⁹ Ibid., 14.

²⁰ The Library of Congress Country Studies, Sudan, The Anglo-Egyptian Condominium, 1899-1955, 4 July 2002, available from http://www.workmall.com/wfb2001/sudan/sudan_history_the_anglo_egyptian_condominium_1899_1955.html; Internet; accessed 9 April 2007.

Consequently the South's lack of economy and infrastructure persisted as the country neared its independence from Britain.²¹

By the time the British government realized that they would have to give independence to Sudan, the South had been so neglected that it completely lacked both economic infrastructure and educated leadership.²² Regardless, the British did not seek to change that trend at independence. Instead they enforced the division between the North and the South in the way they filled army and civil service positions. In both of these groups, northerners greatly outnumbered southerners. Furthermore, when the British did place southerners in civil service, they favored one regional group of southerners, the Equatorians, over Dinka and Nuer. Such an unbalanced distribution led to both resentment among southerners and disagreements at independence as the newly-appointed southern officials did not represent the entire southern viewpoint.²³

The First Civil War (1955-1972)

In the summer of 1955, a group of southern soldiers stationed in the South mutinied, fearing that the independence from the Condominium would simply result in Northern colonization²⁴ Since the mutiny did not involve all southerners, it only served to increase factional divides within the region²⁵ Moreover, it made Britain hasten its exit from Sudan. Shortly thereafter, the British swiftly circumvented their legal negotiations

²¹ Johnson, 17.

²² Ibid., 15.

²³ Ibid., 19.

²⁴ Ibid., 27.

²⁵ Ibid., 19.

and left an unstable Sudan with a temporary constitution when they exited on 1 January 1956.²⁶

After British departure, the newly-independent government in the North attempted to launch policies of Arabization and Islamicization throughout the entire country. In response, in 1962, a group of Southern leaders formed the Sudan African National Union (SANU), commonly known as Anyanya²⁷ and began a guerilla war.²⁸ The first Sudanese civil war was fought almost completely on southern land and stemmed from both the under representation of Southerners in political and military groups and the religious differences between the regions. Although the fighting throughout this war maintained a low level of intensity, it was not resolved for over sixteen years.²⁹

In 1969, however, following the 1967 Arab-Israeli War, the southern forces improved their position in the war drastically. After the Arab-Israeli resolution, both Israel and the new Ugandan leader, Idi Amin, took an interest in the southern Sudan's battle. With a steady stream of arms from its new Ugandan ally, the South finally became united under the Southern Sudan Liberation Movement (SSLM).³⁰ The North, which had remained unified throughout the conflict, negotiated with this new group and established the Addis-Ababa Agreement. The Agreement, signed in neutral territory in Ethiopia, ended Sudan's first civil war in 1972.³¹

²⁶ Ibid., 30.

²⁷ a type of poison

²⁸ Johnson, 31.

²⁹ Georgette Gagnon and John Ryle, *Report of an Investigation into Oil Development, Conflict, and Displacement in Western Upper Nile, Sudan* (October 2001): 20.

³⁰ Johnson, 36.

³¹ Ibid., 39

The Interlude between the First and Second Civil Wars and the Discovery of Oil
(1972-1983)

The Addis-Ababa Agreement drew a boundary that separated Sudan into the North and the South, recognizing southern regional autonomy within a united Sudan. In the South, the differing southern political groups sought to form a unified government for their region; however, they disagreed on the role of the southern region within Sudan. Meanwhile, a faction of the Anyana opposed the SSLM and advocated an entirely separate Southern Sudan, a significant increase in independence from what had been established by the Addis-Ababa Agreement.³²

From the beginning, the North displayed little respect for southern regional autonomy as it challenged the control of important resources. For example, in 1961, when uranium was discovered in the northern part of a predominantly southern-controlled province, the central government redrew the boundary to incorporate the mineral deposits and their wealth into the northern state of Darfur. The Addis-Ababa Agreement later dictated that this land should be returned to the South. However, when the Agreement passed in 1972, no action was taken. Water represented another key resource. Although the Jonglei Canal had been built to harness the valuable water resources abundant in the South, providing for both the mechanical agriculture in the North and for local socio-economic aid in the South, it ultimately benefited only the North. All of the branches of the Canal that would help the South were neglected. Despite repeated requests for changes in construction patterns, the water went to the North.³³ These previous experiences of exploitation conditioned the southerners to expect the worst when foreign investors began searching for oil within their region.

³² Ibid.

³³ Ibid., 48.

Chevron's 1978 discovery of oil in the Muglad and Melut basins of the southern region prompted a move by the central government to take over the new resource. In late 1980, President Nimeiri attempted to redraw the boundary between the North and the South so that the land where oil had been discovered would fall within the northern province of Kordofan. Street protests by southerners, as well as resistance from the National Assembly, prevented Nimeiri from changing the boundary but his attempt continued the theme of Southern exploitation and foreshadowed events to come.³⁴

Indeed, dissenters from both sides expressed grievances with the Addis-Ababa Agreement. Dissenters in the Northern government thought that giving the Southern Region autonomy worked against their goal of forming of a complete Islamic state and increased separatist tendencies in that region.³⁵ Although many southerners supported the Agreement initially, others in the southern region felt that the North did not take enough southerners into the Sudan armed forces nor did they do enough for the southern economy to alleviate underdevelopment in the area.³⁶ Disagreement on the treaty led to further fractioning of the South, leaving those supporting the Addis-Ababa Agreement aligned with the Northern government and at odds with the southern dissenters.³ After 1981, these two groups began engaging in guerilla warfare over the defense of the Agreement in the Upper Nile, Jonglei, and Bahr El Ghazal regions.^{3,6} [Appendix A, Map 2].

³⁴ Rone, *Sudan, Oil, and Human Rights*, 129.

³⁵ Johnson, 60.

³⁶ Rone, *Sudan, Oil, and Human Rights*, 122.

Oil and the Second Civil War, 1983-2005

The Second Civil War began in 1983, when President Nimeiri reneged completely on the Addis-Ababa Agreement. He revoked the autonomy of the Southern Region, splitting it into three branches, dissolving its government, and imposing sharia, or Islamic law.³⁷ Aside from the desire to annex the oilfields, Nimeiri was struggling under enormous economic burdens following the disappointment of the mechanized agriculture “bread basket” policy starting in the 1970s. All over the world, countries were suffering from staggering rates of inflation due to the overproduction of mechanized agriculture and from high rates of unemployment as workers became displaced by machines.³⁸ At the same time, oil prices increased as political crises in the Middle East and rise of OPEC, The Organization of Petroleum Operating Companies, decreased the supply of oil.³⁹ Thus, mechanized agriculture saw the percentage annual growth rate of Sudan’s exports decrease to -5.7% by 1980 and the national debt increase to \$6.3 billion dollars by 1982. As Sudan was unable to pay its debt in 1977-8, domestic sources of oil for the country became even more important.⁴⁰

In response to Nimeiri’s action, factions in the South united under the Southern People’s Liberation Movement/Army (SPLM/A), which included both a political and military wing. Led by John Garang and backed by the Ethiopian government, this organization established the southern platform for the Second Civil War and provided the government in the Khartoum with a list of grievances that were centered around the

³⁷ Rone, *Sudan, Oil, and Human Rights*, 130.

³⁸ Tom Wicker, “How We Got Here,” *The New York Times*, 16 November 1987, 19(A).

³⁹ Judith Rees, *International Oil Industry* (Great Britain, 1997), 14.

⁴⁰ Johnson, 44.

southern economic underdevelopment and the desire for a shareholding position within the new oil development.⁴¹

The 1983 grievances of the SPLM demonstrated that the second civil war had significant economic underpinnings, which the northern seizure of the oilfields had exacerbated.

The specific grievances were: 1. Khartoum's interference in the selection of the leadership of the Southern Region, 2) plans to construct the Jonglei canal, 3) the unconstitutional dissolutions of the Regional Assemblies and governments, 4) attempts to redraw the Southern Region's border, 5) the decision first to build an oil refinery outside of Bentiu, and then pipe the Bentiu oil directly to Port Sudan, 6) The deliberate neglect of the South's socio-economic development, 7) the Integration Charter and Joint Defence Treaty with Egypt, 8) the redevison of the South into three regions, 9) failure to adequately provide for the livelihood of the majority of ex-Anyanya soldiers, 10) the incomplete integration of the ex-Anyanya into the Sudanese army, and 11) plans to transfer the ex-Anyanya battalions to the North."⁴²

Several of these grievances reflected discontent with the South's underdevelopment.

Indeed, at this point, only \$45 million of the \$225 million allotted for the southern development from the Addis-Ababa Agreement had been paid to the South, while their land had been persistently tapped for resources such as uranium and water.⁴³ Southerners refused to see the same situation repeat itself in the exploitation of their oil.

Since infrastructure and increased economic benefits were the goals of both sides in the Second Civil War, the North and the South were essentially fighting over the oil reserves and their potential profit. However, the severity of the fighting blocked either side from realizing its goals. The war prevented the foreign investment, necessary to develop the reserves, from entering the country and damaged the reputations of those

⁴¹ Ibid., 62.

⁴² Ibid.

⁴³ Ibid., 44.

companies that were already present. Sometimes, these early oil interests even became targets of the war. For example, in 1984, the original oil discoverer, Chevron, left the country when four of its expatriate workers were killed in a southern rebel attack on their oil development at Bentiu.⁴⁴ Chevron's departure hurt the GoS which, even with control of the reserves, lacked the infrastructure to export the oil and thus relied on foreign investors.

Spending about \$1 million dollars a day in a war that had yet to bring in any profit, the GoS borrowed significant amounts of money from other governments. It found itself in such debt that it begged foreign oil investors to return to its war-stricken country.⁴⁵ Malaysian (Petronas), Canadian (Arakis), and Chinese (Chinese National Petroleum) companies arrived in Sudan in 1989, five years after Chevron's departure. While these companies continued with the development of oil resources, they were still unable to generate a profit through exportation. Moreover, in the mid-1990s, they began to attract negative international opinion, which charged that they were abetting human rights abuses in the civil war.

In attempts to alleviate their economic crisis by improving the situation for foreign investors, the North sought peace with the South. Leaders from the North and the South signed the Khartoum Peace Agreement in 1997. While the current president of the National Islamic Front (NIF), Omar al-Bashir, represented the North, the many divisions in the South prevented any one leader from representing the entire region. Regardless, Nuer leader Riek Machar, stepped forward and signed the agreement which intended to

⁴⁴Eric Reeves, "Oil Development in Sudan" *Review of African Political Economy* 29, no. 91 (March 2002): 168.

⁴⁵Audrey Macklin, "Our Sisters from Stable Countries: War, Globalization, and Accountability," *Social Politics: International Studies in Gender, State and Society* 10, no. 2 (2003): 267.

show foreign oil companies that the conflict had ended. Aside from its role in attracting foreign oil investment, this document was of little consequence for two reasons. First, Machar's signature did not represent the entire South, but rather a single faction that had allied with the GoS in 1991 and continued to fight against the more prominent and representative SPLA. Second, despite its promise, the North still refused to rely on southerners as allies or to allow them to gain any power within the oil industry⁴⁶. The Khartoum Peace Agreement therefore represented only a temporary alliance extending GoS control into the rural areas of the Western Upper Nile from the period of 1997 to 1999. This window allowed for the foreign oil companies to develop in what was considered a zone of peace.⁴⁷

Enter Talisman Energy, Inc.

⁴⁶ Jemera Rone, "Sudan, Oil and War," *Review of African Political Economy* 30, no. 97 (September 2003):509.

⁴⁷ Gagnon and Ryle, 20.

Chapter I

Talisman's Impact on Sudan's Second Civil War, 1998-2003

On Monday, May 31, 1999, Sudan's Islamic regime inaugurated its newly completed oil pipeline.⁴⁸ The elaborate ceremony demonstrated a general feeling of optimism amongst the attendees. Amidst officials reading from scripts, Sudanese in attendance exchanged looks of both pride and hope for the oil-fueled future of their war-torn country. With shining prose, a poet praised the country's rebirth and a radio commentator excitedly called the day "our sunrise"—a probable end to the country's poverty. Abdalla Deng Nhial, the chairman of the peace committee in the national parliament, declared the beginning of oil exportation as the beginning of Sudanese stability and peace.⁴⁹ The first 600,000 barrel consignment of oil to come out of the 1,610-kilometer pipeline went to Singapore and the following 600,000 barrels was sent to China and Korea. Including delegates from Saudi Arabia, Chad, the Central African Republic (CAR), and more than 30 Western company representatives, the ceremony was presided over by President Omar al Bashir and Talisman CEO James Buckee.⁵⁰

A radio announcer at the event declared the oil pipeline a victory for the Islamic government in the midst of the country's fierce second civil war saying, "We have defeated all the foreign enemies wishing to stop the export of the oil. We must now defeat the internal enemy who may try to halt the full utilization of the oil revenue."⁵¹

This statement from the oil ceremony serves to introduce the context in which Talisman

⁴⁸ Nhial Bol, "Islamic Regime Launches Oil Exports," *Economy-Sudan* (30 Aug 1999), available from <http://web.lexis-nexis.com/universe/printdoc>; Internet database; accessed 30 October 2006.

⁴⁹ Albino Okeny, "Sudan's New Oil Era Comes at a Price," *Deutsche-Presse-Agentur* (28 Oct. 1999), available from <http://we.lexis-nexis.com/universe/document>; Internet database; accessed 30 October 2006.

⁵⁰ Bol; and Christian Aid, *Scorched Earth* (Russell Press, March 2001), 22.

⁵¹ Bol.

developed its oil interest in Sudan. First and foremost, Sudan was a country at war. At the time of the pipeline's opening, the Government of Sudan (GoS) was spending about \$2.5 million a day on its war. Thus, regardless of the lofty speeches made by the officials and entertainers at the pipeline ceremony, the oil revenue did not yet signify peace and stability for Sudan, but rather a source of revenue to assuage war debt. In fact, members of the Southern People's Liberation Alliance (SPLA) did not attend the ceremony, instead announcing that they would disrupt exportation if oil revenue was used for arms.⁵² This ceremony therefore serves to introduce the three main parties in this discussion, two that were present and the one that was not: respectively, Talisman, the GoS, and the SPLM/A.

Each of these parties has played a distinct role in Sudan's evolving conflict. Historically, the Southern Sudanese have been described as helpless victims at the hands of the GoS and its corporate counterparts. Why? Throughout the tumultuous decades of the second civil war, both the GoS and the southern rebels have launched attacks and been attacked. As a company operating on the battlefield, where does Talisman fit into this scheme of victim and perpetrator? Specifically, this chapter seeks to evaluate whether, based on their actions and alliances with the GoS, Talisman provided a disproportionately large advantage to the GoS, which might have allowed the northern government to strengthen their war position in battles and along borderlands.

The Civil War in 1998

Before oil revenue began to affect the methods of fighting in the second civil war, hostilities took place largely on the ground in a form of guerilla warfare. The southern

⁵² Ibid.,1.

region was conducive to this type of fighting because of the thick tree and bush groundcover. The thick cover protected and concealed southern rebels who staged small-scale attacks on pointed targets in the rural Western Upper Nile region. Increasing oil development, however, destroyed the wooded areas with two main consequences. First, the southerners lost much of their groundcover protection for attacks. Second, the oilfields replacing the brush became the central battlefield for southern attacks. Indeed, since they were unable to penetrate into Northern regions, the SPLA fought by attacking various oil developments and putting them out of commission.⁵³

Although the GoS also fought with guerilla tactics, its strategy differed because it was on the offensive, slowly and steadily trying to encroach on southern land. While southern rebels tried to defend their territory, GoS forces launched raids into villages surrounding the oil reserves, trying to expand into resource-laden territory. At this point, the large GoS debt from the first fifteen years of war left them with few resources to produce arms. They manufactured their only weapons in a small factory located slightly south of Khartoum in Shaggara using money borrowed from other countries.⁵⁴ Having only minimal resources from the eleven years of peace following the first civil war, the GoS was in a dire struggle to harness the resources necessary to win its war and bring the country to peace.

⁵³ Ibid., 28.

⁵⁴ Christian Aid, 18.

Talisman and Its Arrival in Sudan.

In 1992 British Petroleum (BP) sold its 57% share in BP Canada to the public, creating a new company named Talisman, based in Calgary.⁵⁵ This independent company had a wide variety of shareholders and differentiated itself from other Canadian companies in its desire to expand broadly throughout the world while largely ignoring the oil reserves on Canadian land. The company gained holdings throughout the North Sea region and in such far-off areas as Indonesia, Malaysia, Algeria, and Trinidad.⁵⁶ Since 1992, Talisman also acquired Encor Inc., Bow Valley Energy Inc., Goal Petroleum plc, Pembina Resources Limited, Arakis Energy, Rigel Energy, VISTA Midstream Solutions Ltd., and Paladin Resources. Although some of these companies had Canadian roots, Talisman's acquisitions represented a push towards increasing their international holdings more so than just a consolidation of Canadian companies. With all its expansion, Talisman proved able to offer significantly better than average growth rates with an 11% compound annual growth in production per share and 27% annual compound growth in cash flow per share.⁵⁷

Of specific interest to this discussion is Talisman's 1998 purchase of the shareholdings of Arakis, Inc, another Canadian oil firm. With this acquisition, Talisman entered Sudan with a 25% share in the Greater Nile Petroleum Operating Company consortium (GNPOC).⁵⁸ Until selling this share in March of 2003, Talisman's

⁵⁵ Talisman Energy, Inc., Talisman Energy, History, 2007, available from http://www.talisman-energy.com/about_us/history.html; Internet; accessed 20 September 2006.

⁵⁶ "Deals & Deal Makers," *Wall Street Journal (Eastern Edition)*, 21 Oct. 2005, 5(C).

⁵⁷ Talisman Energy, Inc., Talisman Energy, About Us, 2007, available from http://www.talisman-energy.com/about_us; Internet; accessed 20 September 2006.

⁵⁸ Gagnon and Ryle, 26.

development in Sudan remained very controversial.⁵⁹ Since the GoS began making oil revenue in 1999, various human rights organizations, including Amnesty International and Human Rights Watch, have argued that foreign oil investments in the country have played an insidious role in the progression of the second civil war.⁶⁰

Talisman's Arakis purchase began a close-knit relationship between the new investors and the GoS, which would direct much of the progress of the oil development. Although the contractual information between the GoS and Talisman remains confidential, information can be inferred from the behavior of the two entities in the oil projects.⁶¹ Talisman interests were located in the Heglig and Unity oilfields [Appendix A, Map 3] in Blocks 1 and 2. In these areas, Talisman developed significant infrastructure; however, all of it technically belonged to the GoS.⁶² Indeed, Talisman treated its relationships with the GoS as a partnership, allowing the oil Blocks to become government enclaves where the GoS could make use of both infrastructure and strategic location in its war efforts. The GoS and oil companies had established this relationship as early as the 1980s. Consequently, southern rebels persistently attacked the oil blocks. In 1984, for example, Southern forces killed four Chevron workers in Bentiu.⁶³

Indeed, in 1998 Talisman entered Sudan—in the midst of failing or abandoned foreign investments and at the height of GoS war debt—and found the “zone of peace” described in the Khartoum Peace Agreement to be nothing more than wool pulled over the international eye. In fact, the company entered into a raging conflict that left no room

⁵⁹ Larry Neumeister, “Talisman Released from Genocide Case,” *The (Raleigh, NC) News & Observer*, 12 Sept. 2006.

⁶⁰ Reeves, “Oil Development in Sudan,” 167.

⁶¹ *Ibid.*, 2.

⁶² Gagnon and Ryle, 32.

⁶³ Reeves, “Oil Development in Sudan,” 168.

for neutrality or middle ground. As new investors in the region, Talisman needed to establish infrastructure to export oil and security to protect its interests. In the face of the second civil war, these needs forced Talisman to come down on the side of either the GoS or the SPLA.⁶⁴ Since the Khartoum Peace Agreement gave the GoS sovereignty over the oil reserves, Talisman might not have thought itself to be making such an overt choice between North and South; however, even Talisman's potentially unwitting alignment with the GoS greatly affected how the North and South waged their war, and how southerners experienced it.

Talisman and Its Territory

To facilitate the development of the oil infrastructure, many southerners had to be displaced from their homes. Evidence implicated Talisman in this displacement. A memo dated May 7, 1999 sent from the central Petroleum Security's office in Khartoum to a branch office in Heglig, read:

In accordance with directive of His Excellency the Minister of Energy and Mining and fulfilling the request of the Canadian Company...the armed forces will conduct cleaning up operations in all villages from Heglig to Pariang.⁶⁵

Other sections from the memo stated the operations were necessary to "ensure the security and well-being of employees and company property."⁶⁶ The text also clearly stated "it has been decided to eliminate Heglig village and the Unity state in Toor," two

⁶⁴ Gagnon and Ryle, 15.

⁶⁵ The Presbyterian Church of Sudan v. Talisman Energy, Inc., Civil Action No. 01 CV 9882 (DLC) Complaint, 18.

⁶⁶ Edward Alden, "Canadian oil group asked Sudan army to 'remove' villagers, document alleges: Talisman Energy faces lawsuit over army's 'cleaning-up operations' in oilfields," *Financial Time*, (London), 22 March 2002, 12.

regions surrounding the oil interests.⁶⁷ Marked “very urgent,” the memo preceded by only two days one of the worst raids on the Southern Sudanese oil regions of the entire war.⁶⁸

On May 9, 1999, GoS troops descended from the Nuba Mountains and Pariang into the Southern Sudan. They found the area open and available because of the newly built all-weather roads between the oil developments in Unity State.⁶⁹ The attack followed the pattern of the scorched-earth attacks undertaken by the government during the second civil war. Helicopters gunships flew into the region, traveling low enough to the ground to shoot people and destroy cultivation, accompanied by loads of government troops in armored vehicles.⁷⁰ Throughout the attack, bombs were dropped to make the region uninhabitable for those who weren’t immediately killed or displaced by the fighting.⁷¹ Initial reports stated that the offensive only lasted ten days; however, it was the attacks by ground troops that occurred over ten days, while the entire offensive lasted about two months. In fact, it’s likely that the movement of government ground troops would have lasted longer if the rainy season had not taken over in early June. Throughout the attacks almost all the villages on the oil line were destroyed, including Toor and Heglig, Biem 1 and Biem 2. Also, parishes of the Presbyterian Church of Sudan, a group with strong connections to Western religious activists, were burned and pillaged.⁷² Over fifty percent of the population of Ruweng County was displaced or killed during the offensive.⁷³ These government offensives played a dual role in creating a secure space for the oil blocks. First, by clearing the land, they allowed easier access for developers to

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ “Human Security in Sudan: The Report of a Canadian Assessment Mission Prepared for the Minister of Foreign Affairs Ottawa, January 2000,” *Review of the African Political Economy* (1999): 134.

⁷⁰ Ibid and Alden, 12.

⁷¹ “Human Security in Sudan”, 134.

⁷² Presbyterian Church of Sudan v. Talisman Energy, Inc., (Complaint) 2.

⁷³ Alden and “Human Security in Sudan”, 134.

construct infrastructure. Second, by clearing the populations, they protected against retaliation from southern forces.

By its own account, Talisman relied partly on the GoS forces. The company's Corporate Social Responsibility Report cited the Sudanese military as the primary security provider for all GNPOC operations.⁷⁴ Although several levels of security organizations protected GNPOC investments, the GoS maintained that its military supply the main force because foreign oil companies resided in its country and operated under its laws.⁷⁵ The hierarchy of security below the GoS military included the Government of Sudan Petroleum Security which was responsible for coordinating overall security for GNPOC operational areas; the Government of Sudan National Security, which was responsible for maintaining the country's internal security; the GNPOC Security Department, an unarmed unit which acted as a liaison between GNPOC operations and other security groups; and Talisman Security Personnel, which provided unarmed security advisors to Talisman. The company stated that these security units were subject to ethical codes outlined by the United Nations Code of Conduct for Law Enforcement Officials, United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials, and the GNPOC Code of Ethics, which required that no violations to the human rights of perpetrators occur during the enforcement of laws.⁷⁶ The extensive destruction to regions surrounding the oil developments suggested that these regulations were not closely followed.

⁷⁴ Gagnon and Ryle, 29 and Talisman Energy, Inc., *Corporate Social Responsibility Report 2001* (2001), 17.

⁷⁵ *Talisman Corporate Social Responsibility Report 2001*, 17.

⁷⁶ *Ibid.*, 17.

Talisman faced a difficult situation with respect to the security of its assets in Sudan. As long as the North-South conflict continued to rage on the land surrounding its blocks, it was forced to make significant investments in security. At the time when Talisman entered Sudan, the conflict had escalated to such a level that it was clear the company could not enter the country as a neutral party. But no evidence suggests that Talisman investigated risk-assessment options prior to investing in Sudan; however, upon its entry in the southern Sudan, it had no choice but to react to the war⁷⁷ Since the SPLA and the GoS were the only entities possessing arms in the region, Talisman was forced to choose one for security. For the same reason Talisman had signed its contractual agreement with the GoS, based on the sovereignty over the oil blocks established by the Khartoum Peace Agreement, Talisman turned to it for protection.⁷⁸

The various levels of GoS security proved significant for two reasons. First, with their extensive security presence, the GoS could maintain oversight of Talisman's oil infrastructure, from which they were also benefiting. Additionally, through oilfield protection, the GoS could protect the regions that had become the de facto battlegrounds for the conflict. Not only were these oil developments heavily militarized, but they were also viewed by southern rebels as prime targets for guerilla attacks. Indeed, since the southern forces were unable to penetrate northern boundaries, they focused the majority of their attacks on the oil fields. Alternatively, oil security forces continued to stage attacks on the rural populations surrounding the oil regions, which they considered a security threat.⁷⁹

⁷⁷ Georgette Gagnon and Audrey Macklin and Penelope C. Simons, *Deconstructing Engagement* (January 2003): 20.

⁷⁸ Gagnon and Ryle, 15.

⁷⁹ Gagnon and Ryle, 30.

After the attack that cleared the Heglig area, Talisman began to pour money into developing the infrastructure needed to increase oil production. Although the company had oil investments throughout the world, it valued its Sudanese assets because of the great potential for growth and profit. According to Talisman's annual report of 2000, approximately two-thirds of its operating budget in Sudan was dedicated to developing structural projects in the area. Based on the company's net capital of \$120 million, this statistic estimated Talisman invested around \$80 million in the pipeline, central processing facility upgrades, and numerous development and exploration sites. Between 2000 and 2001, Talisman helped to increase Sudan's oil exportation from 190,000 barrels per day to 230,000 barrels per day.⁸⁰

Aside from its work on the oil pipeline, Talisman began to establish the infrastructure necessary for its own exploration. Much of Talisman's infrastructure came under criticism for alleged human rights abuses and a role in the war that favored the GoS. For example, the company needed to construct airstrips in the Southern Sudan to facilitate transport and travel of foreign goods into the region for construction. The Heglig airstrip [Appendix A, Map 4], was originally a rather short dirt strip used by the Northern government for air travel in the area. Upon their entry to the area, Talisman and the other members of the GNPOC extended and paved the airstrip to improve its availability for all-weather use. In addition to these original developments, the airstrip was tarmacked as its use increased within the next two years.⁸¹

⁸⁰ Ibid., 27 and Lawrence G. Tapp and Gail Robertson. "Talisman Energy, Inc.," *Ivey Publishing (Richard Ivey School of Business, The University of Western Ontario)*, 28 May 2003 [journal on-line]; available from <http://cases.ivey.uwo.ca/Cases/Pages/home.aspx?Mode=showproduct&prod=9B03M028>; Internet: accessed 10 April 2007.

⁸¹ Christian Aid, 25.

The location of the Heglig airstrip gave it military significance. Since it was previously a government airstrip, a government garrison remained stationed next to it. Also, Heglig constituted the main all-weather airstrip in the Western Upper Nile region. Many argue, in the same manner as it served the oil companies as a means of entering the Southern region easily and directly, it also helped the GoS. Located 450km further south than the closest northern base at El Obeid, the Heglig airstrip thus provided a strategic entry into the South for northern Offensives.⁸² Indeed, according to the Harker report, “flights clearly linked to the oil war have been a regular feature of life at the Heglig airstrip.”⁸³ Harker also specifically declared that the airstrip served a joint purpose for the oil companies and the Northern government, explaining that GoS gunships and Antonov bombers have shared the oil facilities with Canadian aircrafts.⁸⁴

Many witnesses also attested to government use of the Heglig oil strip. Manurop, a Nuer man displaced from his home in Mankien in April of 2001, explained “The gunships come from Heglig, whenever it comes, it opens the doors and starts shooting. We hear the noise of the gunship and know the direction it comes from, it takes off from Heglig.”⁸⁵ Many members of SPLA have given similar accounts. Stephen Mabek, Commissioner of Ruweng County, associated these new attacks not only with the increase in oil infrastructure but also with the increase in the GoS’s oil wealth. He stated,

Since new oil began in 1999, GoS tactics have changed the war of the government into a new phase. GoS is using oil revenues to support the war, buying new weapons and using weapons to take control Seeing new things in the villages like long-range helicopter gunships, Antonovs and more weapons. The gunships hover over the area, see people and shoot people indiscriminately with rockets and machine guns. In 1999, gunships

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Gagnon and Ryle, 31.

first started attacking here (three times in 1999). In 2001, so far there have been already four attacks. The gunships are always coming from Heglig.⁸⁶

These quotations were also substantiated by witnesses who claimed to have seen “white” gunship pilots during military attacks. Since white skin could denote Europeans, Asians, or North Americans, these claims suggest that the GoS of Sudan could have been using foreign mercenaries in attacks as opposed to simply its own people.⁸⁷

Talisman acknowledged that the GoS indeed frequently used the Heglig airstrip because the government still owned it. As long as the GoS owned the oil infrastructure, it was impossible to restrict its use of the airstrips against military attacks on the South. Talisman and other GNPOC oil companies stated that they maintained a company position that the airstrips may only be used for defensive purposes, defining “defensive” as “security support which assists forces legitimately deployed within the concession to protect property and personnel using a proportionate level of force.”⁸⁸ Witness statements, however, have shown that the companies proved unable to hold the GoS to this policy.

In the case of the Heglig, even if the GoS used the airstrip only for defensive purposes, GoS presence still harmed southerners. People not associated with the oil companies, especially aid workers, confronted government restrictions and found themselves unable to enter and move through the South. For example, the government issued monthly flight passes for those attempting to enter the Upper Nile (oil) region. Although the oil companies were permitted complete access to these areas, relief workers attempting to bring aid to the suffering Southerners, were often stopped. Frequently, the

⁸⁶ Ibid.

⁸⁷ Ibid., 32.

⁸⁸ Ibid.

GoS rejected flight passes for relief planes, such as the World Food Programme (WFP), which had dropped food interventions at the modest Heglig airstrip before oil development, leading to the death of the thousands starving and displaced in the South.⁸⁹ One mother in a rebuilt village called Roubnyagai explained “Five women have been taken by crocodiles [trying to gather water lily roots to feed their families]. But what choice do we have? We have no seeds at all. If we don’t go to the river our children may die.”⁹⁰ Additionally, the government restricted the issuance of visas to human rights workers and reporters, thus preventing documentation of such tragedies.⁹¹

In addition to the airstrip, Talisman also helped construct all-weather roads facilitating travel among the oil concessions. These roads extend between the towns of Mayom, Wangkei, Bentiu, Pariang, and Abiemnom [Appendix A, Map 5]. Their role in providing a means of direct transport cannot be underestimated in the face of the heavy seasonal rains and swamps of southern Sudan.⁹² Floods often made regions of the South completely impassable during the rainy months. To combat this problem, the all-weather roads were banked up to six feet on either side.⁹³ The extensive construction of these roads destroyed much of the natural ground cover in the area and introduced a new set of military issues. Southern rebels had previously made use of the ground cover to protect them in raids on oil fields and GoS strongholds. According to an unidentified foreign observer “The rebels have nowhere to hide. These all-weather roads and airstrips are making this an all-weather war for the government.”⁹⁴ Indeed, the roads connected the

⁸⁹ Christian Aid, 12.

⁹⁰ Christian Aid, 15.

⁹¹ Gagnon and Ryle, 7.

⁹² Ibid, 26.

⁹³ Christian Aid, 26.

⁹⁴ Ibid.

scattered garrisons of the Northern government, giving them easy access to the frontline of the war. For example, the GoS executed offensives to the regions of Gongril and Bahr el-Ghazal by sending troops along oil roads such as the GNPOC's Heglig-Abiemnom road.⁹⁵

Clearly Talisman provided substantial assistance to the GoS by developing infrastructure within and among oil blocks. Talisman's role was central because neither the GoS nor the other investors possessed both the capital and the technology to do what Talisman could.⁹⁶ However, in the midst of all its new construction, Talisman's biggest impact came from its role in establishing the new oil pipeline, which allowed the GoS to begin earning oil profit within a year of the company's entry.⁹⁷ Talisman's role in the pipeline project should not be underestimated. Prior to Talisman's entry, only 680 km of the 1,600 km pipeline had been laid.⁹⁸ Talisman's arrival not only sped up the completion of the pipeline, but also changed its direction. Originally Chevron had planned to export Sudan's oil through a pipeline leading to the closest Sudanese border, in Ethiopia. Although this route was much shorter, it would export the oil on the Southern side of the country, which was largely outside of the GoS's control. Instead, Talisman helped complete a pipeline that led to Khartoum, the northern capital city, and the Red Sea.⁹⁹ [Appendix A, Maps 3 and 4] The pipeline was also carefully directed between Blocks 1 and 2, oil regions owned by the GNPOC, at its base in the Western Upper Nile region to minimize the distance spent in regions not under GoS control. At the end of the

⁹⁵ Ibid.

⁹⁶ Macklin, "Our Sisters," 267.

⁹⁷ Gagnon and Ryle, 27.

⁹⁸ Christian Aid, 22.

⁹⁹ Gagnon and Ryle, 26.

pipeline, Talisman again helped by building a terminal for oil takers at Port Sudan, thus making oil export possible.¹⁰⁰

Oil Revenues and the Civil War

The new oil production supplied the GoS with substantial assistance in its war efforts. The oil revenue began providing the government with \$162 million a year in 1998 which increased to approximately at \$400 million annually by 2001. Even with the cost of the war mounting above \$1 million a day, the oil revenue allowed the GoS to fund its campaigns. In addition to the extensive revenue and infrastructure, the GoS also received gifts from oil companies. For example, Southern leaders have told Christian Aid workers that the GNPOC, to which Talisman belonged, donated fifty trucks to the GoS for troop transportation. The trucks, painted with military camouflage colors, were donated in a ceremony at Bentiu in 1998.¹⁰¹

Initially the GoS denied using oil revenue for arms and infrastructure for government offensives; however, only eleven months after exportation began, General Mohamed Osman Yassin contradicted this stance when he explained to student army conscripts that much of the financing for their ammunition came from the oil boom. Oil money allowed the GoS to expand its weapons operations out of Shaggara and into two huge factory sites in 1999, only a few months after the first oil was exported. Both of these sites—Military Manufacturing Complex (MMC) on the Khartoum-Medani highway and GIAD, forty kilometers south of Khartoum—produced both military and non-military products. The military products remained unmarked, so as to prevent southern

¹⁰⁰ Ibid., 27.

¹⁰¹ Ibid., 26.

resistance from targeting the sites. President Bashir commented at GIAD's opening ceremony that the plant would be used for weapons as small as rocket-propelled grenades and as large as mortars, tanks, warplanes, and rockets.¹⁰²

President Bashir's comments were substantiated by both other military officials and southern victims. Commander Gadet, a former government official, collected unmarked weapons from several new factories before defecting to the South in October of 1999. He told relief workers that he had seen military vehicles, anti-tank weapons, grenades, and heavy guns before leaving the North, explaining that almost all of the equipment was left unmarked to prevent a visible connection to the oil wealth.¹⁰³ Indeed, southern victims also attested to the type of government offensives facilitated by these weapons. Thousands of Nuer civilians, who have been displaced from their Western Upper Nile homes surrounding the oilfields to Bahr el-Ghazal, hundreds of miles away, reported that their villages were first attacked with Antonov bombs. Following the bombs, government troops, arriving either in helicopters or trucks, set homes ablaze and killed whoever was unable to flee.¹⁰⁴

Talisman, Community Development, and the SPLA

In spite—or perhaps because of—its close relationship with the GoS, Talisman attempted to cultivate the image of a benefactor to southerners and their communities.¹⁰⁵ In its Corporate Social Responsibility Report of 2001, the company extensively explained the use of its funds to develop the communities surrounding its oil interests. The

¹⁰² Christian Aid, 18.

¹⁰³ Ibid.

¹⁰⁴ Ibid., 7.

¹⁰⁵ Gagnon and Ryle, 7.

company is part of two community development programs, a GNPOC program where it holds a 25% share based on its share percentage in the consortium, and its own private program. The funds used for the GNPOC program are reimbursable by the GoS but the Talisman community development is at personal cost to the company.¹⁰⁶

Talisman's community development program carried a \$2 million budget for 2001, of which \$819,541 was spent and \$581,515 was allocated into trusts for projects designated for other years. Although Talisman recognized that the situation in the South demonstrated enough need for it to spend its entire \$2 million budget within 2001, the company restricted its spending only to projects which they deemed "appropriate and effective."¹⁰⁷ From its budget, the company dedicated 42% to health, 23% to agriculture, 9% to learning, 8% to relief and water each, 3% to capacity building, and 7% to "other."¹⁰⁸ The diverse use of funding allowed Talisman to start projects such as the renovation of Abyei hospital, agricultural programming in the Kailak Lake region, an entrepreneurial program for women in Khartoum, a well distribution system in Kummagon, and school construction in Karkaria. Talisman also dedicated funds to clinics in Pariang and Rubkona and to an artificial limb camp in Khartoum.¹⁰⁹ [Appendix A, Maps 2 and 5]

Talisman regarded these programs as offering substantial aid to southerners. The Abyei region, for example, lacked medical resources until Talisman renovated the hospital that was originally constructed by UNICEF in 1972. The company also provided a new school, as well as water wells and electrical generators for both institutions.

¹⁰⁶ *Talisman Corporate Social Responsibility Report 2001*, 21.

¹⁰⁷ *Ibid.*, 22.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

Similarly, the clinics in Paryang and Rubkona facilitated significant preventative health services, including vaccination campaigns against polio and other commonplace diseases.¹¹⁰ Accordingly, these communities grew significantly.¹¹¹

Aside from health, education, and basic infrastructure, Talisman supported the Kailak Lake Agricultural Project and the Women's Entrepreneurial Project as methods of creating a self-sufficient form of income for Southern Sudanese. In the region of Keilak Lake, [Appendix A, Maps 2 and 5] over 600 families participated in the program, which helped them planting and harvest sorghum and sesame. They could then either sell the crop or use it for food, depending on their specific needs.¹¹² The Women's Entrepreneurial Project, located in Khartoum, taught tailoring, pasta-making, and business management to women refugees from the South who were living in the Shagar and Mayo camps for internally displaced persons. After finishing these courses, the women could work in established corporations or start their own small businesses; but either way, they were able to earn a living.¹¹³

Although Talisman has dedicated significant amounts of money to these projects, many human rights activists questioned their benefits for several reasons. First, Talisman could only establish projects in areas controlled by the GoS. The Women's Entrepreneurial Project only benefited women who had already been displaced and fled to the capital of the Northern Sudan.¹¹⁴ Second, it remained unclear how many people actually used the aid. John Harker reported that the hospital Talisman built in Abyei was almost empty of patients during his visit. Although company officials explained to

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid., 23.

¹¹³ Ibid.

¹¹⁴ Ibid.

Harker that many outpatients had gone home due to the time of day and the Ramadan holiday, Harker found similar empty beds during another investigation. Additionally, Harker found both the wells and the roads built by Talisman to be close to oil drilling and exploration sites, or linking oil developments together rather than providing transportation for the villages that they supposedly helped.¹¹⁵

Another point of controversy surrounding Talisman's claimed aid to southerners is whether it employed southerners in its offices and plants. Talisman declared that in December of 2000, the company hired 128 Sudanese nationals at its office in Khartoum. Talisman further explained that 31% of the Sudanese nationals identified themselves as Southern Sudanese.¹¹⁶ In contrast, Christian Aid, argued that Talisman did not employ local workers at its Khartoum office or its southern developments but instead relied on foreign manpower for even menial tasks such as road construction.¹¹⁷ Even evidence from Talisman itself casts doubt on the employing southerners. Various Southern Sudanese quoted in Talisman's Corporate Social Responsibility Report of 2000 claimed they were not receiving jobs from oil. One village leader from Bentiu said "The company is not employing local labourers—we want jobs from Talisman, not food."¹¹⁸ A former politician from Bentiu described the labor situation by saying "There's a lot of manpower coming from the North to work in Heglig and on the infrastructure projects so local people are not benefiting from the oil through local employment. They should open an office for jobs in Bentiu and at Heglig."¹¹⁹

¹¹⁵ Christian Aid, 27.

¹¹⁶ *Talisman Corporate Social Responsibility Report 2001*, 24.

¹¹⁷ Christian Aid, 7.

¹¹⁸ Talisman Energy, Inc., *Corporate Social Responsibility Report 2000* (2000), 26.

¹¹⁹ *Ibid.*, 32

In addition, the same critique about the distribution of Talisman's aid projects applied to its employment of southerners: such employment occurred in areas controlled by the GoS. These jobs remained unattainable for the mass of southerners living in the war-torn regions. In addition, Talisman claimed that it did not displace people from the areas of their oil development because there were no people there to displace; they said the region was already empty when they arrived.¹²⁰ If the region was empty, how could it employ locals?

If people lived in the oil regions before Talisman began exploration in the area, scorched earth warfare probably drove them north into government controlled areas.¹²¹ Once in these areas, the displaced southerners could benefit from the relief projects initiated by Talisman and would likely have access to jobs provided by the company. The approximately forty-three southerners hired by Talisman in Khartoum likely had been forced from their homes.¹²²

Some observers thus argued that Talisman's relief efforts actually played into the war strategy of the GoS. For example, although Talisman established relief camps for southerners who had lost their home in the second civil war, most of the camps were located on northern soil. Thus, southerners could only access Talisman's aid if they followed a sort of forced migration from their homes into the North. For many southerners, the promise of safe living conditions combined with relief from the fighting surrounding their homes in the oil region, provided enough motivation for them to move.

¹²⁰ Christian Aid, 10.

¹²¹ Gagnon and Ryle, 7.

¹²² *Talisman Corporate Social Responsibility Report 2001*, 24.

Indeed, observers saw this southern movement into relief camps as thinly-veiled assistance for the GoS's forced displacement of southerners.¹²³

Perhaps the most telling criticism of Talisman's aid came from the non-government organizations (NGOs). As a whole, these groups snubbed Talisman's efforts. The director of an international NGO from Nairobi working in the Southern Sudan commented "At no point have the international NGOs got together and said that they will not take Talisman's money. However, it appears that each one has come to the same conclusion. What does this tell you?"¹²⁴ The fact that aid organizations shunned funds from Talisman suggested that the company's efforts, whether of pure motivation or not, failed to build relationships with southerners.

As the governing body in the South, the SPLA declared the oil companies and the GoS one and the same as enemies in the war. The SPLA staged numerous attacks on oil infrastructure from 1999 and until Talisman's departure in 2002. The SPLA's first actions against the oil infrastructure fell on the Khartoum pipeline that Talisman had been instrumental in building. The minor attack in January of 2000 interrupted production on the line for several days. Although Talisman largely downplayed this sabotage, the SPLA's attacks became fiercer in the following months.¹²⁵ On August 4th the SPLA made its first direct attack on a Talisman oil block. SPLA spokesperson Samson Kwaje explained "Since 1999, we have been attacking the pipeline from Heglig to Port Sudan, now we are shifting to the real oil area."¹²⁶ While Talisman immediately denied that any damage to its facilities had resulted in an interruption of production, a non-governmental

¹²³ Gagnon and Ryle, 38.

¹²⁴ *Talisman Corporate Social Responsibility Report 2001*, 22.

¹²⁵ Gagnon and Ryle, 27.

¹²⁶ Stephen Ewart, "Talisman oil field in Sudan reported attacked," *The Gazette (Montreal, Quebec)*, 8 August 2001, 14(D).

organization substantiated the SPLA's description of the attack.¹²⁷ According to the report, the attack damaged an oil storage tank, a grounded helicopter, and the main gas chamber for the natural gas power station at the Heglig oil base. The damage to the gas chamber was specifically destructive because it cut off the electricity to Bentiu, Rub Kona, and many other areas of the oil field, making production impossible. The SPLA also commented that they were attacked by helicopter gunships on their way to Heglig.¹²⁸

A few weeks later, the SPLA announced another attack on Talisman. Again, Talisman denied any such occurrence. According to the SPLA, on September 29, 2002, its forces damaged the main rig for the Unity oil fields: a major area in Talisman's oil concession. With wartime bravado, an SPLA leader signed a statement declaring "Initial reports indicate that it will take a considerable amount of time to restore this facility to full operation" and "The gallant commando units are poised to strike again to shut down exploration of oil which has resulted in massive human misery to the people of Southern Sudan and other marginalized areas."¹²⁹ Talisman's general manager in Khartoum, Ralph Capeling, countered these statements by declaring "There was no attack; there was no battle. Production and drilling are going as normal." Other officials added that reports from the SPLA were "'completely false.'"¹³⁰

Regardless of the validity of statements made by either party, the claims by the SPLA and denials by Talisman indicate conflict between them. First, any sort of military attack on a Talisman oil development showed that the SPLA lumped foreign oil

¹²⁷ Gagnon and Ryle, 28.

¹²⁸ Gagnon and Ryle, 28.

¹²⁹ Associated Press, "Talisman loses rig to rebels," *The Star Phoenix (Saskatoon, Saskatchewan)*, 3 Oct. 2002, 4(D).

¹³⁰ Associated Press, "Sudanese rebels claim attack on oil rig: But Calgary's Talisman Energy says report is completely false: 'Production going as normal,'" *The Gazette (Montreal, Quebec)*, 3 Oct. 2002, 19(A).

companies into a group allied with the northern government's actions. Second, the SPLA's statements, if not their actual attacks, attracted the attention of the company's shareholders and others to the possibility of its complicity with the GoS in the abuses of the civil war.

Conclusion

The circumstances surrounding foreign oil development in Sudan, and therefore Talisman's investment, were complex and layered with history and conflict. Talisman built its oil infrastructure on the homes and villages of the Southern Sudanese. With its purchase of Arakis's interests, Talisman entered this volatile situation as a business, with the goal of making a profit. Many of the choices the company made over its four-year tenure can be attributed to such an attitude.

Regardless of whether Talisman intended to act as a perpetrator within the northern government's oil war on the South or simply invested blindly in a business venture, the company did provide a significant advantage to the GoS. The roads and airstrips Talisman constructed to allow supply deliveries to their developments doubled as paved passageways for northern forces into the oil battlefields. Here, in the name of oil security, GoS forces maintained a stronghold in the important borderland regions. Additionally, the GoS used revenue from Talisman's profit to increase their arms, using gunships and Antonov bombers that the southern forces could never afford.

Although their assistance in the GoS's persecution of southerners might not have been intentional, one might wonder how a Western corporation such as Talisman could enter into such a position so easily. In fact, the historical development of the international

oil and the lack of government regulation of the industry made Talisman's controversial investment much easier than one might originally believe.

Chapter II

Providing a Framework: International Oil Industry Development and Other Players in Sudan (c. 1945-2002)

Within a year of entering Sudan in 1998, Talisman elicited criticisms from NGOs such as Human Rights Watch and Amnesty International. The company denied allegations of human rights abuses, stating that Sudan was benefiting from its presence and drawing attention to the hospitals, wells, and other social welfare programs it was establishing. Regardless of whether Sudan ultimately benefited from Talisman's presence, a more important question remains: how could a company declaring itself to be conscious of social welfare in the area where it operates arrive in a position where it could be accused of human rights abuses? Even if the allegations were untrue, Talisman made itself vulnerable to such accusations. What sort of factors facilitated Talisman's arrival into this position? Furthermore, how did the actions of other companies in Sudan operating under similar circumstances at the same time compare with Talisman's actions?

Talisman did not enter Sudan out of ignorance or apathy. Rather, its arrival followed from the logic of oil production as it had developed in previous decades. Since its beginning, the international oil industry evolved with developed countries looking for resources in underdeveloped countries. Indeed, oil development was both a political and economic process and the industry received pressures from each sector.

Development of the Oil Industry from World War II to 1978

Governments first recognized the importance of oil during the First World War, when that raw material fueled both military and naval forces. By the end of this conflict, the U.S. and other countries fought for oil concessions in the Middle East, Latin America, and Southeast Asia. The best positioned nations were those who both produced oil domestically and imported it. Domestic oil production helped make the United States and Soviet Union major powers during World War II. After the war ended, most of the world's oil production outside the Communist bloc and North America fell under the control of seven major oil companies: Exxon British Petroleum, Royal Dutch/Shell, Standard Oil of California (Chevron), Texaco, Gulf, and Mobil.¹³¹

In order to distribute the revenue between these companies and the countries in which they extracted the oil, the companies were required to pay a 50% tax on oil profits to the governments of the host countries. Initially this system functioned to the satisfaction of both host countries and oil companies. In the 1950s, however, the oil companies began adjusting the posted price of crude oil so as to pay a lower tax on their profits.¹³² Regardless, no crisis arose during these years, often called the "golden age" of the international oil, because profits remained high and host countries lacked the resources to exploit their own oil reserves.¹³³

As the oil industry evolved, several types of companies became prominent. Initially, the major oil companies were mainly privately-held, meaning they were owned solely by a small, related group.¹³⁴ In the 1970s, many companies shifted to publicly-held

¹³¹ Reese, 9-10, 18.

¹³² Ibid., 10.

¹³³ Ibid., 11.

¹³⁴ Ibid., 15.

structures, selling shares to the general public and public institutions. In this shift, the company could make a significant amount of money through an initial public offering (IPO) of its shares on the New York Stock Exchange. The wide range of investors associated with public companies typically possessed a diverse viewpoint more representative of the general public than that of investors in privately-held companies. Additionally, a third type of company was nationally owned. These companies typically emerged in response to a supply crisis of a particular nation.¹³⁵ They imported oil when the domestic supply was limited, and exported it when supply was high; thus, the market helped determine the role they played for their countries.¹³⁶ Ultimately, national oil companies served as a tool for their countries to force an even distribution of resources that would not be achieved simply through the economic means of the market industry.¹³⁷ Developments in Sudan included all three types of oil companies.

As the industry evolved, the international market increased from the original seven firms to include a large number of small companies, which had developed out of the success of the initial public investors. The number of companies then contracted, as these small companies began to merge in the 1980s. (Talisman's breaking off from British Petroleum then growing through the acquisition of smaller firms provides a microcosm of this process.¹³⁸) Companies also joined together in conglomerates to reap the advantages of groupings within the oil industry. Conglomerates allowed diversification within the group of companies, thus making them less susceptible to

¹³⁵ The Baker Institute Energy Forum and The Institute for Energy, Law & Enterprise, *National Oil Companies: What roles can they/should they play in an age of liberalized markets, globalization?* (May 2005): 3.

¹³⁶ Baker Institute, 4.

¹³⁷ Baker Institute, 5.

¹³⁸ Talisman Energy, Inc., Talisman Energy, About Us, available from http://www.talisman-energy.com/about_us; Internet; accessed 20 September 2006.

downturns within the industry. For example, a conglomerate with investments in different countries, producing gas products along with simply crude oil, became less vulnerable to a block in production in one of its host countries or a market downturn for one particular oil-related product. Indeed, companies in conglomerates relied on their profits from the conglomerate as a whole, even when their particular market failed to flourish. Therefore, conglomerates provided protection for individual companies even though each company had its own shareholders.¹³⁹

As members of conglomerates, most international oil companies developed extensive vertical integration, controlling both upstream and downstream production. Upstream production referred to oil exploration, discovery, drilling, and development of oil fields. On the other hand, downstream production denoted the activities after retrieval of the crude product from the oil fields, including the refining, marketing, and delivery of oil-related products. In addition, conglomerates were horizontally integrated among countries, sharing relationships on the same level of production and essentially creating a small and intimate network of companies crossing national boundaries.¹⁴⁰ Such extensive vertical and horizontal integration meant that the conglomerates did not need to rely on their host countries.

Oil companies also organized into groups called consortia (sg., consortium). As opposed to conglomerates, consortia did not organize companies to streamline a diverse set of tasks; rather they brought together several partners to undertake a single large-scale project. Before consortia, the capitalist emphasis on stark competition between individual entities prevented new projects from coming to fruition when a proposing company

¹³⁹ David Johnston and Daniel Johnston, *Introduction to Oil Company Financial Analysis* (Tulsa, Oklahoma: Penn Well Corporation, 2006), 239.

¹⁴⁰ Rees, 12.

lacked the capital or technology to facilitate the project alone. Consortia, on the other hand, allowed companies, even competitors, to cooperate and share resources and expertise. As members of such a group, companies were able to launch projects that they would not have otherwise been able to facilitate—for example, the Khartoum pipeline project in Sudan—thus promoting advancement and competition. Indeed, sharing the burden of manpower and capital in a new investment allowed many companies to go ahead with otherwise overly risky or overly costly projects, such as initial oil developments in underdeveloped countries. Consortia also often included business of varying sizes, giving different benefits to each. Smaller independent companies benefited by receiving access to resources they needed to increase research and development. In return, larger companies gained specialty expertise from workers in smaller, more focused companies.¹⁴¹

Regardless of their participation in consortia, oil companies made individual contracts with the host country. In order to distribute profit, international oil companies used several types of contracts that differed greatly from the initial system of royalties on the price per barrel. In their search for new oil, companies prioritized making agreements with host countries possessing a significant chance of discovery, willing to making reasonable financial agreements, and maintaining political stability.¹⁴² On the other hand, host countries sought investors with development expertise who were willing to invest significant capital and stimulate the host economy by employing local workers.¹⁴³ Thus, although the industry seemed to function on finding an appropriate match between

¹⁴¹ Graham Bannock and Evan Davis, Paul Trott, Mark Uncles, *The Economist Dictionary of Business* (London: Profile Books, 2003), 352.

¹⁴² Charles F. Conaway, *The Petroleum Industry: A Nontechnical Guide* (Oklahoma, 1999), 65.

¹⁴³ *Ibid.*, 64.

investors and host countries, the GoS was offered a contract to any company willing to invest in Sudan, which many companies seemed find attractive.

Although the specifics of agreements between the oil companies and host countries obviously varied from case to case, they essentially fell into three types: concession contracts, production-sharing agreements, or service contracts. The first type, concession contracts, most resembled the original system of the oil industry. These types of contracts were the most prominent in Sudan because they allowed for oil development with little previously established infrastructure on the part of the host country. Under this type of contract, the host country received a royalty on all the sales of oil and the associated products from the specific area allocated to a given company. The host government was also allowed to tax the profit of the oil company. Aside from that, the oil company largely exercised autonomy in its investment, management, payment of operating costs, and sales.¹⁴⁴

The other two types of contracts were also used in Sudan, but less frequently. In production-sharing contracts, the oil company was also largely autonomous, although the profit was distributed differently than in concession contracts. In production-sharing agreements, a specific section of the oil reaped from the operation was denoted as “cost oil” and its sale was used to repay the initial investment made by the operating company. The remaining oil was deemed “profit oil” and money earned from this segment was distributed between the operating company and the host country based on predetermined percentages. Additionally, the government could tax all of the operating company’s profits.¹⁴⁵ Finally, service contracts, gave the operating company the least freedom. In

¹⁴⁴ Ibid., 66.

¹⁴⁵ Ibid.

this agreement, the host country supervised all the company's operations, fronted all of the capital, and granted no ownership interest in the product produced. Typically these circumstances existed through a national oil company. The operating company profited simply from a set price per barrel amount for its operations in the development.¹⁴⁶

Around 1960, the fall of market prices for oil products led to a shift in relationships between host countries and oil companies. Economically, the decline in prices came essentially from the over-efficiency of the oil companies, which led to an excess in product over demand. At the same time, no political conflict after the Suez Crisis restricted the flow of oil in order to keep prices high. The limited supply relative to the demand had helped stabilize the prices in years past. In order to preserve their profit in the midst of falling oil prices, companies sought to decrease the royalty tax they were paying to countries housing oil resources. This pressure from the companies led to the organization of the major oil-exporting countries—Iran, Kuwait, Venezuela, Saudi Arabia, and Iraq—into the Organization of Petroleum Exporting Countries (OPEC) in 1960.¹⁴⁷ A producers' cartel, OPEC sought to maintain the profits of member nations by stabilizing prices.¹⁴⁸

Initially, OPEC had little power to set the price of oil per barrel and thus ensure a profit for its members. However, by 1972, OPEC controlled oil prices and possessed the power to require companies to alter their production methods.¹⁴⁹ Any doubts about OPEC's industry control vanished when the Yom Kippur War began. In response to the

¹⁴⁶ Ibid., 67.

¹⁴⁷ Ibid.

¹⁴⁸ Organization of Petroleum Exporting Countries, 2007, available from <http://www.opec.org/aboutus/>; Internet; accessed 13 February 2007.

¹⁴⁹ WTRG Economics, Oil Price History and Analysis, 2005, available from <http://www.wtrg.com/prices.htm>; Internet; accessed 25 March 2007.

U.S. and other Western nations' support of Israel, Arab-dominated OPEC staged an embargo. It refused to supply oil to those countries supporting Israel. The limited supply led to a 400% increase in the price of crude oil between 1973 and 1974—from \$3/barrel to \$12/barrel in just six short months—drastically changing the daily living habits and employment of these industrial nations.¹⁵⁰ Another increase from \$14/barrel to \$35/barrel occurred between 1979 and 1981 because of the Iranian revolution and the Iran-Iraq war.

These two shocks led the Western oil companies to search for oil outside of OPEC regions.¹⁵¹ Since it was not a member of OPEC, Sudan attracted attention. The structure of the oil companies, particularly their integration and vast capital, meant that they did not need much more from a host country than a hospitable environment; the companies would provide the necessary infrastructure and ensure revenue production. The companies certainly wanted a degree of political stability. The peace after the first civil war, proctored by the Addis-Ababa agreement of 1972 made Sudan an eligible candidate for exploration.¹⁵² In 1978 the Canadian company Chevron discovered oil in the country.

Oil Production in Sudan (1978-2002)

Although several different oil companies invested in and divested from Sudan over the course of the almost 25 years from 1978 to 2002, export was limited to only the last three years. Between 1978 and Talisman's entry in 1998, several different companies entered the country and laid the groundwork for Sudanese oil development but not one

¹⁵⁰ The Government of Canada, Autumn 1973—The OPEC Oil Crisis: Forcing Up World Oil Prices, 20 March 2007, available from <http://www.canadianeconomy.gc.ca/english/economy/1973opec.html>; Internet; accessed 25 March 2007 and Oil History and Analysis.

¹⁵¹ Rees, 14 and Oil History and Analysis.

¹⁵² Rone, *Sudan, Oil, and Human Rights*, 723.

possessed the necessary combination of capital, technology, and staying power within the country's political turmoil to translate its investment into profit.

In 1978, Chevron discovered oil reserves in the Muglad and Melut basins, in the northern parts of Southern Sudan.^{3, 153} [Appendix A, Map 4] The GoS gave both fields names that suggested northern control. Block I became known as "Unity," suggesting southern incorporation with the North, while Block 2 was christened "Heglig," a colloquial Arabic term for a type of tree. As Chevron continued to survey the region for oil reserves, the political situation in the country became increasingly volatile. In 1983, President Nimeiri reneged on the Addis-Ababa Agreement leading to the resumption of fighting and the beginning of the second Sudanese civil war. The newly-discovered oilfields became too risky to develop.¹⁵⁴ Indeed, in 1984 Chevron was forced to abandon its Sudanese investments when four of its expatriate workers were killed in a southern rebel attack on their Bentiu development.¹⁵⁵

Although Chevron was no longer operating in Sudan, the company still retained ownership of its concessions. The Islamic government that took control of the oil reserves at the outbreak of the war, however, refused to let the oilfields lay idle as Sudan faced major debts from the expensive fighting. In 1992, the GoS was finally able to force Chevron to sell its shares to the Sudanese state-owned oil company Concorp, who promptly sold the shares to State Petroleum, a Vancouver-based company in partnership with Arakis. As a mid-sized independent oil firm out of Calgary with most of its developments in the U.S. Appalachian Mountains, Arakis saw the Sudanese project as an opportunity to convert the company into a major international player. Regardless of the

¹⁵³ Ibid., 127.

¹⁵⁴ Ibid.

¹⁵⁵ Reeves, "Oil Development in Sudan," 168.

controversial political situation in the area, Arakis assumed the risk in order to buy out State Petroleum for full ownership of the Sudan project, vowing to raise the \$750 million to \$1 billion necessary to fund it.¹⁵⁶

Throughout its tenure, Arakis maintained a good relationship with the GoS. The company trucked oil from its fields to refineries in Khartoum. Nonetheless, Arakis failed to make a profit from Sudanese oil. In late 1996, Arakis sold 75% of its shares to the state-owned oil companies Chinese National Petroleum Company (CNPC) of China, Petronas of Malaysia, and Sudapet of Sudan. Arakis's new partners had varying reasons for seeking investments in Sudan when they entered in 1996. The CNPC was looking for oil reserves to satisfy China's growing energy needs, as all of the reserves within their country had passed their production peak by the mid-1990s.¹⁵⁷ While Petronas was also looking for new energy supplies for Malaysia, it specifically took an interest in developing Sudan because of the Islamic connection between the two countries.¹⁵⁸

The Khartoum Peace Agreement made these investments possible, quelling the international concern for the Sudanese violence by declaring the oil regions to be a "zone of peace."¹⁵⁹ Although this Agreement was not ratified until 1997, a political charter was signed in 1996 containing what would become the body of the Agreement, thus securing the area for international investment within that year.¹⁶⁰ Such an agreement aimed to indicate to new investors that they would not face the same violence Chevron had during its operations in the mid-1980s.

¹⁵⁶ Human Rights Watch, *The Arakis Period: 1992-1998*, November 2003, available from <http://www.hrw.org/reports/2003/sudan1103/11.htm>; Internet; accessed 26 March 2007.

¹⁵⁷ Human Rights Watch, *China's Involvement in Sudan: Arms and Oil* (2003) 2.

¹⁵⁸ "Petronas In Consortium to Produce and Market Oil in Sudan," *Bernama* (Kuala Lumpur), 10 December 1996, NOPGCIT.

¹⁵⁹ Gagnon, 20.

¹⁶⁰ *The Arakis Period: 1992-1998*.

Despite its partnerships, Arakis did not last long in Sudan. U.S. restrictions on Sudanese investments tightened even after the Khartoum Peace Agreement was signed, forcing Arakis to choose between selling off their American assets or their Sudanese assets. In 1997, it chose Sudan. However, after selling off its U.S. investments, Arakis was unable to post its share of the consortium funding and was ultimately acquired by Talisman Energy in 1998.¹⁶¹ Thus, Talisman entered Sudan through the investments of one of the many smaller oil companies it acquired during its attempt to increase its overseas assets. The Canadian company then became one of the major groups operating there under the veil of the Khartoum Peace Agreement.

Greater Nile Petroleum Operating Company (GNPOC)

By buying out Arakis, Talisman became a member of a consortium: the GNPOC, which Arakis, CNPC, Petronas, and Sudpet had joined in 1996, hoping to group their combined assets to achieve the capital and manpower needed to successfully profit from Sudanese oil.¹⁶² The Sudanese company, Concorp, had facilitated the formation of GNPOC by forcing Chevron to sell its idle shares in 1992.¹⁶³ The GoS also played an important role in determining the membership of the GNPOC, pushing for the inclusion of oil companies from countries with which Sudan had a good relationship. For example, the GoS requested that Arakis include the CNPC, because China had supplied weapons to the GoS in the past.¹⁶⁴

¹⁶¹ Ibid.

¹⁶² Ibid. Although was not directly involved in the actions of the consortium, they helped facilitate.

¹⁶³ Luke A. Patey, "A Complex Reality: The Strategic Behavior of Multinational Oil Corporations and the New Wars in Sudan," *Danish Institute for International Studies* (Copenhagen, 2006): 34.

¹⁶⁴ Ibid.

China had actually maintained a very long-standing relationship with the series of governments that have come through power in the Northern Sudan. The Nimeiri government, which held power from 1969-1985 and was responsible for the redrawing of the Addis-Ababa boundaries that led to the second civil war, purchased weapons from China. Their purchases included everything from helicopters and tanks to ammunition to antipersonnel and antitank mines. The magnitude and frequency of these purchases increased in the early 1990s in response to increased fighting over the oil reserves. In fact, several of these Chinese weapons have been identified by witnesses during their use by the GoS army.¹⁶⁵ Thus, despite their relative inexperience in oil development, the GoS pressured Arakis to sell shares to CNPC to allow the GoS increased access to Chinese weapons.¹⁶⁶

The formation of the consortium was significant for each of its member companies and the GoS because, by grouping their resources, it gave all parties the best chance to earn a profit from Sudanese oil. Upon its initial formation, the group included various companies with different strengths. For example, CNPC, as a national oil company, was able to provide a large and inexpensive, sometimes unpaid, labor force.¹⁶⁷ Also, during Arakis's initial financial problems, CNPC and Petronas put up funding for the oil development, allowing progress to continue.¹⁶⁸ Over the following two years, the GNPOC continued to make discoveries, increasing the value of oil shares in Sudan. In 1998 when it acquired the assets of Arakis, Talisman brought new technology and financial backing for the consortium. For its part, Talisman benefited from the previous

¹⁶⁵ *China's Involvement in Sudan*, 1.

¹⁶⁶ Patey, 34.

¹⁶⁷ *Ibid.*, 2.

¹⁶⁸ The Arakis Period: 1992-1998.

experience of the other consortium members and helped to work on the pipeline project they had already begun.¹⁶⁹ Finally, as a legally incorporated alliance, the consortium required significant commitment from each company. Though only responsible to the GoS through their contractual agreements, the companies, were responsible to each other and any divestment or new membership could be vetoed by the other partners.¹⁷⁰

Through its members, the GNPOC's projects encompassed concessions in Blocks 1, 2, and 4. These included oil fields at El Noor, Bamboo, Toma South, Munga, Diffra, Unity, and Heglig. All of the oil from these developments traveled along the 1,500 kilometer pipeline from the blocks to the refineries in northern Khartoum and El Obied for export at Port Sudan.¹⁷¹

The other non-Sudanese members of the GNPOC, CNPC and Petronas, along with Swedish company Lundin Oil provide an excellent frame of reference for Talisman's actions in Sudan. Together, the descriptions of the business organization and actions of each company provide a cohesive picture of the Sudanese oil industry during Talisman's tenure, shedding light on the accusations against Talisman. Separately, each company offers a different insight. The history of CNPC proves significant. The Chinese company was the largest shareholder in the GNPOC (40%). It attracted accusations of human rights abuse and compliance with the GoS similar to those directed against Talisman. Yet the CNPC did not withdraw from Sudan. Conversely, the description of Petronas bears significance as it was the only non-Sudanese member of the GNPOC that

¹⁶⁹ Ibid.

¹⁷⁰ Kamarul Yunus, "Petronas May Benefit if Talisman Pulls Out From Sudan" Business Times Kuala Lumpur: 16 July 2001, 3(O).

¹⁷¹ GNPOC, Project Overview, 2005, available from <http://www.gnpoc.com/asp/ProjectOverview.asp?glink=GL002&plink=PL010>; Internet; accessed 27 March 2007.

did not face allegations of human rights abuse regardless of its close relationship with the GoS. Finally, although Lundin was not a member of the GNPOC, its story offers the perspective of another large Western company who likely would have been under more ethical stockholder scrutiny than the state-owned CNPC and Petronas companies.

Chinese National Petroleum Company (CNPC)

As a national oil company, CNPC's business practices have been largely dominated by the Chinese government's need for petroleum resources. The government and the oil company shared the same aim of providing oil for the country's ever-growing economy, which was paramount over all other motivations.¹⁷² CNPC found a way to provide oil for China in Sudan's need for foreign investment. After the production peak of the Chinese oil fields in the mid-1990s, CNPC aggressively bought foreign oil fields and began importing foreign oil into China as early as 1997.¹⁷³ CNPC's relationship with the government also allowed the company to operate without prioritizing profit since the government supplied the company with resources such as economic opportunities, access to military arms, and political support in the international forum.¹⁷⁴

Entering Sudan in 1996 with high hopes, the CNPC invested significant resources into oil exploitation. The company expected to import almost ten million barrels from the new oilfields before 2000. This project was in fact China's largest foreign oil asset—with interests in the GNPOC Blocks 1,2, and 4, along with Block 6, and Blocks 3 and 7, which were not yet in production—and development at that time and was considered a

¹⁷² Patey, 32.

¹⁷³ *China's Involvement in Sudan*, 2.

¹⁷⁴ Patey, 33.

“major breakthrough” by the national media.¹⁷⁵ Expectations of benefits led the CNPC to invest much money and manpower into the development of the oil fields. First and perhaps most important, the CNPC, as did Talisman, played a major role in building the pipeline that linked the GNPOC blocks to Port Sudan in the North. CNPC’s construction branch, China Petroleum Engineering & Construction Corporation (CPECC) helped construct both the 1,500 kilometer pipeline and a refinery near Khartoum. For both of these projects, CPECC/CNPC imported Chinese workers to minimize its labor costs and finish the project in a timely fashion.¹⁷⁶

CNPC also devised a way for Sudan to pay for imported Chinese weapons. Since Sudan did not have much money to spend on buying arms, the country arranged a financing option called an “offset package.” This term refers to the use of oil concessions as a means for paying for weapons. For example, China sold SCUD missiles to Sudan at the end of 1996 using a \$200 million Malaysian government loan against a future oil development.¹⁷⁷

The CNPC also cemented a close relationship with China that benefited the GoS with respect to the United Nations. Since China is a permanent member of the UN Security Council, it blocked any Council action towards political or economic sanctions against Sudan.¹⁷⁸ Additionally, China showed its friendliness to the Sudanese government by taking extra measures to complete the Khartoum Pipeline project for the National Islamic Front’s tenth anniversary: June 30, 1999.¹⁷⁹

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Christian Aid, 19.

¹⁷⁸ Patey, 34.

¹⁷⁹ Ibid.

Due to the close relationship between China and the GoS, as well as general SPLA animosity towards the oil companies, the CNPC was on very poor terms with southerners. As did other oil companies, the CNPC faced rebel attacks; some Chinese employees were even kidnapped by the SPLA.¹⁸⁰ Even more than other oil companies, China failed to employ southern Sudanese. Alternatively, China, was able to outbid other companies for the pipeline contract by importing Chinese laborers who worked thirteen or fourteen hours per day with few breaks and on little food. Some of the workers were prisoners. Many of them died from tropical diseases, especially water-borne illness. In addition to pipeline infrastructure, the GoS was also used to provide security and protect the Chinese workers.¹⁸¹ The resulting tension further encouraged the SPLA as well as local people to attack the pipeline construction.

Along with GoS security, many southerners attested to Amnesty International that armed Chinese guards defended the pipeline construction. In addition to fending off rebel attacks, these guards took action to displace Southern Sudanese people who were living in the way of the pipeline. Southerners who escaped these military attacks testified to Chinese soldiers using their weapons and even raping Sudanese women.¹⁸²

Regardless of this hostile environment, aside from its responsibility to the Chinese government, CNPC was not answerable to any other entity or group. Unlike other Western companies within the GNPOC, it did not speak publicly against allegations that its operations helped the GoS in the war with the South. As a member of the GNPOC, however, the CNPC was required to sign a Code of Ethics presented by

¹⁸⁰ Patey, 34.

¹⁸¹ *China's Involvement in Sudan* 3.

¹⁸² Edwards, Catherine. "Chinese Troops Wreak Havoc in Southern Sudan" *Insight on the News*. Washington: 24 July 2000. Vol. 16, Iss. 27; 6.

Talisman in 2000. Thus, as a member of the oil consortium, the CNPC should have been susceptible to pressures from outside critics to the same extent as other consortium members were.¹⁸³

Petronas Caligari

Petronas Caligari, another member of the GNPOC, was a state-owned Malaysian corporation that conducted both upstream and downstream work within Malaysia and abroad. The company became involved in Sudan in 1997, when, responding to GoS pressure, Arakis sold a 30% share to Petronas. The company signed a production-sharing and exploration agreement with the GoS and became one of the original members of the GNPOC. The \$600 million investment gave Petronas interests in Blocks 1,2, and 4, which had 600 million recoverable barrels at the time of the 1998 investment.¹⁸⁴ Over the first year of their investment, Petronas spent \$200 million on their Sudan project and drilled twenty-nine wells.¹⁸⁵ The company's interests were divided into different subsidiaries such as Petronas Carigali Overseas Sdn Bhd, which worked in developing two onshore blocks in Southern Sudan, and OGP Technical Services Sdn Bhd, which helped build and develop the 1,500 km pipeline linking these blocks to the refinery and port in the Northern Sudan. The company also marketed lubricants, gas and fuel oils, petrol and Jet A-1 in Sudan.¹⁸⁶ Altogether, 135 Malaysian workers were employed throughout Sudan in these subsidiaries with 79 in Khartoum and the remainder in other areas. Including the

¹⁸³ Patey, 35.

¹⁸⁴ Ibid., 38.

¹⁸⁵ Fauziah Ismail, "Petronas all set to tap Sudan oil gush," *Business Times* (Kuala Lumpur), 16 May 1998, 1(O).

¹⁸⁶ Patey, 38.

spouses and children, 234 Malaysian people lived throughout Sudan at the time.¹⁸⁷

Petronas continued to look for more opportunities in Sudan and considered the opportunities it had already received as an affirmation of GoS approval of their work.¹⁸⁸

While Sudan expressed gratitude to Petronas for its new investment, praising the Malaysian company for its willingness to enter Sudan at its time of great need, the ethics of the company's entry are rather questionable. Some sources claim that the GoS pressed for Arakis to sell Petronas shares based on the Islamic connection between the two countries and an increased accessibility for the GoS to Malaysian arms.¹⁸⁹ Indeed, Sudan's Minister of Industry and Investment, Dr. Abdul Halim Ismail Al-Muta'afi explained graciously that Petronas had entered Sudan at a time when very few companies were willing to make the move, in the early stages of the Khartoum Peace Agreement.¹⁹⁰ Such a close relationship between the GoS and Petronas could only stand to benefit the government, whether through oil development or arms.

In fact, Malaysia and Sudan shared a very close bond, partially based on their Islamic religion. Both the Sudanese Foreign Minister Dr. Mustafa Mosman Ismail and the Malaysian Foreign Minister Datuk Abdullah Ahmad Badawi attended the Organisation of the Islamic Conference meeting in Jakarta, Indonesia. Mustafa explained that he was happy with the Malaysian investment in the oil projects because he expected it to help rehabilitate the Sudanese economy. Aside from just the revenue from the oil investments, the Malaysian and Sudanese officials discussed integrations such as having Malaysian

¹⁸⁷ Adeline Ong, "Sudan Petronas Staff Safe," *Business Times* (Kuala Lumpur), 22 Aug 1998, 2(O).

¹⁸⁸ Ismail 1(O).

¹⁸⁹ Patey, 40.

¹⁹⁰ R. Ravichandran, "More Malaysia-Sudan Joint Ventures Underway," *Bernama* (Kuala Lumpur), 14 May 2000, 1.

airlines fly to Sudan and having Sudanese diplomats train at the Malaysian Institute of Diplomacy and Foreign Relation.¹⁹¹

In the two years following the 1998 conference, Malaysia and GoS developed an Islamic bond and sought to merge the two countries in areas such as agriculture, power generation, energy, and infrastructure development. Malaysia looked to the newly developing Northern Sudanese market to buy Malaysian cars imported to the country. Also, Malaysian officials felt they could assist Sudan in making money from a tourism industry based around hotel and safari park developments since they had recently developed their own tourist industry successfully. The oil development in Sudan also opened the door for Malaysian investment in railroad and river transportation that would help to connect the different agricultural and farming regions of the large question. Although Malaysia already imported products such as electronics, spare parts, pharmaceuticals, furniture, and fertilizers and many undeveloped agriculture products, the countries had previously traded through a third party, a pattern that they hoped to change through their new joint ventures.¹⁹²

According to a Malaysian newspaper clearly biased towards its state-owned oil company, Petronas also aided Sudan by implementing a “Sudanisation Programme,” modeling it after its Malaysianisation Programme that had helped to develop its home country. The program has provided training for Sudanese workers at the Universiti Teknologi Petronas school in Malaysia and allowed the Petronas Research and Scientific Services, a Petronas subsidiary, to help train the Sudanese Ministry of Energy and Mines, the central petroleum laboratory in Khartoum. The article quotes Omar Suhaimi Abu

¹⁹¹ “Petronas In Consortium to Produce and Market Oil in Sudan,” *Bernama*, (Kuala Lumpur), 10 December 1996, NOPGCIT.

¹⁹² Ravichandran, 1.

Hassan, the country manager for Sudan, has spoken extensively about the value Petronas assigns to improving and benefiting the host country, as expressed in the company's mission statement. Omar Suhaimi explained that Malaysia has a policy of "Prosper Thy Neighbour" which they have extended to Sudan through their programs. "This directly contributes to the well-being of this nation. Of course, it is up to the Sudanese government to decide how this contribution can be translated for the benefit of its people" and "The benefit is not for us, it's for them. They will develop themselves. This is a long-term development, not a short-term gain or benefit on our part."¹⁹³ Although, this source favors Malaysia in a way that might slightly exaggerate Malaysia's generosity, the establishment of such a program does provide an objective measure of the investor's commitment to Sudan.

Although Petronas had been touted for its involvement in Sudanese development, their investment was very one-sided. In fact, since Petronas and Malaysia had connected with Sudan based on a religion they shared with only the northern region, the company and country likely possessed hostilities towards the South. Indeed, as an Islamic country, Malaysia might extend the same extreme evangelistic tendencies of the Islamic GoS towards the southern rebels.

Indeed, Petronas's lack of relationship with the South was confirmed when, like its GNPOC partners, the company fell victim to the attacks of the SPLA. When the SPLA announced that it had attacked three oil wells in 2001, Petronas denied the reports along with other members of the consortium and the Sudanese embassy. Petronas representatives explained that their interests had suffered no damage and that they

¹⁹³Mohd Fisol Jaafar, "Petronas Contributing Towards Well-Being of Sudan," *Bernama* (Kuala Lumpur), 13 July 2000, 1.

understood Sudan to be stable and the oil fields to be completely safe. In fact, a representative commented, “It is normal for a country like Sudan. SPLA is their domestic problem and as far as our investment is concerned, there is nothing to worry about.”¹⁹⁴ Contrary to such assurances, Petronas had actually been under consistent threat of rebel attack during its operations in Sudan. It was debatable, however, if Petronas was the intended target or was simply sandwiched between the intensely targeted Talisman and Lundin developments.¹⁹⁵ In fact, after Talisman and Lundin exited the respective blocks in which they worked with Petronas, no security issues were reported. It was also possible, however, that this lack of news is a matter of reporting and not necessarily a matter of fact.¹⁹⁶ Regardless of such discrepancies, working under the harsh and dangerous Sudanese conditions was considered a “national service for Malaysia” for the Petronas employees, illustrating the risk involved.¹⁹⁷

Despite security problems within Sudan, Petronas continuously sought further investments. In fact, when Talisman began looking for options to pull out of Sudan, Petronas believed it could benefit by increasing its share in the GNPOC. Sudan’s Foreign Minister Mustafa Osman Ismail confirmed that if Talisman pulled out, the stock would be returned to Sudapet, the national company, and would then be offered to the other members of the GNPOC such as Petronas and CNPC.¹⁹⁸ Petronas would have been a worthy candidate for consideration because of its close relationship with the GoS, its de facto immunity to North American NGO criticism due to its state ownership, and its

¹⁹⁴ Jailani Harun, “Reports on Sudan Oil Wells’ Destruction Unfounded, Says Envoy,” *Business Times* (Kuala Lumpur), 30 January 2001, 02.

¹⁹⁵ Patey, 38.

¹⁹⁶ *Ibid.*, 39.

¹⁹⁷ *Ibid.*, 40.

¹⁹⁸ Yunus, 3(O).

ability to ignore U.S. sanctions on businesses operating in Sudan because it did not raise funds in the U.S. capital market.¹⁹⁹ However, when Talisman did eventually divest from Sudan the following year, the company's GNPOC shares were sold to ONGC an Indian company. Petronas instead bought a greater interest in another concession block.²⁰⁰

Lundin

Although Swedish-based oil firm Lundin did not belong to the GNPOC, it did have a significant history and involvement within Sudan. In 1995, The International Petroleum Corporation (IPC of the United Arab Emirates), a Lundin Group corporation, embarked on an unsuccessful exploration offshore in the Red Sea. Then, in 1997, Lundin formed a consortium with Petronas, OMV of Austria, and Sudapet to begin work in Sudan's concession Block 5A. Lundin was the operator of this block and held 40% of its shares. In 2001, Lundin moved into Block 5B as a 24.5% shareholder in another consortium, the White Nile Petroleum Operating Company.²⁰¹

Lundin's operations in Sudan differed from those of many other companies in the country, because its ownership philosophy was based on aggressive buying and selling as opposed to establishing a long-term presence. Instead, Lundin entered exploration areas, made major discoveries, and then sold their interest.²⁰² Since Lundin was continuously investing in new developments, they were perpetually seeking new shareholder approval of their holdings. Indeed, shareholder approval was also important to Lundin because of

¹⁹⁹ Patey, 39.

²⁰⁰ Patey, 40.

²⁰¹ Ibid., 25.

²⁰² Ibid., 26.

their status as a publicly-held company, unlike CNPC and Petronas which were state-owned and only responsible to their home governments.²⁰³

Since the company was so responsible to shareholders, Lundin needed to make a clear profit in Sudan. Fortunately, its investment in the Block 5A began with a discovery of over 300 barrels of “excellent” reservoir quality oil through the drilling of an exploratory well in the Thar Jath region in 1999. Over the following ten months, the oil field tripled in size and Lundin developed infrastructure such as all-weather roads and airstrips. However, similar to Talisman, Lundin was accused of cooperating with GoS in scorched earth tactics that displaced southerners. Again, southerners said that government forces arrived via the all-weather roads or in helicopter gunships and forced them out of their homes.²⁰⁴ The destructive path of the GoS forces started with Chotyiel in October of 1999, then continued on through Dhorbor in March of 2000, Guit in May of 2000, and Kuach, in the same month. In each of these villages people fled for their lives, often hiding in the forest for weeks until the GoS had moved on. Many old people and children were burned alive because they could not escape quickly enough. The entire line of villages along the oil reserves were completely razed to the ground.²⁰⁵

The construction of this road led to many problems for Lundin. It was reported that Lundin initially became involved in the project because the area’s previous road had been landmined in a rebel attack.²⁰⁶ Lundin also commented that it intended to reroute the road through a less populous area, a remark contradicted by the accounts of victims.²⁰⁷ This road was intended to provide all-weather transport for supplies from the base at

²⁰³ Ibid., 27.

²⁰⁴ Christian Aid, 7.

²⁰⁵ Ibid., 8.

²⁰⁶ Patey, 26.

²⁰⁷ Ibid., 27.

Rubkona to the oil development site.²⁰⁸ Taban Deng, former Minister of State for Roads in the GoS, reported that the road was so important to Lundin's operations that the company paid up to \$400,000 per kilometer to rush Chinese workers to finish the project.²⁰⁹ The rushed completion of the road through such a dangerous area required Lundin to use various security groups. It employed the Southern Sudan Defense Force (SSDF), the local police, private consultants, and the GoS army. Although the use of southern forces angered the GoS, the SSDF would soon reunite with the SPLA and thus no longer provided oil security.²¹⁰

The large amount of violence associated with Lundin's investment in Sudan began to prompt stockholder activism. The Swedish Foreign Minister at the time, Anna Lindh, spoke out against Lundin for its complicity in human rights violation in Sudan, claiming its investment was causing Sweden negative publicity.²¹¹ Handelsbanken, a Swedish bank and major investor of Lundin's, sold its shares in response to the accusations, prompting Lundin to take action.²¹² Lundin was able to alleviate the criticism, perhaps because Ian Lundin, chairman of the Lundin board of directors, had previously sat on the Arakis Board of Directors in 1998 was thus acquainted with the situation in Southern Sudan²¹³ Lundin thus invited members of the Swedish government and the United Nations to enter Sudan and advise the company on ways to improve the conflict in the oil region. The company also reaffirmed its Code of Conduct and pledged

²⁰⁸ "Lundin Suspends in Sudan," *Hart's Africa Oil and Gas* 3, no. 5 (8 March 2000): 1.

²⁰⁹ Christian Aid, 6.

²¹⁰ Patey, 27.

²¹¹ *Ibid.*, 28.

²¹² *Ibid.*

²¹³ *Ibid.*, 26.

to become more involved in community life. This response seemed to quiet much of the Swedish criticism of Lundin.²¹⁴

Lundin then continued its development of Sudanese oil, discovering another important reserve in Block 5A in March of 2001. The well tested at 4,260 barrels per day with excellent reservoir quality. This reservoir laid on the same trend line as the extremely successful wells in the Heglig and Unity oil fields where GNPOC operated.²¹⁵ Lundin planned to also use the GNPOC pipeline out of the region to transport its new-found oil to Port Sudan and the northern refinery.²¹⁶ This recent discovery helped to improve Lundin's financial reputation and the company announced shortly thereafter that its new subsidiary Lundin Petroleum would seek a listing in both the New York and Stockholm stock exchanges.

In 2001, Lundin Oil (the company referred to as Lundin above) developed a new subsidiary called Lundin Petroleum that grouped together Lundin Oil's assets in Sudan and Russia. This subsidiary began when Talisman Energy agreed to buy the \$350 million grouped assets.²¹⁷ Facing strong criticisms about its involvement in Sudan, however, Talisman pressed for Lundin's Sudanese assets to be divided off into a separate company, which would be owned by Lundin shareholders and operated by Lundin management.²¹⁸ Thus, even after leaving Sudan, Talisman was still involved in the country through layers of red tape and management bureaucracy.

²¹⁴ Ibid., 29.

²¹⁵ Oil reservoirs are often connected and thus several reserves in a row constitute a sort of trend line. Companies typically search for new reserves along trend lines where previous developments have been successful, as they would indicate a good oil quality and/or availability.

²¹⁶ Robert Perkins, "Lundin Makes Sudan Find," *Platt's Oilgram News* 79, no.45 (7 March 2001): 2.

²¹⁷ Robert Perkins, "Lundin Plans Spin-Off of Sudan, Russia Assets," *Platt's Oilgram News* 79, no.120 (22 June 2001):1.

²¹⁸ Warn, Ken Warn, "Talisman Makes Lundin Purchase," *Financial Times* (London), 22 June 2001, 18.

After its division into Lundin Oil and Lundin Petroleum, the Swedish company's involvement in Sudan faltered. Increased fighting prompted it to postpone production in January of 2002. Although the company hoped to resume after a February peace agreement between the SPLA and the GoS, fighting quickly resumed. The area became unworkable. The public reception of GoS President Omar al-Bashir's call for "unrestrained war" on rebels led to Lundin's largest ever one-day fall in the Stockholm Stock Exchange.²¹⁹ The plummeting stock left Lundin looking for new investors, however; UN-issued sanctions on Sudan and Iran prevented United States and United Kingdom institutional investors from becoming involved with the company.²²⁰

Conclusion

The evolution of the oil industry set the stage for Talisman's operations in Sudan. International oil companies had become so extremely integrated that they seemed to form a tightly knit web of alliances and accountabilities. Thus, while the involvement of CNPC, Petronas, and Lundin developed in response to such individual factors as their country's energy needs or economic pressure from socially-conscious shareholders, the experience of each provides a valuable frame of reference for Talisman's activities. Overall, these companies shared many similarities but vastly different outcomes. Thus, while this chapter demonstrates the historical evolution of the oil industry that facilitated Talisman's entry into its controversial Sudanese investment, it raises another question; what forced Talisman out of Sudan?

²¹⁹ Robert Perkins, "Lundin Stock Slides on Renewed Fighting in Sudan," *Platt's Oilgram News* 80, no. 169 (4 September 2002): 4.

²²⁰ *Ibid.*

Chapter III

Talisman's Divestment: How the Presbyterian Church, NGOs, and Political Activists Forced Talisman out of Sudan

In 2002, Talisman's CEO Jim Buckee expressed his deep regret at his company's sale of their Sudanese stake to Oil and Natural Gas Company (ONGC) Videsh of India in March of 2003. "It has been very difficult for us to operate (in Sudan)," he commented. "In the event of signing a peace agreement, we will come back to Sudan."²²¹ Canada's Talisman Energy sold their interests in what had proven to be a very successful oil venture in Sudan. What would prompt Talisman to abandon an investment that had been steadily increasing its return, ultimately pumping more than 200,000 barrels of crude oil a day?²²² This chapter traces how Talisman's departure came as a culmination of several different historical forces, involving the company both directly and indirectly. The evolution of international laws on genocide and human rights, the Presbyterian Church, and the American Anti-Slavery acted together to force Talisman out of Sudan.

These forces converged in November of 2001 when the Presbyterian Church of Sudan and other plaintiffs filed a class action law suit against Talisman, charging that the company had aided and abetted genocide, war crimes, and crimes against humanity during its four-year tenure.²²³ While the Presbyterian Church of Sudan was listed as the major plaintiff, the suit claimed damages not only to physical Presbyterian parishes, but also to other victims of oilfield attacks throughout the Southern Sudan. Growing out of its

²²¹ "Talisman Completes Sale of Sudan Oil Interests," *The Star Pheonix* (Saskatoon, Saskatchewan), 10 March 2003, 10(A).

²²² Reuters, "Talisman faces Sudan lawsuit: U.S. anti-slavery group cites abuse of human rights," *Calgary Herald* (Alberta, Canada), 8 November 2001, 6(A).

²²³ Presbyterian Church of Sudan v. Talisman Energy, Inc. (Complaint), 1.

historical involvement in Sudan, the Presbyterian Church sponsored the suit, but the suit attracted the attention and even direct support of other groups involved in Sudan. The lead counsel for the plaintiffs, Casey D'Avino, belonged to the Board of Directors of the American Anti-Slavery Group. If the lawsuit had succeeded it might well have pushed Talisman out of Sudan. The case, however, was ultimately dismissed in 2006—four years past Talisman's divestment in Sudan. Did the lawsuit influence Talisman's 2002 decision to leave Sudan? And, if so, how?

In order to understand the impact of the class action suit, it is important to understand the historical forces behind the complaint. First, one must trace the development of the international law about human rights abuses and the Alien Tort Claims Act, the American law under which the suit was filed. Next, the history surrounding the groups involved, including the Presbyterian Church and the American Anti-Slavery Group, will help show how the case developed. Finally, the narrative of the lawsuit, including ultimate rulings by the judge, will reveal the legal implications—or lack thereof—from the suit. Each of these parts will act as building blocks for the ultimate analysis of the lawsuit's impact and Talisman's withdrawal from Sudan.

International Law

Talisman entered Sudan in 1998, when international leaders and activists emphasized recognition of human rights but proved unable to develop courses of action against human rights abuses. The decade had witnessed large-scale violence against civilian populations in three continents. In 1992, during the war in the former Yugoslavia, Bosnia accused the Yugoslav government of ethnic

cleansing in the form of rape, terror, and murder, leading the residents to leave their homes, and thus constituting genocide.²²⁴ Then in 1994, Hutu extremists used a racial rationale to kill 800,000 Tutsis in Rwanda. Although the designation of Hutu and Tutsi as ethnic/racial identities had emerged after the colonial era, the case was eventually ruled as genocide in 1998 by the International Criminal Tribunal of Rwanda.²²⁵ Also in 1998, Spanish prosecutors charged Chile's former dictator, Augusto Pinochet, with genocide for crimes he had committed during his rule in the 1970s. This charge was filed under the Spanish definition of genocide, which is slightly broader than the widely-accepted definition referring to religious and ethnic groups and thus includes political activists—like the Chilean victims—and not solely ethnic groups.²²⁶

These crimes occurred decades after international law had grappled with genocide. In the years following closely after World War II, much attention turned towards drafting international law to prevent the type of genocide that had taken place against European Jews. Before it was given a general definition, Winston Churchill referred to the persecution of the Jews as “the crime with no name.”²²⁷ Later, a Polish Jew who had fled to the United States during World War II coined the term “genocide.” In his 1944 book, Axis Rule in Occupied Europe, Using the example of European Jews as his basis, Raphael Lemkin defined genocide as “a coordinated plan of different actions aiming at the destruction of

²²⁴ William Schabas, “The Genocide Convention at Fifty,” *United States Institute for Peace* :3, 7 January 1999 [report on-line]; available from <http://www.usip.org/pubs/specialreports/sr990107.html>; Internet; accessed 15 February 2007.

²²⁵ Ibid.

²²⁶ Ibid., 2.

²²⁷ Ibid., 1.

essential foundations of the life of national groups, with the aim of annihilating the groups themselves.”²²⁸

On December 9, 1948, The United Nations General Assembly convened the Genocide Convention, resulting in the first modern human rights treaty.²²⁹ This convention defined the term “genocide” as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.²³⁰

The treaty went on to declare that international law would punish not only genocide, but also conspiracy to commit, direct and public incitement to commit, attempt to commit, and complicity in genocide.²³¹ The day after the Genocide Convention, the United Nations also issued the Universal Declaration of Human Rights.

Each of these new documents contained problems, however, including the modifying subclauses of different signatories and often overly-idealistic claims. For instance, the United States modified the Genocide Convention ruling in two ways. Stating both that it should be notified before any action is taken against it under the international law and that it would act in no ways that could be

²²⁸ Ibid., 2.

²²⁹ Ibid., 6.

²³⁰ Convention on the Prevention and Punishment of the Crime of Genocide, Prevent Genocide International, 8 November 2005, available from <http://www.preventgenocide.org/law/convention/text.htm>; Internet; accessed 15 February 2007.

²³¹ Ibid.

considered prohibited by the United States Constitution.²³² As demonstrated by the Pinochet case, Spain also modified the text to include political groups as a potential target for genocide.²³³ Additionally, the documents also described very general means for preventing genocide and human rights abuses but did not stipulate specific or definitive action. The treaties spoke about protecting universal respect for fundamental human rights and freedoms by maintaining that all humans are created equal with respect to dignity and rights. They prohibited behaviors such as slavery and torture.²³⁴ They then stated that no group should act to violate such freedoms. The lofty speech made the documents too subjective to make effective accusations or require action.

While the Genocide Convention and Universal Declaration of Human Rights made violations of human rights illegal under international law, events in the 1990s revealed a major flaw: the international community's inability to prevent genocide or human rights violations. Although the Geneva Convention and the Universal Declaration of Human Rights did not establish a legal obligation for peacekeeping forces to act in response to potential genocide situations, their definitions of the crime brought international attention to the word that would mandate some sort of intervention with its use.²³⁵ This confusion about the action required after its use has led to hesitation in the use of the term. Initially the international community did not apply the term "genocide" to Rwanda because that label required that some action must be taken. Instead, in 1993, when

²³² Ibid., 7, 8.

²³³ Schabas, 2.

²³⁴ *Universal Declaration of Human Rights*, 10 December 1948, available from <http://www.unhcr.ch/udhr/download/dllist.htm?accept=Accept>; Internet; accessed 23 March 2007.

²³⁵ Schabas, 4.

United Nations peacekeeping troops entered Rwanda, they failed to take any action against the perpetrators of what the UN would later call genocide.²³⁶

Thus, in the absence of a clear-cut method of action based on international law, many activists tried to prevent and punish human rights abuses by other means. In the United States, activists turned to the Alien Torts Claim Act (currently known as the Alien Tort Statute), which they eventually used against Talisman. The U.S. government's passing of the 1789 Act gave United States Federal Courts jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."²³⁷ Generally, individuals have used the Act against other individuals. For example, in 1980 a Paraguayan man successfully sued the policeman who had tortured his son to death. More recently, however, human rights activists have used the law in attempts to hold transnational corporations accountable for international law violations that have occurred in countries outside of the United States.²³⁸ Very few of these suits, however, actually reached trial. Between 1993 and 2006, of the thirty-six suits filed, twenty were dismissed, thirteen still remain open, and three were settled out of court. For example, in 2005, Unocal Oil Company of California reached a settlement with the fifteen Burmese villagers who filed a suit against the company, accusing it of human rights abuses perpetrated while building a gas line.²³⁹ Although this suit was filed by the plaintiffs directly, NGOs vocalized their confidence in its success.²⁴⁰ The attention of the American media to such trials probably persuaded Unocal to settle outside the

²³⁶ Ibid., 5.

²³⁷ Alien Tort Claims Act, Global Policy Forum, available from <http://www.globalpolicy.org/intljustic/atca/atcaindx.htm>; Internet; accessed 10 February 2007. The Alien Tort Claims Act was originally passed to allow the U.S. Courts to try pirates from crimes committed outside of U.S. borders.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

court. Thus, not the legal process itself, but rather the negative publicity of such a lawsuit, gave activists a measure of control over corporate responsibility in operations outside of the United States.²⁴¹

The Presbyterian Church in Southern Sudan

Human rights activism attracted the Presbyterian Church partly because of its commitment to act for social justice in the face of repression. According to a statement from its General Assembly in 1958 the Church:

affirms its conviction that neither the Church as the body of Christ, nor Christians as individuals, can be neutral or indifferent toward evil in the world; affirms its responsibility to speak on social and moral issues for the encouragement and instruction of the Church and its members... reminds the churches that their duty is not only to encourage and train their members in daily obedience to God's will, but corporately to reveal God's grace in places of suffering and need, to resist the forces that tyrannize, and to support the forces that restore the dignity of all men as the children of God, for only so is the gospel most fully proclaimed.²⁴²

The involvement of Presbyterians in Sudan and the budding Christian religion in the South drew the Church to champion the cause of southerners against Talisman. Almost completely restricted to the southern part of the country, it became an advocate for their parishioners who suffered the brunt of GoS violence. Along with Anglicans and Catholics, Presbyterian missionaries entered Sudan after an Anglo-Egyptian force defeated the Sudanese Mahdi in 1898. Fearing that Christian missionaries would arouse hostility in the predominately Muslim Northern Sudan, the British prohibited them from working in the Northern Sudan so these American missionaries established themselves in

²⁴¹ Ibid.

²⁴² The Presbyterian Church, Presbyterian 101: A General Guide to the Facts about the PCUSA, available from <http://www.pcusa.org/101/101-social.htm>; Internet; accessed 25 March 2007.

the South.²⁴³ The initial group of four Presbyterian missionaries arrived in Bahr al-Ghazal, located on the northwest border of the Southern region, on March 28, 1902. There, they focused on providing tangible benefits for southerners, specifically in terms of medical treatment.²⁴⁴ In only nine months, the mission doctor saw over eight hundred patients. As the number of patients continued to increase, the mission brought in a second doctor to their practice in the South. In 1908 the Presbyterians set up a mud hospital with an outpatient clinic, and finally in 1911, they built a cement brick building. Along with medical treatment, the mission provided educational opportunities for the Southern Sudanese by building local schools.

Even after its missions withdrew from Sudan, the Presbyterian Church (USA), remained engaged with Sudan. The American Presbyterians supported the Presbyterian Church in Sudan as well as the Sudan Presbyterian Evangelical Church in Khartoum, providing funds as well as missionary training, theology classes, women's programs, and youth work.^{245 246} Continuing its historical role in the South, U.S. Presbyterians helped southerners compensate for GoS damages.²⁴⁷ Using money from their relief fund, One Great Hour of Sharing, the Church provided fishing nets, seeds, hand tools, and disaster relief supplied for southerners suffering from the civil war.²⁴⁸

Inevitably, their advocacy of southerners brought the Presbyterian Church (USA) into direct conflict with Talisman Energy. Southern Presbyterians found themselves

²⁴³ Ibid.

²⁴⁴ R.O.Collins, "The Establishment of Christian Missions and Their Rivalry in the Southern Sudan," *Tarikh* 3, no. 1 (1969): 42.

²⁴⁵ The Presbyterian Church, Perspectives: An Online Publication of the Office of the General Assembly, Presbyterian Church, available from <http://www.pcusa.org/oga/perspectives/aug04/sudan.htm>; Internet; accessed 26 March 2007.

²⁴⁶ Brigid Berry, "Sudanese Situation Worsens," *Church & Society* 83, (Sept-Oct 1992): 130.

²⁴⁷ Ibid., 129.

²⁴⁸ Ibid., 130, 131.

caught in the crossfire of GoS attacks. Located in the Heglig oilfield region in the Western Upper Nile province, their lands became oilfield battlegrounds almost overnight.²⁴⁹ Attacks allegedly jointly planned by the GoS and Talisman destroyed their villages. The entire area was showered with bullets and bombs during the attacks. Members of Presbyterian parishes were raped, murdered, tortured, and enslaved.²⁵⁰

Using as a model the divestment campaign that helped end apartheid in South Africa, in February, 2001, the Presbyterian Church (USA) announced that it was placing Talisman on its corporate “hit list” of companies that should not receive church investments. Its Committee on Mission Responsibility through Investment (MRTI) advised the Church to divest from Talisman based on findings that “Sudan’s Muslim government is a genocidal regime that enslaves women and children, bombs hospitals, and has been responsible for the starving deaths of more than a million people.”²⁵¹ The MRTI cited sources such as Amnesty International, the United Nations, and Human Rights Watch for its conclusions about the GoS attacks on regions surrounding the oil pipelines. The Church then assigned Talisman with responsibility for the GoS attacks because the company paid oil royalties to Sudan.²⁵²

Although the involvement of the Presbyterian Church of the United States was significant, its Canadian counterpart, the United Church of Canada, did not agitate against Talisman in the same way. Such a scenario seems strange since Talisman’s investors included big businesses from both Canada and the U.S.; moreover, Talisman

²⁴⁹ Presbyterian Church of Sudan v. Talisman Energy, Inc. (Complaint), 2.

²⁵⁰ Presbyterian Church of Sudan v. Talisman Energy, Inc. (Complaint), 3.

²⁵¹ Eric Reeves, “The Presbyterian Church (USA) Votes to Divest from Talisman Energy,” 25 February 2001 [article on-line] available from <http://www.sudanreeves.org/sections-req-viewarticle-artid-320-allpages-1-theme-Printer.htm>; Internet; accessed 27 March 2007.

²⁵² Ibid.

was based in Canada.²⁵³ The United Church of Canada, which was formed in 1925 in Toronto, Ontario, encompasses 70% of the Presbyterian Church congregations and the entirety of the Methodist Church and the Congregational Union of Canada, thus making it the correlate of the Presbyterian Church of the United States.²⁵⁴ Similar to the U.S. Church, the United Church has an interest in social justice; their two main tenets of responsibility are “to care for one another and our planet and to resist evil and work for justice.”²⁵⁵

Rather than involve itself in a campaign similar to the Presbyterian Church (USA), the United Church chose to reach out in a different manner. By forming a partnership with the New Sudan Council of Churches in Southern Sudan and the Sudan Council of Churches in Northern Sudan, the United Church staunchly supported the southern rebels, rather than simply putting pressure on the oil company. The United Church provided funds for two Sudanese Churches which were intimately linked with the SPLA.²⁵⁶ In fact, John Garang, the SPLA leader, said that he considered the New Sudan Council of Churches to be the “spiritual wing of the Movement that must be fully involved as part and parcel of the SPLM/A.”²⁵⁷ The United Church’s investment in a church so closely tied to the SPLA demonstrated its stance on the Sudanese conflict.

²⁵³ Talisman Energy, In., Talisman Energy: Ownership Profile, 2006, available from <http://phx.corporate-ir.net/phoenix.zhtml?c=93703&p=irol-ownershipSummary&disclaimer=1>; Internet; accessed 31 March 2007.

²⁵⁴ The United Church of Canada, History of the United Church, 2 March 2007, available from <http://www.united-church.ca/ucc/history/>; Internet; accessed 23 March 2007.

²⁵⁵ The United Church of Canada, Who We Are: The United Church of Canada, 2 March 2007, available from <http://www.united-church.ca/ucc/ourchurch.shtm>; Internet; accessed 23 March 2007.

²⁵⁶ The United Church of Canada, Global Partnerships: The United Church of Canada, 2 March 2007, available from <http://www.united-church.ca/global/>; Internet; accessed 23 March 2007.

²⁵⁷ “Opinion: How Credible a Witness?: The New Sudan Council of Churches”, *The European-Sudanese Public Affairs Council*, 6 June 2002 [report on-line] available from <http://www.sudan.net/news/press/postedr/145.shtml>; Internet; accessed 23 March 2007.

Although it would doubtless have been wary of Talisman, the Canadian church instead chose to support the SPLA/M more directly.

The American Anti-Slavery Group and other Private Organizations

The Presbyterian Church (USA) acted within a much broader movement seeking divestment from Sudan, sustained by a number of private organizations: perhaps most prominently, the American Anti-Slavery Group (AASG). Dr. Charles Jacobs, an active Zionist engaged in various Middle Eastern and African projects, founded the AASG in 1994.²⁵⁸ As the pilot work of the organization, he discussed contemporary slavery in Sudan and other parts of Africa in an op-ed piece.²⁵⁹ Then, in 2000, Jacobs and fellow AASG board member John Eibner, who was also the Director of Human Rights for the very conservative Christian Solidarity International, formed The Sudan Campaign. Although they held quite different religious beliefs, Zionists and conservative Christians have often found a unique bond in supporting anti-Islamic action. Both Jacobs and Eibner expressed great passion for their work. Each has claimed to have contributed to freeing tens of thousands of people from bondage in Sudan.²⁶⁰ Their umbrella organization was designed to combat slavery, starvation, genocide, and religious persecution in Sudan.²⁶¹

AASG staff members initiated anti-slavery publicity with memoirs and public speakers. Frances Bok, a slavery survivor and staff member of AASG published an autobiography 2003 called Escape from Slavery, which helped to broaden awareness of

²⁵⁸ SourceWatch, Charles Jacobs: A Project of the Center of Media and Democracy, 15 January 2007, available from http://www.sourcewatch.org/index.php?title=Charles_Jacobs; Internet; accessed 10 April 2007.

²⁵⁹ Charles Jacobs, "Bought and Sold," *The New York Times*, 13 July 1994.

²⁶⁰ Benador Associates, John Eibner, 2004, available from <http://www.benadorassociates.com/eibner.php>; Internet; accessed 5 April 2007.

²⁶¹ American Anti-Slavery Group, Our History, 2007, available from http://www.iabolish.com/our_history/; Internet; accessed 25 March 2007.

the situation in Sudan. Two former AASG members have also published another book called Enslaved True Stories of Modern Slavery, containing a collection of modern memoirs about slavery, several of which have come from other AASG staff members.²⁶² These same staff members supported activism against slavery in the AASG “bearing witness program.” Through this program, refugees have traveled to speaking engagements at locations ranging from the White House to public events sponsored by the AASG. Finally, through other NGOs operating outside the U.S., AASG also provides aid in the form of education, jobs and job training, food and shelter, rehabilitation and sometimes rescues missions for victims of slavery in Sudan, Mauritania, South Asia, and Cambodia.²⁶³

The AASG also worked for divestment from Sudan. In its campaign for divestment, the Group used the internet to convey its message to widespread audiences who then mobilized on their own. It founded a website called SudanActivism.com, which was directed at college students interested in starting their own divestment campaigns. Through the website, students at Harvard, Stanford, and Dartmouth have been able to field campaigns that have led to the divestment of their respective schools from companies operating in Sudan. Additionally, other smaller schools have been following in these pioneering footsteps.

Through their divestment campaign, websites, books, and sponsorships, the AASG demonstrated a significant interest in the conflict in Sudan. One of the members of its board of directors, Casey D’Avino, Esq., linked the AASG with the lawsuit filed by the Presbyterian Church (USA) and others against the GoS and Talisman. D’Avino was

²⁶² Ibid.

²⁶³ Ibid.

the lead counsel for the lawsuit. Throughout his more than twenty years of practicing law, D'Avino maintained an international focus. He received such accolades as being named as the inaugural John Henry Hobart Fellow in ethics and social justice at Hobart and William Smith College. D'Avino gained publicity for his role as class counsel for the successful cases of several Holocaust survivors seeking reparations from Germany; he was also an original signatory of the German and Austrian Holocaust settlement agreements.²⁶⁴ D'Avino's activism in these cases and the AASG group made him a fitting counsel for the Talisman lawsuit.

As the AASG continued to mount its campaign against slavery for divestment from Sudan, it helped spark the participation of another major force: African-American churches. Initially these groups hesitated to become involved because of their historical disconnect from evangelical, Republican-oriented, conservative ministries. According to one member of the St. Sabina Church in Chicago, however, growing publicity surrounding the situation in Sudan led Black Churches to disregard that gap and extend their support. Indeed, by 2001, Black churches had joined divestment campaigns that have been previously mentioned.²⁶⁵

Political and Government Pressure

Companies investing in Sudan also faced significant political and government pressure from the United States, which had enacted economic sanctions against Sudan in 1997. These sanctions were originally established by President Clinton, when the U.S.

²⁶⁴ Berger & Montague Biographies/Casey D'Avino, 2006, available from http://www.bergermontague.com/bios/attorney_bio.cfm?id=55; Internet; accessed 28 March 2007.

²⁶⁵ "Black Churches and Darfur Activism," *Religious & Ethics Newsweekly* no. 851:19, August 2005, [journal on-line] available from <http://www.pbs.org/wnet/religionandethics/week851/cover.html>; Internet; accessed on 1 April 2007.

government declared Sudan to be a threat for several reasons, including the support of international terrorism and the denial of religious freedoms.²⁶⁶ Although it differed from the more overt sort of activism launched by NGOs, the U.S. government's stance quietly defended the quest for divestment in Sudan by barring all American individuals and entities (non-profits, companies, etc.) from doing business in Sudan.²⁶⁷ As the United States' market constituted one of the biggest consumer markets in the world, preventing companies from earning revenue on the New York Stock Exchange (NYSE) provided major disincentive to working in Sudan.

China came into conflict with U.S. government when it attempted to list its stock on the NYSE. Since importing oil to its country was a priority for China, in 2000 the CNPC attempted to sell stocks to the public to raise revenue for funding its new overseas investments. Instead of the initial \$15 billion the company expected to make by the listing, the Chinese initial public offering (IPO), which was to be listed on the New York Stock Exchange, faced numerous road blocks. U.S. Representative Frank Wolf (R-VA) pointed out that allowing China to raise money in the American market would bypass the sanctions imposed on Sudan and lead Americans to invest the GoS.²⁶⁸ Another roadblock came from former National Security Council Official Roger W. Robinson, Jr., who noted that China also maintained a partnership with Iraq and Iran, two other countries under U.S. sanctions. These two reasons led the U.S. Securities and Exchange Commission to reject the original stock offering, forcing China to modify its listing.²⁶⁹

²⁶⁶ U.S. Treasury Department of Foreign Assets, What You Need to Know About Sanctions in Sudan, 1997, available from <http://www.treas.gov/offices/enforcement/ofac/programs/sudan/sudan.pdf>; Internet; accessed 1 April 2007.

²⁶⁷ *Ibid.*

²⁶⁸ Patey, 35 and *China's Involvement in Sudan*, 3.

²⁶⁹ *China's Involvement in Sudan* 4.

In order to prevent money made in U.S. Stock Market from providing funds for the GoS, the CNPC established “firewall” to determine where specific revenues would be sent. The firewall established PetroChina as the largest subsidiary of CNPC, encompassing all of China’s domestic oil interests. Thus, American investors could purchase the PetroChina IPO and not be concerned about the revenue contributing to unethical actions by the GoS. Although this seemed to be a reasonable divide to resolve the problem, it was not completely effective because PetroChina and CNPC both shared the same income and debt. For example, PetroChina inherited \$15 million of debt from CNPC and used PetroChina profits to repay it, thus connecting the interests of the two companies.

Since it proved so difficult to maintain a differentiation between Sudan and companies that could be benefiting Sudan, in February, 2000, President Clinton attempted to apply U.S. sanctions to include the GNPOC and Sudapet. The U.S. Treasury rejected this move, however; deciding that the sanctions should not apply to non-Sudanese companies doing business with the Sudanese government. Essentially, the Treasury declared that the sanctions did not apply to companies such as CNPC and Talisman.²⁷⁰ Ultimately, PetroChina made only \$2.9 billion from the New York Stock Exchange, which limited the company’s planned expansion in Sudan.²⁷¹

Only a year later, members of the U.S. Senate tried to extend the U.S. sanctions imposed on Sudan through the Sudan Peace Act. Senators Bill Frist (R-Tennessee) and Russ Feingold (D-Wisconsin) called for the U.S. government to take strong action towards ending the civil war. After having traveled to Sudan on a medical mission in

²⁷⁰ Ibid.

²⁷¹ Patey, 35.

2000, Frist reported that the atrocities he had witnessed, and statistics documenting the displacement of over five million people and the murder of over one million “require a strong international and U.S. response.”²⁷² Together, Frist and Feingold initiated the Sudan Peace Act in response to these concerns.²⁷³

Frist and Feingold sponsored the original version of the Sudan Peace Act in the House of Representatives in June 2001. This version, which passed with an overwhelming 422-2 majority, included a clause for unilateral U.S. economic sanctions against Sudan, preventing any company doing business in Sudan from being listed in U.S. securities markets.²⁷⁴ After passing so easily through the House, however, the bill met with resistance and modifications by both the Senate and the Bush administration. Senator Bob Smith (D-New Jersey) led the campaign against the Act for fear that such unilateral sanctions would discourage international businesses from investing in U.S. markets.²⁷⁵ The Senate and the House came to conference on the bill and finally decided on a new version which the House passed on October 7th, the Senate passed on October 9th, and President Bush signed into effect on October 21st of 2002.²⁷⁶

The final version of the Sudan Peace Act gave the GoS six months to reach a settlement with the southern rebels before the United States would impose strict economic and diplomatic sanctions on the entire country. The Act also guaranteed \$300

²⁷² Njuguna Kabuji, “Senator hails passage of Sudan Peace Act,” *Washington Informer* 38, no. 35 (1 August 2001):10.

²⁷³ Ibid.

²⁷⁴ Cathy Landry, “White House Seeking Amended Sudan Bill,” *Platt’s Oilgram News* 79, no. 158 (16 August 2001) 4.

²⁷⁵ U.S. Congress, House, Senator Smith of New Jersey speaking against the Sudan Peace Act, H7911, *Congressional Record* 154, (8 November 2001).

²⁷⁶ U.S. Department of State Office of the Spokesman, The Sudan Peace Act, 21 October 2002, available from <http://www.state.gov/r/pa/prs/ps/2002/14531.htm>; Internet; accessed 5 April 2007.

million in humanitarian aid to the Southern region.²⁷⁷ Although the final version of the law expressed a harsh stance on the situation in Sudan, it was the previous drafts—specifically the original draft including unilateral sanctions that passed in the House in 2001—that had a more direct impact on businesses such as Talisman.

Only a few months after the House passed the first version of the Sudan Peace Act, the Presbyterian Church (USA) initiated its class action suit against Talisman.

The Lawsuit

On November 8th 2001, the Presbyterian Church of Sudan, listed as the major plaintiff, brought a class action suit against Talisman Energy, Inc., and the Republic of Sudan. The case was officially filed as Civil Action No. 01 CV 9882 (DLC) in the Federal Court of Southern New York. In addition to the Church, the plaintiffs included Nuer Community Development Services in U.S.A., and fifteen Southern Sudanese men and women, as well as the estate of the husband of one of these plaintiffs. Bringing the suit “on behalf of themselves and all others similarly situated,” they accused Talisman and the GoS of numerous crimes, which could be grouped loosely into genocide, war crimes, and crimes against humanity, against Southern Sudanese living along the oil developments.²⁷⁸

As a class action lawsuit, the suit sought reparations for both the specific victims listed and for other non-Muslim Africans in Southern Sudan who had suffered similarly from the alleged genocide, war crimes, and crimes against humanity.²⁷⁹ The case

²⁷⁷ “Bush signs Sudan act, Imposing ultimatum,” *The Christian Century* 119, no. 24 (20 November – 3 December 2002): 15.

²⁷⁸ Presbyterian Church of Sudan v. Talisman Energy, Inc. (Complaint), 1, 2.

²⁷⁹ *Ibid.*

highlighted the GoS's scorched earth methods of displacing civilians from potential oil fields. It sought to use select victim testimonies as a representative sample of the suffering of hundreds of thousands of southerners. The plaintiffs alleged that the GoS attempted to establish a "*cordon sanitaire*", or buffer region to protect their oil interests, using an ethnic cleansing campaign against the Christian and animist Africans living in the South.²⁸⁰

For each of the three accusations—genocide, war crimes, and crimes against humanity—the plaintiffs needed to prove that the defendants had violated the definitions of international law. First, genocide was defined for the court based on the Geneva Convention as:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; or (e) forcibly transferring children of the group to another group.²⁸¹

The Geneva Convention designated war crimes to protect non-combatants, ensuring that they not be persecuted on the basis of race, religion, birth, or wealth. Additionally, the following specific acts were prohibited:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment or torture; (b) taking of hostages; (c) outrages up on personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all guarantees which are recognized as indispensable by civilized peoples.²⁸²

²⁸⁰ Ibid.

²⁸¹ *Presbyterian Church of Sudan v. Talisman Energy, Inc.* 453F. Supp. 2d 633; 2006 U.S. Dist., 01 Civ. 9882, (Case), 30.

²⁸² Ibid., 32.

In order to be included under the term “war crimes,” however, the aforementioned crimes must have occurred during specific battles.²⁸³ Finally, the suit accused the defendants of crimes against humanity, including deportation or forcible transfer, inhumane acts such as rape and torture, enslavement, and murder. In order for these actions to be considered crimes against humanity, they must have occurred as part of a large-scale attack on a population.²⁸⁴

The plaintiffs targeted Talisman as a defendant because of its role in abetting the attacks. Although the GoS launched the attacks, the plaintiffs held that the still-poor government of a war-torn, underdeveloped country could not have undertaken such large-scale displacement of people without significant financial and material support from an international partner. The plaintiffs argued that since Talisman provided roads, helicopters, vehicles, and other infrastructure to the GoS as part of their oil development but did not successfully prevent their use in government offensives, they were essentially the GoS’s partner in crime.²⁸⁵ Although the plaintiffs indeed accused Talisman of having some direct involvement in the genocide, war crimes, and crimes against humanity, they mainly tried to prove that Talisman was aiding and abetting illegal government actions.

The legal criterion for aiding and abetting is based mainly on two elements: knowledge and intent. Essentially, a guilty defendant is one who knew of the crime at hand and acted in a way to contribute knowingly to the crime. In order to convict a defendant of aiding and abetting, the prosecution must prove the following:

- 1) that the principal violated international law;
- 2) that the defendant knew of the specific violation;

²⁸³ Ibid.

²⁸⁴ Ibid., 31.

²⁸⁵ Ibid.

- 3) that the defendant acted with the intent to assist that violation, that is, the defendant specifically directed his acts to assist in the specific violation;
- 4) that the defendant's acts had a substantial effect upon the success of the criminal venture; and
- 5) that the defendant was aware that the acts assisted the specific violation.²⁸⁶

Thus, this case set very high stakes by including allegations surrounding Talisman's intent and not simply their physical actions.

Over the course of five years, this complicated lawsuit evolved significantly but never actually came to trial. Throughout the prosecution of the lawsuit, the advantage seemed to shift back and forth between the plaintiffs and the defendants. The defendants gained the first advantage, when the judge ruled in favor of summary judgment rather than a trial by jury. According to standard legal procedure, when a suit is first filed, the assumption is that it will stand trial by a jury to determine whether the defendant is guilty. However, juries are only used in the courts in two capacities: finding facts and applying the law to facts. Juries cannot be held responsible to determine the law. Thus, if there is no issue of fact in a case, a judge can weigh the merits of the case alone and decide the outcome. This situation can occur when the counsel for the defense files for summary judgment. In response to such a motion, the judge reviews the case assuming that every allegation the plaintiffs have put forth is true, giving them every possible assumption and benefit of the doubt. Within this context, the judge decides if the law presents a fair chance for each party because sometimes the intricacies of the law would

²⁸⁶ Ibid., 29.

not allow one of the parties to win.²⁸⁷ In the suit against Talisman, the defendants successfully appealed for a ruling by summary judgment.

The plaintiffs, however, gained an advantage in March, 2002, when a memo referencing Talisman was submitted for evidence. The memo, coming from the Petroleum Security central office in Khartoum to the Heglig office, was labeled “very urgent” and read:

In accordance with directives of His Excellency the Minister of Energy and Mining and fulfilling the request of the Canadian Company...the armed forces will conduct cleaning up operations in all villages from Heglig to Pariang.²⁸⁸

Although this memo seemed very incriminating for the defendants, it is important to remember that Talisman neither sent the memo nor provided the alleged manpower for the attacks. Still, such physical evidence seemed to turn the case in favor of the plaintiffs.

After this evidence was submitted, the defense made several motions aimed at dismissing the case. These failed. The judge determined the case to be under United States jurisdiction, and thus liable to be tried in a U.S. court. Each of these decisions fed into the plaintiff’s advantage.

Regardless of these benefits, a greater advantage went to the defense, when the judge ruled that the case could not be tried as a class action suit. Instead, the plaintiffs could only include the specific grievances of certain victims, significantly lessening the damagers alleged against Talisman. In this March 2005 ruling, Judge Denise Cote said that had the suit been class action, the plaintiffs could not differentiate in their

²⁸⁷ For example, if a person is charged with homicide for shooting a pregnant woman and killing her unborn baby, but the law does not consider the unborn baby a person, the case could be dismissed by summary judgment because the law effectively prevents the plaintiff from winning.

²⁸⁸ Presbyterian Church of Sudan v. Talisman Energy, Inc. (Complaint), 18.

accusations between damages suffered from alleged government genocide and the heavy load of fighting from reactionary rebel forces in the area.²⁸⁹ Essentially, with so many plaintiffs who had suffered so greatly, they would be unable to specify a perpetrator in each act.

Along with the inability to plead the case as a class action suit, the plaintiffs faced numerous problems with evidence that reinforced the advantage for the defense. Although the federal rules of admissible evidence are extremely complicated, for the sake of this case, only one major point needs to be specified to understand the issue the plaintiffs faced with admissibility. In U.S. courts, evidence that is considered “hearsay” is inadmissible. Hearsay refers to any testimony given about something that happened to someone else, who is physically able to appear in the court on his or her own. Thus, any person who gives a statement to be used as evidence about their experience of suffering needs to have given a deposition, which can be attached to the complaint in a sworn affidavit, and then needs to appear in court to provide their version of the events for the judge or jury. This requirement made it impossible for the plaintiffs to use investigative reports such as the Harker Report, written by John Harker about his mission on behalf of the Canadian government and distributed in February of 2000. The plaintiffs filed the Report as evidence that Talisman had displaced people during its development of the region. The counsel for Talisman, however, successfully countered that this report was inadmissible, because John Harker did not actually live through the events he was

²⁸⁹ Harding, 11(A).

reporting. Instead, the Report was hearsay,²⁹⁰ reflecting collective testimony that Harker had composed while in the southern Sudan.²⁹¹

Additionally, the plaintiffs tried to use the Sudan Peace Act of 2002 to support their accusation that Talisman had aided and abetted genocide. This document, however, was ruled inadmissible in court because it was not factually supported: another problem of evidence for the plaintiffs that furthered the advantage towards the defense. The plaintiffs then submitted two testimonies to prove that Talisman had known about genocidal intentions of the government. First, a prominent member of the former Arakis security team testified that he had told Talisman that its entry into the country would lead to the successful exploitation of the oil regions, allowing oil revenue to help the GoS, so that “there would be no hope for the survival of the of the southern Christian community because they would not have resources to defend themselves.”²⁹² The second witness testified that Talisman was also aware of the GoS’s Islamization policy, attempting to convert people in the South. According to Judge Cote, these two testimonies indeed implied that Talisman knew something about the GoS operations; however, it did not necessarily know whether either piece of information referred to an attempt to eliminate or destroy a population—genocide—as opposed to just displacing them.²⁹³

The plaintiffs also accused Talisman of crimes against humanity, including deportation or forcible transfer, inhumane acts such as rape and torture, enslavement, and

²⁹⁰ Although this hearsay rule seems to ban a lot of the evidence presented by the plaintiff, there are some situations where it becomes admissible. The most common exception to the rule is the exception for “excited utterances.” This term refers to information that is blurted out by the witness during a time of extreme excitement or stress and is based on the idea that someone in an excited situation who accidentally confesses some sort of information will be less likely to lie than someone who could calmly pre-meditate. This exception could apply to people in Sudan who suffered during the Heglig attacks and might have given information about what happened to them while desperately wounded.

²⁹¹ Presbyterian Church of Sudan v. Talisman Energy, Inc. (Case), 12.

²⁹² Ibid.

²⁹³ Ibid.

murder as part of a large-scale attack on a population. In this instance, the plaintiffs failed to provide testimony from witnesses who had been enslaved, raped, or deported, or from witnesses testifying on behalf of a murder victim. All of the plaintiffs stated that they had been “forcibly displaced” from their homes in the concession regions but Judge Cote ruled that the plaintiffs provided no evidence that showed that this displacement was part of a widespread attack on the population. Rather, the evidence suggested that the major displacements perhaps occurred prior to Talisman’s entry; during the company’s tenure, people were displaced on a smaller scale and because of their proximity to the developing oil areas.²⁹⁴

Ultimately, even though it appeared clear that many civilians suffered these crimes, identifying the perpetrator proved difficult. The armed conflict included many parties other than the GoS.²⁹⁵ In southern Sudan, the hostilities had become so complex that it was difficult to discern whether the GoS had planned and executed a particular act of aggression. Southern factions fought among themselves, sometimes attacking civilians. Additionally, some militias from the North proclaimed themselves to be fighting an Islamic jihad in the South and engaged in fighting that did not fall under the formal command of the GoS. Moreover, the witnesses who testified to their victimization had suffered aerial attacks and therefore were unable to pinpoint their attackers or their attackers’ motivations. Thus, Judge Cote determined that the plaintiffs were unable to prove that the injuries incurred by civilians in the oil areas were directly related to armed conflict by the GoS security forces in conjunction with Talisman’s oil development.²⁹⁶

²⁹⁴ Ibid., 31.

²⁹⁵ Ibid.

²⁹⁶ Ibid., 38.

Finally, the suit against Talisman included an accusation that the company had given substantial assistance to the GoS, which allowed it to propagate its war against the South. The substantial assistance included:

- 1) upgrading the Heglig and Unity airstrips; 2) designating areas “south of the river” in Block 4 for oil exploration; 3) providing financial assistance to the Government through the payment of royalties; 4) giving general logistical support to the Sudanese military; and 5) various other acts.²⁹⁷

According to Judge Cote, while many of these details had been proven by evidence admissible in the U.S. courts, the acts were not necessarily criminal. For example, the improvement of the Heglig and Unity airstrips was a necessary step for Talisman to be able to import the necessary equipment to build their oil infrastructure. As far as the second point, the judge noted that Talisman needed to designate new areas for drilling when developing an expanding oil field. Finally, paying royalties to the GoS was part of the contractual agreement between the host country and the operating company and should be considered more law-abiding than criminal.

Based on the evidence presented by the plaintiffs, Judge Cote dismissed the case in September of 2006, finding that in each of the accusations, the evidence did not completely implicate Talisman in aiding and abetting genocide, war crimes, or crimes against humanity. In her decision, Cote said “The plaintiffs have failed to locate admissible evidence that Talisman has violated international law. [They] repeatedly describe ‘Talisman’ as having done this or that, when the examination of the sources to which they refer reveals that it is some other entity of an employee of some other

²⁹⁷ Ibid., 33.

company that acted.”²⁹⁸ Essentially, Judge Cote dismissed the case on grounds of lack of admissible evidence overall, as well as more specific weaknesses in each of the charges.

Although these acts were not necessary criminal, Judge Cote recognized the plaintiff’s point that the acts led to a situation where civilians in the South suffered significantly. Essentially, the plaintiffs argued that Talisman should have recognized that the GoS would direct its oil profits to making war in the South; the company should have stayed away from the area. Talisman should have understood that when the GoS explained that they would move the populations away from the oil fields to allow for development that, given their history of human rights violations, they would likely not be moving the people in a fair or non-violent manner. As Judge Cote commented, her decision “does not reflect a finding that the plaintiffs and their neighbors did not suffer great harms, or that the Republic of Sudan did not engage in gross violations and international law and the norms of civilized behavior.”²⁹⁹ That being said, the plaintiffs failed to present sufficient evidence that Talisman was directly involved in an attack on any of the plaintiffs, nor could they prove that Talisman had an illicit intent in their role in the oil development in Sudan.³⁰⁰

Publicity and Pressures Outside the Lawsuit

In a case clearly implicating transnational companies in the abuses that occurred surrounding the oil development in Sudan, why would Talisman be the only company listed with the GoS as a defendant? The previous chapter reviews that, although Talisman had a significant presence in Blocks 1,2, and 4 as a member of the Greater Nile

²⁹⁸ Neumeister, 1.

²⁹⁹ Ibid.

³⁰⁰ Presbyterian Church of Sudan v. Talisman Energy, Inc. (Case), 33.

Petroleum Operating Company, it represented only one member of this group. In fact, both the CNPC of China (40%) and Petronas of Malaysia (30%) had greater interests in the conglomerate than Talisman.³⁰¹ The pressure to bring the guilt of any of these parties to light, however, likely depended on the shareholders who held them accountable. Since the Alien Tort Statute is an American law and Talisman was the only company in the conglomerate earning money in the United States market, it was susceptible to negative publicity from the North American media that would not affect the other companies. Indeed, since neither CNPC nor Petronas earned money in U.S. markets, they could declare themselves undeterred by legislature set forth by the U.S. Treasury, which prevented companies with interests in Sudan from making money on the New York Stock Exchange and thus prevented American dollars from entering a country against which the United States had sanctions.³⁰²

The case against Talisman clearly evolved out of a series of events much larger than just Talisman's own actions in Sudan. In the 1990s, public attention and international law was focusing on genocide and human rights violations in light of situations in the former Yugoslavia and Rwanda. The Presbyterian Church, which had long been involved in providing aid for in the Southern Sudan, was continuing to build on its tenets of action in the face of conflict. In 1997, the U.S. established economic sanctions against Sudan.³⁰³ Casey D'Avino had received international success as class counsel fighting for reparations for Holocaust victims. The American Anti-Slavery Group, a non-profit organization for which D'Avino was a member of the board of

³⁰¹ GNPOC, Vendor Database Management System and Mission Statement, 2005, available from <http://www.gnpoc.com/asp/vendor.asp?glink=GL003&plink=PL025>; Internet; accessed 28 March 2007.

³⁰² *China's Involvement in Sudan*, 3,6 and Patey, 35.

³⁰³ What You Need to Know About Sanctions in Sudan.

trustees, had been exhibiting a specific focus on Sudan and the modern slavery there. In 2000, the CNPC was prevented from making an IPO in the New York Stock Exchange because of the possible transfer of American investment money to Chinese interests in Sudan. Finally, the Sudan Peace Act had begun to move through Congress.³⁰⁴

Even as these other factors developed, the Alien Tort Statute provided a rare regulation of corporate responsibility through the publicity of suits filed under the act. This case against Talisman was no different. As a publicly-held oil company, Talisman was susceptible to publicity surrounding its actions in Sudan. And publicity there was. The claim against Talisman was filed on November 8, 2001 and within the week, there were ten different articles written in Canadian papers surrounding the issue. Further waves of publicity came with each action of the trial: when the memo was released as evidence, when the case was determined to fall under United States jurisdiction, when the first appeal for dismissal was rejected, when the Alien Tort Claims Act was revealed as the incriminating statute, when the suit was determined to not be class action, when the second dismissal appeal was rejected, and finally, when the case was dismissed. Over the course of the five years of law suit, eighty-eight articles appeared in Canadian papers.³⁰⁵

Interestingly, although the case was filed in a U.S. court, the newspaper attention came almost completely from the Canadian press. Regardless of the placement of the case, Talisman probably garnered significantly more Canadian attention because it was the country's largest petroleum producer, thus the average Canadian likely felt connected

³⁰⁴ "Bush signs Sudan act, Imposing ultimatum."

³⁰⁵ Lexis Nexis Academic Database, Accessed through Duke University. World News- North American search.

to the company.³⁰⁶ Also, Talisman's largest shareholders were split between Canadian and American institutions, with the Canadian companies holding many more shares. The companies holding major investments in Talisman were mostly money management companies, including investment and venture capitalist groups, with which smaller Canadian businesses and individual investors would have also felt a connection.³⁰⁷

The articles chronicling the Talisman case in Canadian newspapers contained a veritable he said-she said account of the trial proceedings. While the papers reported the striking aspects of the plaintiff's case, including repeating statistics about displacement and murder at the hands of the GoS and potentially Talisman, they also included Talisman's perspective. Most of the articles cited a representative of the company declaring that Talisman was a "force for good", that the situation in the Sudan was simply tragic, and that Talisman was innocent.³⁰⁸ For example, even an article detailing the publication of the memo ordering the clearing of the Heglig oilfields, allegedly the "smoking gun" in the plaintiff's bag of evidence, quoted a Talisman spokesman as saying "We can emphatically say that the suggestions in the alleged memo run contrary to everything that Talisman practices and believes in Sudan."³⁰⁹ Although the company was repeatedly able to voice their perspective to the media, Talisman still felt the need to sell their Sudanese investment.

³⁰⁶ Chris Varcoe, "Talisman face Sudan lawsuit: U.S. anti-slavery group cites abuse of human rights," *Calgary Herald* (Alberta, Canada). 8 November 2001, 6(A).

³⁰⁷ Talisman Energy: Ownership Profile.

³⁰⁸ Varcoe, 6(A).

³⁰⁹ Alden, 12.

Conclusion

Although neither the Sudan Peace Act nor the lawsuit alone forced Talisman to withdraw from Sudan, they nonetheless sent a clear message to the company: get out. While the lawsuit proceedings were swaying advantage back and forth between the plaintiffs and the defense, other critics were more constant. Throughout the lawsuit, activism from NGOs such as the American Anti-Slavery Group, the Presbyterian Church, and later Black churches throughout the United States were unfaltering in their mission towards divestment in Sudan. Talisman chose to heed the warning signs and leave on its own terms before international pressure climaxed, forcing them to suffer losses in an abrupt departure. In March of 2003, Talisman sold its holdings—25% of the largest Sudanese oil project—to the Indian company ONGC Videsh, Ltd. for approximately \$1.13 billion.³¹⁰

³¹⁰ Harding, 11(A).

Conclusion

“If Talisman were to leave, would the oil stop flowing? If the oil were to stop flowing, would this force the government to change?”³¹¹

-A Sudanese academic from Khartoum

Despite Talisman’s departure in March of 2003, the oil development in Sudan continued to prosper. The other members of the Greater Nile Petroleum Operating Company—CNPC, Petronas, Sudapet, and most-recently, ONGC—worked in an industry whose profitability transformed the economy of northern Sudan. Indeed, in the years following Talisman’s divestment, the area around Khartoum traded in its image of isolated, dusty, and underdeveloped for a trendy new look. Now, rich young Sudanese wear designer outfits and drive BMWs in a show of wealth similar to that of twenty-something-year-olds in the United States.³¹²

As of 2006, Sudan’s oil industry was exporting 512,000 barrels of oil a day, earning for the GoS the billion-dollar revenues that have facilitated its jump from destitution to Dior. The increase in oil wealth has also sparked a prosperous real-estate market, another source of profit for the northern government. As foreign investors bought land in the country, the Khartoum skyline became dotted with high rise buildings that reflect Sudan’s new luxury. For example, the Libyan government recently finished construction on a Nile-side hotel featuring an indoor pool, espresso bar, spa, and squash courts. Additionally, a Turkish company built a strip mall outside the city.³¹³

While obviously pleased with its country’s economic progress, the GoS still had more in mind. Indeed, the northern government recognized that its ongoing war with

³¹¹ *Talisman Corporate Social Responsibility report 2000*, 12.

³¹² Jeffrey Gettleman, “War in Sudan? Not Where the Oil Wealth Flows,” *The Economist* (24 October 2006).

³¹³ *Ibid.*

southern rebels prevented it from receiving the unrestricted interests of international businesses. For this reason, GoS President Omar al-Bashir and SPLA leader John Garang sought a peace between their two regions. The second civil war finally ended in January, 2005. The peace agreement stipulated a sharing of power between the two leaders which included John Garang's appointment as vice-president, distribution of oil revenue to the South, and the inclusion of southerners in Sudan's armed forces. Lastly, the treaty included a clause granting the southern Sudan the right to secede after an interim six-year period.³¹⁴

Although this agreement established peace within the country and allowed the North to benefit from oil profit, the economic boom did not reach its full potential. Despite GoS expectations, the United States did not rescind its sanctions upon the signing of the peace agreement. Instead, the U.S. maintained its sanctions because of the conflict that had broken out in Darfur. By 2004, the tenth anniversary of the Rwandan genocide, Darfur faced similar accusations. Ultimately, the conflict in Darfur reflected the previous pattern of northern exploitation of peripheral regions. Thus, while the oil exportation continued to earn billions of dollars for the country, Sudan's per capita income hovered around \$640, a reflection of the thousands of persecuted and impoverished people living in Darfur.³¹⁵

Sudan's large but undistributed prosperity in spite of U.S. sanctions and the crisis in Darfur demonstrates the role that foreign oil companies have played in underdeveloped countries. Oil companies entered countries looking solely to make profits. They did not take as their charge mandating resolution of cultural, political, or social problems.

³¹⁴ Gwynne Dyer, "Peace Deal in Sudan May Open Pandora's Box," *Toronto Star*, 17 January 2005, 7(A).

³¹⁵ Gettlemen.

Within those countries, companies nonetheless provided significant economic effects, sometimes even exacerbating inequalities. Over the decades, these companies have acted as either as exploiters or benefactors of their host countries or, in the case of Sudan, both. From the description of present-day life in Khartoum, it is obvious that the foreign oil has improved the lifestyle in the northern region greatly. Alternatively, the same oil development cost millions of southerners their homes and lives as GoS security forces displaced them from their land on the oil reserves. Overall, these oil companies made a significant impact through their exacerbation of the Sudanese political instability, and thus of the instability in the entire northeast Africa region, while also receiving accusations of human rights abuses. Despite these accusations, international organizations and activist groups monitoring human rights were unable to exert measurable pressure on these large-scale corporations.

The Talisman example showed just how difficult it was for any organization to control an oil company's actions. Even though Talisman was susceptible to shareholder pressure as a publicly-held company, forcing its divestment required significant effort from several groups in addition to its shareholders. Indeed, the divestment campaign against Talisman consisted of a unique and far-reaching army of activists including members of NGOs, religious groups, and legislatures. These activists were then able to utilize the Alien Tort Statute to pressure the company. Indeed, Talisman's divestment would not have occurred without both the specific contribution of each party and the collective power they wielded together combined with the availability of the American law.

The complicated interaction of NGOs, religious groups, and other socially-conscious organizations required to pressure Talisman's divestment raise several questions about the future of oil industry regulation. First and foremost, how effective was this method of demanding corporate responsibility since it both required large-scale involvement and applied only to publicly-held businesses? What other ways could these same activists exert a more effective influence over more companies? Perhaps, instead of working against publicly-held companies by forcing divestment, investors and activists should take advantage of their controversial positions and include these companies in their goals. By following a well-articulated set of ethical standards and clear-cut rules for operating in regions of political instability established by investors, these public oil companies could provide examples for their peer companies. Indeed, even one company should be able to provide a measurable amount of regulation based on the large-scale integration of oil companies within conglomerates and consortia. Additionally, forming connections between social activists and big businesses could lead to more transparent and ethical business practices.

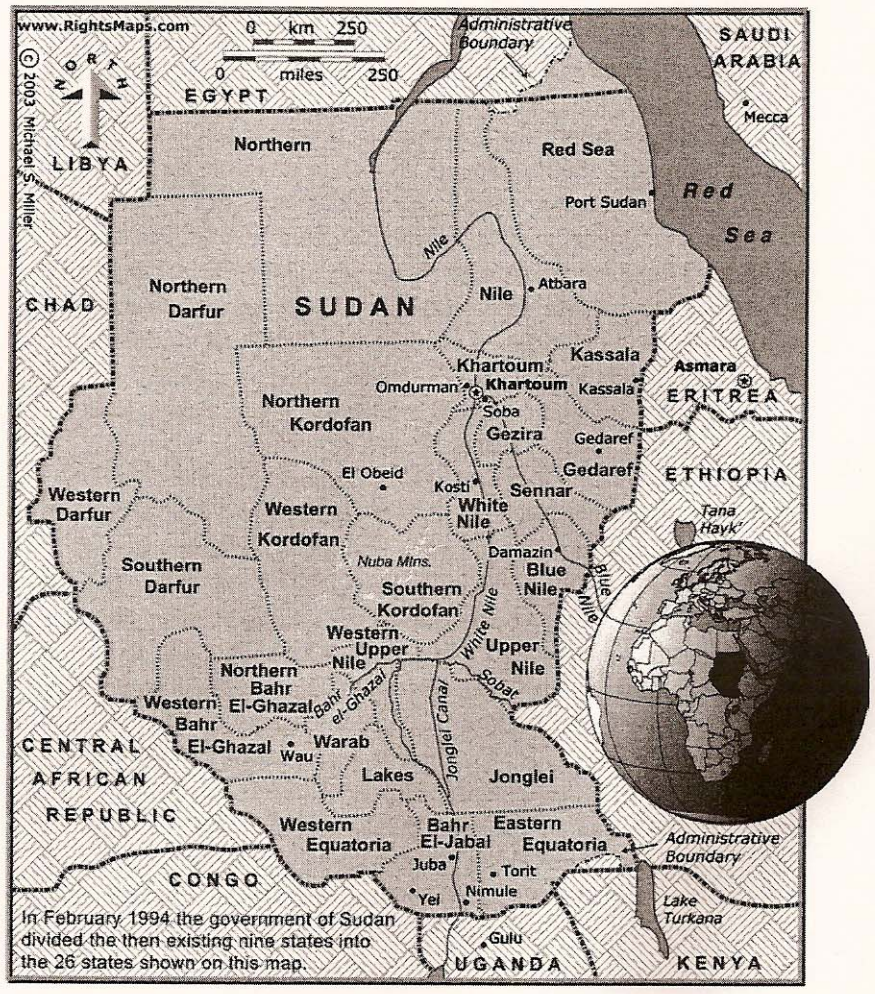
As Sudanese oil development, and oil development across the world, evolve, the regulation of the international industry continues to be important. Since oil has become such an integral part of daily lives, consumers need to hold the companies they patronize accountable for ethical practices. In their evaluations of a company's practice, however, consumers must not be fooled by the colorful images of previously-underdeveloped cities that have been revitalized by oil's economic booms. Such images do not provide enough evidence to validate a company's operations in a host country. Rather, they might be illustrating a one-sided story. Indeed, Sudan's oil development provides perfect support

for such skepticism. As the GNPOC-constructed pipeline exports hundreds of thousands of barrels daily, consumers purchasing Sudanese oil must remember that for every prospering Khartoum, there is a devastated Heglig.

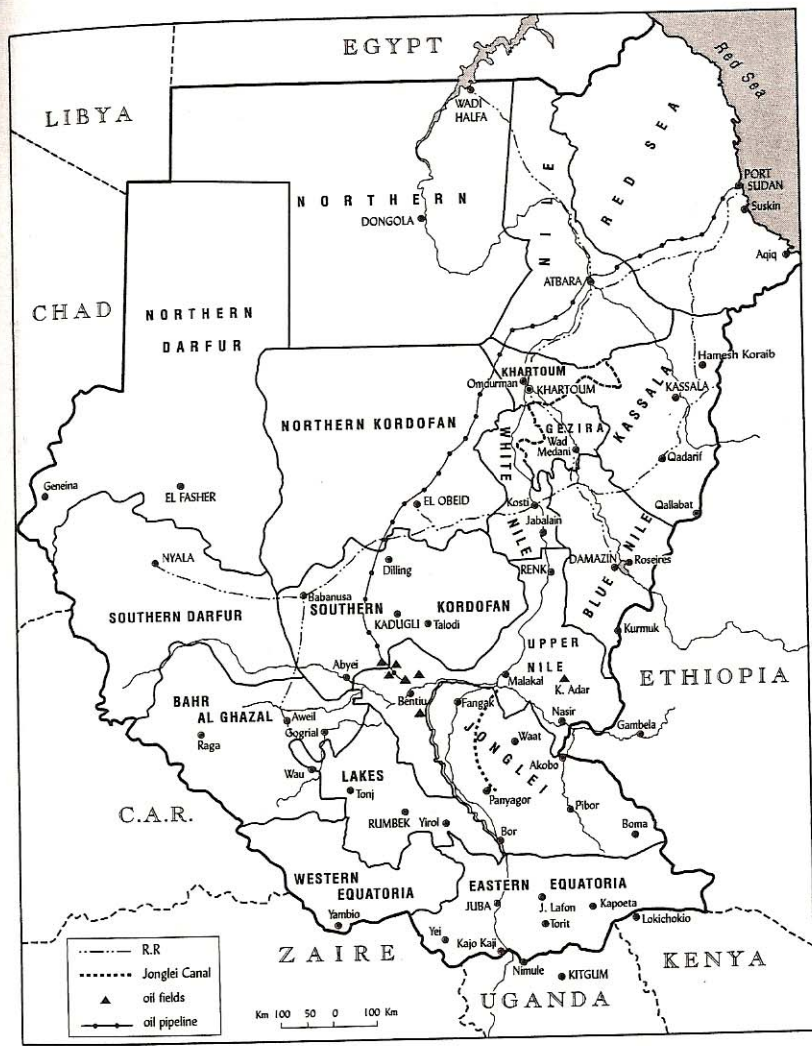
Appendix A:
Maps

Map 1

MAP A: SUDAN



Map 2

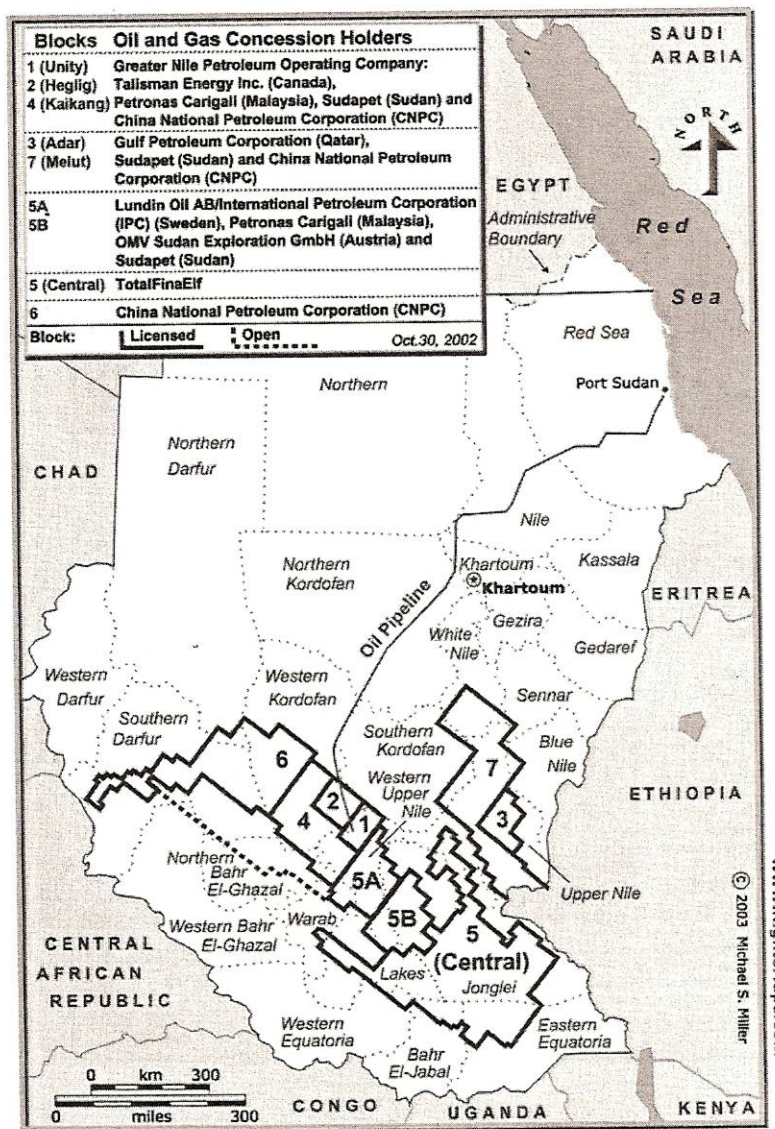


Map 1: The Sudan in 1983
(showing oil pipeline opened in 1999)

Map 3

Glossaries

MAP B: OIL CONCESSIONS IN CENTRAL AND SOUTHERN SUDAN AS OF AUGUST 2002



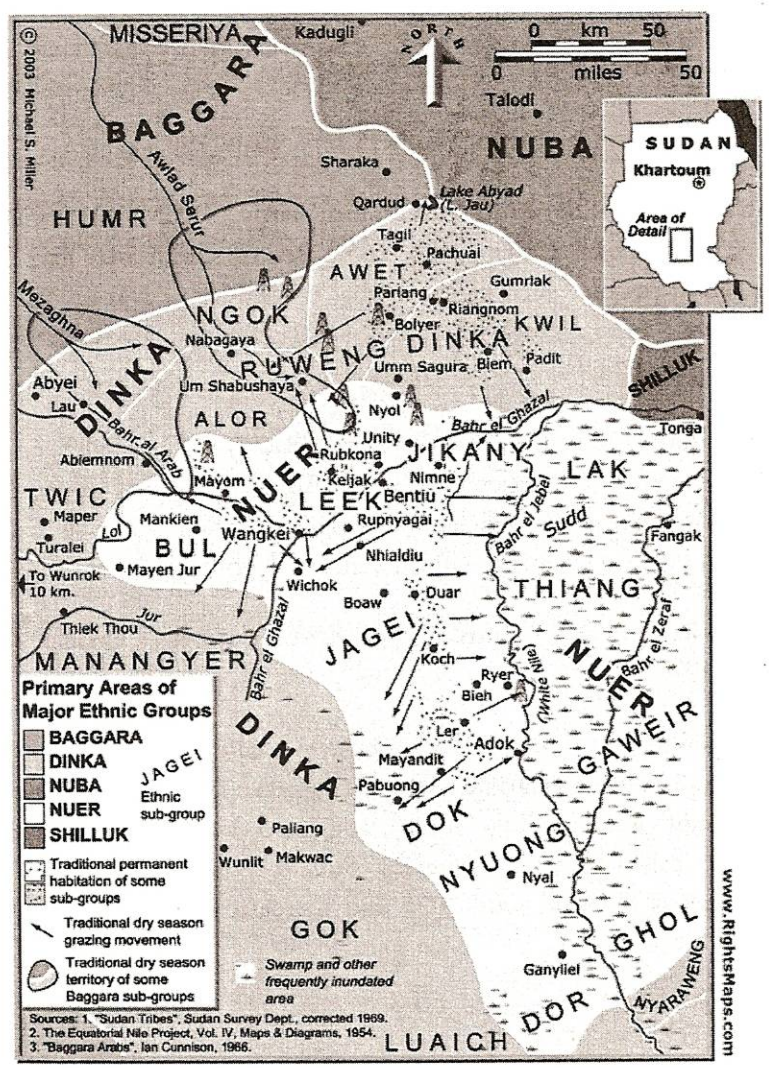
Map 4



³¹⁶ "Oil in Sudan" Southern Sudanese Friends International
 <<http://southsudanfriends.org/issues/oil000614.html>>.

Map 5

MAP D: ETHNIC GEOGRAPHY IN WESTERN UPPER NILE



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