

**Final evaluation:**

Support in reinforcing diplomatic capacities of the Government of the Republic of South Sudan provided by Independent Diplomat, an international non-profit organization

**Draft final report**

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# Executive Summary

## Background

This report evaluates the diplomatic advice given to the Government of South Sudan by Independent Diplomat, an international group of former diplomats, from November 2011 to October 2013. The project was financed by the Swiss Federal Department of Foreign Affairs. The advice focused upon the negotiations of post-secession issues with the Government of Sudan and relations with the UN peacekeeping mission in South Sudan. Towards the end of the mandate, relations with neighboring countries, the European Union and the United States, as well as voting in international institutions were touched upon. Finally, advice on institutional reforms was given to the Ministry of Foreign Affairs of South Sudan.

## Relevance

The Government of South Sudan was unprepared to face the extraordinary diplomatic challenges based upon the history of its independence. Although friendly governments dispatched a few advisors to work as sherpas in negotiations and organized crash courses in diplomacy, this was not enough. More intense and sustained diplomatic advice was called for.

The Swiss-funded ID project met that need. In that sense, it was highly urgent and relevant, a view confirmed both by South Sudanese high officials and foreign observers. The project was also of high priority for the international community, which gave strong support in state-building to the nascent nation. Finally, the ID project also fit well into the mandate of the Human Security Division of Swiss Foreign Affairs as an emergency intervention in a fragile new State going through a post-war peace consolidation process.

## The quality of project design

Project preparation documents are not sufficiently detailed and analytical to reduce the risks of weak compliance or failure. They do not give evidence of specific agreements with the South Sudanese Ministry of Foreign Affairs and other domestic counterparts on the scope and modalities of project implementation. Specific elements which do not reflect good practice in project design are: a) the selection of Independent Diplomat as advisor is not sufficiently justified and no evidence indicates that South Sudanese counterparts approved of ID's appointment; b) the initial terms of reference for the assignment constitute an ambitious menu of operational objectives and do not reflect a common assessment by South Sudan and the Human Security Division of the most urgent tasks to be assigned to Independent Diplomat; c) no mention is made of diplomatic advice and technical assistance to the Ministry of Foreign Affairs, financed by other external sources; and d) a baseline should have been established of the Ministry of Foreign Affairs' organizational efficiency and its potential, in terms of trained staff, infrastructure and financing. Other units of the Government of South Sudan involved in international negotiations should have been included in this baseline analysis.

## **The demand for Independent Diplomat's services**

Shifting demand. The actual demand for Independent Diplomat's services was different from expectations in October 2011. The advisor was to work in the Ministry of Foreign Affairs and its mandate was to support the Ministry in all aspects of its potential agenda in foreign relations. Yet, the Ministry did not want to work with Independent Diplomat for the first 16 months, except for two initial tasks. Independent Diplomat's proposed organizational reform of the Ministry, which was prepared early in the mandate, was not appreciated. The advisor then found plenty of work with the chief negotiator for the post-secession negotiations with Sudan, besides advising the country's Vice-President periodically on relations with the UN peacekeeping mission. This situation changed in early 2013, when the top officials of Ministry started to employ Independent Diplomat for many aspects of the Ministry's traditional regional and global agenda. At that point in time, the Ministry was in a better position than before to become active, as the negotiations of the North-South agenda had found a partial conclusion with the September 2012 Cooperation Agreements and their aftermath: an active first phase of implementing the Agreements as well as the unsuccessful search for solutions to the unresolved Abyei territorial integration and other border issues. Independent Diplomat worked on relations with the UN peacekeeping mission occasionally during the two-year mandate.

Other sources of advice and training. Other external sources of advice were available to the negotiators in the post-secession negotiations with Sudan. Also squattered and quick opportunities for training of diplomats were available, although these crash courses could not replace a longer-term capacity development scheme, building on a group of tools, which is the only way to make a difference in strengthening capacities of public institutions.

The power of internal lobbies. It was wrong to expect, as some external observers did, that Independent Diplomat's advice could be a counterweight to powerful internal lobbies and, therefore, be instrumental in avoiding "diplomatic blunders" like the oil production stop, the Heglig incursions, support to allied rebels in Sudan or harassment and attacks by South Sudan armed forces of staff and military personnel of the UN mission. The Human Security Division avoided this mistake in the design of the project by limiting Independent Diplomat's advice to "diplomatic aspects" of decision-making on major questions of stability and security of South Sudan and the protection of civilians in the case of the UN peacekeeping mission.

## **The quality of ID's diplomatic advice**

Independent Diplomat's experts were not able to prevent South Sudanese negotiators from making some disruptive decisions which increased the risk of war with Sudan. But in the post-secession negotiations with Sudan and in South Sudan's relations with the UN peacekeeping mission Independent Diplomat's experts had an important function in helping South Sudan's negotiators and diplomats to understand the views of the international community and of their counterparts in negotiations, and to take into account historical and political facts as well as legal considerations in their diplomatic decisions. On the same topics Independent Diplomat formulated and then prepared the presentation of South Sudan's positions in international forums, and prepared talking points or statements for briefings of the diplomatic corps and the press. Independent Diplomat also did more standard diplomatic work for the Ministry of Foreign Affairs preparing diplomatic visits, voting positions in international forums, and interventions in meetings of regional and global organisations. Finally, experts of Independent Diplomat also made two largely unsuccessful proposals to improve the Government of South Sudan's decision-making in negotiations and outreach of its diplomacy.

These services of the diplomatic advisors are highly appreciated by South Sudanese counterparts who are aware that the bridges, which Independent Diplomat built with the international community, reinforced South Sudan's international standing. They also recognize that nobody else in South Sudan was able to do this work at a critical juncture in its history. This recognition has much to do with the formal and substantive quality of the advisors' texts: they are short, often written like talking points, and are logically structured and therefore easily readable. At the same time they are usually based upon comprehensive diplomatic intelligence, well-researched historical and political facts and accurate legal considerations. Statements often comprise of an argumentative chain which gives a convincing rationale for South Sudan's position.

### **The Human Security Division as project manager and supervisor**

The Human Security Division's supervision of the project was necessarily limited by the fact that Independent Diplomat provided services to the Government of South Sudan which, to be useful and acceptable, had to be kept secret, even to the funding agency. The solution which was found was adequate, namely to ask the diplomatic advisors to write periodic reports to the Human Security Division describing the political and institutional context relevant for their work, giving an overview of their assignments in the period, indicating potential tasks in the next period and - only in two annual reports - making an evaluation of results of their interventions. As far as we know, the representatives of the Human Security Division did not discuss these reports with Independent Diplomat and did not periodically talk to project counterparts in South Sudan on the usefulness of the project, difficulties in its implementation and possible reforms to better attain the initial project objectives.

### **Outputs**

#### **Independent Diplomat: Diplomatic texts produced**

Topic	Background + policy advice	Statements/letters talking points	Diplomatic intelligence	Diplomatic corps + press	All texts
RS/RSS negotiations	5	5	9	2	21
*Heglig	-	5	2	1	8
*Abyei + borders	1	5	1	1	8
UNMISS	3	4	1	1	9
Regional + global	7	6	2	-	15
Capacity development	3	-	1	1	5
All texts	19	25	16	6	66

### **Outcomes**

Lasting results could not be expected from ID's advice which consisted in taking over urgent diplomatic tasks from the Government of South Sudan for which, a few months into independence, nobody in the Government had the necessary professional skills and experience. While an immediate effect could be felt on international relations and negotiations of South Sudan, the effect on the competency of South Sudanese diplomats, and the future excellence of South Sudan's diplomacy was minor at best. Taking the different areas of ID's engagement, outcomes are identified as follows:

Post-secession negotiations with Sudan. Independent Diplomat contributed substantially to South Sudan's overcoming its international diplomatic deficit after two disruptive decisions in early 2012: the

oil production stop and the Heglig incursions. Independent Diplomat was instrumental in the Government's successful lobbying for comprehensive peace and cooperation agreements, and then for an early implementation of these agreements after September 2012. Finally, the advisors contributed to keep, for some time, conflictive issues on the international agenda - territorial status of Abyei, the attribution of disputed and claimed areas - which could not be resolved in the peace and cooperation agreements.

Heglig. Through its extensive briefings on the international condemnation of South Sudan's two incursions, Independent Diplomat contributed to the decision of South Sudan to withdraw its troupes from Heglig and helped to rectify South Sudan's bad image by providing a convincing rationale for the Heglig incursions.

Abyei. ID argued eloquently South Sudan's case for the inclusion of the Abyei in the peace and cooperation agreements and then, when the inclusion failed, the case for an early referendum. Such an outcome was blocked. The achievement in this case is that the Abyei referendum is still on the international agenda, waiting to be decided upon.

Relations with the UN peacekeeping mission. Through its briefings to South Sudan officials on new-style UN peace missions and a field study on the management of the UN mission, Independent Diplomat helped South Sudan to have a constructive dialogue with UN officials. When relations with the UN mission became strained (attacks of South Sudan's armed forces on civilians and on UN soldiers and staff), Independent Diplomat helped in keeping South Sudan's international image from deteriorating by pointing to a) a series of laws and institutional measures of South Sudan to improve its human rights record as well as b) legal action taken against perpetrators.

Regional cooperation and global diplomacy. The diplomatic advisors' comprehensive documentations prepared for diplomatic visits to other governments (or a regional organization, in one case) might serve now as templates for other international visits. The same might be true for voting options prepared by Independent Diplomat (Palestine's status as Observer State of the UN, position on the International Criminal Court).

Diplomatic capacity development. Independent Diplomat was instrumental in accelerating the creation of South Sudanese embassies and missions, and facilitating more frequent and better organized ministerial briefings of the diplomatic corps and the press.

## **Lessons learned**

Project design. In diplomatic advice projects, even if they are decided in a fragile country environment, project design has to be paid particular attention and an agreement has to be reached with domestic counterpart agencies beforehand on the choice of advisors, the modalities and scope of advice, and the inclusion of capacity development elements. The context and the analysis which justify a specific project design have to be reflected in project documents.

Demand for diplomatic services. The lesson to be learned from the sudden shifts in demand for diplomatic services is the same we already mentioned in project design, namely the need to study the demand for diplomatic services thoroughly beforehand and to ensure ownership by the domestic partner agencies. It is essential also that the provider of diplomatic advice is accepted by local counterparts not only as highly professional but also as independent and exclusively loyal to the receiving country. In

addition it is crucial to be aware of the high sensitivity to external interference in local policy-making in post-independence situations because of the pride to be in charge of domestic high officials and the power of domestic lobbies. This could be observed when the Ministry of Foreign Affairs rejected Independent Diplomat's advice on organisational reform and designated a mid-level counterpart in the Ministry. It was also evident in the exclusion of Independent Diplomat from important decisions in the North-South negotiations.

It is important also to take account of other sources of cooperation in the same field to avoid inefficiency and competition in advice. It is not possible for an emerging domestic administration to manage and supervise external aid. This is why the involved external agencies have to make sure that their interventions reinforce each other or are complementary. This is an essential task of the Human Security Division at the time of project preparation.

Quality of Independent Diplomat's advice. The lessons to be learnt when considering the scope and quality of the diplomatic advisors' work are three: a) it is impossible to change the main course of negotiations through external diplomatic advice. For major decisions, advisors are not listened to, in the South Sudanese context such decisions are based to a large extent on the views of groups and personalities wielding informal power or on spontaneous acts of field commanders (as happened allegedly in the first Heglig incursion); b) diplomatic advice is appreciated to better inform the country's positions and present these to the international community, if the advice is of high quality and if the advisor is considered fully loyal to the country's cause; c) this means that the selection of the right advisors is the single most important decision in such a case, both in terms of their diplomatic professionalism as well as in terms of the trust they are able to obtain from the country's officials for whom they will work.

The Human Secrutuy Division as project manager and supervisor. Even in projects where the the main output is diplomatic advice, which is confidential and is not made available to the donor agency, it is useful to supervise actively such a project in the field, based upon the consultant's periodic reports and periodic talks both with the consultant as well as with concerned domestic project agencies.

Project outcomes. The way the ID project was designed, its outcomes could not go much beyond immediate effects upon the negotiations with Sudan, improvements in relations with UNMISS, some neighboring countries, and some international organizations. A sound position of South Sudan in two votes in international organizations can also be counted as an outcome. In contrast, the impact on the organization of the Ministry of Foreign Affairs and the skills of its staff was minimal.

## **Options for a future project**

Yet, more lasting effects on institutional capacities and skills of diplomats are highly desirable, even in projects which give priority to meeting emergency needs in a post-independence situation. The first way to achieve those is to associate diplomats of the recipient country to the diplomatic advice provided by guiding them in the writing of diplomatic notes. This implies normally that they are integrated in the advisory team and that the advisors have well defined tasks as coaches, for which they have to be made accountable. A component which could be added is a training plan and scholarships for diplomatic staff, including academic courses in African or non-regional universities. Organizational changes and a higher efficiency of management are also necessary ingredients. Although complex and requiring much time, this is the best way to support partner countries in developing sustained institutional capacities.

# Main Report

## A. Background and project relevance

### *Mandate and mission dates*

1. In July 2014, the Human Security Division (HSD) of the Federal Department of Foreign Affairs gave a mandate to Matthias Meyer to evaluate ex post the diplomatic advice of Independent Diplomat (ID), provided to the Government of the Republic of South Sudan and its Ministry of Foreign Affairs and International Cooperation (MFAIC) from November 2011 to October 2013.<sup>1</sup> The evaluation mission took place from 29 September to 10 October 2014 and included stays in Addis Ababa, Juba and Nairobi. The writing of the evaluation report was delayed because of concurrent mandates and private non-planable emergencies.

### *Country context*

2. After the independence of Sudan in 1956, the country was thrown into an endemic civil strife for 39 years, only interrupted by eleven years of peace. The conflict involved mostly the Government of Sudan and the Sudan People's Liberation Movement (SPLM), the political movement of the rebel forces of Southern Sudan, the Sudan People's Liberation Army (SPLA). Only after 50 years of independence and several years of international mediation a Comprehensive Peace Agreement (CPA) was concluded in 2005. The CPA included the option for the population of what had become - through the CPA - the autonomous region of the ten southern states of Sudan to vote on their secession from Sudan. A regional government was formed, the Government of Southern Sudan. It became the nucleus and training ground for the future government of independent South Sudan. In January 2011 the referendum option was used, South Sudan became independent in July 2011. Yet many state succession issues, supposed to have been settled in the interim, remained unresolved, creating a permanent threat for the two neighbouring States to relapse into war. These unsettled problems are described below.

3. Oil transit. This included, in the first place, the price to be paid by the new Government of the Republic of South Sudan (GRSS) to transport Southern oil through the pipeline through the North to the refinery in Sudan or to Port Sudan on the Red Sea. Oil production was shut down by South Sudan in January 2012 after negotiations on oil transit fees and compensation payments to Sudan for lost revenues broke down. After resumption of oil production in April 2013, oil exports represented 99% of South Sudan's exports and funded about 83% of GRSS' fiscal revenues.<sup>2</sup> This shows the vital importance of finding a fair negotiated solution to oil transit.

4. A number of other post-secession issues, besides oil transit, had to be solved:

- Borders. The demarcation of the uncontested parts of the long border between the two States, based upon the demarcation (as far as it existed on maps) at the time of independence of Sudan in January 1956. Borders had to be secured and monitored, a mechanism had to be created to react and sanction

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<sup>1</sup> Matthias Meyer is owner of PRAXIMONDO, practitioners for development, environment and trade in Carouge, Switzerland. Independent Diplomat is an international NGO specialized in capacity-building and advice in diplomacy with offices in New York, London, Brussels and Washington DC.

<sup>2</sup> These figures are for fiscal year 2013/2014 (July 2013 to June 2014): Republic of South Sudan, 2014 Article IV Consultation – Staff Report, International Monetary Fund, Washington D.C.: December 2014.

border violations. Finally, border posts had to be established on a number of transnational corridors for the free passage of people and goods.

- Disputed territories. The attribution of several territories in the border zone which were disputed by both countries. The most controversial one was *Abyei*, where a referendum on statehood should have been held in 2011, according to a provision in the CPA of 2005, and a UN peacekeeping force was present from 2011 on (UN Interim Security Force for Abyei, UNIFSA). The reasons for controversy were both the ethnic composition of Abyei's population as well as oil resources. The other disputed areas are the *Kafia Kingi enclave* at the far western border (Western Bahr El Ghazal), the *Fourteen Mile area or Munro Wheatley Strip*, between Northern Bahr El Gazal in South Sudan and East Darfur in the North, and three towns or areas on the eastern part of the North-South border.<sup>3</sup>
- A claimed territory. But another town and territory on the border was contentious as well: *Heglig*, called Panthou by South Sudan, adjacent to Abyei, rich in oil facilities and populated mainly by Dinka. It was separated from Abyei through an arbitration by the Permanent Court of Arbitration in The Hague in 2009. South Sudan argues that Heglig was south of the border according to the maps of 1956, the time of independence of Sudan. It was transferred to a northern State by the Government of Sudan, only when it became a realistic prospect that the South would secede and oil production sites would have to be attributed to one or the other State.
- Status of nationals. The status and the rights of nationals residing in the other State had to be determined. The initial policy of Sudan after the secession in 2011 was to strip of their Sudanese nationality the millions of South Sudanese who lived in the North because they had fled the pre-independence civil war in the South, had looked for work or had migrated for other reasons. This led to a massive exodus to South Sudan immediately after independence. A transition period for this migratory movement was agreed (valid also for Sudanese nationals living in South Sudan), ending on 8 April 2012. Nothing had been agreed on the rights of residents from the other State after that date.
- Pension rights. Public servants of Sudan before the secession were not automatically eligible for pensions or not paid pensions if they lived or became public servants in the other State. This affected mainly public servants of South Sudanese origin.
- Division of public assets and debt. The division between the two states of public assets and debt has to be decided. This concerned particularly a considerable external debt and debt arrears (about USD 40 billion in 2011), public institutions and their infrastructure and other assets and debts, State archives and cultural heritage property.
- Cooperation between the two central banks. To strengthen the economy of both countries, a close cooperation was necessary on monetary and exchange rate policy, banking supervision, a smooth payment system between the two countries, and the protection of rights of commercial banks in both countries.
- Trade. The two countries had to find a trade regime which came as close as possible to the free trade regime which existed inside of Sudan before secession. This implied for instance agreeing on preferential tariffs, taking into account tariff regimes of regional economic communities, to which both belong, and efficient joint Customs management.

5. An important issue interfered with the North-South negotiations which is - strictly speaking - not part of the post-secession issues, but has threatened to destabilize relations between the two

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<sup>3</sup> The Eastern disputed areas are *Kaka* (a town and surrounding area) at the border of Upper Nile State and Southern Kordofan, the *Meginnis Mountains* at the northern edge of Upper Nile State and *Jodha*, a border post and a strip of land to the East of Meginnis Mountains.

countries: the war of the Government of Sudan against the SPLM-North, part of the former rebel army fighting the Sudan government who had their base in two northern States bordering South Sudan: South Kordofan (mainly in the Nuba mountains) and Blue Nile. SPLM-North counts on support among the Nuba ethnic group and other non-Arab groups who often have ties with population groups in South Sudan.<sup>4</sup> The war is still ongoing today, without prospects so far of peace negotiations. Sudan has accused GRSS to give support to these rebels and bombarded repeatedly targets in the border region in South Sudan, mainly in 2011 and 2012.<sup>5</sup> This has had an incident on border demarcation and security since Sudan has been unable to secure part of the Southern border in these two regional States. More importantly, well over 100'000 refugees fled to South Sudan and live still today in refugee camps.

6. The second diplomatic topic of concern were GRSS' relations with the UN peacekeeping force. Already before independence a UN peacekeeping force intervened in Southern Sudan to protect civilians from internal warfare, usually involving ethnically-based rebel armies contesting the SPLA-backed regional government. In the aftermath of independence an even stronger UN involvement in peacekeeping proved to be necessary.

7. Thus, the new nation did not only have to create viable public institutions from scratch but did also have to give priority to maintain peace threatened by both internal dissensions and by the Northern neighbor who had badly accepted the economic consequences of secession and the loss of a third of its territory. The North-South negotiations required from GRSS to have a coherent diplomatic approach involving the top of the government in the first place and then defense forces, political parties and key ministries besides MFAIC. It also implied reinforcing relations with the different layers of mediators and friendly nations as well as key members the UN Security Council.<sup>6</sup> These priorities left little room to organise and maintain the economic and trade links between the two now separated economies and South Sudan's economic and political integration in the East African region. It did not allow either for joining international organisations and treaties of importance to South Sudan. Since independence the diplomatic challenges for the new authorities of South Sudan have been truly overwhelming.

8. In December 2013 an internal armed conflict erupted between factions of the SPLA, which had become the army of the GRSS. It reflected growing dissensions inside of the SPLM, the majority party, on the way the President discarded competitors seeking to replace him and on the prospect of federalism and more democracy. A short but very violent civil war followed in the capital first and then in four States of the North-East of South Sudan, leading to thousands of dead soldiers, rebels and civilians and millions of civilians who sought refuge in other parts of the country, in UN-run camps and in neighboring countries. A truce on January 23, 2014 froze the fronts but has been challenged by both warring parties with repeated transgressions.

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<sup>4</sup> The CPA in 2005 allocated to SPLM rebels in the two northern States a share of local political power (as political party) and the right to hold "popular consultations" on the form of local autonomy and the resources allocated by the central government.

<sup>5</sup> According to a source well connected to the North-South negotiations, there was ample evidence that the support by the SPLM of the SPLM-North rebels continued after the secession inspite of blanket denials. Friends of GRSS reminded high officials frequently that South Sudan was a State now and that these practices undermined seriously the diplomatic credibility of GRSS and the possibility to reach solutions in the North-South negotiations.

<sup>6</sup> The team of mediators was headed by Thabo Mbeki, former President of South Africa, and included Abdulsalam Abubakar, former President of Nigeria, and Pierre Buyoya, former President of Burundi. The mediators headed the High-Level Implementation Panel at the African Union in Addis Ababa (AU-HIP) and counted on about twenty staff. AU-HIP was supported by the Chairperson of the Intergovernmental Authority on Development (IGAD), a sub-regional organisation of North-East African States, and the Special Envoy of the UN for Sudan and South Sudan. Further support was received by the Troika on Sudan (Norway, United Kingdom and the USA), the European Union, the members of the UN Security Council and the League of Arab States.

9. Peace negotiations have taken place since the truce was brokered in January 2014 by the organization grouping seven States of North-Eastern Africa, the Intergovernmental Authority on Development (IGAD). These negotiations have not concluded yet. The internal confrontation has stifled the attempt to resolve the remaining State succession issues with Sudan and most other diplomatic initiatives of the GRSS. The eruption of the internal civil war was the main reason for the Swiss Ministry of Foreign Affairs not to consider a continuation of the diplomatic support to GRSS through the ID project.

### ***Project objectives and content***

10. Shortly after independence of South Sudan in 2011, HSD prepared a project to reinforce the diplomatic capacities of the GRSS, and specifically those of its Ministry of Foreign Affairs and International Cooperation (MFAIC). The HSD asked Independent Diplomat to prepare a project concept and then awarded the project to ID. The mandate of ID began in November 2011 and ended in October 2013. Under different funding ID had worked already for the regional Government of South Sudan before independence since 2009. ID had been attached at that time to the Ministry of Regional Cooperation.

11. According to ID's first-year project proposal, the overarching goal was to enable MFAIC at the end of the project to use a strategic approach to its regional and multilateral diplomacy.<sup>7</sup> However, this was not to be achieved through a strategizing and planning exercise but through example. ID would "provide the necessary back-up and support for addressing the most urgent diplomatic issues that GRSS faces, some of which pose significant threats to peace in the region".<sup>8</sup> ID's tools for this task were the ones which are implicit in the NGO's "demand-driven model of diplomatic advice" that is gathering intelligence in the diplomatic world, providing analysis (including recommendations and actions to take), as well as preparing statements, letters and talking points (see paragraph 18).

12. Which are these most urgent diplomatic issues? Neither HSD (first-year credit request) nor ID (first-year project proposal) were willing or able to be specific. We get a menu of operational objectives - sometimes mixed with expected outcomes or outputs - which covers the first diplomatic priorities of South Sudan in 2011, but also substantially all possible diplomatic activities of a new-born State in Africa. Specifically, the following operational objectives were to be achieved:

- Consolidated peace and settled State succession issues, embedded in a number of agreements between GRSS and the Government of Sudan. Yet, ID was only to help GRSS in getting regional and international diplomatic support for its positions in these negotiations, not to give policy advice to GRSS, according to the HSD credit request;
- Improved relations with the UN Security Council and its members and the UN peace-keeping force enabling South Sudan to participate actively in defining, implementing and extending the UNMISS mandate;
- Given the importance of the UN Security Council both for State succession and peacekeeping issues, having built a strong UN permanent mission of South Sudan in New York;
- Having finalized the process of political and diplomatic recognition as a new State following its declaration of independence and membership of the United Nations and the African Union.

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<sup>7</sup> We are referring to the *Proposal for Support from the Government of Switzerland, 1 November 2011-31 October 2012*, paragraph 19, page 5 (henceforth ID's first year project proposal). This is an Annex written by Independent Diplomat to the first *Credit Request (Kreditantrag)* by HSD, dated 2 November 2011 (henceforth HSD's first-year credit request).

<sup>8</sup> Ibid. paragraph 19, page 5.

- Having become an active member of and a good neighbor in the region by reinforcing bilateral relations and joining regional organizations; the focus of these latter being peace and security (like IGAD) or economic development (regional economic communities like the East African Community/EAC or the Common Market for Eastern and Southern Africa/COMESA);
- Having set priorities in the accession to international organisations and treaties and then having acceded to the most important ones, particularly those concerning human rights and peace-building and those focussing on economic and social development and the environment;<sup>9</sup>
- Having become a partner of private and public actors and cooperation agencies which are active in peace-building, capacity development and economic and social development.

13. Both HSD's first-year credit request and the ID's first-year project proposal made reference in three ways to the reinforcement of diplomatic capacities of MFAIC:

- A South Sudanese strategy for regional and international diplomacy (short-term, medium-term and long-term) should be the result of the project, including an action plan with expected outputs and outcomes. It is difficult to see how ID's focus on back-up for the most urgent diplomatic tasks would lead to such a strategy (paragraph ...). One could imagine a team of MFAIC planners and ID staff working on such a plan, guided by regular meetings with top officials. There is no evidence in the two documents that any further thought was given to preparing such a strategy or that MFAIC had asked for such a task being included in the project.
- As part of its tasks ID should provide guidance "and training as appropriate" to MFAIC staff to enable them to write formal diplomatic communications and speeches. This is training on the job.
- The HSD request mentioned as an expected result of the ID project that the basic design ("Grundlagen") of a well-organised MFAIC would be completed. This included an efficient and effective organisational structure and solid relations of MFAIC with its external missions. ID's proposal was more cautious. It said that ID would "be in a position to provide strategic advice on the design and operational scope of South Sudan's new MFA" but it would only do this "subject to the Republic of South Sudan's needs and instructions".

14. Planning documents for the second year of ID's mandate – from November 2012 to October 2013 – took account of actual work done by ID in the first year.<sup>10</sup> The menu of expected assignments became much shorter:

- Follow-up work on the implementation of the September 2012 Cooperation Agreements with Sudan and the unresolved post-secession issues (Abyei, final status of disputed and claimed areas, need for a political process in the Two Areas of Southern Kordofan and Blue Nile in Sudan);
- Continued diplomatic advice in New York and Juba on facilitating the UNMISS' mandate and its annual renewal;
- Help to build a cross-government approach to public diplomacy and to disseminate the GRSS' foreign policy decisions (after a first attempt in 2012 failed, see paragraph 44);
- Advice on diplomatic and procedural aspects of international treaty accession and particularly those related to human rights;

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<sup>9</sup> In November 2011, South Sudan was already a member of the United Nations and of the African Union.

<sup>10</sup> We are referring to the *Credit Request (Kreditantrag)* by HSD of October 19, 2012 (henceforth HSD's second-year credit request) and its annex: *Independent Diplomat's Support for Independent Diplomat's work for the Gouvernement of the Republic of South Sudan*, dated 12 October 2012 (henceforth ID's second-year project proposal).

- If requested by GRSS, engage with multiple international actors in respect to strengthening peacebuilding and development cooperation.

15. It is interesting to note what was missing in the above list. What was going to become the new focus of ID's advice in 2013, namely bilateral and multilateral relations in the sub-region and a small number of global diplomatic issues, is not mentioned. ID could not anticipate in October 2012 a new interest of MFAIC in using ID for the Ministry's typical normal diplomatic tasks (paragraph 46). The comprehensive diplomatic strategy to be developed by the MFAIC, an overarching objective in 2011, had gone by the wayside. No mention was made of on-the-job coaching of MFAIC staff to develop their skills in writing diplomatic messages, and major structural reforms of the MFAIC.

#### ***Diplomatic advice of Independent Diplomat***

16. ID gave support to the GRSS mainly through its senior staff member in Juba, Philip Winter, who was joined in early 2012 by a young professional, Stella Kenyi.<sup>11</sup> Stella stayed until October 2013. But ID also mobilized other members of its team, particularly Andrew Lewis of the New York Office, who was in charge for ID of the South Sudan project, and on one occasion Nicolas White, working in Brussels. In fact, much of the work on the North-South negotiations and on UNMISS was initiated in New York by Andrew White, since it was related to meetings of the UN Security Council, UN peacekeeping policy and South Sudan's UN Representative Office. Most ID texts were drafted collectively: a first draft was produced by the Juba team or Andrew White in New York, then it was reviewed by the other part of the South Sudan team and sometimes a senior ID manager. Work of the South Sudan team was reviewed every quarter in an internal Skype conference with ID managers, that is Carne Ross, the founder of ID (in New York) and Paul Whiteway (based in London). An Advisory Board of Independent Diplomat meets annually. It comprises presently of six eminent former diplomats, international lawyers and leaders of human rights' organisations.<sup>12</sup>

17. ID had started to work for the regional Government of Southern Sudan by October 2009 from New York and was then attached to the Ministry of Regional Cooperation, the pre-independence predecessor of the MFAIC. Philip Winter started his mandate in Juba in September 2010. Besides gathering intelligence ID had an important role in facilitating closer relations of the regional Government with the UN and other actors who supported and mediated the peace process (paragraph 7, footnote 6). ID used its contacts with members of the diplomatic corps in New York to get the regional Government of Southern Sudan invited as a non-state actor to a UN High-Level Meeting on Sudan in September 2010. The regional Government was invited later on (from November 2010 to Mai 2011) to five Security Council meetings. Finally ID was instrumental in preparing South Sudan's membership of the UN already before independence in July 2011, which led to new country's accession only five days after independence.<sup>13</sup>

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<sup>11</sup> Before joining Independent Diplomat Philip Winter had worked in Central and Eastern Africa - including southern Sudan - in UN peacekeeping and mediation (DRC), teaching (Rift Valley Institute, Kenya), humanitarian aid (for a UK NGO in several countries, including southern Sudan) and the private sector (boatyard in Juba). Stella Kenyi is a young professional with South Sudanese origins but grown up in the USA, where she had received excellent academic training (Hamilton and Cornell University, Masters in political science).

<sup>12</sup> See Independent Diplomat's website: <http://independendiplomat.org/>.

<sup>13</sup> This information is taken from the Proposal for Support from the Government of Switzerland, 1 November 2011-31 October 2012, page 3 and 4; Annex written by Independent Diplomat to the first Kreditantrag by HSD, dated 2 November 2011.

18. According to ID, its model of giving diplomatic advice is “client-led,” meaning that the agency works first to understand the client’s own goals, concerns and challenges.<sup>14</sup> ID’s advice to GRSS was to help GRSS meet the goals that it defined for itself. ID worked by gathering intelligence on the international diplomacy about South Sudan, and by providing regular analysis based on this intelligence to key contacts in the government. Often ID made a number of specific recommendations and actions to take, and provided hands-on assistance to GRSS political leaders and senior officials to implement this advice, including the drafting of talking points, letters and speeches. ID also drafted more detailed political advice on long-term diplomatic strategy. ID’s advice and assistance to GRSS was provided in an integrated manner on political strategy, international law, and public communication.

## **B. Methodological approach and its limits**

### *Use of OECD evaluation criteria*

19. The evaluation is using standard OECD project evaluation criteria. These criteria will be applied in a logical sequence in the text:

- The relevance of the ID advice is addressed in Section C;
- The quality of project design is treated in Section D. It concerns mainly the quality at entry of the project: the definition of objectives, the scope of support, activities conducive to achieve a chosen objectives, the selection of consultants, and the determination of baseline conditions.
- The quality of ID’s diplomatic advice. This is the core of the report and will be the object of Section E. It concerns the quality of ID’s diplomatic intelligence and written contributions to GRSS negotiators and MFAIC high officials. ID’s work will be analysed in five areas of negotiations and relations with international partners, and in respect to capacity development.
- HSD’s role as project manager and supervisor will be the object of Section G.
- A summary description and characterization of ID’s outputs will be the object of Section H.
- In Section I we will explore whether any tangible outcomes can be attributed to ID’s diplomatic advice, and, if so, whether these outcomes are likely to be sustainable.
- Finally, in Section J we will collect the lessons learned in the evaluation which are presented already in the earlier chapters, and in Section K we will present how a future project could look like.

### *Sources of information*

20. The evaluation is based upon a) the study of a substantial sample of documents produced by ID experts, b) interviews with the involved ID experts and c) views expressed by counterparts of ID in the GRSS (those who gave mandates to ID and those who used ID’s written outputs) as well as diplomats and officials of international organisations who gave support to GRSS in international negotiations, supported mediators or were on the other side of the fence (like officials of UNMISS in respect to GRSS’ relations with the UN peacekeepers in South Sudan). At Annex 1 is a list of persons met on this mission in Addis Ababa, Juba, Nairobi and Geneva.

21. Views of ID counterparts and observers. The most important group of these counterparts are the direct beneficiaries in the GRSS of the ID project, that is mainly negotiators, heads of delegations

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<sup>14</sup> This is an only slightly changed description of ID’s model for diplomatic advice, taken from ID’s second-year proposal of advice to South Sudan (for a full reference see footnote 10 ).

in relevant international meetings (ID drafted the main intervention of South Sudan on some occasions), mission chiefs, particularly the one in New York (UN Security Council), and the Minister and high officials of MFAIC, as ID was attached to MFAIC and received some mandates directly from the Minister and his direct subordinates. Views by direct beneficiaries are expressed on a few occasions in emails which are part of ID project files to which the evaluator had access (paragraph ...). Much more significantly, these direct ID counterparts had to be interviewed.

22. When the evaluation mission took place (end of September/early October 2014) some of ID's most important counterparts were known to be in Ethiopia because they participated in the multi-stakeholder negotiations to end the internal civil war: on the Government's side (like the former Minister of Foreign Affairs), on the side of the SPLM in opposition or as members of the group of former detainees who participated in these negotiations.<sup>15</sup> The negotiations took place at Bahir Dar, a resort town in the North-West of Ethiopia. I was not able to go to Bahir Dar from Addis Ababa as I had intended, mainly because of overbooked flights and hotels but also since the access to the potential interviewees was improbable, given that access to the conference hotel in Bahir Dar was impossible to obtain.

23. In Juba, only few direct beneficiaries could be met because some high officials traveled, others had moved to GRSS missions abroad or had left government service and South Sudan. I was able to meet a few government or former government officials, and reached a former vice-minister of MFAIC by phone. Yet these interlocutors – with the exception of the former vice-minister and a former high official involved in Abyei negotiations – had only been sporadically in contact with ID or ID's work. Given the limited access to direct beneficiaries of ID's services both in Addis Ababa and in Juba, we sent out questionnaires in early January 2015 to six key interlocutors of ID in Ethiopia (SPLM leaders – former detainees) and in Juba (present and former MFAIC ministers and a former vice-minister). We also asked the HSD field officer in Addis Ababa for support in finding officials from which we had not received a reply to emails and phone calls. In spite of periodic reminders by phone and email (in the case of Juba to a Ministry official who had volunteered to intervene with the potential interviewees) I received only one filled-in questionnaire.

24. A second group of ID counterparts were observers from international institutions as well as foreign diplomats. In Addis Ababa I was able to have a substantive interview with a diplomat who, since the last decade, has represented his country in the so-called Troika, the three countries (United States, Great Britain and Norway) who have given support to the CPA peace process before and after independence of South Sudan. I also met two well-informed officials working for the European Union. In January 2015 I sent questionnaires to two international experts (UN Office and Secretariat of the African Union) who were at Bahir Dar during my mission. I received a reply from one of the two. In Juba, most diplomats following the peace process between Sudan and South Sudan appear to have moved on. I did meet a very knowledgeable high official of UNMISS and a keen observer from the NGO scene.

25. Interviews with ID experts. An essential source was, of course, the directly involved three experts of Independent Diplomat (see paragraph 16 and footnote 11 on their functions and background).

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<sup>15</sup> The Government had detained eleven high-level officials right after the outbreak of armed confrontation in Juba in December 2013 claiming that they had participated in the attempt of a coup d'Etat. For example, Pagan Amum, the former secretary general of SPLM and chief negotiator in the North-South negotiations was among them. Seven were released and repatriated end of January 2014, four at the end of April 2015 as part of the conditions which the SPLM in opposition set to agree to a truce and peace negotiations. Yet most of the former detainees did not join the opposition in the negotiations but remained allied as a third fraction of SPLM in the internal negotiations.

I had extensive sessions with Stella Kenyi in Juba, Philip Winter in Nairobi and Andrew Lewis in New York, in the last case by Skype and email.

26. ID and related GRSS texts. The evaluator read a sample of documents, produced by ID and by GRSS officials based upon ID drafts: diplomatic intelligence, background papers, proposals on negotiating positions, interventions of high officials in international meetings, summary minutes of meetings . Upon our request ID New York had sent an extensive selection of documents they produced, that is 66 documents. The package also included some emails comprising of counterpart appreciations of the value of the documents produced by ID. The available documents, which represent a great majority of ID's substantive texts, covered the following areas: The comprehensive peace and post-secession negotiations between South Sudan and Sudan, two important elements of these negotiations: SPLA's Heglig incursions and the territorial status of Abyei, relations with the UN peacekeeping mission (UNMISS), regional cooperation and global diplomacy, and diplomatic capacity development.

#### ***Limits to evaluation***

27. What are the expected achievements of the ID project? To be able to evaluate a development project it is important that, at the outset, project activities, and the expected outputs and outcomes, are well identified. The usual tool to describe the way a project's operational objectives are expected to be reached is a "logical framework" or a "theory of change" which describes synthetically the sequence of steps to reach an expected outcome or, in complex cases, the different chains of expected results and external factors which influence the success of a project.

28. The ID Project was not designed in that way because it was direct advice to South Sudanese top diplomats, substituting for lacking diplomatic staff and intelligence gathering. This is a "firefighting" project to help GRSS at a crucial moment in its history to provide badly-equipped GRSS negotiators with better tools, data and options to choose their negotiating strategy and tactics, to defend GRSS' international credibility by explaining well to the international community South Sudan's military and diplomatic moves, and to set the right priorities for its diplomatic agenda. Incidentally and by example, ID might also help to improve some institutional processes in South Sudan's diplomacy. This means that the evaluation has to focus mainly on the quality of ID's written work and its usefulness for counterparts in GRSS. It is much more difficult to point to concrete outcomes.

29. What is best practice in this case? Evaluators don't only have to be aware of the OECD evaluation criteria (paragraph 19). What is more important is that they are able to judge the efficiency of the work done and its results by making reference to good professional practice in the field covered by the evaluated project. That means that ID's experts have to be excellent diplomatic practitioners. They should a) have an excellent knowledge of the political and historic context of South Sudan's independence and its international alliances; b) have good diplomatic skills, enabling them to do accurate diplomatic intelligence for South Sudan, c) be respected for their competence and integrity by their South Sudanese counterparts, and d) be personable and sensitive to cultural differences, ensuring smooth working relations with their counterparts, and displaying a sense of loyalty.

30. How to judge the quality of diplomatic texts? As the main service which ID provides are diplomatic texts, these have to be of high quality and have to reflect the required personal and professional qualities of ID experts, as mentioned above. In paragraph 18 we present the main elements of ID's client-led model of intervention. We have analyzed ID's documents having these criteria in

mind. A questionnaire verifying the elements of ID's mode of intervention, when analyzing statements and other texts, is attached at Annex 3.

### **C. Project relevance**

31. As we described above (paragraphs 2 to 7) the GRSS, right after its birth, had to resolve major issues with the Government of Sudan – coming from the CPA agenda of 2005 and state succession in 2011 – to be able to consolidate statehood and avoid war. Its legitimacy was also contested by rebel groups internally, and therefore it needed the support of the international community to avoid renewed civil strife and to protect its civil population, when power struggles led to open internal violence and warfare. The GRSS was unprepared to face these two and other typical diplomatic challenges of a new State.

32. Although in different parts of top Government, a few external advisors or advisory groups were delegated by friendly governments to work as sherpas in negotiations or provide diplomatic training to officials (more on that in paragraphs 47 and 48), more intense diplomatic advice, attached to the MFAIC, was called for. HSD's ID project was highly relevant in that sense, a view confirmed both by South Sudanese high officials and foreign observers that we consulted.

33. Diplomatic advice of ID was also relevant and of high priority for the international community which gave strong support to peace and state-building in the nascent South Sudan and its public sector. Finally, the ID project also fit well into HSD's mandate as an emergency intervention in a fragile new State going through a post-war peace consolidation process.

### **D. The quality of project design**

#### *Analysis of project design*

34. It is important to examine project design – in evaluation parlance often called “quality at entry” – because project design usually is a major predictor of project success. It is worth investing in feasibility studies and joint planning with the designated domestic project partner to ensure that the project has a good chance to achieve the desired outcomes. Established methodologies are followed to analyze the problem to be solved, define project objectives, examine options to reach these objectives and then choose the most suitable one, and, finally, examine risks that might derail a chosen path of implementation.

35. The quality at entry of the ID project cannot be judged by these standards since it is a support to GRSS in an emergency situation and it consists of diplomatic advice with an uncertain impact and without the ambition of strengthening sustainably the capacities of the Ministry of Foreign Affairs or other agencies of the GRSS. Still, the documents justifying this intervention, mainly HSD's two annual credit requests and ID's two annual project proposals could have made a better case for the ID intervention and have been more explicit on its limits (see paragraphs 11 to 15). The approval of the project by Swiss Foreign Affairs would have been better justified, chances of project success increased and the final evaluation facilitated. In the following paragraphs we will indicate which elements of project entry documents could have been improved:

### ***The selection of Independent Diplomat as advisor***

36. In a project where diplomatic advice is the main service delivered, the choice of the adviser is probably the single most critical decision influencing project success. One would expect normally the cooperating agency to choose the advisor in close consultation with the domestic project partner on a competitive basis, and to justify the final choice convincingly in the project request submitted for approval. This justification should include evidence that the chosen advisor meets the approval of the domestic project partner for a specific well-defined job assignment (see terms of reference below). We agree that given the urgency and the track record of ID, particularly in South Sudan, a competitive choice was not necessary. But the choice should have been better justified and evidence presented which showed that the Minister of Foreign Affairs and possibly other instances of GRSS approved the choice taking into account a specific agreement on the tasks to be performed.

### ***Terms of reference of ID***

37. As we explained in paragraphs 11 to 15, a menu of operational objectives was presented in HSD's first-year credit request and in ID's first-year project proposal which covered substantially all possible diplomatic activities of South Sudan at that time and three forms of institutional reforms and capacity development. This list was then reduced in the second-year planning documents, taking into account the actual demand for ID's services in the first year. There is also some confusion in the terminology used: activities and results (which are outputs and outcomes) are mentioned but sometimes specific results are actually rephrased activities.<sup>16</sup> It is not clear whether this broad assignment is due to the fact that it was impossible for HSD to discuss diplomatic priorities and ID's specific role with South Sudanese counterparts when the project was prepared, or whether the counterparts themselves did not want to limit the scope of ID's services beforehand.

38. Be it as it may, it would have been good practice to present evidence that there was a clear understanding of local counterparts on the limits of the advice to be given and an agreement on the expected operational objectives. This would have been particularly important for the capacity development and institutional reforms included in the project. Given the overriding importance for GRSS of the North-South post-secession negotiations at the start of Swiss ID funding, one would also have expected that the advising role in those negotiations would have been defined with some precision. In fact, HSD's first-year credit request mentions the North-South negotiations as the second of eleven activities; they are not mentioned directly in the expected results of the project.<sup>17</sup> In addition, ID was only to help GRSS in getting regional and international diplomatic support for its positions in these negotiations, not to give policy advice to GRSS (paragraph 12 and 43).

### ***Other diplomatic cooperation to South Sudan***

39. HSD and ID planning documents do not mention other sources of diplomatic advice or capacity development. The knowledge of other actors in this field would have helped in better defining ID's mandate. Also, it is impossible to make the case to internal constituencies that cooperation funds were used for services which were financed already by other cooperation sources. In paragraphs 47 and 48

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<sup>16</sup> ID in its first-year planning documents present similar outcomes, calling them outputs, which is clearly a wrong use of evaluation terminology.

<sup>17</sup> We are referring to point 2.4 "Activities and expected results", page 4 of HSD's first-year credit request. For the full reference, see paragraph 10, footnote 6.

we present the information which we found on other negotiating sherpas and legal advisors who were working for GRSS and diplomatic training programs organized during the time of ID's Swiss mandate.

### ***A baseline of diplomatic capacities***

40. Finally, in the project documents of any technical assistance project it is essential to analyse the organizational efficiency and the potential of domestic partner institutions, in terms of trained staff, infrastructure and financing. It is only possible to measure progress in a project if one knows the status at the point of departure. A good baseline also helps in deciding on the tools of technical assistance to be used. Questions to be asked might be for instance: Is it efficient to do on-the-job coaching of MFAIC staff given the quality of available staff? Or, which reform steps have a chance to succeed given the present institutional context? ID's first-year project proposal does characterize the organizational status of the Ministry of Foreign Affairs in a few sentences (in point 8, page 2 of the proposal). But such an analysis should go deeper and should include other South Sudan government units involved in international negotiations and diplomatic relations.

### ***Conclusions and recommendations***

41. **Conclusions**. Project preparation documents of HSD and ID are not sufficiently detailed and analytical to reduce risks of failure of the envisaged project. Also, they do not provide evidence of specific agreements with the South Sudanese Ministry of Foreign Affairs and other domestic counterparts on the scope and modalities of project implementation. Specific elements which do not reflect good practice in project design are: a) the selection of ID as diplomatic advisor is not sufficiently justified and no evidence shows that main South Sudanese counterparts approved ID's appointment; b) the initial terms of reference for the assignment constitute an ambitious menu of operational objectives and do not reflect a common assessment by GRSS and HSD of the most urgent tasks to be assigned to ID; c) no mention is made of diplomatic advice and technical assistance to the Ministry of Foreign Affairs financed by other external sources; and d) a baseline should have been made of MFAIC's organizational efficiency and its potential, in terms of trained staff, infrastructure and financing. Other negotiating units of GRSS should have been included in this baseline analysis.

42. **Recommendation**. In diplomatic advice projects, even if they are decided in a fragile country environment, project design has to be paid particular attention and an agreement has to be reached with domestic counterpart agencies beforehand on the choice of advisors, the modalities and scope of advice, and the inclusion of capacity development elements. The context and the analysis which justify a specific project design have to be reflected in the project documents.

## **E. The demand for ID's services**

### ***A shifting and limited demand***

43. **First-year of mandate**. At the start of the programme it was impossible to determine which tasks counterparts of GRSS were going to give to ID staff. Yet from the initial goals of the program and the expected results (paragraph 12) one assumes that ID would mainly support the Ministry of Foreign Affairs in its typical tasks as guardian of foreign policy and facilitator in South Sudan's integration into the region and the world. In respect to the most burning international issue at that time, lasting peace and good economic relations with Sudan, ID was expected to merely "garner regional and international support for the full and final implementation of the outstanding issues in the 2005 Comprehensive Peace

Agreement as well as agreements on the post-referendum issues". It did not turn out that way. In the first year of the Swiss project ID was involved only in two tasks which gave direct support to the MFAIC: a) strategic organizational advice on how to overcome the "diplomatic deficit" of South Sudan; and b) support to South Sudan to gain membership in the Cotonou Agreement between the African, Caribbean and Pacific (ACP) countries and the European Union. This last attempt was finally blocked by the Parliament of South Sudan.

44. In fact, during the first year of ID's assignment the MFAIC did not appear to be particularly interested in ID's services. A mid-level diplomat was assigned as its counterpart in the Ministry. Why? The explanation of a seasoned South Sudanese diplomat, confirmed by external observers, is that ID's services had been highly appreciated before independence by officials of the then Ministry of Regional Cooperation of the regional Government of Southern Sudan, particularly because of its work to introduce the regional government to the UN and its Security Council and then to help prepare UN membership of South Sudan right after independence (paragraph 17). Once South Sudan had become an independent State, officials of MFAIC wanted to take governance into their own hands. They felt that ID had become intrusive and was talking down to them. According to this source, access to the Minister was minimal at that time. The only piece of work of ID to strengthen the role of the Ministry, a three-point strategy to overcome the country's "diplomatic deficit" in February 2012, was badly received by Ministry officials because of its implicit criticism of MFAIC's organisation and management (paragraph 106). The strategy proposed, among others, to focus diplomatic missions to nine key bilateral and multilateral locations and by introducing an encrypted electronic communication system, linking all key domestic decision-makers and the diplomatic outposts.

45. ID staff confirmed that during the first months of the assignment they were looking for mandates outside of the ministry. According to ID, the then chief negotiator of the negotiations with Sudan, Pagan Amum and President Salva Kiir encouraged ID to insist on getting assignments. Pagan Amum knew ID well from the pre-independence period. ID had prepared his speech – as Minister of Peace and CPA Implementation of the regional Government of Southern Sudan – to the UN Security Council in November 2009, the first UN Security Council meeting the regional Government was invited to as non-state actor (paragraph 17). In the end, during the first year, main assignments can be summarized as follows:

- Most of the work of ID concerned the most important diplomatic battleground for GRSS: the comprehensive settlement of major pending issues following state succession with the Government of the Republic of Sudan (GRS). From early year to October 2012 an ID staff member accompanied the GRSS delegation to negotiating rounds and meetings of the African Union at Addis Ababa doing a lot of back-office work and report writing for the delegation, prepared a speech to the African Union's Peace and Security Council, informed the GRSS on closed briefings and meetings of chief mediator Mbeki wrote talking points for a diplomatic initiative of South Sudan, and prepared a note with advice on how to implement a resolution of the UN Security Council. We will analyse this work in paragraphs ...
- ID also wrote background and negotiating strategy papers and collected diplomatic intelligence on three specific North-South issues which were part of the negotiations: oil transport through Sudan, the border demarcation process and the Heglig/Panthou incursion. We will analyze this work in paragraphs ...
- Finally, the New York staff of ID followed the UN peacekeeping mandate and its renewal (UN Mission to South Sudan, UNMISS) reporting on UNSC meetings, and preparing talking points or

speeches for interventions at UNSC meetings. ID reported to GRSS' Vice-President for this task. This will be the object of paragraphs ...

46. Second year of mandate. The conclusion of the Cooperation Agreement between the Republic of Sudan and the Republic of South Sudan, dated 27 September 2012, reduced the scope for ID's diplomatic advice on North-South issues to implementing some of the subagreements – a process which is still unfinished in some cases today – and to negotiating areas which could not be settled in the Cooperation Agreement: the territorial status of Abyei and the attribution of other disputed and claimed areas. At the same time, in early 2013, the MFAIC became an open book for ID with the promotion of Grace Datiro as Vice-Minister. She put the junior ID staff member in Juba in an office next to her and used ID's services to better inform the new diplomatic initiatives which the Ministry was now in a position to undertake. From July 2013 on, the new Minister of MFAIC, Barnaba Marial Benjamin took over in giving mandates to ID. He knew ID quite well because his previous position had been Minister of Information. This meant that the original terms of reference of ID became a reality. Follows a summary of ID's work from November 2012 to October 2013:

- North-South agenda: ID contributed to a) the planning of the implementation of the Agreement of 27 September 2012, b) its New York staff worked on the role and renewal of the mandate of the UN peacekeeping force for Abyei, named UNISFA (United Nations Interim Security Force for Abyei), and c) prepared briefings and talking points for the Minister of Foreign Affairs at the presidential summit (al-Bashir – Kiir).
- ID followed up on relations with the UN peacekeeping and “state-building” force (UNMISS) and the renewal of its mandate in July 2013. In particular it evaluated for MFAIC the performance of UNMISS before the renewal of the mandate, including field trips inside of South Sudan.
- The bulk of mandates, now received from the Minister's Office of the MFAIC concerned a) the regional agenda both concerning good relations with neighbor countries and multilateral cooperation, b) global diplomacy: participation in the UN General Assembly and accession to the UN human rights' treaty; and c) strengthening GRSS' diplomacy: a proposal on a coordinated cross-government approach to diplomacy; staffing and strategic priorities of GRSS' UN Mission; preparing regular meetings of the Foreign Minister with the diplomatic corps in Juba and the press.

#### *Other sources of external diplomatic advice and technical assistance*

47. ID staff were not the only advisers to GRSS in the North-South negotiations. A Dutch economist and a US lawyer worked for the President's Office.<sup>18</sup> The economist advised for instance the negotiating sub-group on monetary and trade issues. The lawyer advised among other tasks on the dispute over the Abyei area. Some young advisers from the UK, sponsored by the cooperation fund set up by the former UK Prime Minister Tony Blair, also worked in the President's Office. ID staff is of the view that there was not too much “stepping on each other's toes” among external advisors. In the North-South negotiations there was a division of labor between ID and other advisors. The only example of conflicting advice mentioned is that the chief negotiator got sometimes “very legalistic advice” from other sources which, in ID's view, was not conducive to strengthen GRSS' negotiating position.

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<sup>18</sup> The lawyer was from Public International Law and Policy Group (PILPG), a pro bono law firm that often gets contracts from USAID.

48. Although the terms of reference of ID did not exclude diplomatic training functions, it was never ID's intention to work as trainers. Actually, several countries offered training for the mostly inexperienced officials of MFAIC. Senior cadres of the Ministry were sent to South Africa for a few short courses, but no follow-up was organized. Other training opportunities, mostly for mid-level staff of MFAIC, were used in Austria, China, Turkey and the Netherlands (Clingendael Institute). Finally, the US Special Envoy's Office in Juba organized two crash courses, one week each, for ambassadors, and two for mid-level officers in Juba in 2012 and 2013. Although these courses included prominent US former diplomats and a Kenyan high-level diplomat as trainers, and video interviews with prominent US diplomats like Thomas Pickering (US envoy at the UN at one time), they created a lot of frustration on the South Sudanese side because they were too short and in no way adapted to the precarious working conditions which MFAIC and its diplomatic missions abroad had to deal with.<sup>19</sup> This at least is the view of an external observer familiar with MFAIC.

49. Finally, the several layers of mediators and diplomatic friends of South Sudan had a lot of informal contacts with South Sudanese decision-makers. The mediators tried to pressure their counterparts into adopting their negotiating strategy and solutions – conducive to reach a consensus between the parties - and provided them with non-papers and blueprints. For instance, South Sudan presented a proposal for a comprehensive strategy in the North-South negotiations in July 2012, the origin of which is unknown but is thought by ID staff to come from the AU mediator's staff member.<sup>20</sup> According to ID staff, the mediators ignored ID in a first stage and dealt exclusively with GRSS counterparts. After a while, they also informed ID on their assessment and proposals. In some cases, particularly when they had lost their contacts because of personnel changes in GRSS, they passed exclusively through ID staff, hoping that ID would relay the message to GRSS. In these cases, ID was used as a conduit between mediators and South Sudan authorities.

### ***The power of internal lobbies***

50. The most important limitations to the impact of ID was the fact that in any country but particularly in a new nation like South Sudan external diplomatic advice is often simply not taken into account. As we have seen above, MFAIC was not interested in advice, at least not during the first 16 months of ID's mandate because its high officials were eager to assume their power and were very sensitive to the implicit criticism which is part of any substantive advice (paragraph 44). The situation was different in the North-South negotiations, the main area of work of ID during the first year. The President's Office and the President himself were very involved in the negotiations. Besides the "official" negotiating team, advice was received from 30 to 40 former rebel leaders, representing also different ethnic sensitivities, who had direct access to the negotiating team.<sup>21</sup>

51. As we see later in this text in detail, in these post-secession negotiations ID played an important role in informing the chief negotiator on the views of key members of the international community and

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<sup>19</sup> The two-year training program cost USD 1 million. It was implemented by the International Executive Service Corps (IESC) a prominent US training institute set up in 1964 at the time of the New Deal-type "Alliance for Progress", the first comprehensive US cooperation program, oriented towards Latin America. Source: <http://iesc.org>, consulted on 8 February 2015.

<sup>20</sup> The Agreement on Friendly Relations & Cooperation (AFRC) between the Republic of South Sudan and the Republic of Sudan, A Republic of South Sudan Proposal, Addis Ababa, Ethiopia, July 2012 (mimeo). See also paragraph 64, bullet 5.

<sup>21</sup> The informal power of former SPLA rebels was even greater in the pre-independence interim period (2005 to 2011) when the regional Government of Southern Sudan did not have any formal system of decision-making and no external policy to speak of. But, obviously, even after independence the process of establishing the formal power and discipline of a government has not been concluded yet.

the mediators and then presented South Sudanese actions and decisions in a way that gave a counterweight to the misperceptions of these external parties. Some external observers made a negative judgement of ID's performance because they were not able to help South Sudan in avoiding what they considered major diplomatic blunders, like the oil production stop, the Heglig incursions, the support to SPLM-North rebels in their war with the Government of Sudan, or attacks on civilians and harassment and occasional attacks on UNMISS peacekeeping staff by SPLA units. However, as in any such context, the interests and views of local constituencies usually prevailed over the international obligations and credibility of the country, which were the main concern of ID in its advice. The knowledge of this type of decision-making was probably the main reason why HSD in its terms of reference for ID was so cautious in mentioning the North-South negotiations and limited ID's involvement to mobilise regional and international support for the implementation of the outstanding post-secession issues (see paragraph 44).

### ***Conclusions***

52. Shifting demand. The actual demand for ID's services was very different from expectations in October 2011. ID was to work in the Ministry of Foreign Affairs and its mandate was to support the Ministry in all aspects of its potential agenda in foreign relations (see ID's initial terms of reference summarized in paragraphs 11 to 13). Yet, the Ministry did not want to work with ID for the first 16 months except for two initial tasks. ID's organizational reform of MFAIC, which was prepared at that time, was not appreciated. ID then found plenty of work with the chief negotiator for the post-secession negotiations with Sudan, besides advising the country's Vice-President periodically on relations with UNMISS. This situation changed in early 2013 when the new top officials of MFAIC started to employ ID for many aspects of the Ministry's traditional regional and global agenda. Of course, at that point in time, MFAIC was in a better position than before to become active, as the negotiations of the North-South agenda had found a partial conclusion with the September 2012 Cooperation Agreements and their aftermath: an active first phase of implementing the Agreements as well as the unsuccessful search for solutions to the unresolved Abyei territorial integration and other border issues. ID continued to work on UNMISS relations.

53. Other sources of advice and training. There were other external sources of advice to the negotiators in the post-secession negotiations with Sudan and probably also on other diplomatic issues. Also squandered and quick opportunities for training of diplomats were available, although this could not replace a longer-term capacity development scheme, building on a group of tools, which is the only way to make a difference in strengthening capacities of public institutions.

54. The power of internal lobbies. It was wrong to expect, as some external observers did, that ID's advice could be a counterweight to powerful internal lobbies and, therefore, be expected to be instrumental in avoiding "diplomatic blunders" like the oil stop, the Heglig incursions, support to SPLM-North or harassment and attacks by SPLA of UNMISS staff. HSD and ID avoided this mistake in the design of the ID project by limiting ID's advice to "diplomatic aspects" of decision-making on major questions of stability and security of South Sudan and the protection of civilians in the case of UNMISS.

### ***Recommendations***

55. The lesson to be learned from these sudden shifts in demand for ID's services is the same which we already mentioned in paragraphs 37 and 38, namely the need to study the demand for diplomatic

services thoroughly beforehand and to ensure ownership by the domestic partner agencies. It is essential also to be sure that the provider of diplomatic advice is accepted by local counterparts not only as highly professional but also as independent and exclusively loyal to the receiving country. In addition it is important to be aware of the high sensitivity to external interference in local policy-making in post-independence situations because of the pride to be in charge and the power of domestic lobbies. This could be observed when the Ministry of Foreign Affairs rejected ID's advice on organisational reform and designated a mid-level counterpart in the Ministry. It was also evident in the exclusion of ID from important decisions in the North-South negotiations.

56. It is important also to take account of other sources of cooperation in the same field to avoid inefficiency and competition in advice. It is not possible for an emerging domestic administration to manage and supervise external aid. This is why the involved external agencies have to make sure that their interventions reinforce each other or are complementary. This is an essential task of HSD at the time of project preparation.

## **F. The quality of ID's diplomatic advice**

### ***The comprehensive North-South negotiating track***

57. Negotiating context. We described briefly the main negotiation areas in paragraphs 3 and 4: oil transit through Sudan, border demarcation and security, attribution of disputed and claimed areas, the status and rights of nationals in the other State, acquired pension rights, the division of public assets and debt, the cooperation between the two central banks, and the preferential trade regime between the two countries. Shortly after independence negotiations started in sub-groups according to the themes mentioned above. The chief negotiator headed the most important groups on South Sudan's part. Mainly procedural and intermediate agreements were reached on some negotiating themes until the end of 2011 but no progress was made on the economically critical oil transit. A proposal on Abyei, made by the main mediating team – led by former South African President Mbeki – was rejected by Sudan in December 2011. Meanwhile the North – South border became instable because of the “Two Areas” civil war in Sudan: the Sudan Armed Forces (SAF) bombarded targets north and south of the border, and the flow to South Sudan of refugees from the Two Areas surged.

58. In late January 2012 South Sudan decided to close down oil production after Sudan had blocked the loading of oil tankers in Port Sudan with oil coming from South Sudan and did not pay for the oil received.<sup>22</sup> Other reasons for this radical step were that Sudan had bombed repeatedly targets in four South Sudanese Border States and had blocked the return of Southerners living in the north. The closing-down of oil production created a serious set-back in the negotiations, since it appeared that from that moment on both parties banked on the economic breakdown of the other State. Diplomatic friends of South Sudan considered this decision as irresponsible brinkmanship. A second “blunder” followed: SPLA forces invaded Heglig/Panthou twice in late March and in April 2012, reacting to Sudan Air Force attacks south of the border. Heglig is an oil-rich territory north of the North-South border but claimed by South Sudan. More details on this incident, which brought the two countries back to the brink of war are described in paragraphs 70 and 71.

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<sup>22</sup> GRSS claimed also that Sudan had started to construct a pipeline linking South Sudanese oil fields to the Heglig oil fields (which are north of the border). This hostile action was apparently discovered when SPLA occupied Heglig at the end of March 2012.

59. An intense diplomatic mediating activity and meetings at the African Union and at the UN Security Council followed the oil delivery stop and the Heglig incursions. The conclusion reached by the international community was that only a comprehensive approach to the main negotiating items would have a chance of leading to peace. This consensus followed a diplomatic initiative of the GRSS in February 2012 for a comprehensive agreement with deadlines for the final solution to all issues. According to ID staff the South Sudan negotiators were convinced that it was important to solve the oil dispute, which was the most important issue in the negotiations, at the same time as the other negotiating items (and in particular the very sensitive items on border security and disputed and claimed areas). Once the oil dispute was solved, leverage in favor of South Sudan on other issues of concern would evaporate. It was this logic of a “single undertaking” which was at the heart of the comprehensive negotiating strategy.

60. Two international decisions mark progress made on the comprehensive negotiating path:

- The roadmap in seven points of the Peace and Security Council of the African Union, dated April 24, 2012.<sup>23</sup> It instructed the two countries to stop hostilities, withdraw their armed forces behind their respective borders, stop support to rebel groups against the other State and enact other measures – mostly already decided but not implemented – to reduce tensions between the two countries. It urged the parties to resume negotiations and reach agreement on the main conflictive issues, respecting specific deadlines (oil, status of nationals, demarcation of border and resolution of disputed and claimed areas, and the final territorial status of Abyei). In case of non-compliance the African Union would ask the UN Security Council to apply economic or military sanctions (Chapter VII of UN Charter, Articles 41 and 42).
- The UN Security Council confirms the AU road map in Resolution 2046 a week later, on May 2, 2012.<sup>24</sup> Mainly because of Chinese and Russian opposition, only economic and diplomatic sanctions (Chapter VII, article 41) are retained in case of non-compliance. The conflict between Sudan and SPLM-North in the “Two Areas” is treated specifically in the Resolution. The conflict parties are expected to cooperate in a negotiated settlement of political and security arrangements (based on a 2011 agreement which was never implemented) and to accept an international proposal to permit humanitarian access to the affected population in the two areas.

61. After almost five months of negotiations a comprehensive agreement was reached on 27 September 2012: It includes a general Cooperation Agreement between the Republic of Sudan and the Republic of South Sudan and eight sector agreements.<sup>25</sup> These cover most of the outstanding negotiating items but sometimes only by establishing mechanisms to cooperate in solving the issues. Abyei and other disputed or claimed areas are not mentioned except for the “14 miles area” (paragraph 4). The Two Areas conflict in Sudan is mentioned indirectly in the sense that both parties “renew their commitment to the cessation of harboring of, or support to rebel groups against the other State”.

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<sup>23</sup> African Union, Decision Peace and Security Council on the situation between the Republic of Sudan and the Republic of South Sudan, Addis Ababa, 24 April 2012; PSC/MIN/COMM/3.(CCCXIX).

<sup>24</sup> United Nations Security Council, Resolution 2046 (2012) adopted on May 2, 2012:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2046\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046(2012))

<sup>25</sup> The eight agreements cover i) oil transit and a transitional financial compensation of Sudan; ii) the status of nationals of the other State; iii) border issues, describing mainly the demarcation process and the establishment of a safe demilitarized buffer zone); iv) border security arrangements: withdrawal of armed forces, immediate implementation of the demilitarized buffer zone including in the 14 mile area (see paragraph ...), joint monitoring of border, opening of ten border crossings; v) cooperation in central banking; vi) trade: intention to agree on a preferential trade regime; vii) division of state assets and liabilities; and viii) the payment of pension benefits.

62. The implementation of the 27 September agreements is a long and unfinished story. 36 joint committees were established in the agreements but only in March 2013 did the two sides sign an implementation matrix.<sup>26</sup> Oil started to flow again in spring 2013. Progress was also made in 2013 on opening borders, cross-border trade, customs, and humanitarian aspects. Abyei is still living under transitory arrangements, an agreement on a referendum was in reach but was then rejected. Other disputed and claimed areas are waiting for negotiations to take place (or then international arbitration to be sought). Progress on unfinished reforms was frozen in December 2013 with the start of the internal warfare in South Sudan.

63. Independent Diplomat's involvement. The North-South negotiations were the most important area of work for ID in the first year of their Swiss mandate. ID gave to the evaluator access to 21 documents its staff produced on the comprehensive negotiating track: a) five concern strategic advice to the negotiating team of GRSS, b) five comprise of talking points to explain South Sudan's negotiating position in international forums; c) nine others concern diplomatic intelligence (briefings on closed international meetings and attitudes/positions of mediators, facilitators and countries which had an impact on the negotiations), and d) two documents are statements or talking points for a meeting with the diplomatic corps in Juba and a press conference in New York.

64. ID gave the following diplomatic advice to the GRSS negotiating team:

- In February 2012 ID presented the need for comprehensive negotiations in a note of three pages, covering all major outstanding issues and deadlines for implementation. The note justifies the oil production stop as a last resort to protect South Sudan's interests. The purpose of the note is for South Sudan to regain the initiative in a deteriorating negotiating environment.
- At the end of March 2012, shortly after the first Heglig invasion, ID makes concrete proposals on how to retake the negotiating initiative: through a summit of the presidents of Sudan and South Sudan, the implementation of joint border monitoring (which would allow humanitarian access to the Two Areas) and an attempt to supersede the slow African Union process by going directly to the UN Security Council.
- In early May 2012, ID presents talking points for the meeting of the UN Security Council on the roadmap of the African Union: a good inventory of critical points of the initiative and questions which might be asked by members.
- At the beginning and end of May 2012 ID wrote notes on Resolution 2046 of the UN Security Council. The first one deals with the specific implications for South Sudan of the Resolution, the second one develops three scenarios on what might happen to the Resolution by the implementation deadline of 2 August 2012: success, extension of the deadline, or failure.
- End of July 2012 ID presents talking points for an African Union meeting. It summarizes a blueprint of a comprehensive cooperation agreement proposed by South Sudan which is based upon the AU road map and Resolution 2046.<sup>27</sup> The proposal was probably drafted by staff of the main mediator's office (AUHIP), see paragraph 49 and footnote 20.
- In early October 2012, ID explained the three challenges of the 27 September 2012 Agreements: a) establishing and staffing of the various implementation mechanisms; b) making clear that South

<sup>26</sup> The implementation matrix is an annex of a letter of the Secretary general of the UN to the president of the Security council dated 18 March 2013: [http://peacemaker.un.org/sites/peacemaker.un.org/files/SD-SS\\_130312\\_ImplementationMatrix.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/SD-SS_130312_ImplementationMatrix.pdf)

<sup>27</sup> The Agreement on Friendly Relations & Cooperation (AFRC) between the Republic of South Sudan and the Republic of Sudan, a Republic of South Sudan proposal; Addis Ababa, Ethiopia July 2012 (mimeo).

Sudan is complying; and c) ensuring international attention to unresolved points: Abyei and other disputed and claimed border zones.

- In early December 2012, ID prepared a note and talking points for the chief negotiator outlining how to relaunch the Cooperation Agreements of 27 September 2012 and extend them to negotiations on Abyei and other border issues. Sudan had blocked implementation, using as a main argument the alleged support of South Sudan to the SPLM-North rebels in the Two Areas. ID recommends for South Sudan to offer mediation in a political settlement between the northern rebels and Khartoum. As an example of ID's work the note and the talking points are attached to the report as Annex 4.1.

65. In addition to this diplomatic advice (and associated statements or talking points) ID provided nine pieces of intelligence to the negotiators. These concerned closed meetings of the UN Security Council including briefings by President Mbeki, a meeting of ID with the UN Department of Peacekeeping Operations, views of Security Council members on North-South negotiating issues, and meetings of ID with US diplomats in Addis Ababa and Juba. Two examples:

- In February 2012 ID briefs on a closed meeting between President Mbeki and the UN Security Council, having received accounts from two attending members. President Mbeki apparently presented a one-sided account of the impasse in North/South negotiations, primarily blaming South Sudan for the breakdown. GRSS is losing support in New York because it is not considered constructive. Its reasons for shutting down the flow of oil are poorly understood. ID recommends a meeting of South Sudan with the Security Council to explain the South's position.
- In June 2012 chief negotiator Pagan Amum came to New York to participate in a UN Security Council meeting on Abyei/UNISFA and the implementation of Resolution 2046. ID briefed him on the issues which Council members were likely to raise. It pointed to a number of positions of South Sudan which might have to be clarified in the discussions. This briefing is at Annex 4.2.

66. Finally, ID wrote the statement of South Sudan's representative at the UN who briefed the press in July 2012 on South Sudan's proposed comprehensive peace and cooperation agreement in July 2012 (footnote 27). ID also wrote the talking points to inform the diplomatic corps in Juba on how GRSS planned to implement the September 2012 Cooperation Agreements.

67. **Assessment.** ID's diplomatic advice was not about major negotiating decisions as for instance the two which contributed to block progress in the North-South negotiations and deteriorated seriously South Sudan's international standing: the oil production stoppage and the Heglig invasion. This is because ID was not consulted for decisions which were made at the highest level. However, ID staff members were sometimes invited by the chief negotiator to sit into meetings of the negotiating team as observers. Through its advice in early 2012, ID was able to a) help South Sudan to overcome its "diplomatic deficit" with the international community by explaining the rationale of South Sudan's positions and b) advocate a comprehensive negotiating approach. Such an approach was then used in the AU roadmap and Resolution 2046. In a similar way ID proposed a plan to implement the September 2012 Agreements, and, in December 2012, to relaunch them, when they were at a standstill.

68. ID also explained South Sudan's position on comprehensive negotiating proposals and agreements (as well as their implementation) to the international community through preparing statements and talking points for international meetings and briefings to the diplomatic community and to the press. Through its intelligence work, particularly involving the positions taken by President

Mbeki and key members of the UN Security Council, as well as those of influential diplomatic representatives in Addis Ababa and Juba, ID gave access to essential information to GRSS negotiators. This helped to address concerns and misperceptions in the negotiation process and diplomatic outreach.

69. Most notes written by ID are of excellent quality. Notes are usually not more than three pages long, comprising of short and simple sentences. Paragraphs are numbered and the structure of the notes is clear (for instance: summary, current situation, advice). The notes read often like talking points. The texts reveal a good grasp of technical and institutional issues involved (for instance the links with the CPA 2005 or with UN institutional processes, and the views of specific countries or groups of countries on the issue at hand). When advice is given, it is presented as an option and is justified concretely as a way to take into account the views of Sudan and countries which take Sudan's side. The quality and a certain homogeneity of the texts of ID go back to the way they are drafted. The initiative is taken by a staff member, and the text is then reviewed by the key members of ID (see paragraph 16).

### ***Heglig***

70. **Negotiating context.** In January 2012 the negotiating process was endangered both because of the oil production stop and the spill-over of the civil war in the Two Areas in Sudan: Sudan Armed Forces did not only bomb targets in the North but also in southern Border States. Troops also crossed the border, possibly to pursue northern rebels but also to confront SPLA units. The attacks of northern planes and troops started from the air base in Heglig. After an attack by Sudan Armed Forces of SPLA forces south of the border, SPLA pursued the attackers into Heglig on March 26. It is assumed that this was a decision taken by the local SPLA commander in charge and not by the President. South Sudan withdrew from Heglig two days later at the request of the African Union.

71. On April 4, 2012 chief mediator Mbeki proposed a joint decision of the two countries: cessation of hostilities and withdrawal of armed forces; an agreement of cooperation and non-aggression guiding all security-related issues; the (previously non-functioning) joint border monitoring mechanism to be implemented and supported by UNISFA - the UN peacekeeping corps created for Abyei who would now receive an extended mandate; and the preparation of a summit of the two presidents. South Sudan accepted the decision immediately, Sudan did not. Sudan Armed Forces continued to bomb SPLA positions and other targets in the following two weeks, including Bentiu town, the capital of Unity State. On April 10, reacting to these attacks, SPLA troops took control of Heglig again. Intense international pressure, including from South Sudan's key partners, and the prospect of UN sanctions led the GRSS to withdraw its troops from Heglig on April 20, 2012.

72. **Independent Diplomat's involvement.** GRSS had not explained the reasons to the international community of its incursions into Heglig, which harbors important oil production facilities. Since Heglig was considered part of Abyei until the international arbitration in 2009, it was not a focus of the CPA in 2005 (see paragraph 4). The international community saw South Sudan's incursions as an escalation in the conflict with Sudan, which threatened to reignite armed warfare and, therefore, end the already stalled peace process. ID had a double function in this crisis:

- It had to brief GRSS and its negotiators on the negative reaction of the international community, including its traditional friends, to the incursion of Heglig; it then had to convince GRSS on the concrete measures to take to get back on the negotiating track and regain the higher ground in the negotiations;

- It had to inform the members of the UN Security Council and the mediators on the reasons for SPLA's incursion of Heglig and South Sudan's willingness to get back to the path of peace settlement with Sudan, backing this claim with concrete conciliatory step.

73. Between 14 April and 4 May 2012, ID prepared four letters and a statement to the UN Security Council, briefed the South Sudanese authorities twice on closed meetings of the UN Security Council, and prepared a press statement for the UN representative of South Sudan.

74. ID had to inform GRSS on the reaction of the international community to the Heglig incursions. A good example is the situation report of 17 April, 2012 on a closed session of the UN Security Council where President Mbeki and UN Special Envoy Menkerios reported on the effect of the Heglig incursion on the North-South negotiations. ID reaches the conclusion from the discussion that South Sudan is losing the "moral high ground" and that Security Council members, also those that are friends of South Sudan, are unaware of the history of Heglig. In bilateral contacts (but not in the meeting), even the US asks for immediate withdrawal.

75. As the available sample of documents indicates, ID informed the members of the UN security Council well on South Sudan's position:

- In a letter to the UN Security Council on 14 April it gave a rationale to the two Heglig incursions, explained why South Sudan claims Heglig as its territory based upon its history and the main criterion used for border demarcation (positioning in respect to the border at the time of independence of Sudan), and manifests its conformity with the joined decision, proposed by the mediators on 4 April, 2012 on cessation of hostilities, withdrawal of armed forces behind the borders, border security measures and a commitment to an overarching agreement guiding all security-related issues between the two States. It also denounces Sudan's continued armed aggression and its refusal to accept a joined decision of cessation of hostilities and confidence-building measures. The letter is attached in Annex 4.3.
- In a letter to the UN Security Council on 28 April, 2012 GRSS commits to the cessation of all hostilities in accordance with the AU road map and refers to a decision of GRSS to immediately withdraw police services from Abyei after having already withdrawn troops from Heglig and, earlier, SPLA soldiers from Abyei.
- In a statement made to the UN Security Council on May 2, 2012, Minister Deng Alor confirms South Sudan's conformity with the AU roadmap and Resolution 2046 of the UN Security Council, mentions the withdrawal of the South Sudanese police force from Abyei - the same has to happen with the Sudan Armed Forces stationed in Abyei - and requests that humanitarian aid be mobilized to counter the terrible effects of continued aerial bombardments and ground incursions by Sudan Armed Forces in South Sudan, and the effects of their invasion in Abyei in 2011 on internally displaced persons.

76. Assessment. In the Heglig affair ID had an important but very difficult task at its hands. It had to provide good intelligence to the negotiators so that South Sudan became aware of its difficult diplomatic position, being considered an aggressor and war monger, a role reserved before to the other side at the negotiating table, the Government of Sudan. On the other hand, ID had to make a convincing case to the members of the UN Security Council and the international community in general, giving a rationale to the Heglig incursion and regaining the moral higher ground by concrete conciliatory gestures and the advocacy for a comprehensive peace settlement. On both accounts, ID performed well. This was possible mainly because of the professional experience and the good diplomatic network of

ID's New York Office. Both the briefing on a closed meeting of the UN Security Council on April 17, 2012 (paragraph 74) and South Sudan's letter to the UN Security Council on April 14 (paragraph 75, Annex 4.3) attest to that.

### ***Abyei and other border issues***

77. Negotiating context. According to the Comprehensive Peace Agreement of 2005 a separate referendum of residents of Abyei should have taken place simultaneously with the referendum in Southern Sudan in January 2011. But Sudan and SPLM were unable to agree on whether northern Misseriya people, most of which use grazing lands of Abyei part of the year, were allowed to vote, besides the resident population, who are predominantly of (southern) Dinka Ngok extraction. In May 2011, an incursion of Sudan Armed Forces led to the displacement of 100'000 mainly Dinka Ngok civilians. A temporary regime for Abyei was established in June 2011 with a jointly nominated local administration under the control of an Abyei Joint Oversight Committee, constituted by two high officials from each country and a non-voting facilitator from the African Union. In July 2011 the UN Security Council authorized a new peacekeeping mission for Abyei (UN Interim Special Force for Abyei, UNISFA).<sup>28</sup> After its deployment, Sudan Armed Forces and SPLA forces, present in Abyei, were to be redeployed in their respective countries. This happened only after long delays.

78. New life came into the final settlement of Abyei's status through the AU roadmap and UN Security Council Resolution 2046. In September 2012 the AU mediators proposed to hold a referendum in October 2013. The counterproposal of Sudan was the partition of Abyei: the northern part was to be incorporated to Sudan, the southern part to South Sudan. The 27 September 2012 Cooperation Agreement did not include a sub-agreement on Abyei because of this dissension. But in October 2012, the AU Peace and Security Council gave a final six more weeks of negotiating time to the two parties and then, unless a negotiated solution had been found in the interim, the referendum proposal of the AU mediators would become binding. After heavy lobbying by Sudan, the next session of Peace and Security Council in December 2012 stepped back from endorsing the AU mediators' referendum proposal.

79. Since the beginning of 2013 until today, no new elements have appeared in the Abyei settlement. The security situation has remained fragile: for example, in May 2013 a legendary paramount chief of the Dinka Ngok and a UNISFA soldier were killed. On March 4, 2015, a press report mentions an attack by a Misseriya militia of a village in southern Abyei, killing four people and burning down 24 houses.<sup>29</sup> In the view of GRSS Sudan has continued to move goal posts, for instance a) by settling Misseriya families in Abyei and attacking Dinka Ngok villages to change the demographic proportions, and b) by trying to modify the rules on ethnical balance in Abyei institutions, established in the CPA 2005, in favor of the northern Misseriya.

80. What is true for Abyei, is also true for the devolution of other disputed and claimed areas and for border demarcation. While some progress was made on opening borders and cross-border trade in 2013, border demarcation and security is still today work in progress.

81. Independent Diplomat's involvement. ID was only involved in the Abyei part of the negotiations when there were signs in 2012 that the temporary and unstable joint management of Abyei

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<sup>28</sup> This mandate of UNISFA was renewed every six months and extended to the monitoring of other border areas. It is still in place today.

<sup>29</sup> Sudan Tribune, <http://www.sudantribune.com/spip.php?article54176>

could, finally, give way to a referendum as part of comprehensive North-South negotiations. ID's New York Office prepared two letters to the UN Security Council, a GRSS statement to the AU Peace and Security Council, a statement to the accredited press at the UN in New York, and two briefings to GRSS negotiators. Other border questions than Abyei and Heglig were not part of mandate given to ID, probably both because of the highly political nature of the issues involved and the fact that there was not much progress in the negotiations. There is one exception: ID wrote a background paper and a negotiating strategy on border issues in June 2012.

82. The most important of these ID drafts are the following:

- After the heightened tension in the first months of 2012 GRSS wrote a letter in May 2012 to the UN Security Council in which it provided evidence of compliance with actions required by Resolution 2046: the South Sudanese Police Service of Abyei had been redeployed before the deadline, following the earlier redeployment of SPLA forces. That means that there were no more South Sudanese forces stationed in Abyei. The same was true for Heglig. In contrast, Sudan Armed Forces remained in Abyei and continued to launch attacks against targets in South Sudan territory. Therefore the GRSS asked for Chapter VII sanctions against Sudan.
- In a statement to the UN accredited press in New York in May 2012, South Sudan's UN representative described the difficulties of the interim regime in Abyei: the establishment of a joint area administration was impeded, the rules for nominating Council members officials had been changed unilaterally by Sudan, many ten thousands of Ngok Dinka refugees in South Sudan (after the 2011 attack by Sudan Armed Forces) were still unable to return to Abyei. GRSS welcomed the renewal of the UNISFA mandate, called for the activation of the agreed border mechanisms, the restoration of livelihoods and a better presence of UN human rights monitoring.
- In a forceful statement to the AU Peace and Security Council in October 2012, Nhial Deng Nhial, the then Minister of Foreign Affairs focussed on the unresolved issues after the Agreements of 27 September 2012, that is the status of Abyei and of disputed and claimed areas, border security and demarcation, and a negotiated conflict settlement in the northern States of South Kordofan and Blue Nile (the Two Areas).. As to Abyei, the Minister urged AU's Peace and Security Council to adopt the AU mediators' proposal to hold a referendum in October 2013 with a referendum commission chaired by a nominee of AU. According to him, the counterproposal of Sudan, a partition of Abyei, went against the spirit of the CPA 2005. The statement is attached at Annex 4.4.
- In January 2013, ID briefed GRSS on a meeting held with the Ethiopian Permanent Mission in New York. Ahead of the AU summit, the mission gave advice on the next diplomatic steps GRSS should take to convince key AU members of the need for a referendum of Abyei residents.
- Finally in a letter to the UN Security Council in May 2013, the South Sudan Mission Chief provided details on the legal history of Abyei and informed on the instable interim status of Abyei. Sudan had encouraged the settlement of Misseriya within Ngok Dinka areas to change the demographic balance and influence the outcome of the agreed referendum. Armed Misseriya had attacked and killed repeatedly Ngok Dinka, looted their cattle and burned their villages. UNISFA soldiers considered the protection of civilians against armed civilians as being outside their mandate. GRSS proposed a strengthened mandate of UNISFA (protection of civilians against all armed elements), full demilitarization of the Abyei area, facilitating the return of all displaced Ngok Dinka to their home areas and an agreement on the final status of the Abyei area. The letter is attached at Annex 4.5.

83. We mentioned above that ID was asked to prepare only one document on other border issues in June 2012, probably because negotiations on border demarcation and disputed and claimed areas were part of resolution 2046 and were required to be completed until 2 August 2012. In a densely written three page document, ID explained, first, which different maps were available to determine a provisional border line taking the date of independence of Sudan (1 January 1956) as the yardstick, defined the concept of “safe demilitarized border zone” (SDBZ), pleaded for negotiating bilaterally the disputed areas before asking for international arbitration as a last resort, and proposed how to include Heglig as a claimed area in the negotiations. ID proposed and justified a sequencing of the negotiations in four steps:

- Working from the indicative map prepared by AU, implement SDBZ and joint monitoring of borders respecting the deadline of Resolution 2046;
- Put border monitors in place and withdraw troops 10 km south of southern SDBZ line;
- Begin negotiations on disputed areas;
- If after a sustained negotiation effort results remain inconclusive, ask for international arbitration, adding Heglig as a claimed area at that moment.

84. Assessment. All of the texts which we reviewed are well structured and denote an excellent knowledge of legal and political aspects. Proposals take into account the views of the opposing side, those of a divided international community and the one of the AU mediators. Often they are based upon a more precise knowledge of facts than the one previously used in the international discussion. While the drafting was always reviewed by an ID team, all texts on Abyei were drafted by ID’s New York Office, the text on borders is possibly an exception because it might have been drafted first by ID’s Juba staff. This is because they concern directly or indirectly the UN Security Council.

85. A South Sudan high official who was intimately involved in Abyei negotiations and oversight was highly appreciative of ID’s support, calling it a “bridge between the Government of South Sudan and the UN Security Council”. They “made Abyei known in a structured way”. Their involvement at critical stages was almost daily. He also attests sincerity and integrity to the ID team, affirming that they never had a hidden agenda.

#### ***Relations with UNMISS, the UN peacekeeping mission***

86. Context. A first UN peacekeeping mission was set up in Sudan as part of the CPA in 2005. It focused on six conflict-prone areas in northern and southern Sudan. Right after independence in July 2011 a new peacekeeping mission was set up for South Sudan (UN Mission in the Republic of South Sudan, UNMISS) as well as one to support the interim regime in Abyei (UN Interim Security Force for Abyei, UNISFA). The new UNMISS, in the mind of its main backers in the UN Security Council, was not only to have the traditional military and police security functions of peacekeeping missions but an expanded mandate of protection of civilians and a state-building component, consisting mainly of training of military, police and civilian State officials in how to become protectors of the civilian population, respect human rights and apply the rule of law. This new mandate creates a responsibility to protect civilians even against SPLA in cases where government forces threaten parts of the country’s population. It also meant that UNMISS staff would give support to negotiated solutions to local conflicts,

mainly through mediation. The original peacekeeping corps had a ceiling in its staff of 7000 military personnel, 900 civilian police personnel and an appropriate civilian component.<sup>30</sup>

87. Complying with these functions has not been an easy task in a country which has been rocked, as before independence, by a number of intercommunal conflicts and by armed rebel groups attacking South Sudanese army (SPLA) bases in some cases. As an example, there were 265 violent incidences in the first ten months in 2013, causing about 600 deaths and newly displacing about 160'000 people throughout South Sudan.<sup>31</sup> UNMISS has been hindered to fulfill its mandate to protect civilians by four factors: a) the countries providing peacekeepers often do not equip them properly, for instance with helicopters or river boats, impeding that they can reach remote areas where conflicts are taking place; b) the very poor state of transport infrastructure has limited access to conflict hotspots; c) belligerents, including local SPLA troops, have often barred access to peacekeepers, and d) UNMISS peacekeepers themselves have become the target of harassment or attacks. By end of June 2013, a UN report counts 248 cases of "status of forces" violations since the establishment of UNMISS.<sup>32</sup> There were also 33 peacekeepers and other UN staff killed until March 2015. Examples are attacks as they happened to five Indian peacekeepers and seven civilian staff in Jonglei in April 2013 and to a Russian crew whose helicopter was shot down.

88. After an internal civil war broke out in December 2013, the ceiling for UNMISS military and police personnel was increased by a third, but at the same time the State-building functions (training, joint patrols UNMISS/SPLA and civilian and military staff, support of mediation and so on) was cut. That meant at the same time that UNMISS has not been able to protect adequately civilians anymore, although in the new resolution of the Security Council (May 2014) it was authorized for the first time to intervene militarily under Chapter VII. According to a close international observer, UNMISS management had been accused by GRSS to protect the opposition and provide intelligence to it. Also, SPLA commanders had harassed UNMISS staff. With the breakout of the civil war the humanitarian situation deteriorated sharply owing to attacks by both parties in conflict on the civilian population. 85'000 civilians have sought refuge in UNMISS compounds in 2014.<sup>33</sup>

89. Independent Diplomat's involvement. Nine documents, prepared mainly by ID's New York Office, were made available. ID played an important role advising GRSS on the new type of UN peacekeeping missions (enhanced protection of civilians and institutional strengthening of State agencies), when UNMISS was established. In 2013 ID was asked to study UNMISS' management in the field and made recommendations for a modified mandate. ID also prepared the statements made by South Sudan's mission chief in New York when UNMISS's mandate was renewed and when consultations took place on South Sudan in the UN Security Council based upon the UN Secretary General's report (a total of four statements). Finally, ID briefed GRSS on consultations of the UN Security Council with the UN Special Representative in South Sudan and wrote talking points for a panel discussion in New York after the renewal of the UNMISS mandate.

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<sup>30</sup> UNMISS Facts and Figures: <http://www.un.org/en/peacekeeping/missions/unmiss/facts.shtml>. The civilian component stood at 1'018 international staff, 1750 national staff and 570 United Nations Volunteers in October 2013, according to the Report of the UN Secretary-General on South Sudan of 8 November 2013, S/2013/651:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2013/651](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/651), page 6.

<sup>31</sup> Ibid, page 13.

<sup>32</sup> Ibid, page 15. This refers to the Status of Forces Agreement (SOFA) which was signed by GRSS and the UN at the same time as UNMISS was established. Such violations consist mainly of harassment, threats, extortion, physical assault, arrest and detention of UN staff as well as the seizure of vehicles.

<sup>33</sup> Information provided by an UNMISS official.

90. ID wrote two notes to GRSS, in March and April 2011, on the future mandate of UNMISS which started in July 2011, right after independence. This work was done before funding from Swiss Foreign Affairs began in November 2011. The first note provides a detailed introduction into the planning process of UN peacekeeping and peace support missions and outlines the principal issues GRSS should consider when it determines its policy towards the new mission proposal. Recommandations are made on a) the objectives and structure of the new mission (for instance inclusion of border security, which implies the parallel consent of Sudan), b) how protection of civilians should be included, c) how the mission should be coordinated with development planning both of the UN and donors, d) where GRSS should locate the internal coordination of the new mission, and e) what are the desirable qualifications of the Special Representative of the Secretary General to be nominated. The second note explains the implications and modalities of protection of civilian mandates (having their origin in the “responsibility to protect” doctrine, adopted in 2005), using examples on modalities from other UN peace support missions. The two notes reflect extensive discussions of ID with UN officials and diplomats from key UN Member State missions in New York.

91. In the second quarter of 2013, ID was mandated by GRSS to investigate UNMISS performance in the field and recommend measures which then could be included in the negotiations on the annual renewal of the UNMISS mandate. ID staff visited UNMISS bases and those of other UN agencies as well as local administrations in Aweil (capital city of the regional State of Northern Bahr el Ghazal State) and Bor (capital city of the regional State of Jonglei). Their report was summarized in a note in June 2013 (attached to this report at Annex 5.6). The assessment reveals a series of shortcomings and a lack of adequate resources which make it difficult for UNMISS to comply with its ambitious mandate. The recommendations are as follows:

- UNMISS assets and staff should be redeployed to high-risk areas;
- The UN country team should shift its development cooperation more to areas of greater security;
- UNMISS should include a programme to extend the presence of government to isolated areas by improving both road and river access;
- A communication campaign should be launched to explain how UNMISS and UNISFA will operate in the States in which they are both present;
- Communications should be improved between the UN and the SPLA, local authorities and communities to foster understanding of the two Missions’ mandates.

92. ID produced the following two statements for the South Sudanese UN representative in New York in 2012:

- At the time of renewal of UNMISS, in July 2012, South Sudan’s Representative a) appreciates the continued support to peace by the UN and the international community, b) comments that more security for civilians is tied to better relations with Sudan, c) welcomes the call in the resolution of the UNSC for better coordination of UNMISS peace support with other humanitarian and development agencies, d) is convinced that the oil stalemate will soon find a solution, and e) expresses the strong commitment of South Sudan to continue negotiating all the outstanding issues with Sudan.
- In his observations to the UN Secretary General’s report on South Sudan in November 2012, the mission head of GRSS a) considers the 27 September 2012 Cooperation Agreements to be an important milestone on the way to lasting peace with Sudan but considers also that the final resolution of all issues is necessary – border demarcation and final status of Abyei – which requires

active support of the Council, b) for this reason, he pleads for an approval by the Council of the AU Peace and Security Council's decision (24 October 2012) to organize a referendum on the final status of Abyei, c) affirms that South Sudan is eager to implement the agreed border security mechanism (demilitarized border zone and joint monitoring and verification) but that peace in regional States on both sides of the border will only be possible if a negotiated solution can be found to the armed conflict in the "Two Areas" in Sudan, d) considers that the recent decision to expulse a Human Rights Officer serving with UNMISS has not been taken lightly but was in conformity with international conventions; this does not put in question the unwavering commitment of South Sudan to international human rights, and e) explains that in the case of the intercommunal conflicts in Jonglei GRSS is pursuing a multi-pronged strategy including a reconciliation process directed by a Presidential Committee and a disarmament process directed by the SPLA.

93. In July 2013, in its address to the UN Security Council on the occasion of the renewal of the UNMISS mandate, South Sudan's UN Representative admitted important gaps in GRSS' capacity to protect civilians and create the institutions and legal tools of a society based upon the rule of law and freedom of expression. He a) enumerated the new laws enacted in the first two years of government, providing the basis for greater respect of freedom of expression, b) declared that universal human rights, reinforced by positive elements in South Sudan's cultural values, were at the core of the liberation struggle, c) recognized that there was a gap between aspirations for security and respect for human rights, owing to the negative legacy of a long and devastating conflict, d) remained concerned about intercommunal violence in Jonglei which presented a challenge to discharge GRSS' primary responsibility for protecting citizens, e) signaled that GRSS was aware of importance of addressing underlying causes and remained confident that UNMISS was to continue to assist the government to develop the rule of law and implement peace operations ("disarmament, demobilization, and reintegration", DDR).

94. He continued his intervention by welcoming reforms which were embedded in the renewal of UNMISS' mandate: a geographical reconfiguration of its military deployment so as to focus on volatile high-risk areas and efforts to co-locate more UNMISS staff. He recognized UNMISS' requirement to have unhindered access across the territory and confirmed GRSS' commitment to improving communication and coordination systems in this regard. South Sudan did not want a repetition of the tragic incidences which led in 2012 to the loss of 16 peacekeepers. He also mentioned that the internal conflicts had detrimental effects on the region. All countries of the region had a common interest in stability and, therefore, South Sudan was determined to work with neighboring countries to consolidate peace in the region. Finally, he stressed that the consolidation of peace and stability in South Sudan also required the solution of other challenges: finding a final status of Abyei through a referendum of its residents and a political solution to the conflict in South Kordofan and Blue Nile regions in Sudan (the "Two Areas").

95. In November 2013, South Sudan's UN representative addressed the UNSC in a consultative meeting on South Sudan which was based upon the UN Secretary General's status report. He emphasized that the Jonglei intercommunal conflict remained of great concern for GRSS as it was a challenge to the Government's prime responsibility to protect civilians. He mentioned the following details: as part of the President Kiir's national reconciliation strategy, successful peace offers had been made to several insurgent rebel leaders. A similar dialogue was now about to succeed in the case of David Yau Yau. Yet the national reconciliation strategy could only succeed if it attacked the root causes of rural poverty. This meant providing schools, health centers, all-weather roads and stronger government to rural regions which had not been given any support by central governments for a very

long time. Another important aspect was zero tolerance for crime and full accountability of crime perpetrators. GRSS accepted that UNMISS had unhindered access across the territory and regretted the incidents that had occurred.

96. ID also briefed South Sudan's UN Mission and GRSS on a closed meeting on March 15, 2012 of the UNSC with the Special Representative of the UN Secretary General to South Sudan and the UN Undersecretary General for Peacekeeping. In such cases, ID consulted with members of the UNSC to find out what had been discussed. Finally, ID prepared talking points for the UN Representative of South Sudan to participate in a panel discussion on 30 July 2012. On that occasion the UN Representative explained the complexities and limits of UNMISS interventions in civilian conflicts (prevention and deterrence), taking the Jonglei intercommunal conflict between Murle and Lou Nuer as example.

97. **Assessment.** ID's contribution in the area of South Sudan's relations with the UN's peacekeeping and peace support mission is substantial. The main positive elements of its interventions are:

- ID introduced South Sudanese officials to the complex world of UN peacekeeping diplomacy. Its two background notes and the associated action plan and other recommandations are technically correct and to the point (paragraph 90). The notes reflect an excellent access of ID to the UN experts in this field and to key members of UNSC.
- ID studied UNMISS management in the field in 2013 before the renewal of the UNMISS mandate (paragraph 91 and Annex 5.6). Its observations open the eyes on the relative inefficiency (logistics, equipment, motivation) and the bureaucratic complexity of having a multi-country corps of peacekeepers working side by side with another UN peacekeeping corps (UNISFA/Abyei and borders), and humanitarian and development agencies. ID's recommandations are pertinent and mostly well argued. Unfortunately they were probably not used by GRSS counterparts in the renewal discussions (see discussion on outcomes, paragraph 131).
- Relations between GRSS and UNMISS became strained in 2012 and 2013 because UNMISS troops, police personnel and civil staff were frequently barred from access to crisis zones mainly by SPLA, GRSS/SPLA were not willing or able to protect civilians, as they should have, and harassment and attacks on UNMISS staff increased over time. ID in two interventions was able to explain this situation to the members of the Security Council in a credible way as regrettable incidents which did not keep GRSS from improving its humanitarian track record and, whenever possible, sanction wrongdoers (see paragraphs 93 to 95). Sources confirmed that there was nobody else than ID who could have done this work in 2012 and 2013. It helped South Sudan to keep a reasonably good image in the international community until the outbreak of the internal civil war in December 2013.

### ***Regional cooperation and global diplomacy***

98. **Context.** In late 2011 and in 2012 ID's services were mainly in demand to support the South Sudanese negotiators in several aspects of the non-resolved post-secession issues with Sudan, while relations with the UN peacekeeping mission had to be dealt with periodically at the UNSC in New York. (paragraphs 43 and 44). The Ministry of Foreign Affairs was not interested in ID's services and was not able to get involved intensively in regional and global diplomacy, which one would have expected to be at the center of South Sudan's foreign relations as a new-born country, if only relations with Sudan

had become stable and the “logic of war” buried. This changed after the conclusion of the September 2012 Cooperation Agreements with Sudan and first steps in their implementation. Remained the unresolved issues: Abyei, other disputed and claimed territories and border security, as well as a political solution to intermittent warfare in the Two Areas in Sudan. Yet, after a promising initiative to organize a referendum in Abyei in the last quarter of 2012, all these remaining negotiating items proved to be intractable. This is why, from the first quarter of 2013 on, the attention of GRSS and particularly the Ministry of Foreign Affairs shifted to cooperating with neighboring countries and participating in some global forums.

99. Independent Diplomat’s involvement. ID made available six documents covering regional topics that were prepared between April and October 2013. Two documents - a detailed background report and a vice-ministerial statement - concerned bilateral relations with the Democratic Republic of Congo. Two others prepare statements for meetings of the International Conference of the Great Lakes Region (ICGLR). ID makes recommendations on the position of South Sudan to take on the International Criminal Court at a Summit of the African Union (South Sudan is not a signatory of the ICC). Finally, the selection of texts comprises of a statement of the Minister of Foreign Affairs at an IGAD meeting on peace and security in the “Karamoga Cluster”, a region in the North-East of Uganda which borders Kenya and South Sudan.

100. ID was also asked to take positions on diplomatic topics going beyond Africa. Of the nine documents made available by ID a) three concern visits of South Sudan delegations to the EU in Brussels with the intent to become a member of the Cotonou Agreement, the trade and cooperation agreement tying the Africa, Caribbean and Pacific (ACP) countries to the European Union; b) two give advice on the position to take at the UN General Assembly on the membership bid of Palestine; c) a briefing explains to which six human rights’ treaties South Sudan has adhered to thanks to the assistance of the Human Rights Section of UNMISS, without having internal procedural laws yet on treaty accession and ratification; d) a background paper and talking points for meetings in Brussels explain the “new deal” for fragile countries (like South Sudan), that is five peacebuilding and statebuilding goals which should guide cooperation with fragile post-conflict countries;<sup>34</sup> e) advice on a possible recognition of Kosovo as a new State by South Sudan; and f) briefing papers for a visit by the Minister of Foreign Affairs to Washington DC which contain interesting intelligence on the views of different segments of officials, politicians and organisations on South Sudan as well as a schedule of suggested meetings.

101. As example of ID ‘s work on regional issues we selected two topics:

- In April 2013 ID briefed the group of officials which prepared a high-level meeting between the governments of South Sudan and the Democratic Republic of Congo (DRC). The briefing is attached at Annex 5.7. Later, ID staff wrote the statement of South Sudan’s Deputy Minister of the MFAIC at the high-level meeting in Kinshasa. The main issue was the security situation in the border areas between the two States. Over the past 8 years about 32000 refugees from DRC and the Central African Republic, mostly fleeing from the Ugandan Lord’s Resistance Army, had taken refuge in Western and Central Equatorian states in South Sudan. DRC also alleged that armed rebel groups with connections to SPLA were based in South Sudan and attacked targets in Eastern DRC. Finally, Amboro nomads were roaming across some of the Central and Eastern African States

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<sup>34</sup> This was decided upon at the High-Level Forum on Aid Effectiveness in Busan, South Korea in 2011 by OECD and developing countries as well as by several global development organisations.

without the governments having a clear knowledge about their whereabouts. The border was not well delineated and some parts were contested by the DRC. A joint Interministerial Commission had been set up recently. ID proposed that a Joint Defense and Security Committee be formed between the two countries to focus on refugee and rebel groups and eventually disarm rebels. A separate Joint Border Committee should organize the delineation and demarcation of the common border and deal with disputed areas.

- Ahead of the extraordinary summit of the African Union on Africa's relationship with the International Criminal Court (ICC), ID advised South Sudan on the options it had to take a position on the matter as a non-member of the Rome Statute. After considering the different options and the role of AU (or better the lack of it) in the withdrawal of individual members, ID's advice was for South Sudan not to be in the forefront of the discussion and to follow the African consensus on the issue quietly. This would avoid affecting relations with EU member States and other large donors of South Sudan, many of whom are strong supporters of the ICC. ID also mentioned the ambiguous language in the Cotonou Agreement committing members to "take steps towards ratifying and implementing the Rome Statute" which, in fact, did not mean that ACP countries had an obligation to become a member of the Statute (see below).

102. Concerning "global diplomacy" we make reference to the considerable work performed by ID staff (with an important part played by ID's Brussels' Office) in introducing GRSS to the European Union and the Cotonou Agreement. ID prepared extensive briefing papers for President Kiir's visit to Brussels in March 2012 (attached at Annex 4.8), organized the logistics and meetings of the visit - including top officials of all the different organs of the EU machinery -, prepared the letter requesting membership in the Cotonou Agreement, and provided ample advice to a later delegation of South Sudan officials to Brussels in late April 2012, including answers to nine specific questions which EU counterparts were bound to ask, according to ID's intelligence.

103. Assessment. These more traditional diplomatic tasks were well performed by ID staff:

- The detailed, tightly written history of political and security relations in the eastern region of DRC denotes a good knowledge of the region. The inventory of bilateral migratory security and border issues appears complete, the proposed bilateral commissions an adequate first step to carry this common work forward.
- The advice on ICC positioning of South Sudan was sound, avoiding any provocation of African neighbors (like Kenya) and donor countries, most of which are strong backers of ICC.
- In its thorough work preparing the presidential visit to Brussels/EU, ID used well the network established by its Brussels office, judging from the quality of the appointments and the policy questions collected. The preparatory work is sound in terms of facts and diplomatic intelligence (attitudes and views of counterparts) and the schedule of meetings impressive.

### ***Diplomatic capacity development***

104. Before independence, from 2005 to 2011, the Ministry of Regional Cooperation of the regional Government of Southern Sudan was in charge of foreign relations. But in fact the Presidency of the regional Government as well as a number of rebel leaders were involved in diplomatic decisions in many instances. No diplomatic priorities were being set, no foreign policy was formulated. This mode of operation continued after independence in the new MFAIC. Among all the state-building tasks, foreign relations did not have first priority. Staffing decisions took time, operating procedures were

enacted only very slowly, and credentials of foreign ambassadors were accepted with considerable delays. In November 2011 the MFAIC announced that 26 embassies were going to be created overseas. In March 2012 78 ambassadors were nominated inside of MFAIC, including those who were going to be sent to diplomatic posts. In the second quarter of 2012 first embassies started to be installed. It took the rest of the year to reach the target. But these embassies were understaffed initially. Most of them were not well informed and did not receive specific mandates. Circular letters were sent to them only irregularly. This situation has improved gradually. But still today, no internal secured electronic network exists in MFAIC, including other key government offices and South Sudan's missions. Even today, private emails are used to communicate. Some key missions have their own website. Also, there is still no mechanism to coordinate important diplomatic positions and tasks inside of GRSS.

105. Independent Diplomat's involvement. The initial proposal of ID, an annex to HSD's first project document, comprised of an ambitious component of diplomatic capacity development (paragraph 13).<sup>35</sup> ID was to "... strengthen GRSS' capacity to engage effectively in diplomatic processes." ID was to work with MFAIC "to design and develop a strategic approach to GRSS' regional and multilateral diplomacy." If needed, "ID is also in a position to provide strategic advice on the design and operational scope of South Sudan's new MFA, including its overseas diplomatic service."

106. ID was not asked to provide much advice in this regard. The documentation made available by ID contains two reform proposals for the MFAIC (in February 2012 and in April 2013), a suggested plan of priority tasks and working assignments of South Sudan's UN mission in New York, a schedule of meetings for a visit mainly with members of the UN Security Council, and talking points for a briefing of the diplomatic corps in Juba after a summit between Sudan's and South Sudan's Presidents. The two reform proposals are summarized below:

- ID justifies its reform proposals for the MFAIC, made in February 2012, with the fact that since independence South Sudan lost a lot of ground in its diplomatic performance in the eyes of the international community. These proposals are at Annex 5.9. Its positions in the post-secession negotiations with Sudan, and particularly the oil production stop, are not understood, even by its international friends. South Sudan is unable to communicate well its policy decisions and lacks intelligence on how its diplomatic decisions are perceived internationally. This "diplomatic deficit" could be overcome by four measures: a) an interministerial working group should be created to work out and propose diplomatic positions; b) after the weekly meetings of the Council of Ministers decisions should be communicated in public messages to the diplomatic corps, the press and to South Sudan's overseas embassies; the GRSS website and new media should be used as well; c) embassies should be established in nine international centers which are critical for South Sudan; and an encrypted email network should be established, with donor support.<sup>36</sup>
- ID presents a very similar reform agenda fourteen months later, in April 2013, which indicates that MFAIC did not act upon the first proposals in February 2012. The four recommandations are: a) the creation of an interdepartmental public diplomacy task force; b) a system to convey instructions to embassies and missions; c) weekly separate briefings of the diplomatic corps and the press; and d) an encrypted intra-gouvernemental email system.

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<sup>35</sup> Independent Diplomat, *Proposal for Support from the Government of Switzerland*, 1 November 2011- 31 October 2012, attached to EDA, Political Department IV, Human Security Division, *Kreditantrag, Independent Diplomat - Develop South Sudan's Diplomacy*, Bern, 2 November 2011.

<sup>36</sup> These are Washington DC, New York, Beijing, Moscow, Addis Ababa, Brussels, Geneva, Khartoum and Pretoria.

107. Assessment. ID's proposals were well taken and are common sense when a ministry of foreign affairs works under normal circumstances and is given the means to operate. According to internal sources in MFAIC the reform proposals, when they were first made, were taken as an unfair and arrogant criticism by MFAIC management and staff. Besides the preparation of the file and Brussels' visits for the Cotonou Agreement, no further work was given by the MFAIC to ID in 2012 (paragraph 44). Nevertheless, some of the proposals were gradually and partially enacted over time: press conferences and briefings of the diplomatic corps were held irregularly in 2012 and more frequently in 2013. Embassies started to be informed by MFAIC on decisions made in Juba, although irregularly and often with delays, and some of them were given mandates. We will further explain this "impact" of ID in paragraph 133. However, with hindsight, it would have been much more productive for ID to limit its contribution to some hands-on work for the Ministry, upon demand, as evident in the three other assignments presented in the ID files: preparation of diplomatic meetings, background notes, press conferences and specific organizational proposals (as the one for South Sudan's UN Mission in New York).

#### *Overall quality of ID's diplomatic advice*

108. Functional types of advice. As we could see in this section, ID's services were not used in case of major controversial negotiating decisions of GRSS (oil production stop, Heglig incursions) or, for obvious reasons, in other actions or omissions by GRSS (support to SPLM-North in Sudan, SPLA attacks on civilians and UNMISS staff) which had a negative impact on South Sudan's international standing and relations with the United Nations. ID was not integrated into the negotiating team for post-secession issues (even if it participated in some meetings of the team) and was not part of the Vice-President's team for UNMISS relations. The advice ID provided covered three diplomatic and an institutional function:

- In the North-South negotiations and in relations with UNMISS, ID helped its South Sudanese counterparts to understand the views of the international community - particularly the members of the UN Security Council - multilateral partners and mediators, and it proposed policies and action plans to GRSS policy-makers and negotiators which were based upon ID's understanding of South Sudan's best interest, taking into account the intelligence it had collected on other players, the international legal obligations of South Sudan, and a good understanding of political, historical and legal facts.
- ID prepared the presentation of GRSS' positions in the North-South negotiations and in UNMISS relations - some of which reflected directly previous proposals of ID, others not - giving them a rationale and relating them to views and actions by other parties. It also prepared their presentation to the diplomatic corps and the press through talking points and statements.
- Mostly in the last eight months of its mandate, ID prepared diplomatic visits, voting positions in international fora, and interventions in meetings of regional and global organisations.
- ID made two proposals to improve the decision-making in negotiations and the outreach of South Sudan's diplomacy.

109. Argumentative elements used by ID. Typically the following arguments were used by ID in its texts:

- A convincing rationale for GRSS decisions which are misunderstood internationally (examples: oil production stop, Heglig incursions);

- Conciliatory gestures and immediate implementation of international measures to get back on a constructive negotiating path (examples: police withdrawal Abyei, withdrawal of military forces Heglig and Abyei, prosecution of SPLA perpetrators re civilians and UNMISS);
- Highlighting the absence of commensurate conciliatory measures by Sudan in the case of North-South negotiations;
- Advocacy for mediators' proposals for negotiations (North-South) and defense of human rights and good governance (UNMISS context);
- Conformity with international legal standards (CPA 2005);
- Practical proposals to move forward and find a negotiating platform to balance conflicting interests (bilateral relations with DRC).

110. ID's arguments are usually based upon accurate facts and good intelligence:

- A good grasp of political, legal and historical facts (examples: briefing on new type of UN peacekeeping mission, background paper on borders, study of UNMISS in the field), facts which are sometimes not present in earlier discussions (Heglig history);
- A good knowledge of the attitude and the intentions on the other side of the negotiating table gathered through intelligence;
- A similarly good grasp of views of key members of the international community and of mediators. Particularly impressive is the reporting on closed meetings of the UNSC. Because of excellent relations with a number of members of the UNSC, ID was able - two days after the meeting - to give a detailed account of views expressed.

111. The formal structure of ID's texts may be characterized as follows: Notes are usually not more than three pages long and comprise of short sentences, often reading like talking points. Their structure is logical (for instance: summary, current situation, advice). Paragraphs are numbered to facilitate memorizing and internal referencing. Background papers, despite of frequently relating a complex historical and legal reality, are quite short and easily understandable for non-initiated readers. This is because the minimum of facts are related to understand the context and they are put into a logical sequence. When looking at all the texts produced by ID, it is easy to observe that their structure and writing style is quite homogeneous. This has to do with the way they are drafted. ID texts are first drafted by an ID staff member, either in Juba or New York (in one case probably in Brussels), and then reviewed by senior experts located in New York.

112. Views of counterparts and observers. Most texts of ID were appreciated by the South Sudanese high officials who had asked for them. The first evidence are short emails from some officials acknowledging receipt of the texts (some of these emails were made available by ID) and the fact that statements and talking points were used in international meetings, usually without or only with minor modifications. Independent Diplomat was indispensable in doing professional diplomatic work to formulate and prepare the presentation of South Sudan's positions in international relations for which the chief negotiator of GRSS in the North-South negotiations or the Ministry of Foreign Affairs did not have anybody who could do it. It did not only "build a bridge between GRSS and the UNSC" in the case of Abyei but built similar bridges with the international community in the other areas of negotiations and external relations (paragraph ...). An external observer's comment confirms this in the case of meetings of the African Union. He observed a huge drop in quality in South Sudan's positions once ID had left the scene. There are only two critical views of ID's work we are aware of: a) ID's reform proposal in early 2012 of the Ministry of Foreign Affairs was resented by MFAIC staff and the

Ministry did not want to use ID's services for a long time; b) one external observer criticised the professionalism of ID staff in Juba - while being eloquent of the work of ID's New York Office - and blamed it for not being able to take more influence on GRSS to avoid what most members of the international community considered as major blunders in the North-South negotiations. Yet, he then admitted that this was too much to ask from any external diplomatic advisor.

### ***Conclusions***

113. Independent Diplomat's experts were not able to prevent GRSS from making what the international community considered diplomatic blunders which increased the risk of war with Sudan. But in the post-secession negotiations with Sudan and in South Sudan's relations with the UN peacekeeping mission ID had an important function in helping South Sudan's negotiators and diplomats to understand the views of the international community and of its counterparts in negotiations, and to take into account historical and political facts as well as legal considerations in its diplomatic decisions. In the same areas Independent Diplomat also formulated and then prepared the presentation of South Sudan's positions in international forums, and prepared talking points or statements for briefings of the diplomatic corps and the press. ID also did more standard diplomatic work for the Ministry of Foreign Affairs preparing diplomatic visits, voting positions in international forums, and interventions in meetings of regional and global organisations. Finally, ID also made two largely unsuccessful proposals to improve the Government of South Sudan's decision-making in negotiations and outreach of its diplomacy.

114. These services of ID experts very highly appreciated by South Sudanese counterparts who are aware that the bridges which ID built with the international community reinforced South Sudan's international standing. They also recognize that nobody in South Sudan was able to do this work at a critical juncture in its history. This recognition has much to do with the formal and substantive quality of ID's texts: they are short, often written like talking points, and are logically structured and therefore easily readable. At the same time they are usually based upon comprehensive diplomatic intelligence, well-researched historical and political facts and accurate legal considerations. Statements often comprise of an argumentative chain which gives a convincing rationale for GRSS' position.

### ***Recommendations***

115. The lessons to be learnt when considering the scope and quality of ID's work are three: a) It is impossible to change the course of negotiations through external diplomatic advice. For major decisions advisors are not listened to, in the South Sudanese context such decisions are based to a large extent on the views of groups and personalities wielding informal power or on spontaneous acts of field commanders (as happened probably in the first Heglig incursion); b) diplomatic advice to better inform the country's positions and present them to the international community is appreciated, if it is of high quality and if the advisor is considered fully loyal to the country's cause; c) this means that the selection of the right advisors is the single most important decision in such a case, both in terms of their diplomatic professionalism as well as in terms of the trust they are able to obtain from the country's officials for whom they will work. Independent Diplomat (and the specific advisors selected) was a good choice in the case of South Sudan.

## **G. HSD's role as project manager and supervisor**

116. We already mentioned in the section on project design that HSD should have spent more time to ensure that ID's services were well defined and met the expectations of South Sudan's negotiators and top diplomats (paragraphs ...). Having a good analysis of the institutional and political context at the beginning of the project would have allowed not only to define more realistic outputs and outcomes but also for HSD to follow progress made in the course of the two years in achieving the project's expected results. Of course, a "normal" supervision by HSD of the project was not possible because of the nature of ID's diplomatic advice to GRSS. Many documents written by ID required that they were kept secret which implied that HSD could not be given access to them and, therefore, could not be aware of and "supervise" the quality of ID's work. Yet this confidentiality restriction did not imply necessarily that HSD could not follow periodically the status of the project and progress made towards achieving its goals, talking to ID's counterparts in the Ministry of Foreign Affairs and other parts of GRSS, to ID's staff in Juba and, why not, in New York, as New York was ID's hub for the project.

117. Besides its two annual project proposals, Independent Diplomat had the obligation to inform HSD every two months on project progress and to write a final narrative report at the end of each year. The last bimonthly report of the first year was not written (September-October 2012). For the second year, only a first four months' report was written (November 2012-February 2013) besides the final narrative report for the second year (November 2012-October 2013). We assume that ID agreed with HSD to a) include the record of the last two months in the final narrative report for the first year (November 2011-October 2012), b) pass to a four months period in reporting in the second year, and c) omit the last two four-monthly reports. These periodic reports were the only written source on the implementation of the ID project available to the evaluator, except for the two annual narrative reports by ID, in the absence of any written evidence of substantive supervision by HSD. They give (as requested in the contract with HSD) a short review of relevant negotiating and political events in South Sudan, indicate the most important tasks implemented by ID in the reporting period and indicate which tasks ID might be asked to take on in the forthcoming period. For that reason it is difficult to understand why this only reporting requirement was not found to be useful in the second year.

118. These reports could have been the occasion for HSD's representative in Juba to get some further explanations from ID's Juba staff on how they judged the usefulness of the project, its conformity with the original intentions and the interest of South Sudanese counterparts in ID's services. In a similar way, HSD's representative could have had a talk with the MFAIC's designated counterpart for the ID project, and possibly other main users of ID's services. A supervision report sent to HSD Berne, comprising of comments on ID's reports and issues revealed in the follow-up discussions with ID staff and South Sudan's counterparts would have been in order. This would have given the possibility to HSD to react when project implementation was at risk, as for instance when ID had to look for mandates in other parts of GRSS given the lack of interest of the Ministry of Foreign Affairs in ID's services in 2012.

119. Such a supervision pattern would have had as an added benefit that HSD's representative in Juba would have been able to enlarge his or her network inside of the Government. This could have been useful for other projects being supervised by HSD and the identification of needs to be addressed by new projects. A more active supervision by HSD would have had to consider one important risk. ID's access to relevant mandates depended on the perception by South Sudan counterparts that ID staff was totally loyal to South Sudan (no hidden agenda) and that the content of their advice was only known to their direct South Sudan's counterparts and not, for instance, to the Swiss Government. However, a precise knowledge of ID's diplomatic texts was not necessary for the type of supervision which we

advocate. As to avoiding the perception of interference, we believe that requires from a supervisor to have good diplomatic skills and a good trans-cultural sensitivity, both attributes which are common among Swiss field representatives.

### ***Conclusion and recommendation***

120. **Conclusion**. The supervision of the ID project by HSD was necessarily limited by the fact that ID provided services to GRSS which, to be useful and acceptable, had to be kept secret, even to the funding agency. The solution which was found by HSD, was adequate, namely to ask ID to write periodic reports to HSD describing the political and institutional context relevant for its work, giving an overview of its assignments in the period, indicating potential tasks in the next period and - only in two annual reports - making an evaluation of results of its interventions. As far as we know, HSD representatives did not discuss these reports with ID and did not periodically talk to project counterparts in South Sudan on their perception on the usefulness of the project, difficulties in its implementation and possible reforms to better attain the initial project objectives.

121. **Recommendation**. Even in projects where the the main output is diplomatic advice, which is confidential and is not made available to the donor agency, it is useful to supervise actively such a project in the field, based upon the consultant's periodic reports and periodic talks both with the consultant as well as with the concerned domestic project agency and domestic beneficiaries.

## **H. A summary of outputs**

### ***Overview***

122. Over the two years, Independent Diplomat staff produced 66 texts as shown in the table below. We classified them in five categories:<sup>37</sup> a) background papers and policy advice for GRSS, b) draft statements, talking points and letters prepared on behalf of high officials of GRSS who intervened in international meetings or wrote letters to international agencies or other governments, c) diplomatic intelligence meaning briefings by ID on views of other governments (for instance members of the UNSC), mediators and organisations on matters of concern to GRSS; d) statements and talking points to be used by GRSS officials in press conferences and in briefings to the diplomatic corps in Juba, New York or Addis Ababa. The texts were usually short, typically three-pagers. The only exception are background papers and notes comprising of policy advice. They were longer when they included action plans and talking points for meetings. Or in the case of bilateral visits to governemnts or international organisations when they included intelligence on partners to meet, views or questions of these partners, a meeting schedule and draft letters.

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<sup>37</sup> The 66 texts are those made available by ID to the evaluator. They constitute the bulk of ID's text production but not its totality. We know for instance that ID staff when in Addis Ababa with GRSS' negotiators in the post-secession negotiations frequently informed the MFAIC and other Government bodies on the course taken by the meetings. In addition, ID also assumed other functions than writing texts, for instance in providing oral information to South Sudanese interlocutors for instance on mediators' views, or putting South Sudanese delegations in contact with officials from other governments or international institutions. The text collection presented here includes two texts on UNMISS which were written a few months before Swiss funding of ID started and one the month after the end of Swiss funding.

**Independent Diplomat: Diplomatic texts produced**

Topic	Background + policy advice	Statements/letters talking points	Diplomatic intelligence	Diplomatic corps + press	All texts
RS/RSS negotiations	5	5	9	2	21
*Heglig	-	5	2	1	8
*Abyei + borders	1	5	1	1	8
UNMISS	3	4	1	1	9
Regional + global	7	6	2	-	15
Capacity development	3	-	1	1	5
All texts	19	25	16	6	66

***The weight of topics covered by ID***

123. Section F presents and analyses ID's texts for the main topics in detail. Here we are looking merely at the weight of these different areas of work :

- ID's services were most urgently and frequently needed in the post-secession negotiations with Sudan. More than half (56%) of ID's texts were written in the context of the comprehensive track of North-South negotiations (32%), and two specific issues in those negotiations, the Heglig incursions of SPLA in early 2012 (12%) and the unresolved status of Abyei (12%). Background papers and policy advice was a less frequent tool used on this main topic than diplomatic statements or letters and intelligence briefings.. To summarize, ID's function was (except for Abyei) to communicate to the international community the reasons for policy moves of GRSS (oil production stop and Heglig incursions) which had not been understood and, therefore, had damaged South Sudan's image. ID then had to present South Sudan's positive attitude towards the negotiating agenda proposed by the mediators and South Sudan's own proposals. ID also helped GRSS to understand the internal consequences of the negotiating roadmap proposed by the African Union and the later Cooperation Agreements with Sudan. Finally it had to make sure through its proposed international interventions that the unresolved issues in the Cooperation Agreements of September 2012 with Sudan remained on the agenda and were treated with urgency.
- The second topic of importance in ID's work was regional and global diplomacy of South Sudan (23% of ID's texts). This was the focus of ID's work in 2013 when it had gained the confidence of MFAIC and worked as the Ministry's diplomatic advisor. Such a new focus was possible because a stalemate in the negotiations on the yet unresolved issues after the Cooperation Agreements of September 2012, meant the ID's advice was not needed anymore in the North-South negotiations.
- Relations with UNMISS (14% of ID's texts) required a periodic involvement of ID, particularly in New York, when UNMISS' relations with South Sudan were discussed in the UNSC and the annual renewal and modification of its mandate had to be approved.
- Finally, ID's services were not used frequently (7% of ID texts) to make proposals on institutional reforms of MFAIC and South Sudan's UN Permanent Mission in New York. They were not used at all for diplomatic guidance and training.

***Expected versus realized outputs***

124. The above figures indicate, if compared to the operational objectives presented in the initial planning documents of HSD and ID that the actual work of ID was not well anticipated at the stage of project design (see paragraphs ...). The only area where the anticipated tasks were confirmed by ID's actual involvement were relations with UNMISS. The weight of ID's diplomatic work with MFAIC

was clearly overestimated, both in its frequency and scope. The involvement of ID in the North-South negotiations was largely underestimated. For several topics identified in the initial planning documents ID was not asked to get involved: the development of a regional and multilateral diplomatic strategy, the process of political and diplomatic recognition of South Sudan, the accession to the most relevant regional organisations, priority-setting and procedures for accession to global organisations and treaties and then the actual accession to the most important ones, facilitating relations with private and public cooperation organisations in peacebuilding and development cooperation, guidance and training of MFAIC staff in writing diplomatic documents, and substantial organizational reforms of MFAIC.

## **I. Outcomes**

### ***Expected versus realized outcomes***

125. When we described the ID project's operational objectives (paragraphs 11 to 13) we realized that the ID project was presented as an encompassing support to the GRSS in its diplomatic relations shortly after independence, by helping its emerging Ministry of Foreign Affairs in its most urgent as well as in all its other tasks. In addition, it was hinted that advice of ID was to be extended to institutional reforms and capacity development. Describing the realized outputs of the project in the preceding section, it became clear that the scope of ID's services was much more limited. Outcomes are the effects "on the ground" of the project's outputs. With a more limited scope of outputs we will also have to expect more limited effects of ID outputs on the course of South Sudan's international negotiations and relations as well as on the efficiency of its diplomatic service.

126. In addition, a methodological point has to be made (see paragraphs 29 and ...). ID did have to take over diplomatic tasks which nobody in the negotiating teams or the Ministry's staff was in a position to take on. It did not associate South Sudan experts to its work and did not train counterparts. While an immediate effect on the international negotiations or relations at hand was possible, it cannot be assumed that there would be an effect on the competency of South Sudanese diplomats or the quality of diplomatic engagements in the future. The comment of an external observer to the North-South negotiations taking place in Addis Abbaba may serve as a confirmation of this point. His comment was that when ID did not prepare anymore South Sudan's statements, this could be immediately recognized in the bad quality of the statements.

### ***The comprehensive North-South negotiating track***

127. Summarizing the assessment of ID activities on this topic in paragraphs 60 to 62, we conclude that ID had a considerable impact on South Sudan's positions in the negotiations and, therefore, on the negotiations' relative success in two ways:

- **Internally:** Through its numerous intelligence briefings and well-structured advice on negotiating positions to take, it was able to convey to GRSS its considerable loss of international standing in early 2012 and to facilitate a unified position of GRSS on a comprehensive settlement of outstanding issues with Sudan which led to the Cooperation Agreements in September 2012. ID helped the process of South Sudan's implementing the main agreements by suggesting an implementing strategy. Finally it kept the focus of South Sudan's decision-makers on solutions for the important issues not resolved through the Cooperation Agreements: Abyei and other disputed

and claimed border territories, as well as a political settlement in Sudan's internal Two Areas conflict.

- Externally: Through its statements, letters, and talking points, mainly to the UN Security Council but also to the African Union's Peace and Security Council, ID helped South Sudan to regain the moral high ground in the North-South negotiations, first by providing a rationale to South Sudan's badly understood radical moves in the negotiations (oil production stop, Heglig incursions), and then by backing international proposals as well as making constructive proposals itself. Later ID defended well the constructive position of South Sudan for an early implementation of the Cooperation Agreements and pointed with arguments to the need for resolving some still pending post-secession issues.

### ***Heglig***

128. ID's diplomatic texts, having their origin mainly in ID's New York Office, contributed to the decision of GRSS to withdraw from Heglig besides the - more important - strong pressure of key members of the international community. ID's work also helped South Sudan to rectify its bad image by giving a good rationale for the Heglig incursions - not given before by GRSS - and committing to comprehensive peace negotiations. This is how:

- Internally: ID briefed GRSS and its negotiators soon after the first incursion on the negative reaction of the members of the UNSC and the main mediators. It then made proposals to GRSS on how to get back on the negotiating track and regain the image of a constructive negotiator.
- Externally: South Sudan explained in a letter to the UNSC the military reasons for invading Heglig clarifying at the same time, for the first time, its historic claim for Heglig as South Sudanese territory. After the second withdrawal, it committed to the cessation of hostilities and comprehensive peace negotiations, and made conciliatory security gestures (letter and statement to the UNSC).

### ***Abyei and other border issues***

129. In a critical period for the status of Abyei - from May 2012 to May 2013 – it was important to make sure that the Abyei referendum became part of a comprehensive agreement between South Sudan and Sudan and, when this failed, that a separate agreement for Abyei was concluded. ID argued this case for South Sudan at the UNSC. It was not successful, the Abyei file is still open today. But according to observers ID played an important role in presenting the Abyei case in a structured and convincing way to UNSC members. It “built a bridge between GRSS and the UNSC”.

130. An excellent briefing of ID on border issues, the only intervention in this field, has not had any known impact but remains as a source so consult in future negotiations.

### ***Relations with the UN peacekeeping mission***

131. ID's work on South Sudan's relations with UNMISS was substantial. It informed South Sudanese decision-makers on the role of the new type of UN peacekeeping mission which includes a strong mandate of protection of civilians and State-building. It studied UNMISS operations in the field in 2013 and made proposals for the renewal of its mandate. Its recommendations were not acknowledged by the high official in charge of relations with UNMISS. Only one of the recommendations (concentration of UNMISS field staff in high-risk areas) was included in the renewal

of the UNMISS mandate. When relations with UNMISS became strained from 2012 on - because of SPLA attacks on civilians as well as harassment and attacks of UNMISS staff - ID explained these incidents to UNSC members as very regrettable and reaffirmed, with examples at hand, GRSS' determination to improve its human rights record. This work of ID was definitely useful and helped, at that time, to keep a reasonably good image of GRSS in the international community. But a longer-term effectiveness of ID's interventions in this field is difficult to see.

### ***Regional cooperation and global diplomacy***

132. ID receives mandates from MFAIC mainly in 2013 on this more traditional diplomatic agenda. Some comprehensive tasks like the preparation of a presidential visit to Brussels (EU relations and ACP membership) and a follow-up delegation provided to Ministry staff a template on how to prepare diplomatic visits which they have or will use on other occasions. The considerations used in the voting proposal on Palestine membership in the UN or on the position to take on the International Criminal Court might also become examples to be used in the future by the Ministry. But otherwise it is difficult in this case to identify specific outcomes of ID's activities.

### ***Diplomatic capacity development***

133. Inspite of an ambitious agenda ID was only asked a few times to touch upon organisational issues and never to associate staff of the MFAIC to its work. With its first reform proposal for the Ministry in early 2012 ID probably helped to accelerate the creation of embassies and missions. It was also instrumental in facilitating more frequent briefings by the Minister of Foreign Affairs with the diplomatic corps in Juba and press conferences were held, often prepared by ID, in Juba and at the UN in New York. This tradition has survived until today. Yet two important proposals, a coordination mechanism inside GRSS to draft and decide upon diplomatic positions, and the introduction of coded intranet communications was never introduced.

### ***Conclusions***

134. Lasting results could not be expected from ID's advice which consisted in taking over urgent diplomatic tasks from the Government of South Sudan for which, a few months into independence, nobody in the Government had the necessary professional skills and experience. While an immediate effect could be felt on international relations and negotiations of South Sudan, the effect on the competency of South Sudanese diplomats, and the future excellence of South Sudan's diplomacy was minor at best. Taking the different areas of ID's engagement, outcomes can be identified as follows:

- Post-secession negotiations with Sudan. Independent Diplomat made a substantial contribution in South Sudan's overcoming its international diplomatic deficit after two disruptive decisions in early 2012: the oil production stop and the Heglig incursions. ID was instrumental in the GRSS' successful lobbying for comprehensive peace and cooperation agreements, and then for an early implementation of these agreements. Finally it contributed to keep, for some time, issues on the international agenda (Abyei territorial status, the attribution of disputed and claimed areas) which could not be resolved in the peace and cooperation agreements.
- Heglig. Through its extensive briefings on the international condemnation of South Sudan's two incursions, ID contributed to the decision of GRSS to withdraw its troops from Heglig and it helped to rectify South Sudan's bad image by providing a convincing rationale for the Heglig incursions.

- Abyei. ID argued eloquently South Sudan's case for the inclusion of the Abyei in the peace and cooperation agreements and then, when the inclusion failed, the case for an early referendum. Such an outcome was blocked. The achievement in this case is that the Abyei referendum is still on the international agenda, waiting to be decided upon.
- Relations with the UN peacekeeping mission. Through its briefings to South Sudan officials on new-style UN peace missions and a field study on UNMISS management, ID helped South Sudan to have a constructive dialogue with UNMISS. When relations with UNMISS became strained (SPLA attacks on civilians and on UNMISS staff), ID helped to keep GRSS' international image from deteriorating by pointing to a) a series of laws and institutional measures of South Sudan to improve its human rights records as well as b) legal action against perpetrators.
- Regional cooperation and global diplomacy. ID's comprehensive documentations prepared for diplomatic visits to other governments (or a regional organization, in one case) might serve now as templates for other international visits. The same might be true for voting proposals made by ID (Palestine status as Observer State of the UN, position on the International Criminal Court).
- Diplomatic capacity development. ID was instrumental in accelerating the creation of South Sudanese embassies and missions, and in facilitating more frequent and better organized ministerial briefings of the diplomatic corps and the press.

### ***Recommendations***

135. The way the ID project was designed, its outcomes could not go much beyond immediate effects upon the negotiations with Sudan, improvements in relations with UNMISS, some neighboring countries, and some international organizations. A sound position of South Sudan in two votes in international organizations can also be counted as an outcome. In contrast, the impact on the organization of the Ministry of Foreign Affairs and the skills of its staff was minimal. Yet, more lasting effects on institutional capacities and skills of diplomats are highly desirable, even in projects which give priority to meeting emergency needs in a post-independence situation. The first way to achieve those is to associate diplomats of the recipient country to the diplomatic advice provided by guiding them in the writing of diplomatic notes. This implies normally that they are integrated in the advisory team and that the advisors have well defined tasks as diplomatic coaches, for which they have to be made accountable. A component which could be added is a training plan and scholarships for diplomatic staff, including academic courses in African or non-regional universities. Organizational changes and a higher efficiency of management is not easy to add on to an emergency project, they can be part of a follow-on project, which will require a long implementation period, maybe in several stages.

### **J. Lessons learned**

#### ***Project design***

136. In diplomatic advice projects, even if they are decided in a fragile country environment, project design has to be paid particular attention and an agreement has to be reached with domestic counterpart agencies beforehand on the choice of advisors, the modalities and scope of advice, and the inclusion of capacity development elements. The context and the analysis which justify a specific project design have to be reflected in the project documents

### ***Demand for diplomatic services***

137. The lesson to be learned from the sudden shifts in demand for ID's services is the same we already mentioned project design, namely the need to study the demand for diplomatic services thoroughly beforehand and to ensure ownership by the domestic partner agencies. It is essential also to be sure that the provider of diplomatic advice is accepted by local counterparts not only as highly professional but also as independent and exclusively loyal to the receiving country. In addition it is important to be aware of the high sensitivity to external interference in local policy-making in post-independence situations because of the pride to be in charge and the power of domestic lobbies. This could be observed when the Ministry of Foreign Affairs rejected ID's advice on organisational reform and designated a mid-level counterpart in the Ministry. It was also evident in the exclusion of ID from important decisions in the North-South negotiations.

138. It is important also to take account of other sources of cooperation in the same field to avoid inefficiency and competition in advice. It is not possible for an emerging domestic administration to manage and supervise external aid. This is why the involved external agencies have to make sure that their interventions reinforce each other or are complementary. This is an essential task of HSD at the time of project preparation.

### ***Quality of ID's diplomatic advice***

139. The lessons to be learnt when considering the scope and quality of ID's work are three: a) It is impossible to change the main course of negotiations through external diplomatic advice. For major decisions advisors are not listened to, in the South Sudanese context such decisions are based to a large extent on the views of groups and personalities wielding informal power or on spontaneous acts of field commanders (as happened allegedly in the first Heglig incursion); b) diplomatic advice is appreciated to better inform the country's positions and present them to the international community, if it is of high quality and if the advisor is considered fully loyal to the country's cause; c) this means that the selection of the right advisors is the single most important decision in such a case, both in terms of their diplomatic professionalism as well as in terms of the trust they are able to obtain from the country's officials for whom they will work.

### ***HSD as project manager and supervisor***

140. Even in projects where the the main output is diplomatic advice, which is confidential and is not made available to the donor agency, it is useful to supervise actively such a project in the field, based upon the consultant's periodic reports and periodic talks both with the consultant as well as with concerned domestic project agencies.

### ***Project outcomes***

141. The way the ID project was designed, its outcomes could not go much beyond immediate effects upon the negotiations with Sudan, improvements in relations with UNMISS, some neighboring countries, and some international organizations. A sound position of South Sudan in two votes in international organizations can also be counted as an outcome. In contrast, the impact on the organization of the Ministry of Foreign Affairs and the skills of its staff was minimal. Yet, more lasting effects on institutional capacities and skills of diplomats are highly desirable, even in projects which give priority to meeting emergency needs in a post-independence situation. The first way to achieve those is to associate diplomats of the recipient country to the diplomatic advice provided by guiding

them in the writing of diplomatic notes. This implies normally that they are integrated in the advisory team and that the advisors have well defined tasks as diplomatic coaches, for which they have to be made accountable. A component which could be added is a training plan and scholarships for diplomatic staff, including academic courses in African or non-regional universities. Organizational changes and a higher efficiency of management is not easy to add on to an emergency project, they can be part of a follow-on project, which will require a long implementation period, maybe in several stages.

## **K. Options for future support**

142. The present evaluation reaches the conclusion that the ID project was useful and had some important immediate effects on South Sudan's most urgent diplomatic challenges but it did not lead to a better equipped Ministry of Foreign Affairs (including embassies and missions), a better coordination of the diplomatic function inside GRSS, and the Ministry behaving as a "learning organization", able to accumulate experience and disposing of career officials who have the required skills. At the present time, political instability prevents donors from giving support to South Sudan so that such lasting improvements of its diplomatic function can be envisaged. But this is only a question of time. Once a transitional government will have been installed, how should the next project to strengthen South Sudan's diplomacy look like?

143. The first need will be to continue to provide direct diplomatic advice. But instead of having ID diplomats providing such advice, it might be more useful to envisage advice from seasoned former diplomats of Anglophone African countries, in a similar way as former high officials have worked in regional governments in South Sudan in a UNDP project. The main difference with the ID project would be that these experts would provide hands-on advice and train on-the-job South Sudanese diplomats in their daily tasks.

144. Secondly, such a project would have to equip the Ministry, particularly with a coded electronic communications system, creating a network between key offices in the Government and South Sudan's embassies and missions abroad. The project would also help the ministry to adapt its organization and financial management to use communications systematically and to maintain the equipment.

145. Thirdly, the Ministry would be given support in developing a multi-year training plan of its staff as part of introducing human resources evaluation and management. Part of the younger staff should be given scholarships for academic training abroad, periodic topical training should be introduced as well as continuous upgrading. It should be examined whether a diplomatic training academy could be established, through a partnership with an African or non-African institution.

146. Such encompassing institutional projects, for which several sources of development financing might have to be tapped, are often not liked by donors because they require a strong and sustained commitment from recipient project institution and its government, and require five to ten years - maybe subdivided in steps - to complete. For this reason they are risky projects. Results might not be attained as planned, and in any case, are difficult to measure. Yet, this is the best way for donors to engage in institutional capacity development, if a sustained institutional development is sought.