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Report

The 'Agreement on Ground Rules' in South Sudan

Study 3 in: The Politics of Principle: the principles of humanitarian action in practice

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Study Notes

This report is one of four from ODI study entitled *The Politics of Principle: the principles of humanitarian action in practice*. The other three reports are: *Leader, (2000) The Politics of Principle: The Principles of Humanitarian Action in Practice: Study 1*; HPG Report 2; Atkinson and Leader, (2000) *The Joint Policy of Operation and the Principles and Protocols of Humanitarian Operation in Liberia: Study 2* HPG Report 3; Mackintosh, (2000) *The Principles of Humanitarian Action in International Law*: HPG Report 5. A Relief and Rehabilitation Network Briefing Paper entitled *Humanitarian Principles in Practice: A Critical Review* which summarise some key findings and issues from the study in a much shorter paper, is also available from ODI.

All the reports are available at the ODI website at www.odi.org.uk/hpg/publications

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Contents

| | |
|---|-----------|
| Acronyms | 1 |
| Preface | 3 |
| 1 The Agreement on Ground Rules | 3 |
| 2 The study | 3 |
| 3 The limits of war | 3 |
| 4 The case studies: the Ground Rules, the JPO and the PPHO | 5 |
| 5 The 'framework of respect' | 5 |
| 6 Scope | 6 |
| 7 Method and methodological problems | 6 |
| 8 Structure of the report | 6 |
| Summary and Findings | 7 |
| 1 The War | 13 |
| 1.1 The origin and nature of Sudan's civil war | 13 |
| 1.2 A brief chronology of the current war | 13 |
| 1.3 The SPLM/A | 15 |
| 1.3.1 Ideology and objectives | 15 |
| 1.3.2 The command structure | 16 |
| 1.3.3 Aid and administration | 18 |
| 1.4 International relations | 21 |
| 2 OLS and the Humanitarian Context | 25 |
| 2.1 Operation Lifeline Sudan | 25 |
| 2.2 A chronology of OLS | 25 |
| 2.2.1 OLS Phase I | 25 |
| 2.2.2 OLS Phase II and the advent of DHA | 26 |
| 2.2.3 The IGADD agreements and after | 27 |
| 2.3 The OLS agreements and principles | 28 |
| 3 The Agreement on Ground Rules | 29 |
| 3.1 The first Ground Rules | 29 |
| 3.2 Origins of the agreement | 29 |
| 3.2.1 Capacity building | 29 |
| 3.2.2 A human rights crisis: critical engagement | 31 |
| 3.2.3 Negotiating the Ground Rules | 32 |
| 3.3 The agreement | 34 |
| 3.3.1 Legal institutional and conceptual framework | 34 |
| 3.3.2 The parties to the agreement | 35 |
| 3.3.3 Recognition, legitimacy and neutrality | 35 |
| 3.4 The role of the Humanitarian Principles Programme (HPP) | 36 |

| | | |
|----------|---|-----------|
| 4 | Putting Principles into Practice | 39 |
| 4.1 | Introduction | 39 |
| 4.2 | Regulating humanitarian intervention | 39 |
| 4.2.1 | Co-ordination, contractual arrangements and co-operation | 39 |
| 4.2.2 | Donor interests | 40 |
| 4.2.3 | An instrument for engagement | 41 |
| 4.2.4 | The impact of aid agency-warring party relations | 42 |
| 4.2.5 | Weakening of the framework | 43 |
| 4.3 | Security and humanitarian space | 43 |
| 4.3.1 | The Ground Rules and the security system | 43 |
| 4.3.2 | Security, neutrality and protection | 45 |
| 4.4 | Managing assistance with principles | 45 |
| 4.4.1 | Aid and the war | 45 |
| 4.4.2 | Food and war | 45 |
| 4.4.3 | Implementing a principled approach | 48 |
| 4.4.4 | WFP and the Ground Rules | 51 |
| 4.4.5 | The politicisation of aid | 51 |
| 4.4.6 | Impact of the Ground Rules: implications of the 1998 Bahr el Ghazal famine | 52 |
| 4.5 | Protection and the agreement on the Ground Rules | 53 |
| 4.6 | The protection work of the UNICEF/OLS Humanitarian Principles Programme (HPP) | 53 |
| 4.6.1 | Dissemination | 53 |
| 4.6.2 | Distribution and content of Ground Rules workshops | 54 |
| 4.6.3 | Dissemination to the military | 55 |
| 4.6.4 | Human rights monitoring | 55 |
| 4.7 | Monitoring adherence by the movements | 56 |
| 4.8 | International NGOs and protection | 57 |
| 4.9 | Donors and protection | 58 |
| 4.10 | Impact of the Ground Rules on the human rights environment | 59 |
| 4.10.1 | Enforcement | 62 |
| 4.10.2 | Protection or containment? | 63 |
| 4.11 | Capacity-building and governance | 63 |
| 4.11.1 | Institutionalising rights and principles | 64 |
| 4.11.2 | Impact of the Ground Rules on Sudanese institutions | 65 |
| 4.11.3 | Capacity-building and neutrality | 67 |
| 4.11.4 | Capacity-building and social contracts | 67 |
| | End Notes | 69 |
| | Bibliography | 71 |
| | Appendix 1: List of interviewees | 74 |
| | Appendix 2: The Ground Rules | 76 |

Acronyms

| | | | |
|----------|---|--------|---|
| ACF | Action Contre la Faim | UNCERO | United Nations Co-ordinator of Emergency Relief Operations |
| ICRC | International Committee of the Red Cross | UNDHA | United Nations Department for Humanitarian Affairs |
| INGOs | International NGOs | UNDP | United Nations Development Programme |
| CAP | Consolidated Appeal (UN) | UNICEF | United Nations Children's Fund |
| CEDAW | Convention for the Elimination of all Forms of Discrimination Against Women | USAID | United States Agency for International Development |
| CRC | Convention on the Rights of the Child | WFP | World Food Programme |
| CRS | Catholic Relief Services | | |
| DHA | Department of Humanitarian Affairs | | |
| DOP | (IGADD) Declaration of Principles | | |
| DRC | Democratic Republic of Congo | | |
| DUP | Democratic Union Party | | |
| ECHO | European Community Humanitarian Office | | |
| EPRDF | Ethiopian People's Revolutionary Democratic Front | | |
| FRRA | Fashoda Relief and Rehabilitation Association | | |
| GHAI | Greater Horn of Africa Initiative | | |
| HPP | Humanitarian Principles Programme | | |
| HRW/A | Human Rights Watch Africa | | |
| ICBP | Institutional Capacity-building Programme | | |
| IGAD | Inter-Governmental Authority on Development | | |
| IGADD | Inter-Governmental Authority on Drought and Desertification | | |
| JRRC | Joint Relief and Rehabilitation Committee | | |
| LoU | Letter of Understanding | | |
| MINOPS | Minimal Operational Procedures | | |
| NCA | Norwegian Church Aid | | |
| NDA | National Democratic Alliance | | |
| NPA | Norwegian People's Aid | | |
| NSCC | New Sudan Council of Churches | | |
| NIF | National Islamic Front | | |
| OCHA | Office for the Co-ordination of Humanitarian Aid | | |
| OLS | Operation Lifeline Sudan | | |
| OSIL | Operation Save Innocent lives | | |
| PMO | Political Military Operations | | |
| RASS | Relief Association of Southern Sudan | | |
| SAF | Sudan Alliance Forces | | |
| SCF (UK) | Save the Children (UK) | | |
| SEOC | Sudan Emergency Operations Consortium | | |
| SINGO | Sudanese Non-Government Organisation | | |
| SPLM/A | Sudan People's Liberation Movement/Army | | |
| SRRA | Sudan Relief and Rehabilitation Association | | |
| SSIM/A | South Sudan Independence Movement/Army | | |
| SSLS | South Sudan Law Society | | |
| TCHA | Technical Committee on Humanitarian Assistance. | | |
| UDSF | United Democratic Salvation Front | | |

Preface

1. The Agreement on Ground Rules

In July 1995, the head of the UN's Operation Lifeline Sudan southern sector¹ (OLS) signed an Agreement on Ground Rules² with John Garang, Commander-in-Chief of the Sudan People's Liberation Movement/Army (SPLM/A). In August, a virtually identical agreement was signed with Riek Machar, Commander-in-Chief of the South Sudan Independence Movement (SSIM/A), and again a year later with Lam Akol of the SPLM-United. The agreements are intended, as the opening words make clear, 'to set out the basic principles upon which OLS works and to lay out the rules and regulations arising from such principles'. The documents also contain a statement of support for the Geneva Conventions and Additional Protocols and the Convention on the Rights of the Child (CRC).

The Ground Rules have received considerable publicity and attention in the humanitarian community, from policy-makers, field staff and researchers alike. At the policy level its example has spawned others, this type of agreement is recommended in the Graca Machel study on children (Machel, 1996) and a variant is currently being tried out by UNICEF in Sri Lanka. At the field level many aid workers have experience of the OLS operation and the Ground Rules, which they carry into other situations. (This, for example, is part of the motivation behind the current Code of Conduct for agencies in Sierra Leone.) And in the research community too the Ground Rules have been singled out as a model, for instance, in the OCHA-commissioned report on Strategic Humanitarian Co-ordination in the Great Lakes Region (Lautze et al., 1998) as a good model. The OLS Review also praises them as an important innovation in humanitarian policy (Karim, et al., 1996). They have, in the words of one commentator, 'a glamorous image' (Murphy, 1997b: 35). This study aims to provide an independent analysis of the Ground Rules and their impact.

2. The study

In recent years there has been an significant growth of interest in the idea of humanitarian principles. This has produced a rash of papers and conferences on the subject. It has also led to attempts in several countries by groups of agencies to develop a more explicitly 'principled' approach to working in conflict. The 'Ground Rules' represent one such attempt.

This case study is part of a wider study by ODI into the idea of 'humanitarian principles'. The purpose of the study was to investigate three broad questions:

- What do humanitarian principles mean to agencies?

- What difference does the adoption of an explicitly principled approach make to agency decision-making and behaviour in the field?
- And finally, what impact does this approach have on the behaviour of the warring parties?

In order to investigate these questions two field studies were carried out in countries where inter-agency agreements to promote a principled approach have been adopted: south Sudan and Liberia. In Liberia two mechanisms were studied: the Principles and Protocols of Humanitarian Operation (PPHO) and the Joint Policy of Operation (JPO) (Study 2: Atkinson and Leader, 2000). An investigation was also made into the legal foundations for principles in international humanitarian law (IHL) (Study 4: Mackintosh, 2000). A separate report has been produced for each of these three case studies in which much of the detail of the research is contained. A synthesis report is also available with the overall findings and recommendations of the study (Study 1: Leader, 2000).

3. The limits of war

The idea of humanitarian principles is simply that that war has limits; it is as old as war itself, as is its regular violation. In the twentieth century this idea is expressed in the detailed commitments made by state signatories to the Geneva Conventions. One element of this expression is the right of humanitarian agencies, notably the International Committee of the Red Cross (ICRC), to offer assistance and protection to those beyond the limits. But carrying this out is neither straightforward nor uncontroversial; where the limits should be drawn is inevitably disputed by the warring parties and there is always the possibility of humanitarian action being perverted to non-humanitarian ends.

In order to cope with these problems, the ICRC developed a practical philosophy known as its *fundamental principles*. The core ideas of neutrality, impartiality and independence serve to legitimise its intervention in conflict, to position the ICRC in respect to the actors in a conflict in a way that is both ethically justifiable and politically possible (Pictet, 1979). Pictet, one of the high priests of this ethic, described the ICRC as a swimmer, up to its neck in politics, but which must keep its head above water to survive. For the ICRC, the fundamental principles are what keeps it afloat.

The complex process accompanying the ending of the Cold War and the growth of globalisation, however, have both prompted and allowed different ethical models of humanitarian intervention to develop. Famously, the founders of *Médécins Sans Frontières* felt that the ICRC's strict observance of its principles critically hampered its ability to provide assistance in Biafra. More recently, conflict appears to have become endemic in parts of the world in ways that challenge conventional Clausewitzian notions of war as being the 'extension of politics by other means' (Keen, 1998). In

these contexts, conventional notions of the state, of peace and war, relief and development, or civilian and combatant on which the ICRC position is predicated appear to have broken down. In a parallel development, the relaxation of sovereignty and the privatisation of aid have brought a massive growth in the number of NGOs and UN agencies working in conflicts alongside the ICRC.

These developments mean that there are now a variety of agencies working in situations of conflict and a corresponding variety of ethical approaches, some of which are not grounded in the universal legal principles of IHL in the manner of the ICRC. Accompanying this growth, though, there has also been a widening realisation of the complexities of working in conflict, notably of the possible negative effects, in large part due to the experiences of Somalia, and then the Goma camps. The lone voices that had been accusing agencies of fuelling conflict, feeding killers and of being much more equivocal agents of change than their fundraising or self-image had allowed, became a chorus. This chorus has been picked up by the mainstream media and there has been a significant shift in the media portrayal of aid workers. Serious questions about the accountability and performance of agencies have been raised.

It is also increasingly apparent that this crisis of confidence came at a time of significant change within the international political system. Amongst the security and diplomatic establishment the heady interventionism of the immediate post-Cold War era in the early 1990s has dissipated, to be replaced with a more sober assessment of strategic interest and the deployment of resources and political capital in defence of national interest. The increased numbers of humanitarian actors are often exposed to the chill wind of conflict without the shield of military and diplomatic interest.

These processes have produced an unprecedented bout of questioning of humanitarian action, both within and outside the humanitarian system.

A range of by now familiar criticisms of humanitarian assistance have developed:

- that it often strengthens the predatory forces that sustain conflict. Resources are diverted to support the war effort through looting or taxation. The provision of assistance in areas controlled by factions can strengthen their command over populations, or facilitate ethnic cleansing, for example. Factions can use negotiations with aid agencies to claim legitimacy and publicity (Macrae and Zwi, 1994; Prendergast, 1996);
- that it undermines, or prevents the emergence of a social contract: resources allow factions to divert money away from welfare to the war effort, and reduce the need for them to be politically

accountable to the people they claim to represent (de Waal, 1997; Anderson, 1996);

- that it destroys local capacity and causes dependence. Flooding areas with resources can reduce the incentives for local producers and can encourage, refugees for example, to become dependent on external supplies;
- that it provides a smokescreen for powerful states to do nothing. Most famously in Bosnia, Western governments were able to present their funding of, and support for, a humanitarian intervention to their public, while doing nothing to bring the war to an end;
- that the system is too chaotic; agencies are market-driven and unaccountable. They compete for media exposure, but can get away with shoddy service delivery as their beneficiaries cannot hold them accountable (de Waal, 1997). The urge to be the first to get the convoy through is more important than ensuring aid is delivered in a principled fashion;
- that agencies ignore rights and protection issues in favour of access. Agencies are too ready to sacrifice the moral imperative to speak out about abuses to the god of access, fearing that without access they will have no publicity.

In short, the humanitarian system is self-serving, and is part of the problem, not the solution.

These criticisms have sparked an intense search for new ideas, approaches and ways of working. Some of the key policy questions are: How can humanitarian agencies intervene in conflicts where the belligerents are not concerned about political legitimacy without strengthening the actors causing the conflict in the first place? What should be the role of humanitarian actors in conflicts where there is little international will to force a settlement? How should agencies respond to mass violations of human rights? Can intervention strengthen civil society and local 'capacities for peace'? What should be the relationship between humanitarian actors and international political actors who may be trying to bring peace?

A variety of different strategies have been proposed and attempted, some organisational some conceptual.

- A number of approaches, inspired by development thinking, emphasise building the capacity of local communities, such as the idea of developmental relief, the relief development continuum, or the idea of 'local capacities for peace' (Anderson, 1996).
- Another approach seeks to promote greater accountability and better performance through establishing voluntary codes and standards, such as the Red Cross/NGO Code of Conduct and the

Sphere project (Sphere Project, 1998), to which agencies should aspire.

- Some agencies have adopted a stronger emphasis on protection and human rights work, emphasising the role of humanitarian agencies as witness, and bringing the suffering of conflict victims into the sphere of international politics.
- A number of agencies increasingly seek to make the notion of human rights the philosophical foundation of their work, seeing promoting the rights laid down in the various UN conventions as the essence of their work.
- Another strand has been to attempt to integrate relief into an overall response to a complex emergency, that encompasses a political goal, human rights development and relief concerns, such as the Strategic Framework for Afghanistan, for example.

The very variety of strategies proposed reflects the extreme heterogeneity of the 'humanitarian system.'

All of these approaches seek to develop 'a principled approach'. However, in the same way that the ICRC has had to make room for other agencies in conflict zones, the notion of humanitarian principles too is now subject to a variety of competing approaches. A number of the fundamental principles are now challenged and are being reinterpreted from different perspectives. The notion of neutrality is challenged by capacity-building ideas that seek to achieve development in conflict and the human rights tradition that seeks to make public condemnations. The idea of independence is challenged by approaches that seek to incorporate humanitarian assistance into broader political approaches to build peace. The idea that humanitarian assistance is unconditional is challenged both from the human rights tradition that seeks to use disbursing or withholding aid as a way of promoting respect for rights and a political tradition that seeks to use aid in the search for political solutions. In short, there is no longer a single coherent ethical position held by those intervening in conflict, rather a confused and confusing free-for-all.

4. The case studies: the Ground Rules, the JPO and the PPHO

This situation is reflected in the three field-based policy innovations selected as case studies: the Ground Rules in south Sudan and the JPO and PPHO in Liberia. They represent, on the one hand, a common desire to develop a more principled approach; yet they also reflect a variety of ethical responses to the dilemmas of working in conflict: humanitarian, human rights and development.

These mechanisms represent a collective attempt by agencies, not just to react in a principled way to their

environment, but to attempt to influence it as well. They have attempted, in different ways, to promote greater respect for IHL by the warring parties. The ICRC approach has always contained an element of this, in that the ICRC has always disseminated the rules of war and made confidential reports on their respect for IHL to the warring parties, it was fulfilling its mandate to promote respect for IHL. However, inspired by these various traditions, the JPO, the PPHO and the Ground Rules have also introduced several new strategies to achieve this end. These have included: humanitarian conditionality, the idea of 'critical engagement,' capacity-building, human rights monitoring, public information and advocacy.

This case study is an attempt to look at the experiment in field ethics and practice represented by the Ground Rules. It will describe and analyse what they were, and the impact they had on what we have called the 'framework of respect'.³

5. The 'framework of respect'

The sphere of action of humanitarian agencies is commonly referred to as 'humanitarian space'. As the term implies, for many field workers, it usually has a primarily geographical connotation and is talked about as expanding and contracting: it is in effect synonymous with access (though see Minear and Weiss, (1999) for a broader definition). It also tends to promote the idea of a kind of apolitical space within which agencies work. What we are trying to capture by the term 'framework of respect' is not so much the geographical area that humanitarian agencies are able to work in, but rather all those factors in a given context that determine the extent of respect for applicable norms of international humanitarian and human rights law. Thus in a particular conflict the framework would consist of: the particular nature of the warring parties, their objectives and strategies, civil institutions and organisations, cultural mores and rules, the regional and international dynamic of the conflict, the levels of interest and attention of the major powers and the role of the humanitarian organisations. Each element has a part to play in determining at any one time the overall level of respect for IHL and human rights, though some are obviously much more important than others.

The purpose of using this notion is:

- To emphasise that in any conflict there are applicable international norms in IHL and human rights law against which the behaviour of all actors involved should be judged and which are primarily concerned with the responsibility of the authorities for the protection of people under their control, not humanitarian action.

- To shift the emphasis away from humanitarian organisations and the idea of their ‘space’ as some kind of politics-free zone and on to the broader political framework within which agencies work.
- To make clear that the primary determinants of respect for legal norms are not humanitarian agencies but other much more powerful organisations and forces, such as military actors and processes of globalisation.
- To get away from the simplistic, geographical notion of ‘humanitarian space’ expanding or contracting, the framework is dynamic and shifts over time in complex ways that are simultaneously both negative and positive. As fortunes on the battlefield rise and fall, as internal political strategies change, as international powers become more or less interested, the framework changes, and new opportunities or threats emerge or decline.

A more practical reason is that this framework of laws and rights may provide some assistance in the complex judgements that relief agencies are having to make, as we shall suggest in the synthesis report (Study1: Leader, 2000).

An objective of the research is thus to examine in what ways, if at all, the mechanisms adopted by the agencies have influenced the framework of respect.

6. Scope

Although the Ground Rules agreement was signed between OLS and several of the warring parties in south Sudan, and the text was the same in each case, this case study will concentrate almost exclusively on the working of the agreement between the SPLM/A and OLS. This is for several reasons. During the period of the fieldwork it was impossible to access other faction areas owing to security problems, so field work was only possible in SPLA-controlled areas. There was also a strong feeling among aid workers that the Ground Rules agreement had effectively collapsed in the SSIM/A areas. Although it would have been interesting to examine in detail why this was so, it was considered more important to concentrate resources on areas where it had been seen to have some success.

The primary focus of the research is the period from the initiation of the Agreement on Ground Rules as an idea in late 1994 through to the end of the fieldwork in mid-1998. However, relevant events both before and after that time are referred to where important. The famine that developed in south Sudan over the summer of 1998 was outside the scope of the research. Despite the fact that it threw up many issues relevant to the Ground Rules, particularly that of diversion of aid, the research team felt that it would be inappropriate to investigate these matters while all available resources were being used for famine relief.

7. Method and methodological problems

The fieldwork for the study comprised an exploratory trip to Nairobi in June 1998, followed by a longer visit to Nairobi, Lokichokio and several locations in south Sudan. Open-ended interviews were conducted with agency personnel, donor and diplomatic representatives, members of the affected communities, and representatives of civil society groups. Several representatives of the armed groups including SPLM/A Commanders were also interviewed. The interviews were supplemented with documentary collection and analysis. In the interests of preserving confidentiality, few interviewees have been cited, though a full list of interviewees can be found in Appendix 1.

The research objectives posed a number of methodological and conceptual problems common to research into humanitarian operations. First, the scope, both geographically (in effect all SPLM/A-held territory) and temporally (from 1994 to mid-1998), is large. It was decided not to focus on specific places or events as this would detract from a broader understanding of the development of the Ground Rules over time.

Secondly, the subject of the research was not a programme or project with specific and quantifiable objectives and outputs, but an agreement between OLS, the 40-plus agencies that are part of it, and a warring party. The objectives of the agreement and thus the criteria by which to assess their impact are diffuse, unclear, often only implicit, and contested. To ask ‘Did the Ground Rules work?’ begs the question of: for whom, and according to what: the SPLM/A, the UN, the NGOs; for promoting principles, security, fund-raising? As will become clear, the Ground Rules mean different things to different people and organisations.

An associated problem is that the Ground Rules are still formally in operation, and are part of a broader struggle between the competing objectives of OLS and the SPLM/A. As such, they are not ‘history’ but part of current politics, not something that promotes objective or impartial judgements on the part of those involved.

And lastly there is the problem of attributing causation. Many of the most interesting questions around the impact of the Ground Rules relate to the impact they have had on the internal evolution of the SPLM/A and what many see as its attempts to make itself more accountable to southern Sudanese society in recent years. However, the case study is reviewing a broad sweep of recent history, with limited information and in a highly charged and contested arena. It is easy in this situation to attribute causation to what is in fact association. For example, the OLS review says ‘the Ground Rules seek to establish a framework of agreed standards to govern mutual behaviour. As a result, the extent and quality of access in the South is much greater than in the north and a broader range of programmes and approaches have been able to

develop:’ (Karim et al. 1996: 61). An alternative, and just as plausible, view is that it is only because the SPLM/A was prepared to permit and encourage such ‘quality of access’ that the Ground Rules were signed in the first place.

8. Structure of the report

The Ground Rules evolved out of a particular context and must be understood in relation to that. As discussed above, the primary determinant of the framework of respect is the behaviour of the warring parties. Thus, in order to place the Ground Rules in context the first section of this report consists of a brief examination of the SPLM/A, its objectives and strategies. The second element is the nature of the humanitarian system, in other words OLS southern sector, which has been a primary factor in the development and working of the Ground Rules. Section 2, therefore, looks at the nature and evolution of OLS southern sector. Section 3 then examines the Ground Rules agreement in some detail, what it is, how it came about, how it is intended to work. Section 4 then assesses the overall impact of the Ground Rules and draws out some relevant lessons.

Summary and Findings

The Agreement on Ground Rules in southern Sudan was among the first of a number of contemporary 'codes' and 'protocols' developed by aid agencies to protect the integrity of humanitarian assistance and the rights of civilian populations in war-induced emergencies. The first Ground Rules, drawn up in 1992 by agencies operating under the umbrella of Operation Lifeline Sudan (OLS) in response to a security threat to the humanitarian programme, defined the minimal conditions under which they were prepared to provide assistance in rebel areas. In 1995 these were revised as the *Agreement on Ground Rules*, and signed separately by the Sudan People's Liberation Movement/Army (SPLM/A), the Southern Sudan Independence Movement/Army (SSIM/A) and the SPLA-United. This agreement seeks to address the constraints on international efforts to relieve humanitarian suffering in rebel-held areas of southern Sudan, and to reduce abuses of civilian populations.

A basic assumption behind the Ground Rules is that the provision of assistance in a principled manner will mitigate the potential negative impact of relief assistance in a war environment. The agreement incorporates provisions of international humanitarian law (IHL) and human rights law, and establishes 'minimal acceptable standards of conduct' for the agencies operating under OLS and the relief wings of the rebel movements. In other words, it aims to reinforce what we have termed the 'framework of respect', or those forces that tend to promote respect for international legal norms concerning the rights of non-combatants in conflict. A key finding is that the Agreement on Ground Rules has worked in this regard only to the extent that it has coincided with existing political and military processes that were already encouraging greater respect, independent of such processes it has had little impact. Through the Ground Rules, UNICEF/OLS exploited the opportunities for change within the SPLM/A, although whether these changes represent a genuine democratisation of the movement and whether the Ground Rules influenced the process of reform is open to interpretation.

The table overleaf summarises some of the factors that are supportive of the framework of respect and others that threaten or weaken it.

A number of features distinguish the agreement from other humanitarian codes and protocols.

A negotiated and signed agreement: A controversial feature of the Ground Rules is that it was negotiated with and signed by non-state parties, for which it has been criticised as in some way conferring legitimacy on the movements. However, it did not confer political recognition; the SPLM/A and SSIM/A were already 'recognised' for humanitarian purposes in the OLS agreements. Signing the Ground Rules signified an acceptance by their leadership of responsibility for

humanitarian and human rights norms, and a means of holding them accountable. It also endowed the agreement with authority for those rebel commanders and authorities ignorant of international treaties. Concerns that the agreement eroded sovereignty were dismissed as erroneous if the intervention meant that civilians were better treated.

International humanitarian principles were not re-negotiated in the Ground Rules, but reaffirmed. Six months of negotiations created an opportunity for dialogue with the movements on contentious issues, such as child conscription, and this strengthened the agenda of reformers within the SPLM/A. What was negotiated was the means of disseminating and enforcing them, and the relationship between OLS and the movements. A weakness in the agreement lies in the formalisation of 'partnerships' with the relief wings of the movements, which imposed conditions on the movements and the humanitarian agencies.

Integrating humanitarianism and human rights: The Ground Rules draw on the different traditions of IHL and human rights law to broaden and deepen the humanitarian principles that provided the basis of OLS. The incorporation of human rights protection as a necessary part of humanitarian operations was particularly innovative, and reflected an increased awareness of the human rights basis of the emergency. It also reflected UNICEF's particular concern with child rights as 'custodian' of the Convention on the Rights of the Child (CRC), and the presence in southern Sudan of many unaccompanied minors and child soldiers. The establishment of a dedicated unit – the Humanitarian Principles Programme (HPP) – within UNICEF/OLS, for the dissemination of humanitarian principles and the monitoring of violations, has served to institutionalise the Ground Rules, and ensures that humanitarian principles remain central to OLS southern sector operations and negotiations with the rebel movements.

There are five areas where the influence of the Ground Rules is apparent: in the *regulation and co-ordination* of the humanitarian programme, in the system of *security*, in the *management of assistance*, in *protection* activities, and in *capacity-building* and *good governance*.

Table summarising some of the factors that are supportive of the framework of respect and others that threaten or weaken it.

| Strengthen | Weaken |
|--|--|
| <ul style="list-style-type: none"> ▪ <i>Within the warring parties:</i> a climate of reform engendered by the SPLM/A's loss of Ethiopian patronage with the fall of the Derg, the 1991 split within the movement, and the movement's increasing dependence on southern populations. A greater reliance on international aid delivered within Sudan, and the movement's desire for internal and international legitimacy. An interest in developing a more professional army in order to achieve its combat objectives. ▪ <i>Within Sudanese society:</i> the actions of individual reformers within the movements, the churches and civil society organisations. Again UNICEF/OLS sought to strengthen this through capacity-building. | <ul style="list-style-type: none"> ▪ <i>Within the warring parties:</i> their political and military goals, factionalisation, and predatory relations with civilian populations. ▪ <i>Among donor governments:</i> lack of policy coherence in relation to the war and the role of OLS. The under-resourcing of OLS and the growth of NGOs. Contradictory actions of governments that provide humanitarian at the same time as they provide military assistance. |
| <ul style="list-style-type: none"> ▪ <i>Among donor governments:</i> a greater emphasis on human rights, increased empathy with the objectives of the rebel movements, and greater financial resources made available for the aid programme. ▪ <i>Among aid agencies:</i> a unified aid response through the regulatory structure of OLS southern sector, and a shift towards rights-based programming. | <ul style="list-style-type: none"> ▪ <i>Among regional governments:</i> conflicting political and economic interests. ▪ <i>Within OLS:</i> the different approaches taken by northern and southern sectors of OLS towards humanitarian principles and protection, and among NGOs a lack of clarity about their protection obligations. |

Regulation and co-ordination: If the ‘rules of war’ are about regulating the conduct of war, the Ground Rules are also about regulating and co-ordinating humanitarian action. Negotiations over the agreement took place at a time of expansion in OLS southern sector, when the number of approved locations and international NGOs operating under OLS was increasing. The UN managed this expansion in a way that proved impossible in Somalia and Rwanda; through a system of contractual agreements that established a system of quasi-accreditation for NGOs, through the incentive of operational support structures for NGOs, and through the Ground Rules which established a common framework for international intervention and engagement with the crisis.

The Ground Rules strengthened the existing system of co-ordination and regulation in OLS in important ways by establishing principles and procedures for engaging in the crisis and negotiating access. In this way the Ground Rules minimise the potential for manipulation by the warring parties and misuse of aid by aid agencies. The framework is sustained through a series of formal and informal mechanisms:

- At high diplomatic levels through the efforts of the Special Envoy for Humanitarian Affairs and diplomatic forums such as the Technical Committee on Humanitarian Assistance (TCHA).
- Through the collective response of donors to specific Ground Rules violations.
- At the level of warring parties through the offices of the Humanitarian Principles Programme, and support to humanitarian principles officers in the relief wings of the movements.
- Among NGOs through the contractual mechanism of the Letter of Understanding (LOU) and through the security system, dissemination and Ground Rules training workshops.
- At a field level, through dissemination and the monitoring and response to Ground Rules violations.

While this integration has advantages in terms of joint action to protect humanitarian space, the price is a loss of independence for aid agencies. This is potentially problematic given that the Ground Rules specify the relief wings of the movements as ‘operational partners’. The OLS agreements confer advantages to the government in terms of regulating agency access. One reason the rebel movements agreed to the Ground Rules is because they are meant to regulate the behaviour of NGOs.

This framework is also vulnerable to donor government interests. Since most bilateral aid to Sudan was cut in the early 1990s OLS has been a focus for international engagement in Sudan; humanitarian diplomacy has largely replaced political diplomacy. Some donors pursue this by channelling funds to the UN. Others pursue it through NGOs who, generally, provide donors

with a more flexible policy instrument. This can make strategic sense by facilitating a response to needs in areas that OLS cannot access. It also means that humanitarian responses may be defined by political considerations rather than need.

Finally, for most field-based aid workers, the primary function of the Ground Rules is to facilitate day-to-day relations with local authorities and populations, and to protect ‘agency space’ rather than ‘humanitarian space’. The Ground Rules most commonly referred to by aid agencies relate to administrative and security concerns, rather than civilian protection.

Security and humanitarian space: The first Ground Rules emanated from a concern for the security of aid workers. Although the Agreement on Ground Rules was formulated with an additional premise – the protection of civilians – their revision was also precipitated by security concerns. There remains a close link between the Ground Rules and the OLS southern sector security system in terms of negotiating access and defending humanitarian space. In the Ground Rules counterparts have responsibility for the security of aid workers. Any incident affecting the security of OLS agencies is initially treated as a ‘security incident’ until it is determined to be a ‘Ground Rules violation.’

The OLS security system has been critical to the expansion of OLS activities in the south. It is a testament to that system and to the Ground Rules that there have been no security-related expatriate deaths in southern Sudan since 1992 and, compared to other war zones, few casualties among Sudanese relief workers. At a time when there is interest among donors and agencies in the use of private armed security firms for the protection of humanitarian operations, the unarmed civilian-based security system of OLS provides insights into alternative means of protection.

There are interesting parallels and differences between the security office and the HPP. While the Ground Rules establish the rules of engagement, the OLS security office advises on the pre-conditions for operations. To fulfil their responsibilities, the HPP and the security office both undertake political and military analysis. In terms of documenting the war, the security incident file provides a more comprehensive chronology of how the war is being fought than the Ground Rules violations file. Security analysis, which includes a regional military and political analysis, involves monitoring the indicators of what is in effect a politico-military early warning system. These include recruitment drives, population movements, and the looting of aid. As humanitarian needs are vulnerable to changes in the military context, such security analysis can be used in projecting short and long term needs. It therefore provides an important political dimension that is lacking from the normal food security and welfare needs assessments. For political reasons, however, the analysis cannot formally be integrated into such assessments.

The security office and the HPP differ in their protection responsibilities. The sole role of the security office is to protect OLS staff. This requires it to maintain a relationship of neutrality with military commanders, which involves a compromise. Security officers cannot openly monitor human rights or prevent aid diversion. Thus, while HPP and the security office are concerned with the protection of OLS member agencies, HPP is also concerned with protecting beneficiaries. Finally, while political and military analysis of the war protects humanitarian space, ironically such analysis is not used for political diplomacy to pursue an end to the war.

The principled management of humanitarian assistance: The analysis that humanitarian aid in war-induced emergencies has the potential for sustaining and escalating violence is a widely held concern. Empirical information is absent on the importance of relief aid as a resource for the warring parties in southern Sudan. However, it probably plays a more important role than in many countries. Politically, OLS is the principal diplomatic lever for the warring parties and international governments. Aid is a calculated element in military strategies, either diverted or taxed to provision soldiers or through access restrictions denied to the enemy. In a war fought on and over the subsistence economy of southern Sudan, assistance to sustain the livelihoods of rural producers is a strategic resource, in particular food aid.

The basis of OLS is the provision of assistance to populations in need wherever they are. The Ground Rules build on this by affirming the right to receive and offer assistance as a basic humanitarian principle, and the denial of assistance or its use for non-humanitarian purposes a breach of humanitarian principles. An assumption behind the Ground Rules, is that adherence by relief agencies and warring parties to fundamental humanitarian principles of neutrality, impartiality, independence, accountability and transparency will mitigate such problems as aid diversion and protect the rights of populations to assistance.

The study found little evidence that aid workers in OLS consciously and rigorously apply these principles in their management of humanitarian assistance. There is little consensus on their meaning or how to operationalise them. For example:

- *Neutrality:* Several agencies seek to operationalise neutrality by working in more than one area controlled by different warring parties, and many agencies working in northern Sudan chose to work under OLS for the cover of neutrality it confers. However, OLS incorporates a broad range of agencies, some of whom are more sympathetic to the movements than others. In the view of several, the neutrality of OLS is already compromised both by its acceptance of government sovereignty and by its partnership with the relief wings of the movements.

- *Impartiality:* Ensuring impartiality of actions, by providing assistance based on 'need alone' is difficult to operationalise, given that OLS lacks a clear analysis of needs, a fact acknowledged by agencies and donors. The picture is further complicated by a lack of shared analysis on definitions of 'need' among aid agencies, between agencies and donors and between agencies and host populations. Anthropological research among Dinka, for example, reveals very different definitions of vulnerability between those claiming rights to give and those receiving.
- *Independence:* The independence of OLS is difficult to sustain, given that it is subject to the influence of warring parties and the foreign policies of donor governments. In addition, there is a tension between those aid agencies who argue for greater external control and independence of the aid programme, and those who believe that sound analysis and an appropriate response can only emerge from a long-term engagement and local participation. Some point to a contradiction between capacity-building and independence. Others argue that the quality of access improves with the quality of relationships.

It is unclear whether the Ground Rules have had any impact on problems of aid diversion and manipulation. In SPLM/A-controlled areas reports of mass looting and explicit diversion of aid are less common than in the early 1990s. Evidence of significant aid diversion by the SPLM/A, SRRA and local authorities during the 1998 Bahr el Ghazal famine, however, does indicate a continuing problem. Importantly, evidence suggests that it is not purely a military problem, but that relief aid is integrated into the local level socio-political structures of the south.

A difficulty in assessing the impact of the Ground Rules is the lack of baseline data, monitoring and reporting on aid diversion. This is especially problematic among the food agencies, given the strategic importance of food aid. In addition, there is little empirical evidence on the impact of long-term food aid on food security. One reason is a lack of long-term studies on food security. Monitoring the end-use of aid should be seen as a fundamental obligation of assistance agencies and an essential component of a principled approach. Donors need to insist on and support more elaborate monitoring and impact assessments.

The growth of ignorance: Sound analysis of the context is a prerequisite for a principled approach, so that humanitarian action is politically informed, but not politically driven. Numerous studies of the Sudanese war and OLS and the sophisticated needs and vulnerability analysis that aid agencies have developed, mean that aid workers probably know more about southern Sudanese society and the political context in which they operate than at any time in the past. OLS southern sector has invested in enhancing this

knowledge through workshops for aid workers. Despite this, aid workers continue to highlight the inadequacy of information and knowledge on which to base humanitarian responses.

The problem is two-fold. First, there will always be a deficit in socio-political analysis, as not all aid workers can be anthropologists, political economists or military strategists. However, the issue is not so much a lack of information, but that it is selective. There is for example, no comprehensive analysis of the SPLM/A, its ideology, organisation, financing and relationship with civilian populations. This is surprising given its influence on the lives of millions of Sudanese and OLS's strategy of 'critical engagement' with the movement. An understanding of the forces fighting the war should be a pre-requisite for determining humanitarian action. In designing protection strategies, an understanding of the SPLM/A is critical for determining whether human rights abuse arise from lack of discipline, poverty, ignorance or deliberate policy. Aid project designs, however, rarely require such analysis.

Secondly, constraints imposed by the operating environment mean that 'needs' are often defined in terms of what is operationally and politically feasible to respond to. If, as some analysts suggest, humanitarian assistance has been used in Sudan by some donors in support of certain political ends, then no amount of sophisticated needs assessment can ensure the impartiality of the aid programme. Furthermore, needs assessments are only meaningful if resources are available to back them. Donors were slow to respond to the warnings about the 1998 famine in Bahr el Ghazal. Because the international community prioritises its engagement between countries and between complex emergencies, proof of empirical need does not necessarily determine response.

Protection: The Agreement on Ground Rules affirms the protection obligations of the signatories, notably the responsibilities of the SPLM/A under IHL. Integrating assistance and protection activities within agencies, however, has proven difficult.

The first problem has been how to respond to human rights abuses that violate the Ground Rules. Shortly after the Ground Rules were signed the HPP investigated two massacres of civilians in which the SPLM/A and SSIM/A forces were implicated. The leadership of the movements failed to respond to the reports compiled by HPP. The ability of OLS to take action was limited. Procedures for addressing such violations had not been agreed. As the Ground Rules define humanitarian assistance as a 'right', UNICEF/OLS cannot use public advocacy or aid conditionality as strategies to ensure compliance with the Ground Rules, and without international political support UNICEF/OLS cannot enforce compliance. The lack of action against those responsible for the 1995 massacres by both leaderships indicates that they can be impervious to international opinion on human

rights. The HPP's position, therefore, is that they cannot be 'humanitarian cops' and instead have pursued a policy of constructive engagement. Consequently, protection activities consist of occasional confidential reporting, dissemination of international conventions and the monitoring of the rights of certain groups, especially children.

A second problem is that very few international NGO aid workers interviewed in this study consider protection to be part of their mandate, or are clear what it means. The potential for maximising protection through monitoring Ground Rules violations is, therefore, not fully exploited. Rights-based work is evolving, but aid workers have received little support or instruction to develop this expertise. Those agencies who have adopted protection as part of their mandate differ in their approaches; some undertake public advocacy and others provide technical assistance and capacity-building.

Dissemination of the Ground Rules and international humanitarian and human rights laws have undoubtedly increased awareness of humanitarian principles and human rights among many southern Sudanese. However, evidence of the impact of the Ground Rules on the behaviour of the SPLM/A towards civilians and better respect for humanitarian principles and human rights is equivocal. Awareness among SPLM/A soldiers of the 'laws of war' relates mainly to the treatment of soldiers rather than civilians. Only in regards to the treatment of unaccompanied children and child soldiers is there some evidence of change. Since the Agreement on Ground Rules was signed some 1,000 children have been reunited with their families in SPLM/A areas. More resources have been invested in this area of protection than others, and among the SPLM/A leadership there is increasing concern for education.

No detailed documentation is maintained by the HPP on the human rights environment against which it would be possible to assess the impact of the Ground Rules in respect of human rights and international humanitarian law. The lack of human rights monitoring is a lost opportunity. An analysis of the human rights situation would provide a political dimension lacking from normal needs assessments. Many of the security indicators monitored by the security office would be relevant to human rights monitoring. Forced recruitment, for example, can signal the outbreak of conflict, and where there are abusive local authorities, problems with the distribution of relief might be anticipated. Undertaking such monitoring, however, could pose a threat to humanitarian access.

The only detailed reports on the human rights environment in Sudan come from human rights organisations which have no operational presence. These reports do provide a form of baseline data on the human rights environment. If humanitarian agencies cannot undertake the work themselves, it suggests the need for a strategic relationship with human rights

organisations, which would separate humanitarian action and human rights action. In Sudan this could involve the placement of independent human rights monitors as recommended by the UN Envoy on Human Rights and human rights organisations since 1994. A decision on this, however, requires the agreement of the warring parties and donor support.

The notion that human rights transcend state boundaries is relatively new, and has become more acceptable since the Cold War ended. If a state does not protect the rights of its citizens, it raises the issue of who should take responsibility. While NGO relief agencies and human rights organisations can and do play a role in monitoring and advocating on human rights, they cannot enforce protection. States cannot abrogate responsibility to NGOs for protection, as they have done with relief assistance, but should take responsibility for upholding international humanitarian and human rights law

Capacity-building: The Agreement on Ground Rules represents an evolution in the objectives of the humanitarian programme. Whereas the first Ground Rules lay out the minimal operating conditions under which assistance will be provided, the Agreement on Ground Rules aim to create or influence the creation of those conditions through capacity-building.

As an aid strategy, capacity-building reflects an analysis that emphasises the internal origins of the war, arising from bad governance and weak social and civil institutions. A situation, some argue, that is perpetuated by an unaccountable and politically driven international aid regime. Solutions are sought in strengthening local capacities or, more ambitiously, building institutions. In OLS, institutional capacity-building has become a focus for a variety of concerns: increasing effective aid delivery; enhancing Sudanese participation in the aid programme; reducing aid dependency; and promoting good governance and political reforms within the movements. From the perspective of the HPP, humanitarian principles and human rights can only be meaningful if they are embedded in Sudanese institutions. For the promotion of humanitarian principles and human rights, the primary focus of HPP capacity-building efforts have been civil institutions, such as the specially created community-based Joint Relief and Rehabilitation Committees (JRRC), the relief wings of the movements, the churches, Sudanese NGOs, and to a lesser extent the judiciary.

The view that the Ground Rules only work where there are working institutions appears to be born out by the fact that they operate in the more secure areas, and primarily those under the administration of the SPLM/A. This conclusion is obvious. As the Ground Rules are linked to the humanitarian relief operation, the Ground Rules will not function where humanitarian access is denied. Arguably the dissemination of protection messages may be more relevant in insecure areas where levels of violence are higher.

A critical problem with elevating capacity-building to a humanitarian principle revolves around the incorporation of human rights protection in a humanitarian programme. Human rights protection demands not only that abuses be identified, but that assistance be given where necessary to authorities to meet their obligations. However, to increase respect for human rights by strengthening relief wings of the movements, civil society organisations or supporting the restoration of judicial systems within rebel-held areas, risks influencing the direction of the war and thus compromising the neutrality of humanitarian assistance.

There are few functioning JRRCs in Sudan. Given the partial and temporary nature of humanitarian assistance it is questionable whether humanitarian aid can be used to build civil institutions, and engineer societal change and greater respect for human rights. Using aid to support and affect processes of political and social change, such as reforms in the rebel movements, relies on an assessment of the legitimacy of those processes. Such assessments will be open to a variety of influences, not all of which are driven by humanitarian concerns. Capacity-building has undoubtedly influenced the way that welfare structures have developed in southern Sudan. The extent to which it has institutionalised respect for humanitarian principles and human rights among the warring parties is more equivocal. The 1998 famine in Bahr el Ghazal suggests there is some way to go.

Implications of the 1998 Bahr el Ghazal famine: Ten years after the famine in Bahr el Ghazal that precipitated OLS, Bahr el Ghazal again became the epicentre of famine. During the famine many of the issues that have long challenged OLS resurfaced, including a lack of preparedness on behalf of aid agencies and donors, problems of access and diversion of aid for military ends. In 1998 options for the reform of OLS appear less feasible than in the past. The political and humanitarian framework that has sustained OLS since 1989 has been weakened, by a breakdown in dialogue with the Sudan government since the US bombing of Khartoum in response to the bombing of their Nairobi embassy, due to the spiralling conflict in the Democratic Republic of Congo (DRC), and the outbreak of war between Ethiopia and Eritrea. In this context the Ground Rules and the OLS humanitarian principles perhaps take on a greater significance, by providing a principled position lacking in international politics.

1. The War

1.1 The origins and nature of Sudan's civil war

The civil war in Sudan is one of the longest running wars in Africa and in the world. The Agreement on Ground Rules was developed at a particular juncture in the war and in the history of Operation Lifeline Sudan (OLS), and is, in part, intended to influence the way in which the war is being fought. Respect for humanitarian principles cannot be divorced from the organisations responsible for implementing them. To determine the impact of the Ground Rules, this section briefly examines the history of the war and the nature and history of the SPLM/A.

The people of Sudan have known only a single decade of fragile peace since independence in 1956. The first civil war, between 1955 and 1972, fought between southern rebels known as *Anyanya* and a succession of northern governments, was brought to an end with the Addis Ababa Agreement which provided a measure of autonomy to Sudan's southern regions. The failure of the military government of Jaafar Nimairi to uphold the autonomy agreement, and of southern politicians to agree on power-sharing, saw Sudan slide back into hostilities between the government forces and southern rebels reconstituted as *Anyanya II*. Government proposals to abrogate the Addis Ababa Agreement by re-dividing the south provoked a mutiny of southern officers in May 1983 and the start of the second civil war.

Analyses of the causes of the war differ. For some analysts the pre-independence genesis of the first civil war, and the fact that both wars have been fought between northern governments and southern based rebel movements, locate its origins in historical colonial inequalities between north and south Sudan and religious and ethnic divides (Clapham, 1998:3). Southern demands for self-determination and equitable development as expressed in SPLM/A manifestos, together with the rejection by non-Muslims of expansionist Islam, are important motivations. They support descriptions of the war arising from a 'separatist' rebel insurgency fighting for autonomy from a strong central state (ibid.:6), and what has been described as a 'war of identity' (Deng, 1995; ACCORD, 1997).

An alternative analysis describes the war as arising from an expansionist political economy. The re-emergence of war is located in the political and economic crisis in northern Sudan in the 1970s and early 1980s and an alliance of northern commercial, government and military interests whose prosperity depended on their ability to tap the land and mineral resources of the south (Duffield, 1990:22; African Rights, 1997:10–38; Keen, 1999:16; Johnson, 1998b). The expansion of mechanised farming and the extraction of oil

discovered in 1978 on the north-south border required a cheap labour force and the dismantling of the southern subsistence economy.

There are clear links between the first and second wars, in particular, 'the structural subordination of the southern Sudan and adjacent areas within the Sudanese state' (Johnson, 1998b:54). However, the current war and the way it is being fought is distinct from that of the 1960s. The SPLM/A is a very different organisation from *Anyanya I* (ibid: 55). It is also only one, if the most prominent, of several southern rebel groups and the war encompasses several smaller but damaging internal conflicts. Furthermore, the current war spans the end of the Cold War during which the regional and international environments have also changed.

1.2 A brief chronology of the current war

The 1983 Bor mutiny in Upper Nile that marked the start of the second civil war was led by soldiers of 105 Battalion, among them former *Anyanya* fighters Major Kerubino Kuanyin Bol and Colonel John Garang de Mabior. The SPLM/A was formed later that year in Ethiopia under the patronage of President Mengistu, with Garang taking overall command of disparate *Anyanya II* forces and mutineers.

At its inception the SPLM/A drew its support primarily from the Dinka and during its first six years the war was largely confined to the southern regions. Trained and resourced by Ethiopia, the SPLM/A gradually took control of much of the south, defending rural populations in areas such as Bahr el Ghazal from government sponsored militias, occupying and subduing non-Dinka areas like Equatoria, and blockading southern towns. During this period the war received little international attention, a situation compounded by the government's and the SPLM/A's restrictions on relief operations. Thus, while the 1984/5 famine in northern Sudan received widespread international help, the war went largely unnoticed. Both government and SPLM/A military tactics, however, took a devastating toll of the civilian populations. Generally, while the government starved the rural areas, the SPLM/A starved the towns (Duffield, 1990:26).

The international community was awakened to the war in 1988, while responding to a flood emergency that hit Khartoum that year. For several years rural populations in Bahr el Ghazal had been subjected to devastating raids from government-sponsored *murahaliin* militia raised from the Rizeigat and Misseriya tribes of southern Darfur and Kordofan. It is no coincidence that these militia operated in areas that incorporated the oil-rich areas of Bentiu, Gogrial and Abyei (Keen, 1999). In 1988 drought exacerbated the cumulative effects of war in Bahr el Ghazal to create famine conditions in which an estimated 250,000 people died (Africa Watch, 1990:103).

The belated international humanitarian response was accompanied by diplomatic pressure on the government and the SPLM/A to end the war. The timing proved politically expedient as the government of Sadiq el Mahdi was politically weak (its coalition partners, the DUP, realised a separate peace with the SPLM/A in November 1988), and the SPLM/A was seeking international credibility. Both have since used their acceptance of Operation Lifeline Sudan created in March 1989, as proof of their humanitarian credentials. While never dependent on there being a ceasefire, the creation of OLS was closely linked to efforts to resolve the war.

A military coup on 30 June 1989 pre-empted a peace settlement. The coup that brought Omar el Bashir and the National Islamic Front (NIF) to power took place four days before Sadiq el Mahdi was to meet Garang in Addis Ababa, and signalled that the war was set to continue. In October 1989, it duly resumed. Government plans to regain the military initiative in the south were delayed, however, by another famine in the north in 1990–91 and the loss of international support because of Sudan's pro-Iraq position during the Gulf War.

In the early years of the war, the SPLM/A policy had been to block relief to the south and to lay siege to government towns. In retaliation, in 1996 the government blocked 'Operation Rainbow,' a modest attempt to airlift food to urban civilians and a precursor of OLS. Rural depopulation, however, was depriving the SPLM/A of support. As it gained more territory, civilians under its control required food supplies. Thus, in 1988 it reversed its policy and consented to an ICRC airlift into the south (Africa Watch, 1990:115). As relief arrived the population started to return, and the SPLM/A began to establish an administration. In what was a dramatically changing international political environment with the ending of the Cold War, this switch in policy and the subsequent negotiations over OLS brought the SPLM/A some diplomatic respectability.

Early 1991 marked the height of the SPLM/A's military ascendancy, with large stretches of the Kenyan and Ethiopian borders, many rural areas and most southern towns under its control. Some observed that it was close to 'winning the war' (Prendergast, 1997:45). Within a few months, however, its position was dramatically reversed. In May 1991, the Derg in Ethiopia was overthrown, the SPLM/A immediately lost its secure bases in Ethiopia, and over 200,000 refugees trekked back to Sudan. In August 1991, a group of SPLM/A commanders in the Nasir region, led by Riek Machar, Lam Akol and Gordon Kong, announced the overthrow of Garang.

As the refugees returned, Nasir became the hub of relief operations. Among SPLM/A sympathisers it is alleged that the humanitarian community played a role in the 1991 split by supporting Machar's forces. Evidence of a

deliberate policy of using aid to engineer the coup is lacking. It is more likely that it was triggered by the threat of a joint Ethiopian/Sudanese military offensive (Johnson, 1998b:63). The SSIM/A's vulnerability to the government's military threat is thought to have been a consistent obstacle to rapprochement with the SPLM/A (Prendergast, 1997:69). Others, however, point to a subtle process whereby relief influenced the pattern of splits by enabling Machar to establish himself as an independent force through the control of relief supplies (African Rights, 1997:173–184 ; Prendergast, 1996:33). It is also argued that the introduction of the Ground Rules and offers of capacity-building support to relief wings of the factions further hardened these divisions.

The coup failed to remove Garang. Instead, it irrevocably split the SPLM/A between the so-called SPLM/A-Mainstream under Garang, and the SPLM/A-United under Machar, renamed the South Sudan Independent Movement/Army (SSIM/A) in 1994. The defection of William Nyuon in September 1992 further weakened the SPLM/A. Events surrounding this defection led to the killing of three expatriate aid workers and a journalist, in response to which the first Ground Rules were introduced in the southern sector by OLS. The factionalisation enabled the government to regain the military initiative, retaking much of the territory it had lost during its 1991 dry season offensive, and by late 1991 it became clear that the SPLM/A-United was receiving direct government support. Between 1992 and 1994, the SPLM/A lost ground on several fronts as it fought the government and government-supported forces of Machar, Nyuon, Paulino Mathi and Kerubino Kuanyin Bol.

Factionalisation and the government offensive deepened the humanitarian crisis. Despite the Nasir coup leaders' declared concern for human rights, the inter-factional fighting involved direct attacks on civilian populations by all sides. By 1992 this had created famine conditions in the Ayod-Waat-Kongor 'Hunger Triangle' in Upper Nile. In the west attacks by Kerubino's forces on civilian populations and relief supplies from 1994 onwards laid the ground for the 1998 Bahr el Ghazal famine.

In 1993, members of the Inter-Governmental Authority on Drought and Desertification (IGADD), a forum comprising Djibouti, Eritrea, Ethiopia, Kenya, Uganda, Sudan and Somalia, embarked on a mediation process.⁴ This was important for a number of reasons. First, it served to underline the regional dimensions of the war, which proved to be a strength and a weakness, as hostilities between Sudan and some of the regional states later underscored. Secondly, the IGADD Declaration of Principles (DOP) helped define constitutional issues that needed to be addressed in order to resolve the conflict, in particular, the need to restructure the relationship between the north and the south and between the people and the state (ACCORD, 1997). Thirdly, the IGADD meetings in March and May 1994 led to the first signed tripartite access agreement

on OLS. Importantly for the Humanitarian Principles Programme (HPP) of OLS southern sector, the IGADD DOP, which emphasised protection of human rights and fundamental freedoms, created an opening for advocacy of human rights issues in the revised text of the Ground Rules.

The intransigence of the warring parties over constitutional issues and a deterioration in relations with Uganda and Eritrea saw this regional initiative falter. Relations with Ethiopia deteriorated, following an assassination attempt on Egyptian President Hosni Mubarak in Addis Ababa in June 1995. Accusations that Sudan was harbouring the assassins brought condemnation from the OAU and the UN Security Council. In southern Sudan there was further factionalisation. Lam Akol broke with Machar in February 1994, Kerubino began raiding in Bahr el Ghazal in July and Peter Adwok sought to create yet another faction in August.

By the end of 1995 the SPLM/A began to regain the military initiative. This coincided with an improved food security situation in the south, the return of southerners from the north, and labour retention in the south, in part helped by food aid (Karim et al., 1996:163–164). Further reasons for the SPLM/A's resurgence lay in a realignment of forces in the region, with Uganda, Ethiopia and Eritrea, backed by the US, forming an alliance against the Khartoum government. In the wake of the failure of the IGADD-led peace process, the SPLM/A had opened negotiations with the National Democratic Alliance (NDA), a group of banned Sudanese political parties and trade unions, leading to the joint Asmara Declaration in June 1995 which adopted some of the IGADD principles including a process of self-determination for the south, but premised on the overthrow of the Khartoum regime. Garang was given overall command of the combined SPLM/A and NDA forces (the Sudan Alliance Forces or SAF) in pursuit of this goal. By the end of 1996, after two years of inter-factional fighting, the SPLM/A-Mainstream emerged as the major rebel organisation opposing the government (UNDHA, 1997). Here it is interesting to note that this revival followed a major expansion of OLS southern sector between 1993 and 1994, and a redefinition of the relationship between OLS and the rebel movements with the signing of the revised Agreement on Ground Rules. This will be described in Section 2.

The government for its part sought to circumvent the IGADD process with one of its own, involving building internal alliances through a policy of 'Peace from Within' (*salaam min a dakha*). In April 1996, Khartoum's support for SSIM/A and other southern factions, long speculated on, materialised when Machar and several other faction leaders signed a Political Charter with the government. Like the Asmara Declaration, it offered a measure of self-determination for the south. It was followed in April 1997 by the Sudan Peace Agreement, signed by representatives of the

government and six former rebel factions united under the umbrella of the United Democratic Salvation Front (UDSF). Machar became the first Chairman of the Coordinating Council of South Sudan; its authority is limited and, at the time of writing, there has been little progress in implementing the Agreement.

In fact, both the Asmara Declaration and the Sudan Peace Agreement, rather than laying the basis for peace, led to an intensification of the war. In 1997, the SPLM/A, SAF and the Beja Congress, with the active support of Uganda, Ethiopia and Eritrea made important advances in the south and along the Ethiopian and Eritrean borders. The anti-SPLM/A alliance was further weakened by fighting within the SSIM/A and defecting back to the SPLM/A, including that of Kerubino. By 1998, the SPLM/A had regained its control over much of southern Sudan, comparable to that prior to the 1991 Nasir coup.

In the view of some analysts, the SPLM/A's achievements since 1995 arise from its success in establishing a functioning administration in the territories it controls, and in retaining the support of the rural population (Johnson, 1998b:65). In the view of one observer, the SPLM/A is 'positioning itself to embark upon building the foundations of a southern peacetime society' (Murphy, 1997a:13). However, 'peacetime' is far from a reality for much of the south. The defection of Kerubino in early 1998 sparked fighting and displacement in Wau and the worst levels of starvation in Bahr el Ghazal since the 1988 famine, which led to the establishment of OLS. In the east the SPLM/A failed to capture the strategically important town of Torit in late 1998. The government's strategy to secure the oil fields in Western Upper Nile by arming various factions has seen the SSIM/A disintegrate further, due to fighting between Machar and Mathip, creating insecurity throughout Eastern and Western Upper Nile.

1.3 The SPLM/A

1.3.1 Ideology and objectives

The war is prosecuted by one political elite against another political elite...it is not a liberation movement.⁵

Every liberation movement requires time to mature... The SPLA needs to define itself and its means.⁶

The above comments, both by aid workers, illustrate different external perspectives on the SPLM/A. No comprehensive analysis of the SPLM/A exists; compared with the government in Khartoum, little has been written about its ideology, organisation, financing or relationship with civilian populations. This is surprising, given its influence as a political and military force on the lives of millions of people in Sudan, and its

close 'engagement' with OLS, especially since the signing of the first Ground Rules in 1993.

The area under SPLM/A administration is vast. Its population is relatively small, but diverse in culture and language. As already noted, the nature of the relationship between southern Sudan and the rest of the country has been a key issue in the successive wars since independence. Both internal and regional peace processes continue to focus on this 'constitutional' issue. The leaders of the SPLM/A have always stated that its goals are the reform of the Sudanese state rather than southern independence; revolution rather than separation (Johnson, 1998a:16). Adopting this position ensured, in part, the support of external backers. Internally, the SPLM/A sought broad appeal by treating the south's grievances in the context of underdevelopment and unequal development within the whole country. Currently much of the rank and file are said to be at odds with the leadership, favouring secession, a view around which the SSIM/A tried to mobilise support in 1991. However, despite these apparent ideological differences, it is argued that southern motivation in the war is largely 'defensive', that it is about 'how to defend the south' (Johnson, 1998b:71).

The Nasir coup attempt revealed internal dissatisfaction with the way the movement was run. In the early 1980s the SPLM/A philosophy owed less to the revolutionary principles of Mao Zedong and Che Guevara, and more to the practices of Ethiopia's Colonel Mengistu – what has been described as 'Afro-Stalinist' (African Rights, 1997:62–3). As it was fighting a powerful and organised central state, the movement arguably needed similar characteristics (Clapham, 1998:8). Furthermore, the centralisation of military authority enabled it to avoid the factionalisation that undermined *Anyanya I* (Johnson, 1998b:60). Its early military achievements point to the success of this strategy. Moreover, it has been argued that the unity of insurgent groups often depends on the ability of a leader to monopolise external support (Clapham, 1998:16). Garang's ability to command Mengistu's support, and the vulnerability of the SPLM/A to fragmentation once this was lost, seem to fit this pattern.

Either way, in the 1980s the SPLM/A was characterised by a centralised, somewhat ruthless military philosophy and structure in which 'the people...were seen as the means rather than the end of the struggle' (African Rights, 1997:64). Up until the 1991 split and the SPLM/A's Torit Resolution, the movement required all its members to undergo military training, reflecting its military rather than political origins (African Rights, 1995:34). Mengistu's patronage meant that a reciprocal relationship with the civilian population was not as necessary as Maoist doctrine presupposes and little effort was made to develop one. As already noted, this included denying humanitarian relief agencies access until 1988. The need to develop a political base among

the southern Sudanese was subordinated to the SPLM/A's combat mission (Murphy, 1994:27). Where military commanders had a large degree of autonomy, this led to a predatory relationship with the civilian population. The military objectives of the SPLM/A, and its failure to support the emergence of a civil society in its early years, it has been argued, underpin problems encountered later by capacity-building initiatives of OLS (African Rights, 1995:33).

The repressive nature of the leadership was a factor in the 1991 coup attempt, as illustrated in the Nasir officers' demands for respect for human rights and the democratisation of the movement. The subsequent split, and the loss of territory and external support, forced the leadership to rethink its strategies and its relationship with the population. In an immediate response to the Nasir manifesto, the Torit Resolution of September 1991 outlined plans for a civil administration and allowed Sudanese to join the movement as civilians (African Rights, 1995:34). It also paved the way for agreement on the formation of the first Sudanese NGO – the Cush Relief and Rehabilitation Society – to work in southern Sudan. As a result of the internal crisis, 'previously taboo topics such as democracy, accountability and human rights were forced back on to the agenda' (Levine, 1997:6).

The Torit Resolution was followed in March–April 1994 by the historic Chukudum Convention, at which the 'New Sudan' was proclaimed and the basis for a decentralised system of government was established, with civil administration and social welfare functions separated from the military. In the words of Garang, the citizen was put at 'centre stage' (African Rights, 1997:307). The process of reform continued with the 1995 Senior Commanders Conference and the Conference on Humanitarian Assistance, followed by the Conference on Civil Society and the Organisation of the New Sudan in 1996. The rhetoric of the movement had thus changed. In his opening address to the 1996 Civil Society Conference, Garang proclaimed:

Effective democratic, participatory and accountable civil authority is the most important task and challenge facing the movement, that must take centre stage as the military problem fades in importance. (African Rights, 1997:310)

The extent to which these developments represent a genuine change is passionately disputed. No doubt there are genuine forces within the SPLM/A pressing for such change, even if its implementation has not been as successful as many had hoped or is proclaimed. As already noted, however, some observers argue that it has been the SPLM/A's success in establishing civil structures and retaining the support of the rural population that accounts for its military achievement since 1994 (Johnson, 1998b:65). Certainly, with the loss of its bases and the threat of internal division, it needed to develop a less extractive relationship with the

subsistence-based rural populations. An important element was its ability to control cattle raiding in the areas under its authority; the establishment of SPLM courts in 1995, for example, helped control raiding between Dinka groups in Bahr el Ghazal and the Lakes regions (ibid: 66).

Significantly for this study, the humanitarian principles and capacity-building initiatives in OLS southern sector originated in this period of internal change. It was also a period of political change globally and within the region, and a time of restructuring within OLS and the international humanitarian system. An important issue, therefore, is the extent to which, as the 1996 OLS review suggests, the Ground Rules helped shape the internal changes in the SPLM/A (Karim, et al. 1996:54) or vice versa.

1.3.2 The command structure

Culture, ideology, political awareness, training and motivation all affect the behaviour of armies. As Keen notes, in the absence of ideology, economic gain may motivate fighting (Keen, 1998:51). Garang personally signed the Ground Rules and sent letters to his commanders with instructions to respect them (Garang, 1993). While significant, this has not stopped abuses by SPLM/A soldiers. Civilians make up the largest proportion of casualties in the war in Sudan. Whether this is due to lack of discipline or deliberate policy is important for understanding the impact of the Ground Rules.

Analysis of the SPLA/M's command structure is missing from most descriptions of the movement. A centralised command structure was a noted feature of the SPLM/A in the 1980s and contrasted with *Anyanya I*. Indeed, it has been remarked that the SPLM/A is more akin to a conventional force than a guerrilla army, and 'the extent of centralisation is remarkable even by the standards of rebel armies' (African Rights, 1997:304). However, the history of factionalism and independent commanders testifies to the difficulties of maintaining a unified command structure. In part, this was contingent on external support, and when Mengistu's patronage was lost Garang's authority was weakened. The nature of the war against a well armed government, the vast area being fought over, and the poor communications and resources, impose a more diffuse organisation on the SPLM/A than descriptions of the centralised command structure would suggest.

The training received by SPLM/A recruits in Ethiopia appears to have consisted mainly of military and political indoctrination. According to some commanders there was no instruction in the rules of war, except in the treatment of prisoners. At best training included instruction in the 'guerrilla's code'. Soldiers were expected to be self-reliant. With recruits taught that food, wife and property could be obtained

through the barrel of the gun, the abuse of civilians was in effect sanctioned.

'At times, the elevation of the military verged on a nihilistic attitude towards civilians and existing social structures'. (African Rights, 1997:82) Military discipline is based on the SPLM/A Penal Code drawn up in 1983, which prescribes the death penalty for crimes by military personnel including looting and rape (Johnson, 1998b:68; Alor Kuol, 1997). Although the Code was later repealed, and the 1994 Chukudum Convention did much to strengthen the role of customary law, implementation of the Code is described as 'irregular and arbitrary', and the text was often unavailable to commanders (Johnson, 1998b:68).

The SPLA generally comprises units formed of people local to the area in which they are operating and whose main motivation is 'defensive' rather than ideologically driven. Local commanders enjoy considerable freedom of action. Indeed, the SPLM/A was described by one interviewee as an organisation built on a series of almost semi-autonomous commanders or 'warlords' who are 'franchised' to operate on behalf of the leadership. The fact that soldiers are not paid and commanders are expected to make arrangements with the local population, weakens the central command structure and its ability to discipline those who abuse civilians or divert relief. This creates a common perception amongst many in the relief community that Garang has limited control over his commanders. Others question whether there is the political will to address this, arguing that the SPLA has 'failed to show a determination to eliminate such actions' and is prepared to forgo disciplinary control in order to maintain a basic level of loyalty (African Rights, 1997:82-83).

In 1998 in Bahr el Ghazal, for example, the SPLM/A used various commanders to contain Kerubino, but turned a blind eye to their looting and abuse of populations.⁷ In August 1996 in Mapoudit, several nuns were arrested by a local commander for allegedly including information on child recruitment in a personal letter (Kur, 1996). The commander, who was also accused of summary executions, was transferred from this command after the Churches and Sudanese NGOs complained, but only temporarily.

The 1994 Chukudum Convention announced a separation of the civilian and military wings, and a division of the military into a 'national' mobile force and locally recruited 'defence forces' (Johnson, 1998b). While some aid workers assess that the civilianisation process has changed nothing and that the military retain control (USAID, 1998), others argue that the separation has improved civilian-military relations at a local level. As part of the internal reforms the military have instituted a Political and Moral Orientation Programme for the army. As described in Section 2, OLS has sought to tap into these changes through its humanitarian principles dissemination programme.

Recruitment: The size of the SPLM/A military force is unknown to external observers. Some estimates put the standing force at around 4,000 – 5,000. However, the dividing line between civilian and soldier is often blurred. Prior to an offensive the SPLM/A embarks on a recruitment drive, releasing soldiers back into civilian life once the offensive is over.

The SPLM/A has always relied on both voluntary and forced recruitment (*kasha*), the latter normally occurring in preparation for military offensives and often targeting deserters, with even reports of Ugandan refugees being rounded up (Human Rights Watch/Africa, 1994:191). The degree to which recruitment is 'voluntary' depends on relations with the local population; among the Dinka the tribal system has commonly guaranteed a certain number of recruits. The general policy of establishing indigenous military units has not been the case with non-Dinka groups; in the 1980s, for example, the recruitment of Equatorians often involved military confrontation and the destruction of the subsistence economy, including the torching of crops, looting of cattle and forced displacement (Duffield, 1990:24). Elsewhere it has formed or assisted with the creation of militias, including the Jur Luo in Bahr el Ghazal, the Latuka in Equatoria, and the Nyangatom, Tapos and Turkana along the Ethiopian border (Africa Watch, 1990:157–158). More recently, the movement has been broadened through alliances, such as with the NDA. Military recruitment based on force, convenience or economic motivation, rather than popular mobilisation, coupled with the lack of military training, accounts for some of the poor discipline and human rights abuse of civilians reported by human rights agencies (Human Rights Watch/Africa, 1994).

Child recruitment has been particularly controversial. In the early 1980s boys were enticed to walk to Ethiopia with promise of shelter and education (Human Rights Watch, 1995:75). In part, this was to avoid death or conscription at the hands of the government or its militias. However, both SPLM/A and SSIM/A have been accused of 'warehousing' thousands of young boys in preparation for military recruitment (*ibid.*). In the late 1980s, there were believed to be up to 20,000 such minors (UNICEF/OLS, 1998a). The SPLM/A has been particularly sensitive to criticism of this policy and in the past has been reluctant to accept family reunification programmes for unaccompanied minors (Human Rights Watch, 1995:84). The inclusion of the Convention of the Rights of the Child in the revised Ground Rules was an explicit attempt to address this issue, and child conscription was among the most hotly debated issues during negotiations over the revised Ground Rules.

The resource base: Fighting wars is hugely expensive and the resources available to an insurgent group from the land or people under its control, or from external supporters, can determine the pattern of conflict. Understanding the means whereby fighting forces are

maintained and supplied is therefore essential for understanding how wars are fought.

In many places in Africa, the strategies used by military leaders to mobilise income have become the most destructive feature of the political economy (Clapham, 1996:234). In Sudan where the subsistence economy is a target and point of defence in the war, this has exacted enormous social costs. Whole tribes and tribal sub-sections, whose ways of life are structured around subsistence economies, have been almost wiped out (Duffield, 1990:30). The effects are felt not only in Sudan. In 1987, for example, some 10–20 percent of the Mursi in Ethiopia were killed by Nyangatom militia armed by the SPLM/A (Duffield and Prendergast, 1995:165). On the government side, the part played in this by powerful military-commercial interests through cattle raiding, mechanised farming, smuggling and mineral extraction has been documented (Keen, 1994). Little information exists, however, on whether a similar convergence of interests exists among the southern rebel movements.⁸

The potential impact of humanitarian aid in resourcing and escalating violence has been documented (Macrae and Zwi, 1994; Keen, 1994; Prendergast, 1996). Some critics of OLS assert that relief has probably made the war in Sudan 'more brutal' (African Rights, 1997:292). In terms of overall aid, southern Sudan has probably received and consumed more resources under OLS than ever before in its history. Clearly relief aid and local taxation (*tayeen*) are an important resource for the SPLM/A. But it is difficult to quantify the relative importance of aid within the war economy. South Sudan is not a cash-based economy, and trading appears to play a remarkably limited role. Although there is some international cross-border trade, and north-south trade within Sudan, which appears to be controlled and presumably taxed by the SPLM/A, there is no information on its value. It is unclear, therefore, how much the SPLM/A depends on aid or trade to purchase arms.

Arms: There is little hard information on the SPLM/A's source of arms. The majority are thought to be captured in battle or purchased on the open market and shipped through the so-called 'frontline states' of Uganda, Ethiopia, and Eritrea (Human Rights Watch/Africa, 1998:44). At various times Zimbabwe, Namibia, Kenya, Israel and Egypt have all been implicated in providing military support (Prendergast, 1997:63). Since the mid-1990s, the main source of political and military support has been the 'frontline states.' Ethiopian and Eritrean support, lost in 1991, was renewed after 1995 with both military training and equipment, plus Eritrean troops being provided to the SPLM/A forces during their 1997 offensive (Human Rights Watch/Africa, 1998:45). Uganda under Museveni has long provided logistical support and allegedly provided troops for the 1997 offensive against Yei. It has also been a transshipment route for arms from as far south as Mozambique, Angola and South Africa. In 1996, the US government

announced plans to provide \$20 million in 'non-lethal military aid' to the frontline states (Human Rights Watch/Africa, 1998:48-49). It is speculated that some of this has filtered through to the SPLM/A.

1.3.3 Aid and Administration

There is a general acceptance that relief aid is important to the SPLM/A, as the following comments by aid workers and an SPLM/A commander interviewed explained:

Aid is important because every soldier has a family who is being taken care of. As long as aid in going in the war can continue.

The SPLA takes food from people. With every big distribution the soldiers will take a share, through wives and mothers. It cannot be stopped. Even WFP accept a percentage is taken.

Food is a factor in the war. We feed on relief.

At its simplest level soldiers have to eat; therefore, feeding the people is feeding the soldiers. But it is not only food that people benefit from. As a senior WFP official noted: 'For a war to continue, you need healthy people [and] people benefit from health inputs'. Similarly, southern Sudanese concerned with the next generation of leaders are keen to emphasise the value of education. There is some acceptance among aid agencies, therefore, of the 'reality' that in these ways aid supports the war efforts of the rebel movements.

Some analysts assert that aid has always been important to the military effort and that the relief wing of the SPLM/A – the Sudan Relief and Rehabilitation Agency (SRRA) – was formed in 1984 as a conduit for aid to the SPLM/A in Ethiopia (African Rights, 1997). For its part, the SPLM/A explains that the contributions of relief rations were just a continuation of support from the people:

When we started we were fed by local people. When the displaced increased they continued with their contribution from food aid.⁹

Foreign assistance became a more critical resource after the 1991 split, the loss of patronage and bases in Ethiopia, and the mass return of refugees. The period of inter-factional warfare between 1991 and 1993 saw some of the worst abuses of aid, as the factions sought to attract civilians to the areas they controlled. In the 'Hunger Triangle' of Upper Nile and what became known as the 'Triple A' camps of Ame, Aswa, Atepi in Equatoria, the armed movements were accused of 'people farming'. This period represented the peak of

human rights violations in the south and human rights organisations extensively documented the predatory practices of the SPLM/A and other southern factions in securing their food supplies. These include stealing food from civilians under their jurisdiction; pillaging cattle and grain from civilians on the other side; forced unpaid farm labour; taxing farm produce; requisitioning and taxing relief beneficiaries; diversion of relief supplies; and displacing and starving populations to draw in food aid (Human Rights Watch/Africa, 1994: 174–175). It was at this juncture in the war that the Ground Rules were first introduced.

As the activities of Kerubino in Bahr el Ghazal in the 1990s clearly demonstrate, the objective of aid diversion is not solely financial gain; it can be a military strategy to deny the enemy. The Ground Rules, which seek to protect the fundamental right of populations in need to receive assistance, were intended to prevent such abuses of aid. The extent to which they have succeeded in this needs to be understood within the context of the internal reforms within the movement. Some SPLM/A commanders interviewed explain the abuse of aid during the early 1990s as arising from the military nature of the movement:

...[in 1992] there were no civil institutions in the SPLA, no demarcation between the military and civil authorities. There was aid abuse and systematic diversion.

As the SPLM/A has regained territory it has become more dependent on the civilian population. The creation of civil administrative structures have in part been a response to this. At the 1994 Chukudum Convention the SRRA was formally separated from the SPLM/A and the civil authorities were given responsibility for raising resources for the army. Therefore, according to one SPLM/A commander, 'food is no longer supposed to be raised by force'. As another explains:

It was the time for change. So many areas were liberated. The civil authorities had responsibility to get food for the army. Food is organised through the executive chief, who gives it to the civil authority who gives it to the army. If the chief is unable to provide, he will tell the civil authorities who will explain to the army. The relationship is changed.¹⁰

The mass looting and explicit diversion of food and other forms of aid that were common in rebel areas in the 1980s and early 1990s are now reported to be less common in SPLM/A territory, although they continue in SSIM/A areas where the situation is more volatile. This is examined further in Section 3. It is worth noting here, however, that while overt diversion of relief may have declined, the democratisation of the movement

has increased other demands on external aid, as reflected in the SPLM/A's demands for 'development' rather than 'relief' aid and its interest in raising greater taxation from civilians and from aid agencies. Taxation (*tayeen*), rather than 'diversion', has become a common concern of aid agencies.

Human rights: One of the most innovative aspects of the Ground Rules was the way they sought to bring human rights and humanitarian principles together, by including a statement of support for the Geneva Conventions and the Convention on the Rights of the Child. Although non-state entities cannot sign these conventions, a formal statement of support by the SPLM/A was an important step towards accepting responsibility for respecting these legal norms.

As already noted the SPLM/A started largely as a Dinka movement, and the factionalisation after 1991 occurred largely along ethnic lines. Although the membership has expanded to include other groups, the senior officers are still predominantly Dinka. To some foreign critics, the SPLM/A is a 'small chauvinist tribal faction'¹¹ with dictatorial tendencies; in some non-Dinka areas it is an army of occupation and faces resistance by local militia. In the eyes of its supporters, however, it has matured into a broad-based movement. By signing the Ground Rules, the armed movements committed themselves to the protection of the rights of civilians and support for human rights norms. The impact of the Ground Rules needs to be assessed in the context of the SPLM/A's record on human rights and its administration of justice and welfare.

The civil war in Sudan has been one of the most costly in human lives, with widespread human rights abuse by all sides. By 1998, one in five of the southern Sudanese, some 2 million people, had been killed, the highest death toll of any conflict (US Committee for Refugees, 1998). UNHCR estimated that there were 209,000 refugees in Uganda, 110,000 in the Democratic Republic of Congo, 78,000 in Ethiopia, 28,000 in Kenya and 27,000 in the Central African Republic. Sudan also has the largest internally displaced population in the world, some 2.5 million people, of whom 1.8 million are in Khartoum, 350,000 in the transition zone and government-held garrison towns and 150,000 in camps in Equatoria.

Human rights organisations have documented the civilian abuses and violations of the laws of war by all parties (see for example, Africa Watch, 1990; Human Rights Watch/Africa, 1994; Amnesty International, 1995; Biro, 1994). The charges against the SPLM/A are numerous. It is charged with using starvation as a weapon of war in its sieges of southern towns like Juba and Torit in the early 1980s (Africa Watch, 1990), and, along with the government and other militias, with creating famine conditions in Upper Nile, Equatoria and Bahr el Ghazal between 1987 and 1989 (*ibid*: 118–137). It stands accused of deliberate and indiscriminate killing of civilians, hostage-taking, rape, indiscriminate

use of land mines, pillaging of foodstuffs, destruction and looting of civilian assets, forced recruitment, recruitment of under-aged minors, mistreatment and execution of prisoners of war and the detention, execution, disappearance and torture of political opponents. It is also charged with attacks on relief convoys, the deliberate starving of populations to secure relief, and the denial of access to humanitarian agencies, and of assistance to populations in need under its control, and to those under the control of other parties.

The 1991 split within the movement led to a particularly brutal period of warfare in the south, which between 1991 and 1993 exacted a higher civilian toll than government offensives. The killing of some 2,000 Dinka in Kongor and Bor by Nasir faction forces between September and November 1991 marked the beginning of a series of ferocious attacks and 'tit-for-tat' massacres between the factions. Historically, the economies of the Nilotic Dinka and Nuer groups of Upper Nile were linked by trade exchange networks as part of the wider regional economy. The split in the SPLM/A, though not tribally motivated, destroyed reciprocal links and precipitated famine in the Ayod, Kongor and Waat 'Hunger Triangle' in western Upper Nile. In 1993, rates of malnutrition in Kongor were amongst the highest ever recorded in the world in what had previously been a food-surplus area (Human Rights Watch/Africa, 1994). The US Committee for Refugees estimated that between 1992 and 1993 some 300,000 people were killed, more than during the 1988 famine (Prendergast, 1997:46). Government flight bans and the general level of insecurity severely restricted OLS access. It was during this period that three aid workers and a journalist were killed in 1992 and the first Ground Rules were formulated.

The reasons for the atrocious human rights record of the SPLM/A are complex and controversial. Sympathisers point to the abuses of the government and its 'spoilers,' such as Kerubino. However, the actions of the leadership from the movement's inception suggest that their primary motivations were not humanitarian. Military centralism was certainly not the way to maximise respect for human rights (Africa Rights, 1997:70). Furthermore, the subsistence-based economy of southern populations has made the destruction of a 'way of life' a strategy for defeating the enemy.

The last few years have seen some attempt to rectify this situation. Pressure has come internally from reformers, as well as from outside. Freed from the political restrictions of the Cold War and in line with the downgrading of state sovereignty, the 1991–1993 period of internecine warfare in Sudan, was one in which human rights was gaining in importance in defining international relations. The US State Department criticised the human rights situation in Sudan in 1989. In 1990, Africa Watch had released an important report on the human rights situation in Sudan (Africa Watch,

1990). In 1991, 1992 and 1993, the case of Sudan was discussed by the UN Commission on Human Rights, leading to the appointment of the Special Rapporteur on Human Rights for Sudan in July 1993. In June 1993, the US put Sudan on the list of countries harbouring terrorists. In June and July 1993, Human Rights Watch undertook research on the human rights situation in Sudan. In 1994, Amnesty International representatives visited southern Sudan and attended the Chukudum Convention meeting with SPLM/A commanders. African Rights, founded in 1993, produced a series of important reports on Sudan. The revised Agreement on Ground Rules, which sought to integrate human rights and humanitarian principles, emerged in this context.

Administration of justice: An inherent problem in carrying out human rights work in the midst of conflict is the way in which wars erode and target institutions, including legal ones. After years of war, southern Sudan has been described as being in a state of 'institutional impoverishment' (African Rights, 1995:21).

Until the Chukudum Convention, the SPLM/A did little to encourage the development of independent civil institutions. However, it has had a legal code since 1983, which, according to Garang, protects civilians and relief workers (Garang, 1993). It has been argued that this legal system, based on traditional chiefs courts, has been important in regulating relations between civilians and military (Alor Kuol, 1997; Johnson, 1998b:68). However, the administration of justice rests largely in the hands of the local military commanders. As the history of human rights abuses attests, the SPLM/A's application of justice has been, at best, inconsistent, especially outside Dinka areas. According to human rights advocates, the penal code has never been used to discipline human rights abusers.

The code was revised at the 1994 Chukudum Convention as part of the process of liberalisation. The laws of New Sudan recognise the role of customary law, in part as a rebuff to Khartoum's Islamic laws. One of the achievements of the Ground Rules, an interviewee suggested, was to introduce some rules into a 'lawless environment'. As the above description indicates, the environment was not so much 'lawless' as governed by laws imposed by a rebel movement. The resolution of legal disputes involving aid and aid agencies remains with the SRRA, rather than other local institutions.

Welfare: Up to the late 1980s, a predatory rather than social welfare ethic characterised the SPLM/A's attitude to international relief efforts. Relief was 'something to be manipulated as an immediate tool for fighting' rather than a resource for the welfare of the people under its authority (African Rights, 1997:91). The explicit policy of blocking relief in the south, to the extent of shooting down civilian aircraft, caused many southerners to flee northwards from the fighting. The switch in policy after 1988, which enabled OLS to be established, was based on a need to retain the population, from whom food and shelter could be obtained and men recruited.

When the SRRA, was set up in 1984, some commentators allege that it was to serve military as well as civilian needs; RASS was established by Riek Machar in 1991 with similar objectives (African Rights, 1997). Others interviewed argue that the establishment of the SRRA was encouraged by aid agencies who required an intermediary to work with. Once the agencies began working within the war zone, the SRRA adopted more of regulatory and facilitative role. It failed, however, to develop sources of support independent of the aid agencies. Furthermore, despite the resources invested in its capacity-building, little progress has been made since the 1980s in establishing a welfare system with a strong basis of civil accountability (African Rights, 1997:10).

One explanation offered is that external aid has been geared to the needs of foreign organisations, and rather than encouraging a 'social contract' it has prevented one from emerging (ibid.). Another explanation is that 'the social welfare of populations is not a top priority' of the SPLM/A, and cannot be in the midst of a war. Instead, it is external relief which 'oils the machinery of the welfare structure', enabling resources to circulate in the absence of cattle and other goods that existed prior to the conflict (Harragin and Chol, 1998).

In its defence, the SPLM/A explains that it does not claim to be a government, although it is referred to as such (*hakuma*) locally. Although it announced the creation of 'New Sudan' at Chukudum, it has not formed a government or claimed independent sovereignty over southern Sudan. To do so would go against the objective of liberating the whole country. The SPLM/A acknowledges that it has 'the ability to govern and meet the obligations of a government for the provision of services', but it clearly does not have the necessary resources and infrastructure to provide full welfare services. As the commissioner of Kajo Keji explained, he 'faces all the problems of statehood with none of the resources'.¹² Therefore, he noted, the SPLM/A 'depends on aid agencies to feed refugees, pay for roads, provide seeds and carry out other development work'. Claiming 'lack of capacity', however, enables the SPLM/A to call for external assistance, while avoiding the claims made on it by the people it purports to represent. With the establishment of the civil administration, demands for external assistance are increasingly for developmental aid rather than relief.

The process of establishing a civilian administration has revealed the gaps between the SRRA and the civilian population, with tension apparent over issues to do with the control of relief resources. Despite the formal separation of the SRRA from the SPLM/A in 1993, and the external institutional support for an independent public welfare mandate, the SRRA's relationship with the military appears not to have altered; it is still part of the movement. In relation to the Ground Rules this is important, first because members

of the SRRA were instrumental in negotiating them and in pushing for reform of the movement, and secondly, because the relief wings of the movements are specified in the Ground Rules as the main 'partners' for agencies working within OLS.

The relative success of the SPLM/A in recent years presents it with a dilemma. It is caught between the need to create a 'quasi-state within a state' in order to ensure the support of the people of the south, with all the responsibilities and expenses for administration, judiciary and welfare that this implies, and the need to sustain itself as a rebel force that can defeat the government. It does not want to end up with all the disadvantages of statehood and none of its advantages in terms of recognition.

1.4 International relations

The nature of an insurgent group's relationship with the regional and international political and economic system conditions its ability to meet its objectives and the choice of strategies it adopts. It also shapes the 'framework of consent' for humanitarian access (Lautze et al., 1998). Like a number of Africa's long-running conflicts, Sudan's civil war bridges the dramatic changes in the international order from the Cold War through to the 'New World Order' and to what has been referred to as 'neo-medievalism' (Duffield, 1998b). These changes brought a resolution to some of the conflicts in Africa. Elsewhere, as in Sudan, the warring parties have adapted to them.

The trans-boundary nature of issues in Sudan and the geo-strategic interests of Northern governments in the Horn of Africa, have been important in shaping the Sudanese war. At the start of its rebellion, the SPLM/A received political and military support from the Soviet-backed Marxist regime in Ethiopia, where it also found sanctuary and food through the refugee camps. As early as the mid-1970s, the Mengistu government had supported opponents of the Khartoum government including Sadiq el Mahdi and *Anyanya II* rebels in response to Sudan's support for anti-Derg forces (Johnson, 1998b:57). Ethiopian support enabled Garang to create an armed movement with national aspirations from what has been described as a 'coalition of ethnic militias' in which dissent was suppressed (African Rights, 1993). The Ethiopian regime was also influential in orienting the nationalist objectives of the SPLM/A towards a reformed and united Sudan, rather than southern separatism (Johnson, 1998b:16). The importance of the Derg to the SPLA/M became apparent after its collapse in 1991.

From the mid-1970s to the late 1980s, the configuration of Cold War politics meant that Sudan lay firmly in the Western sphere. Following the attempted communist coup in 1971, President Nimeiri's main support came from the United States. The role of Western foreign and aid policy in the genesis of the war cannot be overlooked. Considered an ally against Marxist

Ethiopia and Libya, Sudan was the largest recipient of US aid in sub-Saharan Africa. US, IMF and World Bank investments in its development schemes supported the spread of mechanised farming and thus the structural imbalance between the north and south. It was Western support and military hardware that gave Nimeiri the confidence to abrogate the Addis Ababa agreement, which became a focus for southern grievances (Johnson, 1998a:13). Once the war started, the SPLM/A's dependence on Marxist Ethiopia justified continued US military support for the Khartoum government. The southern rebels, who had received Israeli support during the first war, were no longer able to rely on this after Sudan supported the Camp David Accord. The level of US support for Sudan was manifest in the Administration's response to the 1984/5 drought and famine, and the neglect of the war by Western governments. Western alignment with the Nimeiri government was apparent in 1986, when no protest was made against the government's expulsion of the UN Resident Representative for trying to airlift relief to civilians in government-held towns in the south (Africa Watch, 1990:108).

Relations with Sudan began to cool in the mid-1980s when the government's disastrous economic policies meant that the country fell behind in debt repayments. US support continued up to, and initially beyond, the military overthrow of the Sadiq el Mahdi government in 1989, before exposure of the Bahr el Ghazal famine brought pressure for a change in policy. In late 1988, a US congressional delegation had met the SPLM/A and recommended a change in US policy (Africa Watch, 1990:164). In January 1989, the US invoked the Brooke Amendment to suspend bilateral aid to Sudan and criticised the country's human rights record. The same month the US and the UN proposed that SPLM/A-controlled areas should receive food aid and a cease-fire was agreed (ibid:113). The OLS came into being a month later. Remaining US bilateral assistance to Sudan was suspended when the el Mahdi government was overthrown in June 1989, with only humanitarian assistance exempted (ibid:166-167).

The period 1989-91 saw historic political changes throughout the Horn of Africa as the Cold War ended. The military coup in Sudan in June 1989 was followed by the violent dismantling of the Somali state in January 1991, and the overthrow of the Derg in April. The latter was closely followed by the violent schism within the SPLM/A. Sudan's support for Iraq in the Gulf War signalled the end of US-Sudanese co-operation. Relations with Khartoum were set back further in June 1992 following the torture and execution of four Sudanese USAID employees in Juba. Condemnation by the US and UN of Sudan's human rights record led to the appointment of a UN Special Rapporteur for Human Rights for Sudan in July 1993. In 1996, the US supported UN sanctions against Sudan, and imposed its own unilateral sanctions in 1997. In 1998, a US missile hit Khartoum in retaliation for the terrorist bombing of the US Embassy in Nairobi.

As US-Khartoum relations have deteriorated, US-SPLM/A relations have improved. The first 'diplomatic' relations were established during the negotiations which led to the creation of OLS. They continued to be fragile for some time, however. It is alleged that the US may have encouraged the Nasir coup attempt of August 1991, and after the killing of three foreign aid workers and a journalist in 1992 the SPLM/A Mainstream lost much international credibility. In 1993, however, at a time when the US was deeply involved in Somalia, the US Ambassador to Sudan did mediate a cease-fire between SPLM/A-Mainstream and United. The signing of the first Ground Rules in early 1993 signalled a process of rehabilitation for the SPLM/A.

While the policies of the US government have been highlighted here, given its influence in the region, these policies reflected a broader switch in Western interest towards southern Sudan. This is apparent in the funding of OLS. Up to 1991, the north consumed the largest part of OLS expenditure. After 1992, there was a dramatic shift in humanitarian expenditure from the north to the southern sector (Karim, et al. 1996:242). In part this can be explained by the higher logistical costs of the airlift from Kenya. However, the fact that the airlift was expanded reflected, both the humanitarian impact of the government's offensive in 1993 and 1994 and international interests (see Section 2). It has been suggested that the expansion of OLS was partly due to the US decision to strengthen Sudan's southern borders. In 1993, Hassan Turabi, the ideologue of the National Islamic Front in Khartoum, made a famous speech about spreading Islam to the Cape of Good Hope. In June 1993, the US provided a grant to OLS southern sector for institutional capacity-building in the rebel-held areas of southern Sudan. That month, the Sudan government was put on the State Department's list of countries sponsoring terrorism. Prior to the 1998 Bahr el Ghazal famine, the years 1993 and 1994 witnessed the largest WFP deliveries of food aid by WFP from Lokichokio (WFP Logistics, 1998). Given this, the expansion of OLS and the airlift from 1993 can be seen as an attempt by Western governments to assist the SPLM/A in resisting the Khartoum government's onslaught which was pushing towards the Ugandan border (Brusset, 1998).

As already noted, Garang's ability to monopolise external support has been important in sustaining his leadership. Indeed, the leadership is criticised for setting its agenda with too much regard to external actors (African Rights, 1997:312). In the mid-1990s US pressure was important in influencing the process of reform within the SPLM/A. In December 1997, at the end of a year of successful military campaigns by the SPLM/A-NDA alliance, Secretary of State Albright met with Garang and three other NDA leaders in Uganda, and expressed support for the objectives of the opposition. The extent to which political alignments have changed is reflected in the proposed USAID STAR (Sudan Trust for Rehabilitation) project, a capacity-

building and good governance programme for rebel-held areas. In this project, the US prohibition on development aid to Sudan, imposed via the Brooke Amendment, has been overcome by invoking the Horn of Africa Recovery Act.

The STAR project is interesting in the way it links donor foreign policy objectives with those of development and humanitarian aid. Following the policy failures in Somalia, and reflecting a process of political disengagement from Africa, there has been a shift towards greater emphasis on local and regional solutions to 'Africa's problems' in international aid policy. Since 1994, IGADD has been the focus for peace negotiations in Sudan. Once the inter-governmental body for food security problems in the Horn, its charter was revised in 1996 and its mandate expanded to include economic development, peace and security. In other words, the natural disaster model of food insecurity was replaced by one of conflict related food insecurity, and development and conflict explicitly linked. The US Greater Horn of Africa Initiative (GHOAI) was important in the reshaping of IGAD. This is an initiative between the US and the regional governments to establish a better conflict prevention capability (Kruvant, 1996). Supported by the USAID Office of Transitional Initiatives, the GHAI emphasises 'African self-help,' 'localism' and 'regionalism' as part of conflict prevention and resolution strategies (ibid.). The STAR project, justified by the Horn of Africa Recovery Act, is a natural extension of this policy.

The STAR project's support for grassroots rehabilitation efforts in rebel-held territories is consistent with US foreign policy objectives. At a macro level these are aimed at restructuring the nature of the Sudanese state, along the lines of the SPLM/A's stated position, and as incorporated in the 1994 IGADD Declaration of Principles. At a micro level the SPLM/A, in theory, wants a participative system of government. The STAR project is intended to support this.

Western policy of supporting regional solutions has had little success. Following the failure of the regional peace process of 1994/95, Ethiopia, Eritrea and Uganda emerged as 'frontline states' to be supported against the perceived threat of radical Islam from Khartoum. For these states the earlier Cold War tactic of supporting neighbouring insurgencies resumed, with Sudan providing refuge for Eritrean and Ugandan insurgencies. The governments of Ethiopia and Eritrea, although initially antagonistic to the SPLM/A, in turn have provided the movement with political and military support. In 1997 the SPLM/A assisted Uganda against the Western Nile Bank Liberation Front, at the same time as Yei and Kaya fell to the SPLM/A. Since the fall of Yei, Uganda has become an important overland transit route for relief to south Sudan. In Sudan, Ugandan and SPLM/A troops have combined to attack the rear bases of the Lord's Resistance Army in Juba and Rejaf. The spiralling regional conflict in the Democratic Republic of Congo (DRC) threatens to

drag in Sudan. In 1998 the Sudan government is alleged to have provided 3,000 Sudanese troops to support Laurent Kabila, in return for access to northern DRC. From there it can harass Uganda and the SPLM/A in Western Equatoria, which has been relatively stable for several years and happens to be one of the targets for the STAR project. The outbreak of hostilities between Ethiopia and Eritrea in 1998 threatens to further expose the vulnerability of the regional policy as Ethiopia, a former ally of the SPLM/A, has moved to restore relations with the Khartoum government.

Throughout the civil war, the SPLM/A's foreign relations appear to have been largely opportunistic. Like the Khartoum government and other parties, it has been adept at exploiting regional and international political changes, but is also vulnerable to them. Its diplomatic manoeuvring is reflected in its attitude towards foreign assistance and the way it has responded, and continues to respond to, the Ground Rules. As one aid worker noted, aid remains at the centre of the SPLM/A's international relations. By extension, 'humanitarian space' is one of the few things the SPLM/A has in its control.

2. OLS and the Humanitarian Context

The Ground Rules emerged at a particular historical juncture in the Sudanese civil war, and in the evolution of OLS. The previous section set the Ground Rules within the context of the civil war. This section locates their origins in the humanitarian crisis in Sudan, within OLS, and within broader institutional and political changes in the international humanitarian system.¹³

2.1 Operation Lifeline Sudan

Since 1989, international engagement with the civil war in Sudan has largely revolved around OLS, the UN-managed humanitarian programme charged with assisting and protecting war-affected populations. Launched as the Cold War was ending, OLS was the first of the multilateral humanitarian operations that became a feature of international responses to internal wars in the immediate post-Cold War years.¹⁴ This period also saw the principle of absolute sovereignty contested and assertive humanitarian interventionism increase. OLS set a precedent in international humanitarian policy and conflict management; its innovations have informed international responses to other complex emergencies in Angola, Somalia, Bosnia and Rwanda. Several of its features are worth noting.

OLS was established on the basis of a unique access agreement negotiated with the warring parties, which allowed for the provision of assistance to war-affected populations on all sides. A framework was established, whereby the warring parties conceded the principle that civilians caught in conflict have a right to humanitarian assistance and that the international community has a right to provide it. The Ground Rules, developed six years after OLS started, can be seen as an attempt to strengthen this framework.

The OLS framework was innovative in establishing the right to deliver aid in the midst of an on-going war. Until the mid-1980s, the principle of sovereignty restricted the international aid regime, with the exception of the International Committee of the Red Cross (ICRC), to supporting conflict affected populations in government-held areas or as refugees. The OLS access agreement challenged this, requiring the Sudanese government to cede partial sovereignty to the UN in areas controlled by rebel movements. Over time two operational sectors – northern and southern – have emerged to reflect this. The ceding of sovereignty, however, has been equivocal. In return, the UN offers no serious challenge to the government in the north (Karim, et al., 1996:33). While managing access to war-affected populations in areas under its control, the government is also able to manage humanitarian access to populations in areas outside its control through flight bans. Current arrangements mean that humanitarian access in the southern sector is negotiated by OLS with the government on a weekly and monthly basis. The ceding of sovereignty has also involved the UN

establishing a regulatory system for humanitarian agencies under its umbrella. In the southern sector, the Ground Rules form part of this regulatory system. In effect, the dual structure serves to maintain Sudanese sovereignty, rather than challenge it.

OLS was conceived at a time when international diplomacy was focused on promoting a resolution to the conflict, and was linked to the peace process. In the words of one UNICEF official, ‘lifeline was about peace’ (African Rights, 1997:127). The initial concept of delivering relief along ‘corridors of tranquillity’ was intended to provide a common platform around which to pursue confidence-building measures. This was feasible while linked to a political process. As the peace process faltered, however, and donor interest waned, humanitarian diplomacy replaced political diplomacy. OLS became the medium for political engagement, leaving humanitarian assistance exposed to manipulation by national and international political actors.

The critical feature of OLS is that access is negotiated. OLS was not established under Chapter VII of the UN Charter and the option of military protection for the operation was only briefly considered, at the time of the military intervention in Somalia. As access is based on negotiation, its degree waxes and wanes according to the strengths and interests of the warring parties and the interests and pressures of external parties, including regional and donor governments (Karim, et al., 1996:33). Some critics therefore argue that it is better to view OLS as the outcome of political manoeuvring rather than a principled entity (African Rights, 1995).

Finally, the relationship established by the international community with a non-state entity – the SPLM/A – through OLS was at the time unprecedented. It contrasted with that established between the international community and the relief wings of movements in Ethiopia. The ‘partnership’ that has developed between southern rebel factions and UNICEF/OLS remains unique and the Ground Rules of OLS southern sector have been important in shaping this.

2.2 A chronology of OLS

OLS was established in 1989 in the wake of war-induced displacement and famine in Bahr el Ghazal. NGOs and the media were under pressure from a coalition of US Congressmen for neglecting the war and famine; thus Western governments and the UN system in turn exerted pressure on the warring parties to allow relief to reach war-affected populations (African Rights, 1997:113–117). Common ground was forged by domestic pressure for a cease-fire. The November 1988 Accords between the government’s DUP coalition partner and the SPLM/A called on the international community to extend emergency assistance to war-affected civilians in Sudan. The outcome was a Plan of Action for a one-month relief operation.

2.2.1 OLS phase I

Organisationally and politically OLS evolved in two phases (Karim, et al. 1996). The first phase, 1989–92, covers the implementation of the Plans of Action for OLS I (April to August 1989) and OLS II (March to December 1990). These Plans, which proposed to deliver relief across the lines of conflict along designated ‘corridors of tranquillity’, assumed that the emergency would be short-lived and that the interventions would be temporary. The agreements establishing OLS were unsigned, informal agreements, negotiated by UNICEF’s Executive Director James Grant as Personal Representative of the UN Secretary General. For OLS II, UNDP took responsibility for the overall co-ordination of OLS, thus normalising UN-government relations (Karim, et al. 1996:31).

The nature of OLS today owes much to arrangements established in this first period. In particular, it defined the model of humanitarian access dependent on continuous negotiation. Although the OLS I and II agreements do not refer to northern and southern sectors, OLS I did establish the position of UNICEF as the lead agency in non-government areas. When UNDP resumed its lead role, responsibility for relations with the SPLM/A was in practice devolved to UNICEF’s co-ordinator in Nairobi. The northern and southern sectors became formalised over time. Overall co-ordination is provided by a UN Co-ordinator for Emergency Relief Operations (UNCERO) based in Khartoum. In the southern sector UNICEF co-ordinates cross-border operations run from Kenya, working along-side WFP and international and Sudanese NGOs. This early period also established the regulatory framework, whereby NGO relief agencies working in non-government areas sign Letters of Understanding (LoU) with UNICEF/OLS, under which they agree to abide by the principles of OLS in return for logistical and security support from the UN.

During its first six months OLS succeeded in moving relief supplies across the lines of the conflict. The early support of the Khartoum government proved short-lived, however. When fighting resumed at the end of 1989 and both sides closed down humanitarian space, donor interest in maintaining access began to wane. Access was further diminished by the internecine fighting in the south and the growing military assertiveness of the government. Talks in October 1991 and efforts by the US Ambassador to Sudan to mediate between SPLM/A-Mainstream and United failed to improve matters. In the 1992 dry-season offensive, government forces recaptured many urban centres from the SPLM/A. By mid-1992, OLS southern sector had access to as few as seven locations, four of them in areas controlled by SPLM/A United (African Rights, 1997:295). There was speculation about the demise of OLS. International interest, however, was rekindled, which took OLS into a second phase.

2.2.2 OLS phase II and the advent of DHA

Reasons for the renewed interest are several. Inter-factional fighting in Upper Nile had created the notorious Hunger Triangle and the worst famine conditions since the 1988 famine. There was a sense that control needed to be exerted over the behaviour of the warring factions. The government offensive was causing major population displacement. As with the initial phase of OLS, NGOs put pressure on the UN to intervene. Heads of NGOs operating in the south met UNICEF’s Executive Director and the newly appointed Under-Secretary General for Humanitarian Affairs, Jan Eliasson, in Nairobi and urged the UN to open negotiations with Khartoum over access. UNICEF, recognised that the operation had reached an impasse and sought to relaunch OLS with a new southern sector co-ordinator. Timing again proved crucial. In the aftermath of the Gulf War, the international humanitarian intervention in Kurdistan and the creation of the UN’s Department of Humanitarian Affairs (DHA) in 1992 signalled a more assertive approach to intervention as part of the much promoted new ‘moral world order’. This was put into practice in Somalia with military protection for aid operations. SPLM/A United openly lobbied for such intervention in southern Sudan, and there was some expectation in Khartoum that the US might impose an air exclusion zone.

One of the first tasks of the newly formed DHA was to re-energise OLS, and it was given overall responsibility for its co-ordination. The Under-Secretary General for Humanitarian Affairs visited Khartoum in September 1992 and obtained agreement from the government to open up access. Importantly, the reinvigorated humanitarian programme was supported by external political pressure. Khartoum’s support for Iraq in the Gulf War had isolated the regime from the West. The success of US mediation in facilitating the EPRDF’s assumption of power in Ethiopia saw a realignment in regional alliances. US antipathy towards Khartoum increased in June 1992 after the execution of USAID employees in Juba. The murder of three expatriate aid workers and a journalist in Equatoria in October led to a suspension of relief operations in SPLM/A territory, and the eventual imposition of the first Ground Rules. In October, the US Senate condemned Sudan’s human rights record. The UN General Assembly followed suit in December and appointed a Special Rapporteur on Human Rights to Sudan. On 2 December, US troops landed in Mogadishu to protect humanitarian operations in Somalia. As a result of the combined pressure on the warring parties, on 5 December 1992, the DHA was able to renegotiate a new agreement with Khartoum and the SPLM/A on access routes. Within a few months, the number of accessible locations increased to 63 (African Rights, 1997:295). Pressure was maintained on the parties with the appointment of a Special Envoy for Humanitarian Affairs to Sudan in August 1993.

The new phase of OLS saw some significant changes in the operation. In its first phase access had been based on fixed relief corridors. Factionalisation made access more ad hoc. Securing access in this turbulent environment required continuous dialogue and a different relationship with the warring parties (Duffield, 1998a). The Ground Rules were to provide a framework for this.

The appointment of a new UNICEF/OLS southern sector co-ordinator at this juncture in the programme proved critical. The new co-ordinator adopted an assertive line with the Sudanese government and did not wait for permission to open up new locations. Consequently, large areas of the south were opened to relief agencies, despite the SPLM/A's loss of territory to the government and its allied forces. An important element in the ability of OLS to expand in the south was the introduction of a security system, reinforced by the first Ground Rules, that laid out the conditions under which OLS agencies were to operate. Also important was a change in operational modalities from ground to air access, with the increased logistics capacity of OLS funded by donors. The OLS logistics base in Lokichokio expanded rapidly. The provision of a logistics and security system was important in attracting NGOs into the OLS consortium. The potentially negative impact of a proliferation of agencies was regulated by the contractual system of LoUs between NGOs and OLS.

From 1993 OLS southern sector also grew in complexity. In terms of the type of work undertaken by agencies, there was a shift from relief as pure commodity provision to more complex tasks of rehabilitation, capacity-building, and human rights protection work through the UNICEF Humanitarian Principles Programme (HPP). This period also saw a change in OLS's relations with the rebel movements, in particular with the SPLM/A. The Ground Rules provided a framework for this new relationship.

As explained by the 1996 OLS Review, these changes also reflected a shift in the definition of crisis in Sudan (Karim et al. 1996). What was perceived as a war-induced nutritional emergency at the start, by the mid-1990s was being defined as a household security, institutional and developmental crisis. In part, this redefinition reflected the longevity of the crisis. The drift over time from a crisis response operation to more regular country developmental programming is apparent in the establishment in 1997 of Emergency Response Teams for acute emergencies (OLS, 1998b) – the extent to which the situation has somehow become normalised. However, the redefinition also reflected a shift in international political interest in Sudan and towards the SPLM/A, apparent at a political and programmatic level, in the types of activities supported through OLS.

The expansion of OLS would not have been feasible without donor backing, in particular for the expensive

airlift operation. Between 1992 and 1996, over half a billion dollars were spent by the international community through OLS (Karim et al. 1996:16).¹⁵ In 1994, OLS submitted the largest funding appeal in its history, of \$185 million (revised down from \$278 million) of which it received 81 per cent (UNDHA, 1995). This was the year in which progress was made in the IGADD facilitated peace talks (see below). In subsequent years, as the IGADD initiative faltered, there was a decline in donor support for the UN consolidated appeal (CAP) to 50 per cent and less. In other words, donor interest in OLS was in part maintained by their support for the IGADD facilitated peace process.

Acceptance by the SPLM/A of the first Ground Rules proved an important element in its international rehabilitation following the killings of the expatriate aid workers. This, however, needs to be set within the context of changing political interests in the region already noted. By 1993, for example, Eritrea and Sudan were already fomenting opposition in each other's country. Political reforms within the SPLM/A were in response to both internal pressure and external encouragement, especially from the US. In February 1993, prior to the new Clinton Administration taking over, John Garang is reported to have held meetings with the US Ambassador to Sudan. Around this time, he also ordered preparations for the first SPLM/A National Convention held in Chukudum in April 1994 (African Rights, 1995:35). The same year the US government gave a grant to UNICEF/OLS to establish an Institution and Capacity-building Programme (ICBP) for southern institutions including the SRRA and RASS. The ICBP proved important in the development of the Ground Rules.

The internal reforms in the SPLM/A also need to be seen in the light of its military situation, it was losing ground to the government, and as part of its strategy to regain that lost ground. It was in this period of weakness and internal reform that the Ground Rules were expanded and developed.

2.2.3 The IGADD agreements and after

The peace process initiated by IGADD achieved its zenith in March and May 1994 with agreement on principles for a negotiated settlement, and an agreement on humanitarian access, which was ratified by the government, SPLM/A-Mainstream and SPLM/A-United and the UN in May. This tripartite agreement is important for several reasons. First, it was the first (and only) signed access agreement between the various parties. Secondly, it effectively provided recognition of the rebel groups for humanitarian purposes; the SPLM/A had received no mention in the OLS I and II Plans of Action. This was an important change for the revised Ground Rules which were also a signed document. The growing independence of OLS southern sector, and the division of Sudan, was further formalised by the signing of the agreement.¹⁶ Thirdly, while the agreement reaffirmed the principle of free

access to all, it also recognised the changed military environment by signalling a shift in access modalities from fixed corridors to flexible access based on assessed need.

By 1995, the IGAD peace process began to falter owing to the increasing antagonism between Sudan and other governments in the region. In Sudan, much of Upper Nile became insecure when William Nyuon broke from Machar to form SSIM/A II. With Bahr el Ghazal insecure because of Kerubino's activities, agencies had to resort to mobile operations in these two regions.

The government responded to regional and internal pressure by utilising the one international lever available to it – OLS. It extended flight restrictions throughout the south and made it clear that it was unwilling to be treated on an equal footing with the rebels. With funding in decline and access restrictions, OLS was able to meet only 20 per cent of assessed needs. At the same time, the SPLM/A began to reassert itself with proposals either to withdraw from OLS or to separate the northern and southern sectors. By 1995 OLS had returned to the malaise of 1992.

The crisis sparked a review of the operation. The 1996 OLS Review, commissioned by the DHA, was the first formal independent review of the operation in its seven year history (Karim et al. 1996). It proved controversial with all the warring parties as well as some donors and UN agencies. While supportive of the Ground Rules, the Review is perceived to have damaged relations between the SPLM/A and OLS southern sector. Some of its recommendations were implemented: links between OLS northern and southern sectors were strengthened, and a notable innovation was the institution of a protection programme for the war-displaced in the northern sector.

International responses to the Review, or to and address the mounting pressures on OLS, were muted, however. Setbacks in Somalia and Bosnia had undermined confidence in humanitarian intervention as an effective response to internal wars. As budgetary limitations discouraged foreign governments from pursuing overtly activist policies in Africa, 'African solutions to African problems' have come to define much foreign policy. As the Rwandan crisis indicated, choice of interventions is increasingly defined by the national interest of individual countries (Fennell, 1997). In Sudan, this is apparent in the support the SPLM/A has received from Ugandan, Ethiopian and Eritrean armies, backed by Western countries. In 1997, this led to some success for the SPLM/A – NDA alliance along the Ethiopian and Eritrean borders.

Peace talks facilitated by the IGAD were resumed in October 1997. However, there were no new access negotiations until October 1998. In the interval the lines of conflict moved and, following the fall of Yei in 1997, overland access to the south from Uganda had become common practice.

A further period of crisis came in 1998. Years of conflict coupled with drought brought famine to Bahr el Ghazal on the tenth anniversary of the famine that precipitated OLS. In early February, the government blocked all access to Bahr el Ghazal for three weeks. Western diplomatic pressure was important in lifting the flight ban and in mid-1998 access was being granted to more locations than at any time in the history of OLS. Some analysts have suggested, however, that it was the SPLM/A's failure to attack Wau that led to the lifting of the flight ban, rather than external pressure.

In the course of the famine many of the issues that have long challenged the operation resurfaced, including lack of preparedness on the part of OLS and donors, problems of access and diversion of aid for military ends. The following comment written in 1993 seems as relevant five years on:

One of the most bitter tragedies of Sudan is that the dilemmas facing humanitarian organisations today are almost exactly those faced repeatedly over the last ten years. (Jean, 1993:17)

Options to reform OLS appear less feasible than in the past. Diplomatic relations with Khartoum reached an all-time low after the US bombing of a factory in Khartoum in response to the bombing of the US embassy in Nairobi. Regional frontline governments with a key influence on the war are affected by the spiralling conflict in the DRC and the hostilities between Ethiopia and Eritrea. In this context, the Ground Rules and the OLS humanitarian principles perhaps take on a greater significance, by providing a principled position clearly lacking in international politics.

2.3 The OLS agreements and principles

The Ground Rules build on and reinforce the humanitarian principles on which OLS as a whole is based. The revised Ground Rules were developed during the IGADD peace process and fed into it. The southern factions which signed the Ground Rules (SPLM/A and SSIM/A) participated in the IGADD talks.

The principles by which OLS operates have been refined and made more explicit over time. The initial Plan of Action for OLS I noted the 'neutrality' of the operation and the provision of assistance to all non-combatants. Following renewal of the fighting and loss of access in 1989, the principles were more clearly stated in the 1990 Plan of Action and the principle of transparency was added (Karim, et al. 1996:24). The responsibilities of the UN with regard to registering NGOs were also stipulated.

The 1992-4 agreements differ from those of OLS I and II. In particular, there is a shift from fixed corridors to

flexible access based on assessed need, reflecting the changed military environment. At the same time a subtle change in the principles of the operation has been noted (ibid: 26–8). Beginning with the September 1992 agreements negotiated by DHA, an ambiguity arises that enables the government to redefine *war-affected populations* as *war-affected areas*. As areas within government control are by definition not war-affected, this has allowed the government to restrict access to war-affected populations in the areas it controls. The agreements of 1992 came only months after the government launched a *jihad* against the Nuba people of Southern Kordofan (African Rights, 1997:177), an area to which the government has consistently denied OLS access.

3. The Agreement on Ground Rules

The Ground Rules were developed in two stages. The first Ground Rules were formulated in 1992 in response to a worsening security and humanitarian situation in southern Sudan. The second, and current, Agreement on Ground Rules was signed in 1995. This section considers the development of the Humanitarian Principles Programme and the current Ground Rules, and the context in which the Ground Rules were formulated.

3.1 The first Ground Rules

In 1992, southern Sudan was facing a humanitarian disaster comparable to the 1988 Bahr el Ghazal famine. The return of refugees from Ethiopia combined with inter-factional fighting had led to mass starvation and displacement, particularly in Upper Nile. In this context, in October 1992, three expatriate aid workers and a journalist were killed in Eastern Equatoria. OLS operations to the 'Triple A' displaced camps in Equatoria were immediately suspended.¹⁷

The number of aid workers killed in Sudan has been remarkably small compared with other conflicts such as Somalia or Bosnia. The murders were therefore shocking and prompted changes in OLS southern sector operations. First, the international agencies drew up some basic rules for working in Sudan. The conditions under which they were prepared to provide assistance were described in a two-page document known as The Ground Rules, which included guarantees of safety and protection by the armed movements for the staff of agencies operating under OLS, and regulations relating to the use of radios and agency assets. The Ground Rules were written by the international agencies and agreed with little discussion by the SPLM/A in April 1993, followed by the SSIM/A.

Secondly, as a result of the killings, a security officer was employed by OLS and a security system set up. The factionalised military environment had forced OLS to adapt its operation from one based on fixed corridors to open corridors (Karim et al. 1996:51). The new system with clear evacuation procedures proved effective in dealing with the unpredictability of the conflict. An important element in the success of the system was the security officer's ability to pursue a dialogue with the rebel commanders and to gain their trust.¹⁸

Thirdly, in late 1992 UNICEF relaunched OLS with a new southern sector co-ordinator. When he arrived in Sudan at the end of 1992, the Ground Rules had been written but operations were suspended. Evidence that aid was being manipulated by the SPLM/A in the 'Triple A' camps meant that aid agencies were reluctant to resume operations. However, the new co-ordinator was reluctant to place conditions on aid and restarted operations.

3.2 Origins of the agreement

In mid-1994, OLS southern sector re-opened negotiations with the armed opposition movements with a view to revising the Ground Rules. The history, expectations and impact of the revised Agreement on Ground Rules are contested, and the agreement is seen to contain certain contradictions. In part this arises from the varied analyses of the issues that OLS faced at the time. In 1993 and 1994 the analysis of complex emergencies was in its infancy, and in the wake of Kurdistan, Somalia, and Bosnia, humanitarian aid policy was rapidly evolving ways of responding to conflict. OLS was in many ways at the forefront of this. The revised Agreement on Ground Rules therefore incorporated different strands of thinking and concern.

The impetus to revise the Ground Rules needs to be placed within the broad historical and political context outlined in sections 1 and 2. In summary, internationally, there was greater concern for human rights and more interventionist humanitarian policy, with new mechanisms such as the DHA to deal with complex emergencies. In Sudan, the OLS southern sector operation had greatly expanded. The SPLM/A, while on the defensive militarily, showed signs of moving towards political liberalisation. These changes received support among the regional states and the approval of certain Western donors. In early 1994, the IGADD talks were also making progress towards a new tripartite agreement for OLS. The revision of the Ground Rules sought to feed into and strengthen these processes.

As with the first Ground Rules, the immediate motivation for revision was security. The challenges to humanitarian agencies in southern Sudan are immense. Sustaining access, human rights abuse, manipulation of aid, security threats to aid workers, accusations of bias and legal and legitimacy problems of working in areas controlled by non-state entities are problems common to all agencies working in complex emergencies. In southern Sudan, the first Ground Rules proved inadequate to deal with these in the face of factionalisation and programme expansion. At the same time, military intervention had been ruled out.

In October 1994, MSF-France and World Vision International experienced a series of security problems in Yambio, Western Equatoria, while Oxfam was affected in Akot.¹⁹ These incidents led to a meeting on 26 October chaired by the SRRA. In view of agency reports that, despite the existing Ground Rules, they were unable to work unhindered, it was concluded that a more effective means of dealing with such problems as theft and diversion of aid and demands for taxes was needed. Agencies noted that very few Sudanese knew about the Ground Rules, and there was little attempt by the authorities to enforce them or deal with violations. Further discussion with the movements was proposed to protect humanitarian operations, and the meeting

recommended that an OLS/NGO committee should be set up to 'review and revise' the Ground Rules.

The new leadership in OLS southern sector was astute enough to grasp the opportunities presented by the changes taking place in Sudan. Indeed, while the wider political context was fundamental in shaping the Ground Rules, the line adopted by certain individuals was also important. Within OLS the lead taken by the new head of OLS southern sector is considered by many to have been crucial. Described as a 'thinker rather than a logistician', he was open to exploring different ways of working, such as capacity-building. This new leadership was supplemented by a new co-ordinator of the health sector and later capacity-building, who was to become the head of the Humanitarian Principles Programme. Certain individuals within USAID who advocated OLS moving beyond the traditional relief approach were also influential in moulding US policy on the south and towards the SPLM/A. The role played by numerous individuals within the movements was also significant.

3.2.1 Capacity-building

OLS originated as a short-term emergency intervention and in 1993 it was still largely driven by an input delivery approach to relief. The new UNICEF co-ordinator of OLS southern sector, with a background in development, was concerned to move beyond the 'trains, boats, and planes' model of relief. In June 1993, UNICEF/OLS southern sector, with funding from USAID, commissioned a feasibility study for an Institutional Capacity-building Project (ICBP) for the humanitarian wings of the movements and some southern Sudanese NGOs. At the time, there was little understanding of what the term meant, but it stuck. Today capacity-building is a cross-cutting theme in all southern sector activities.

The ICBP predated the Humanitarian Principles Programme (HPP) in OLS southern sector and its influence is apparent in the Ground Rules. The ICBP and HPP have at various times been jointly managed within OLS. Some have argued that capacity-building and humanitarian principles were in fact 'two entry points into the same discussion on programme engagement' (Murphy, 1997a: 16). Their linking is however, a controversial aspect of the Ground Rules. It is therefore worth considering the rationale behind this initiative.

One reason was practical necessity. In the absence of government, UNICEF and other agencies were undertaking roles that would normally be the responsibility of civil and political institutions. Although they received financial support from OLS, the relief wings of the movements were considered under-resourced and lacking in professionalism – the result of an institutional and organisational deficit in southern Sudan. Stronger and more effective local structures to support the delivery of humanitarian services were

therefore required. As one UN employee put it, 'one cannot sign an agreement with people who do not have a pen'.

Associated with this was a concern that Sudanese were being passed over by the international agencies, and that a 'Sudanese view' was missing from OLS.²⁰ It was argued that conflict-affected communities should be given a voice in defining the direction of international action. The solution was seen to lie in strengthening indigenous capacity and restructuring the relationship between Sudanese and foreign actors. This view is apparent in an important shift between the first and the revised Ground Rules. Whereas the first laid down conditions, the second was negotiated and responsibility for enforcement laid on the armed movements and civil society.

These views found support from donors such as the US which had been pouring money into the relief operation at what were considered unsustainable levels. In 1993, USAID had spent heavily on aircraft in support of the expanding southern sector, and was not prepared to repeat this in 1994.²¹ OLS was therefore being encouraged to move beyond traditional relief approaches, with the aim of getting Sudanese to take on more responsibility. Notions of the 'relief-to-development continuum' and 'linking relief to development' began to take root, offering alternatives to endless relief programmes and mitigating what were seen to be the negative effects of long-term assistance.²² In the words of the OLS co-ordinator, capacity-building became the *sin qua non* for moving away from relief to development (Karim et al. 1996:181).

A similar move was also apparent in the northern sector, although based on different political motives. OLS had always incorporated developmental objectives, and these became more explicit as the government gained military ascendancy and deemed the emergency to have passed (Karim et al. 1996). In 1992, it established the Peace and Development Foundation in order, it claimed, to promote development in the south.

This developmental approach was encouraged by growing criticism of humanitarian operations such as OLS for focusing solely on immediate needs and ignoring the underlying structural and 'root causes' of vulnerability. In 1989, OLS had established a precedent for intervention in the midst of an on-going war. Its ability to do this was based on the principle of neutrality. However, the traditional distinction between development and relief assistance was seen to narrow the range of possible responses. The separation of humanitarian aid from its political context was also criticised as misplaced. As one influential group of commentators noted, 'The reality of conflict situations suggests...that relief aid cannot be politically neutral' (Macrae and Zwi, 1994:228). Neutral positioning, it was argued, led to an 'alarming tendency not to examine the underlying causes of conflict, and thus frame clear strategies for their political resolution'. It meant that

agencies did not analyse the impact of their operations. More forcefully put, 'negotiated access is the programmatic expression of the acceptance of continuing violence' (Duffield, quoted in Murphy 1994: 47). The Geneva Conventions after all are based on an implicit acceptance of war.

For an operation based on principles of neutrality and impartiality, this was a radical proposition. It proved controversial among agencies in southern Sudan, with OLS and the government in Khartoum, and with UNICEF. However, the reassessment of neutrality and impartiality did force agencies to reassess the causes of vulnerability and their relationships with civilians and those holding the guns. Some argued that, to be relevant, OLS had to 'adapt to a longer time frame and widen its objectives to address political as well as humanitarian concerns' (Murphy, 1994:41). Political distance would have to give way to engagement and solidarity with the victims of conflict. Capacity-building thus became a political project for promoting good governance, with 'civil society' as its focus.

Significantly, critics and supporters of the capacity-building initiative agree that 'civil society' and civic institutions in southern Sudan are weak, a legacy of colonial history and the SPLM/A's subordination of political development to its combat mission (Murphy, 1994; African Rights, 1995). The lack of any democratic base was one reason for the predatory character of the movement. Since the Nasir coup attempt, the SPLM/A had come under pressure to recognise the need for civilian support (Murphy, 1994:4). In 1993 under donor pressure, Garang ordered preparations to be made for the Chukudum Convention (African Rights, 1995:35). The ICBP feasibility study started as these preparations began.

The three-month study concluded with a recommendation for more 'critical engagement' by UNICEF/OLS with the southern movements. The ICBP should have a role in three areas: humanitarian principles and reform of the movement; institutional development; and strengthening grassroots participation (Murphy, 1997a:18). Within the SPLM/A the idea of capacity-building was seized upon by those advocating change. For OLS, the ICBP study was important for opening up dialogue with the movements and capacity-building became important for supporting strategic allies within them.

Some aid workers caution against exaggerating the role that capacity-building played in furthering US political goals in Sudan, arguing that the US did not need capacity-building to do this. Nevertheless, for USAID, it was considered one way of supporting internal reform, promoting good governance and strengthening the civilian part of the SPLM/A, as evidenced by a USAID report on the October 1994 meeting that led to a decision to revise the Ground Rules (Meserve and Wagner, 1994) (see also Section 4.11). This approach

continues today in USAID's support for good governance through the STAR project.

3.2.2 A human rights crisis: critical engagement

One of the most innovative aspects of the revised Ground Rules was its reconceptualisation of humanitarian crises in complex emergencies as a problem of 'rights' as much as of 'assistance'. It attempted to move OLS away from an assistance-based model of humanitarian action, to one that incorporated rights and protection as a necessary part of its mandate. Like capacity-building, it argued that the humanitarian crisis would continue unless the causes of violence, and the behaviour of the warring parties towards civilian populations, humanitarian assistance, and aid workers were addressed. This reconceptualisation reflected a shift towards rights-based programming in UNICEF following its adoption of the Convention on the Rights of the Child (CRC). In Sudan the issue became imperative for UNICEF, given the plight of several thousand minors separated from their families by the rebel movements, and the practice of under-age conscription.

As already noted, freed from Cold War restrictions, human rights had risen up the international agenda together with new interventionist humanitarian policies. The West's reluctance to criticise the human rights behaviour of 'friendly' Sudanese governments changed when the NIF took power. In January 1989, the same month that the US proposed food deliveries to SPLM/A-held areas, the State Department's Country Report on Human Rights Practice carried a critical chapter on Sudan. In 1990, Africa Watch released a report on human rights violations of all parties in Sudan.²³ From 1992 there was a rash of resolutions on Sudan by the UN Human Rights Commission and visits by human rights organisations. In November 1993, the UN Human Rights Rapporteur to Sudan reported on grave violations of human rights on all sides of the war. The IGADD Declaration of Principles had identified protection of human rights and fundamental freedoms as an issue. The conversion to a rights-based approach was supported by an analysis of OLS in a detailed report by Human Rights Watch on Sudan, the fieldwork for which was undertaken during June and July 1993:

OLS serves the displaced within Sudan and thus helps prevent their mass starvation within Sudan and a larger flow of refugees to countries bordering on Sudan. This operation does not address the rules of war, abuses committed by the parties, nor provide protection to the displaced'. (Human Rights Watch/Africa, 1994:14)

In September 1993, Amnesty International also wrote:

The flagrant violation of human rights standards and the principles protecting civilians and others in times of conflict has created famine and dependency on food relief in many areas affected by war'. (Amnesty International, 1993)

This position resonated with certain individuals within OLS who argued that it was immoral to trade access for silence on human rights abuses (Levine, 1997:10). This position found support among some donors after the experience of the Hunger Triangle, and also in academic and policy analysis of complex emergencies (Macrae and Zwi, 1994). Commenting on an SPLM/A attack on Akot on 22 October 1994, a team reviewing the operations of the Sudan Emergency Operations Consortium (SEOC) noted:

No agency has taken a real stand on such issues. Such a stand could only be effective if it was taken openly and collectively by all agencies working on all sides in the war. It would involve a far higher standard of transparency on the part of agencies (and local authorities). Detailed, public chronicling of incidents of abuse would be a start. (Duffield et al., 1995)

Human rights was to become more critical in humanitarian policy in the wake of the 1994 genocide in Rwanda, the repercussions of which were becoming apparent as the new Ground Rules were being negotiated. Importantly, the human rights critique resonated with certain elements within the armed movements who were advocating greater liberalisation. The 1991 manifesto of the Nasir officers had identified the SPLM/A's failings in human rights, and the 1994 Chukudum Convention was in part a response to such criticism (Prendergast, 1997:72).

Like capacity-building, the approach adopted was one of 'critical engagement' with the movements and support for the participation of civil society. From a humanitarian principle and human rights perspective the rationale behind capacity-building was clear; there had to be a space to engage with people who were being abused. The protection of human rights requires structures and institutions to be sustainable. If human rights and humanitarianism are to be respected and sustained in Sudan, they need to be supported and promoted by the people. It is interesting to reflect, however, that the political response to the outcry by human rights agencies on the situation in Sudan was largely channelled towards humanitarian goals and the expansion of access and humanitarian assistance, rather than towards a resolution of the conflict.

The basis of OLS is negotiated access. Changes in the military environment in southern Sudan had resulted in a shift from fixed corridors to ad hoc access; continuous dialogue with the warring parties was required in order

to sustain access. The killing of the expatriates revealed that, while OLS had a practical dialogue with the rebel movements on operational modalities, there was no 'principled dialogue'. UNICEF's relationship with the government was based on normal UN-state relations and international treaties, as reflected in the OLS access agreements up to that point. It was argued that a similar platform for a structured dialogue was needed for the SPLM/A. However, the UN had problems dealing with non-state parties. The idea was floated of using the CRC as a framework, but this was objected to by UNICEF.

In general, there was a conviction that if OLS southern sector was to evolve, 'an improved framework of collaboration and engagement with the armed opposition movements' was required (Levine, 1997:11). The strategy adopted was to negotiate a revised set of Ground Rules. The first Ground Rules were seen to be weak: they imposed obligations on the armed movements, without any reciprocal obligations for OLS; they failed to define the purpose and objectives of humanitarianism; they made no provision for their dissemination; and they articulated no mechanism for dealing with allegations of violations. A new agreement would provide a joint commitment by humanitarian agencies and rebels to the principles of humanitarianism; it would integrate the delivery of assistance with civilian protection, and elaborate mechanisms for promoting the Ground Rules and for dealing with violations (Levine, 1997:11). Rather than confrontation, a relationship of 'critical engagement' based on humanitarian principles was envisaged. In the words of one of the architects of the revised Ground Rules:

What was being contemplated therefore was a complete redefinition of the relationship between OLS and the southern opposition movements. At the heart of the new relationship would be a statement of humanitarian principles. (Levine, 1997:12)

3.2.3 Negotiating the Ground Rules

The story of the negotiation of the Ground Rules is a good illustration of contested history and disputed causation. The 1996 OLS Review is criticised for misunderstanding the genesis of the Ground Rules, by implying that they were developed by UNICEF without sufficiently crediting the SPLM/A. It refers to the 'UNICEF Ground Rules,' whereas the documents themselves are called the SPLM/OLS, SSIM/OLS and SPLM-United/OLS 'Agreement on Ground Rules'. Responding to the OLS Review, the SPLM/SSRA wrote:

We recognise that the first Ground Rules were conditions set by OLS after the death of relief workers in 1992, but for the current Ground Rules the SPLM is the main contributor. The

SPLM was deeply involved in [the] production of the Ground Rules document. The Ground Rules are a commitment of both the SPLM and OLS agencies to abide by certain rules when working in South Sudan and not an imposition from UNICEF as indicated in the Review. In fact the SPLM would not have signed the Ground Rules if they were OLS Ground Rules. (SPLM/SRRA, 1996).

The SPLM/A is equally sensitive to the view that it is vulnerable to international pressure for access or political reform. This, it argues, simply propagates the view of the people of south Sudan as incapable of doing anything for themselves (ibid). The Review's misrepresentation reportedly caused a breakdown in the relationship between OLS and the SPLM/A. Subsequently, OLS has been at pains to make clear that the Ground Rules were a joint initiative:

...UNICEF/Operation Lifeline Sudan, *together with its counterparts*, the humanitarian wings of the southern Sudanese rebel movements, launched an initiative in late 1994 for the promotion of humanitarian principles. (OLS, 1997b emphasis added)

While criticising the Review for failing to recognise the Ground Rules as a joint initiative, the view within the SPLM/A and SRRA since 1997 has been that they were imposed on the movements in a moment of weakness; 'Dr John is quite explicit and says that the rules were signed under duress'. Duress allegedly comprised a threat to cut aid unless they signed. The movements were clearly under pressure to reform and Garang would have been aware that the donors supported the concept of the Ground Rules. Donors did threaten to end training for the relief wings unless accountability was improved. In 1994, USAID threatened to remove support for the SRRA after it requisitioned several NGO landcruisers in Mundri. In response to incidents in Yambio, USAID also proposed withdrawing resources from areas where there were flagrant violations of principles, to which the European Community Humanitarian Office (ECHO) is said to have agreed (Meserve and Wagner, 1994). Pressure was also seen by some in the SPLM/A to be implicit in UNICEF/OLS's capacity-building support for indigenous NGOs. However, there is no evidence that the continuation of OLS was made conditional on the movements' signing the Ground Rules. Reasons for this revisionist history are explored in SPLM/A criticisms of the Ground Rules in Section 4.

Other factors also encouraged the SPLM/A to sign up to the Ground Rules. The movement was stung by reports by the UN, Human Rights Watch/Africa, and Amnesty International, all released in 1994 and all documenting human rights abuses and violations of the

laws of war by the movement. The OLS southern sector leadership was astute in linking attendance at the IGADD talks with negotiations over the Ground Rules. Although the SPLM/A claims to be immune to external pressure, others believe it was susceptible. As one senior UN/OLS official interviewed remarked:

I have no doubts in my mind that Garang signed the Ground Rules as he saw it in his best interests to do so.....because it gave him credibility in the outside, especially with friends in the US.

Whether this has had an impact on the attitude of the SPLM/A leadership towards human rights will be discussed in Section 4.

There was no intention in OLS to impose the revised Ground Rules on the movements, as this had been identified as a problem with the first Ground Rules.²⁴ The Ground Rules were in fact revised over a six-month period, from late 1994 to July 1995, through a series of workshops with the movements and their relief wings, in particular the SPLM/A and SRRA. Although they were drafted by UNICEF, Garang himself commented on two of the versions. It was argued that as humanitarian principles are universal they could not be externally imposed, but were the responsibility of all parties. Notions of capacity-building and critical engagement are apparent in an approach which argued that a change in the behaviour of the warring parties could only be achieved if the movements were involved in identifying the problems and defining solutions. In line with the aim of redefining the relationship between OLS and the warring parties, the revised Ground Rules were intended to be based on consensus, and mutual obligations. Accordingly, 'the Ground Rules had to represent a joint commitment to a common set of values and common set of rules in order to protect those values'.

Charges that the SPLM/A was pressured into signing the Ground Rules were in fact not heard until the Ground Rules began to be implemented. The first real complaints stem from the investigation by the HPP into two massacres of civilians in Ganyliel and Yirol by the SPLM/A and SSIM/A, the first occurring in August 1995, a month after the Agreement on Ground Rules was signed. A further source of criticism arose from the failure of the capacity-building programme to deliver what was promised. A common SRRA criticism of the Ground Rules is that they serve only to protect the privileges of international agencies. A final source of criticism had to do with the SPLM/A's efforts to assert its authority by introducing a law to regulate NGOs; the revised Ground Rules were seen as a deliberate rebuff to this.

Whichever version of history is correct, an important feature of the second Ground Rules agreement was the lengthy process of negotiation and revision. The

negotiations became a means of stimulating debate inside the SPLM/A, and disseminating humanitarian ideals, which some saw as a healthy process. The military were apparently shocked to hear an international agency assert its concern for the way they treated their people. The negotiations exploited the internal divisions and changes within the movements, and strengthened the agenda of those committed to democratisation and human rights.

Human rights and child recruitment were particularly sensitive issues. The old guard argued that there was no place for human rights in war. Some within the SPLM/A argued that it was inappropriate to sign up to the Geneva Conventions because the movement was not a government, but would be judged as one. Others argued that they put the SPLM/A in good light. While the Geneva Conventions in theory restrict the capacity of armed movements to wage war, acceptance of them improved their image, which was important following human rights criticisms. OLS came under pressure to exclude the CRC from the agreement because of the sensitivity of child recruitment. For UNICEF the issue was non-negotiable. In general, however, humanitarian principles proved less contentious than administrative issues regarding the use of radios, project assets and the vetting of international staff, or the transporting of armed personnel.

Not surprisingly, the negotiations received more external criticism. The government in Khartoum objected on the grounds that they lent credibility to the SPLM/A. OLS Khartoum and UNICEF headquarters voiced similar concerns. UNICEF/OLS southern sector argued that this did not matter if it resulted in respect for civilians. Some argued that by debating with the rebels, OLS southern sector was undertaking roles that the political system should have undertaken. However, as a Special Representative of the Secretary General has never been appointed to Sudan, there was no one else to enter into dialogue with the movements. At the time the ICRC was not involved in dissemination work in Sudan. UNICEF/OLS southern sector defended its action on the grounds that things might have been worse had it not acted, and went ahead with the initiative without formal permission from UNICEF New York. In retrospect, it is accepted that a weakness in the negotiations was a lack of consultation with NGOs and donors (Levine, 1997).

3.3 The agreement²⁵

The revised Agreement on Ground Rules that emerged from the negotiations was a much longer and more complex document than the first Ground Rules. It establishes a humanitarian and administrative framework for a working relationship between the armed movements in the south and OLS and by extension the international community. The document is divided into seven sections that define humanitarian principles, the obligations of the signatories and the

administrative and procedural guidelines for implementing the agreement and resolving violations.

In a preamble, the signatories express their support for international humanitarian conventions, including the Convention on the Rights of the Child and the 1949 Geneva Conventions and the 1977 Additional Protocols.

Humanitarian principles: In the absence of alternative enforcement mechanisms, the ability of OLS to access and assist war-affected populations in Sudan is based on mutual respect for and application of the core humanitarian principles: neutrality, transparency, impartiality and accountability. Since the original access agreements for OLS I, these principles have been made more explicit, and were formally adopted in the 1994 Tripartite Agreement between the government, the rebels and the UN. The Ground Rules, which were being revised in parallel with the Tripartite Agreements, reinforce this humanitarian 'framework of respect' by adding principles of capacity-building and protection.

Obligations and responsibilities: In contrast to the first Ground Rules, the new agreement lays down the mutual obligations and responsibilities of the parties for upholding them. For the aid agencies, these include: upholding humanitarian principles through their actions, respect for local laws and customs, the fair distribution of aid and the provision of the highest possible standards of service. The obligations of the warring parties include: a commitment by the relief wings to humanitarian principles beyond political and military interests, respect for the impartiality of aid agencies operating under OLS and responsibility for the protection of aid agency personnel in areas under their control.

Administrative procedures: The agreement affirms the property rights of relief agencies, and the need for project agreements on the use of agency assets and relief supplies. They lay down rules on the employment of staff, the payment of taxes and rents and agreement on the methods for implementing the agreements and resolving any disputes arising from them.

3.3.1 Legal institutional and conceptual framework

The Ground Rules is a complex document drawing on the different traditions of international humanitarian and human rights law and conceptual developments that were taking place in the humanitarian system at the time. The Ground Rules also, of course, reflect the concerns of the institution – UNICEF – in which they were developed.

As one of the authors of the document relates, a number of sources were 'raided' for inspiration. The CRC, the DHA's 'Respect for Humanitarian Mandates in Conflict Situations', the Geneva Conventions, the Red Cross/NGO Code of Conduct, the Mohunk Criteria, and the Providence Principles were all sourced for ideas. Compromises were made by excluding other conventions such as that on torture. Drawing on these,

the revised Ground Rules mark an attempt to broaden the humanitarian principles on which OLS was based. While restating the core traditional principles of humanitarian action - neutrality, transparency, impartiality and accountability - the 'right to receive and offer humanitarian assistance,' 'protection of civilians and relief staff' and 'capacity-building' were added in an attempt to expand and strengthen the humanitarian framework.

The ethical position of the Humanitarian Principles Programme was based on two assumptions (Levine, 1997:12):

- that protection of the safety and dignity of victims of conflict is an integral part of a humanitarian mandate;
- that access to humanitarian assistance is a fundamental right and that the integrity of the assistance – ensuring its timely arrival to the right people – must be protected.

The latter draws on the DHA 'Respect for Humanitarian Mandates in Conflict Situations' which UNICEF, as co-ordinator, was responsible for promoting. Although a legally disputed concept, OLS sought to make this a normative position (Levine, 1997).

The incorporation of rights and protection as a necessary part of the mandate of humanitarian operations recognised that the crisis in southern Sudan was as much a human rights crisis as a humanitarian one. The political constraints to the integration of human rights and humanitarian assistance were recognised as problematic. However, the plight of thousands of unaccompanied minors and child soldiers in Sudan gave UNICEF a reason to push the issue. The Geneva Conventions and Additional Protocols (which encapsulate the basic principles for the protection of civilians) and the CRC provided the legal framework for protection. The fact that UNICEF had its 'own' human rights treaty gave it a mandate to insist on the incorporation of international legal norms. It is doubtful whether an NGO consortium would have been able or willing to take this step. While there was some dispute within UNICEF as to whether or not the Geneva Conventions should also be incorporated, this was resolved in favour of incorporating them as universal norms.

The incorporation of capacity-building (B6) for local structures as a principle reflected the influence of the ICBP and the Red Cross/NGO Code of Conduct. Both draw on traditions of development work and natural disaster relief, rather than war-related humanitarian response. The influence of the Red Cross/NGO Code of Conduct is apparent in provisions on accountability (A4) and respect for culture and custom (B3). The Red Cross/NGO Code of Conduct was adopted by OLS in January 1998, as part of its mission statement. The principle of capacity-building is particularly important.

Identifying the SRRA and RASS as counterparts effectively restricted the independence of aid agency operations. Given that these are the relief wings of armed factions, a commitment to capacity-building creates a potential contradiction with the principle of neutrality, a principle originating in the humanitarian work of the ICRC in situations of war.

3.3.2 The parties to the agreement

The Ground Rules apply only in those areas controlled by opposition movements covered by the southern sector of OLS and to date they have been signed by three factions: by John Garang for the SPLM/A in July 1995, by Riek Machar for SSIM/A in August 1995 and by Lam Akol for the SPLM-United in 1996. Requests by Kerubino and Paulino Mathip to become signatories have been turned down.

The 1996 Review of OLS recommended that consideration be given to developing the Ground Rules as a framework for a signed agreement between the UN and all warring parties including the government. This was rejected by the government and the UN on the basis that the Ground Rules were a specific instrument for non-state entities. As the government was a signatory to the Geneva Conventions, the issue was not whether it should be subject to this new instrument, but whether principles were being upheld at all (OLS, 1997b). In effect, the principle of sovereignty retains primacy over humanitarian principles, enabling the government to regulate humanitarian aid through its own legal and contractual system. Instead of Ground Rules, since 1997 OLS northern sector has sought to defend 'humanitarian space' in government areas by enforcing what are known as Minimum Operating Procedures (MINOPS). These are location-specific operational agreements rather than universal principles. The differences between the northern and southern sectors has been problematic for the implementation of the Ground Rules. For the SPLM/A, the system is perceived as a mechanism for holding only it accountable.

Reference to the Ground Rules was incorporated into the Letters of Understanding between the OLS consortium and NGOs in 1996. This means that all NGOs joining the consortium agree to abide by their provision. In an important way, therefore, the Ground Rules strengthened the regulatory environment for humanitarian operations in the southern sector and reduced the potential for the manipulation of aid by the warring parties.

A unique feature of the Agreement is that it is a signed document. As such, it is one of the few examples of international agreements made with non-state entities. This has been a controversial aspect of the Ground Rules, prompting debate over the appropriateness of such agreements and their impact on existing international law.

The argument in favour of a signed document is that it provides a mechanism for monitoring and regulation. The Geneva Conventions and Additional Protocols, as part of international humanitarian law, place legal responsibility on the signatories to uphold them. While this does not stop violations, the legal and contractual obligations involved in signing provide an avenue of accountability. Similarly, the supporters of the Ground Rules argue that signing signifies a commitment by the parties to the agreement and a means of holding all parties accountable.

The main instrument available for holding armed groups accountable to international standards is Common Article III of the fourth Geneva Convention. For human rights organisations, the inclusion of the CRC, which brings together several human rights treaties for children, gave OLS additional human rights leverage over the SPLM/A. The then co-ordinator of OLS argued that, while John Garang's signature would not end abuses, it did create an opportunity for dialogue on contentious issues that was not feasible previously. A further argument in favour of a signed document was the authority it conferred vis-à-vis local commanders and civil authorities. For most people in southern Sudan international treaties are unknown. Once the Ground Rules were signed, Garang reportedly gave orders for them to be implemented. As one SPLM/A commander noted, 'The Ground Rules are signed by the Commander in Chief and OLS, so if you want things to go smoothly you should respect the Ground Rules'.

The argument against this is that signed agreements are unnecessary. Everything required for negotiating access exists in Common Article III. The danger with the Ground Rules and other such agreements, it is argued, is that they involve, in effect, a renegotiation and potential dilution of international legal agreements. These same arguments were used for not extending the Ground Rules to include the government. It is further argued that, as the Ground Rules depend on the 'good will' of the parties, they are unenforceable, and there is a danger of watering down international principles.

3.3.3 Recognition, legitimacy and neutrality

A major concern with the signing of the Ground Rules had to do with issues of 'recognition,' 'legitimacy' and 'neutrality'. The Ground Rules provided a framework for a new and principle-based relationship with those armed movements which signed the agreement and thus became formal 'counterparts' to OLS southern sector. The LoU defines counterparts as 'the humanitarian wings, offices, or agencies of the parties to the conflict or any other organisation that UNICEF/OLS signs a Ground Rules agreement with or otherwise recognises as a counterpart to the Consortium.' (UNICEF/OLS, 1998c). Calling 'rebels' 'counterparts' signalled a change in the relationship between the UN and the armed movements. To a

degree it paralleled that between the UN and the government.

For the government, the OLS agreements are bilateral agreements with the UN to whom it had partially ceded sovereignty; it has never recognised the SPLM/A, even for humanitarian purposes. The Ground Rules threatened this arrangement, and for this reason a proposal by OLS southern sector to establish a committee of the UN, donors, NGOs and factions to monitor violations was rejected by the government, which was opposed to any human rights agreement within its sovereign territory as it challenged its authority, a fact not lost on the SPLM/A. According to one observer, the SPLM/A eventually accepted the Ground Rules because they chipped away at the sovereignty of the government.

The UN in Khartoum also expressed fears about the credibility they conferred on the movements. UNICEF in New York, which was more comfortable working with the government, was also concerned that the Ground Rules were seen as favouring the factions. The southern sector responded to such criticism by arguing that while it was 'talking human rights' with the movements, the UN in the north was not 'talking Geneva Conventions' with the government. Following the death of James Grant and a move to rights-based programming, the Ground Rules have become more acceptable to UNICEF.

The reactions of the donors were mixed. The majority expressed support, while a few were concerned with what they saw as political engagement with the movements. An especially critical view expressed by one donor official sums up the concerns of several about the Ground Rules:

Signing the document is dangerous. It legitimises the movements, by assuming they are representatives of the people. This is a dangerous assumption. International humanitarian efforts should not be prescribed by local agreements with fighters, they should simply point out the obligations of the parties as per the Geneva Conventions....Garang does not need to sign an agreement to demonstrate commitment to human rights, he just needs to stop killing and stealing.

The issue was particularly problematic because the agreement was perceived to entitle the signatories to capacity-building support. Such support was in fact not conditional on signing the Ground Rules, as the relief wings were already receiving assistance. However, the movements did view it as a means of receiving administrative costs for the relief wings, including office rent in Nairobi, and the threat of discontinuing the support was taken seriously.

For the government, capacity-building was central to its objections to the Ground Rules. Capacity-building had been denied to the north, although promised in the 1989 OLS agreements. The ICBP programme therefore signalled a switch in developmental assistance from north to south and helped to reinforce the division between the two sectors of OLS. It is thus not difficult to understand Khartoum's objection to the Ground Rules. Some NGOs were concerned that it would strengthen the SPLM/A's capacity to suppress its own people. But support was not to be unconditional. The idea was that, in return for support, the SRRA would become more competent and 'humanitarian'.

The Ground Rules did not confer formal international recognition, but did signal a measure of legitimacy. Against this, UNICEF/OLS argued that the Tripartite Agreements had already conferred recognition on the movements for humanitarian purposes. In fact, the revised Ground Rules probably could not have been signed had the SPLM/A and SSIM/A not signed the Tripartite Agreement. The SPLM/A exploits this, claiming that 'If they do not recognise us they would not work there'.

No criteria for recognition of the SPLM/A were established by the UN when it launched OLS in 1989. What was critical was government dispensation to work in the rebel areas. There was a real concern among aid agencies that signing the Ground Rules would encourage factionalisation. The fact that the movements would only agree to bilateral Ground Rules agreements suggests an attempt on their part to assert an independent identity. The issue became particularly intense when Lam Akol applied to become a signatory and kidnapped some aid workers as part of his bargaining position. His faction was accepted on the grounds that neutrality means equal engagement with all parties. OLS has never publicly defined the basis on which movements would be accepted as formal counterparts. A minimal requirement would be guarantees of independent access, monitoring and the establishment of humanitarian need. In 1997 an application from Kerubino, who also kidnapped several ICRC staff as part of his bargaining strategy, was rejected on the grounds that he controlled no territory and was a potential security threat rather than a potential counterpart.

International humanitarian law has some advantages in this respect. Authorities are defined in terms of territories and populations over which they have control. While this confers certain responsibilities on them, these cannot be enforced or leveraged since assistance remains unconditional. Similarly, the absence of a signed document means that warring parties cannot use this to attract resources and legitimacy. In Sudan, the ICRC argues that tying principles to a signed agreement and capacity-building inevitably leads to the kidnapping of aid workers as a means of attracting attention and support.

3.4 The role of the Humanitarian Principles Programme (HPP)

An important feature of the Ground Rules is that they do not stand alone, but are the centrepiece of the UNICEF/OLS Humanitarian Principles Programme (HPP), with its own office and staff within the structure of UNICEF/OLS southern sector. The establishment of the HPP was an important innovation; UNICEF/OLS assumed institutional responsibility for promoting humanitarian principles. The objectives of the HPP are (Levine, 1997):

- to define and defend the OLS humanitarian mandate; and ensure that assistance reaches the neediest and that civilians are protected;
- to increase awareness and observance of humanitarian principles through dissemination and advocacy at all levels of society;
- to strengthen the commitment of the political authorities to these principles; and
- to monitor and document violations.

With the HPP, UNICEF established a mechanism for promoting humanitarian principles, overseeing the implementation of the Ground Rules, monitoring violations of them and resolving disputes between agencies and local authorities. The HPP became operational in mid-1995 following the signing of the Ground Rules. Since then its activities have comprised the following:

Dissemination and advocacy: The promotion of humanitarian principles, the Ground Rules, the Geneva Conventions, CRC and human rights at all levels of Sudanese society and among international aid agencies working in Sudan.

Investigations and mediation: Investigation and documentation of Ground Rules violations, including abuses of unarmed civilians and security incidents affecting NGOs. It also takes responsibility for mediating disputes arising between NGOs and counterparts.

Institutional capacity-building and support: Support for the formation of a Sudanese-led humanitarian principles lobby, that will take on the responsibility for promoting humanitarian principles and the protection of civilians, including through the relief wings, SINGOs and churches.

Reunification of abducted children: Support and encouragement of counterparts to fulfil their obligations in the CRC with respect to family tracing and child reunification.

Promotion of women's rights: Since 1997/8 UNICEF has sought to promote the rights of women, through the dissemination of CEDAW.

Land mines awareness: Since 1998, following SPLM/A's unilateral commitment to ban the use of land mines in areas it controls, the HPP has supported a land mines awareness campaign, and supported the capacity-building of local mine action organisations such as OSIL (Operation Save Innocent Lives).

Humanitarian diplomacy: A critical, if informal, institutional role played by the HPP since its inception has been as a 'think tank,' to advise and support the OLS southern sector co-ordinator on all issues involving access negotiations and OLS agreements. This has involved political analysis, research and the preparation of UN briefing papers, negotiation strategies for IGAD talks and co-ordination of the Technical Working Group with the SPLM/A. The aim is to ensure that the fundamental principles of access and neutrality remain at the heart of all discussions with counterparts.

HPP's resources are small. It started in 1995 with three staff, all expatriates, working with counterparts in the humanitarian wings of the movements. There was a long and critical gap between the departure of the first head of the unit in December 1996 and the appointment of a permanent Humanitarian Principles Officer in 1998. This gap, which has probably limited the impact of the Ground Rules, arose from institutional concerns about the role of humanitarian principles and rights-based posts within UNICEF, and the priorities of OLS. In 1997, following the positive findings of the OLS Review, financial support to the HPP was increased. It doubled the size of its field presence and the level of technical support it was able to give to indigenous organisations by employing two Sudanese lawyers. One, a former member of the SPLM/A and a judge with access to the military, was able to negotiate a human rights dissemination programme for the military. The other works with Sudanese women's organisations to promote the CEDAW.

The activities of the HPP are undertaken together with the counterparts in SRRA and RASS. The UN, in effect, funds a mirror structure within the SRRA. Since 1997, the programme work in SSIM/A areas has been limited by the lack of an effective RASS counterpart.

4. Putting Principles into Practice

4.1 Introduction

Aid agencies responding to the suffering of the war-affected populations in southern Sudan face enormous challenges. Restrictions on access, attacks on civilians, the destruction and looting of aid supplies and threats to the security of aid workers, all affect their ability to fulfil their humanitarian mandates. These actions, which are not incidental consequences of conflict, but part of military strategies, draw relief aid into the politics and economy of war. The multiplication of agencies working in the war zone exacerbates problems of co-ordination and the equitable and appropriate provision of assistance. The diverse and fitful interest (and lack of interest) of external political actors affects the ability of agencies to respond to need. The Agreement on Ground Rules and the HPP have confronted these issues by establishing rules and practices to regulate the provision of humanitarian assistance and to influence the way in which the war is fought.

Once signed, the Ground Rules quickly became part of the 'discourse' in OLS southern sector. They have been disseminated to several thousand people in southern Sudan and all aid workers entering OLS southern sector are introduced to them. Outside OLS, the Ground Rules have rightly been lauded as an important innovation in the evolution of humanitarian responses to complex emergencies. Some regard them as 'the UN's best effort to date' (Lautze et al., 1998:103). In southern Sudan, however, consensus on their purpose and utility is more equivocal.

Among the leadership of the UN/OLS, the Ground Rules are perceived as a 'framework' for dialogue between the international community and rebel movements. For some, they are a means of promoting international humanitarian and human rights law and a protection mechanism. For others, 'the purpose of the Ground Rules is to stop aid fuelling war'. International donor attitudes towards them vary. Some are supportive, others extremely critical. A few NGOs highlight the principled nature of the agreements, while for most, they are a pragmatic field tool for negotiating and protecting agency space. Few aid workers interviewed for this study could articulate the content of the Ground Rules, or admitted to having read them fully. While generally supportive of the concept, many agencies are critical of the lack of enforcement.

Similarly, attitudes vary within the SPLM/A. While claiming responsibility for their development, many within the SRRA are critical of their application, in part a reflection of the SPLM/A's growing confidence in its own authority. A consistent theme in dissemination workshops has been the stress laid by participants on social and economic rather than civil and political rights. Many are sceptical of the principled nature of the agreement, arguing, like some NGOs, that the

Ground Rules are for the protection of the aid agencies' privileges.

This section examines the influence of the Ground Rules in five areas: the regulation of the humanitarian system; the security of aid workers; the management of assistance; the protection of civilians; and capacity-building and governance.

4.2 Regulating humanitarian intervention

4.2.1 Co-ordination, contractual arrangements and co-operation

By definition, 'complex emergencies' demand a system-wide response. Various aid and security co-ordination models have emerged to provide this, including OLS, UNOSOM, the Somalia Aid Co-ordination Body, UNPROFOR in Bosnia, and UNAMIR in Rwanda, to name but a few. The system of co-ordination and regulation in OLS for aid agencies operating in a complex emergency is unique. OLS is based on a political deal with the Sudanese state that enables the UN to work in an on-going war. In return for government dispensation of access to war-affected populations, the UN regulates the entry of aid agencies in rebel-held areas.²⁶ In this way, Sudanese state sovereignty is protected and the neutrality of the UN-led operation upheld. The deal involves a compromise that enables the government to retain leverage over OLS southern sector and restrict the scope of humanitarian action in rebel-held areas, such as in the Nuba Mountains. It has, however, also served to regulate humanitarian intervention in southern Sudan.

In this respect, the timing of the launch of OLS in 1989 was important. Given the deregulation of the aid industry since the early 1990s, the system of co-ordination and regulation established in OLS southern sector would probably not be feasible today (African Rights, 1997:124). In crises like Somalia and Rwanda, the unregulated influx and actions of aid agencies have been criticised for 'feeding killers', unprofessional standards, degrading humanitarian space and eroding humanitarian principles (Stockton, 1995:17–19). The experience of Rwanda in 1994, in particular, which led to calls for a reform of the aid system with the setting of professional standards and proposals for accreditation, would not have gone unnoticed by those negotiating a revision of the Ground Rules in southern Sudan.

As already noted, from late 1992 OLS southern sector underwent a rapid expansion. This was facilitated by new access agreements with the Khartoum government, the establishment of a security system, the first agreement on Ground Rules and increased donor funding which enabled OLS to change from a primarily land-based operation to a cross-border airlift. Government-approved locations in southern Sudan increased from only 5 in 1992 to 120 in 1996 (Karim, et al., 1996:78). Simultaneous with this geographic expansion, the numbers of Nairobi-based NGOs

operating under agreements with UNICEF/OLS increased from a handful in 1992 to 35 by 1996, including 29 international and 5 Sudanese NGOs (UNDHA, 1997). Although this was only half the number of international NGOs based in Khartoum, it did represent a significant scaling up of humanitarian intervention in rebel-held areas of the south. Unlike in Somalia, Bosnia or Rwanda this expansion was controlled, in three ways: through a system of contractual agreements with the UN; through operational support structures; and by establishing a common framework for international intervention and engagement with the crisis, elaborated in the Ground Rules.

International aid agencies that wish to operate legally within the rebel-held areas of Sudan can do so only by working under the OLS umbrella. Membership of the OLS southern sector operation is formalised through a LoU (a 'Consortium Membership Agreement') with UNICEF as the lead agency and approved by the Consortium Admission and De-admissions Committee (UNICEF/OLS, 1998c). The LoUs describe the humanitarian principles on which OLS is based and set out the intended activities of the NGOs and their responsibilities for reporting and co-operating in evaluations, assessments and monitoring of aid distributions. The criteria for OLS membership are based on a capacity to deliver, a willingness to work in certain areas and a long-term commitment. In this way a system of quasi-accreditation is established.

In 1996, reference to the Ground Rules was added to the LoU, all agencies joining OLS thereby agreeing to 'commit' themselves to them. As the former head of the HPP remarked, 'UNICEF controlled access and NGOs had to agree to the rules to be in'. In an important way, the addition of the Ground Rules strengthened the contractual basis of the humanitarian system in the southern sector. Agencies which are judged to have violated the Ground Rules can be expelled from OLS by the Admission and De-admissions Committee.

A consistent call in most reviews of humanitarian interventions is for 'better co-ordination,' in part a consequence of the sheer numbers of agencies intervening in a crisis. The OLS system of co-ordination and regulation has no parallel in other complex emergencies and without it the introduction of the Ground Rules would have been difficult, if not impossible. The OLS leadership argues that 'if there is no solidarity within the consortium, the Ground Rules would not work' – an observation implying that there are factors other than a voluntary adherence to a common framework and humanitarian principles that encourage collective responsibility.

Although NGOs do work outside OLS, the advantages accrued from being inside are such that most choose to work within the consortium; in 1998, there were some 10 agencies working outside, compared with 40 within. The incentives to work within the OLS southern sector

operation are several. Membership provides access to logistical and communications support, the protection of the OLS security system and information. Another advantage is that UNICEF undertakes to negotiate access to project sites and to assist in mediating any disputes with counterparts (UNICEF/OLS, 1998c). For those NGOs operating in government-held areas, OLS provides the only legal means to work cross-border in non-governmental areas. Importantly, as the UN's ability to do this is based on the neutrality and impartiality of the operation, membership of OLS confers neutrality on member agencies of the consortium. Those which work outside are often described as 'solidarity' NGOs. For some agencies an important incentive for working within OLS is being part of a 'larger voice' able to influence policy.

While mutual benefits exist, UN/OLS-NGO relations have never been easy. Mention has already been made of the lack of consultation during the negotiations over the revised Ground Rules. NGOs have been critical of the logistical support managed by the UN. Resentment about centralised decision-making and the lack of an NGO perspective has led to calls for greater 'deregulation and decentralisation' (Karim, et al. 1996:73), in pursuit of which an international NGO forum was established in 1995. Proposals were also floated in 1996 for an NGO consortium outside of OLS, that would operate independently of the government and in closer partnership with the SPLM/A (Brusset, 1998:22). UNICEF-WFP relations have also been uneasy, centring on respective responsibilities and resources. While UNICEF has always been the lead agency, since 1992 WFP has consistently been able to command greater resources with its management of the food and logistics operation. The 1996 OLS Review noted the lack of co-ordination between WFP and UNICEF on food aid and household food security support (ibid: 147). Furthermore, while NGOs form contractual relations with UNICEF, there are no formal agreements between WFP and NGOs. This is important, given the significance of food aid (see below).

4.2.2 Donor interests

Donors are an important influence on UN/OLS-NGO relations. A striking feature of OLS is its longevity. In part this arises from the lack of alternative political engagement in Sudan. Since most Northern governments cut bilateral aid to Sudan in the early 1990s, OLS has become their main political lever; humanitarian diplomacy has replaced political diplomacy. Some donors choose to pursue this by channelling funds to the UN through the annual Consolidated Appeal (CAP) for Sudan, others pursue it through NGOs. Some donors channel their contributions through OLS member agencies, others through agencies outside OLS, according to 'strategic humanitarian sense' (Prendergast, 1997:87).

The expansion of the NGO presence in southern Sudan in the early 1990s, as in other crises such as Rwanda,

was made feasible by donor government funding. Generally, NGOs provide donors with a more flexible policy instrument than the UN. As a result of the relative power given to NGOs in Sudan by donor funding, the UN cannot neglect them as it did during the Ground Rules negotiations. Furthermore, the more territory the SPLM/A gains the more difficult it is for OLS to enforce regulation of aid agencies. Cross-border operations without government approval have increased since the SPLM/A recaptured Yei in 1997. Partly in response to these pressures, the OLS leadership since 1997 has placed greater emphasis on the 'collegiate' character of the operation, which is now officially referred to as the 'consortium'. As the co-ordinator of UNICEF/OLS notes, 'NGOs are treated differently in OLS from other UN operations'. Joint planning meetings between consortium members in 1997 and 1998 sought to define a common approach and strategy (OLS, 1998b).

Greater integration has certain advantages in terms of joint action on protecting humanitarian space. However, the price of integration can be a loss of independence for agencies. This is potentially problematic given that Ground Rules specify the relief wings as 'operational partners,' and that all the warring parties and donors use OLS for political ends. The Sudan government, for example, does not allow OLS agencies access to the Nuba Mountains from the south, thus compromising the first humanitarian principle in the Ground Rules (A1) – 'the provision of humanitarian assistance to populations in need wherever they may be' (Bradbury, 1998).

4.2.3 An instrument for engagement

International humanitarian policy in Sudan is premised on securing and sustaining access to war-affected populations through negotiation. A danger with this is not only that negotiations may confer legitimacy, but that ad hoc negotiations are open to manipulation. These risks were noted in the 1995 Review of the Sudan Emergency Operation Consortium (SEOC), which criticised the consortium for expanding operations into SPLM/A territory in the absence of assessed need, and for providing unmonitored institutional grants to the SRRA in Nairobi. The SEOC Review, undertaken at the time the Ground Rules were being renegotiated, supported a call for guidelines on how donors and NGOs should relate to civil and political actors in the conflict (Duffield et al. 1995:244). A primary motivation behind revising the Ground Rules was to establish such a principled framework of engagement with the armed opposition movements. At a time of expansion in the southern sector and factionalisation among the movements, an important contribution of the Ground Rules was to regulate international intervention by establishing a common framework of principles and rules for negotiating access.

The answer to 'how' the international community should engage in the war in Sudan and with the warring

parties is dependent on one's view of the objectives of the warring parties and one's own political and economic interests. Is the SPLM/A a 'liberation movement' or a 'predatory' organisation? Is the war a clash of political and religious ideologies, a war between ruling elites? Is it a human rights struggle or a problem of underdevelopment? OLS is a 'broad church' and these different views are apparent among agencies, as illustrated by the following comments of aid workers interviewed in September 1998:

Agencies run the gamut from strict neutrality to solidarity. We involve the SRRA in field trips and assessments.... We do not support building political structures, but there are agencies which will willingly carry troops'.

Once you decide to become involved in Southern Sudan, you have to support their cause.

The Ground Rules overcome these potential contradictions within the consortium by invoking universally accepted principles to define a framework for the international community's engagement. In this way, for some aid workers the 'Ground Rules give legitimacy to the whole operation'.

International engagement in Sudan, however, takes place at different levels – international, regional and local ('field') – and through a multiplicity of agencies. Sustaining the principled framework of the operation involves a number of formal and informal mechanisms:

- At the national and international diplomatic level, the UN Secretary General's Special Envoy for Humanitarian Affairs maintains the framework through diplomatic contacts with the warring parties. His role is to expand and preserve humanitarian space. As chair of the IGAD Technical Committee on Humanitarian Assistance (TCHA), he ensures that humanitarian issues are not neglected in regional peace talks. In October 1998, for example, at a meeting of the TCHA the UN tabled proposals on security protocols, cross-line routes, up-grading roads, and extending the cease-fire in Bahr el Ghazal to secure humanitarian space. These forums provide an opportunity for reinforcing and strengthening the framework, and the HPP plays a role in formulating the negotiating stance of OLS.
- There is no formal donor forum on Sudan that meets regularly in Nairobi. Donor representatives do, however, meet with representatives of the movements in response to specific violations of the Ground Rules, especially those affecting aid agencies. These meetings are facilitated by the HPP.

- The HPP has a key function in strategic co-ordination, negotiating access, advocating respect for humanitarian principles and law and liaising with international regional and political actors. The head of the HPP spends much time in negotiations with the relief wings and political leadership of the warring parties in Nairobi,²⁷ chairing the 'Technical Working Group' of SRRA, UN and NGO representatives which deals with issues critical to relations between humanitarian agencies and the SPLM/A, such as the SPLM/A's proposed new NGO Law. The HPP thus has the difficult balancing role of maintaining relations with counterparts and respect for humanitarian principles. It is also responsible for monitoring and responding to violations of the Ground Rules.
- NGO adherence to the Ground Rules is maintained through a series of Ground Rules, Cultural Orientation and Security workshops run by UNICEF and its counterparts, as well as through joint needs assessments, emergency response teams and agreements on standards and protocols for assistance.
- At 'field' level, the Ground Rules provide a set of administrative procedures for engaging with local authorities and populations. These are reinforced through dissemination workshops run by the HPP inside and outside Sudan, and actions taken in response to violations of the Ground Rules.

Regulating humanitarian space: The basis of OLS is to negotiate and secure humanitarian access for the flow of assistance to war-affected populations. In the southern sector the Ground Rules build on this, by defining and regulating the 'quality' of humanitarian space. This is done by elaborating the basic conditions under which humanitarian assistance will be provided – the security of aid operations and the protection of civilians. However, while the Ground Rules seek to protect both, it is the former that concerns most aid agencies.

For most field-based aid workers, the primary function of the Ground Rules is to facilitate day-to-day relations with local authorities and populations, and to protect their staff and operations. The Ground Rules are part of the Standard Operating Procedures of the OLS security system. Procedure 3, which is concerned with agency-counterpart relations states 'do not ask favours but rights (Ground Rules)' (OLS, 1998a). The majority of Ground Rules 'violations' reported to the HPP by agencies relate to incidents affecting the agencies, such as commandeering of vehicles, harassment and theft, rather than the protection of civilians. Since the Ground Rules were signed, the only withdrawals of assistance or suspensions of operations have occurred as a result of evacuations due to increased levels of insecurity or a breakdown in relations between agencies and local authorities. It is not surprising, therefore, that the head

of one international NGO commented in an interview in 1998:

There are 300 people working for OLS in south Sudan, most NGO staff... I bet 99% would say the Ground Rules are to protect me and my compound.

In other words, for most OLS agencies, the Ground Rules are primarily a tool for protecting 'agency space', rather than 'humanitarian space.'

4.2.4 The impact on aid agency-warring party relations

As stated in the Ground Rules, it is the intention that disputes between aid agencies and warring parties should, as far as possible, be dealt with at the local level. The rules for governing these relations are defined in the administrative procedures set down in the Ground Rules. Through dissemination workshops, local authorities and local populations are educated in the workings of the Ground Rules, the commitments of the movements to them and the expectations of local authorities and aid agencies. Provisions regarding the property rights of agencies, rules on employment, payment of rents, and mechanisms for resolving disputes, establish the rights of the agencies and what claims can be made on them.

For some aid workers, these administrative procedures are no more than the codification of 'best practice' or 'field craft'. As one aid worker interviewed, commented:

The Ground Rules are not rocket science...It is common sense. It is what agencies should do.

What is important, however, is that they form part of an agreement with the movements. They define the responsibilities of the parties and a set of norms which agencies can utilise in negotiations with local authorities. One aid worker explained in an interview in September 1998:

Since they are signed by the leadership of the SPLM/A, there is something to refer to in the event of a dispute. For example, over carrying people with guns.

The dissemination workshops also serve a supportive function of improving the transparency of the aid programme, by enabling aid agencies to explain their programmes and actions to the public (UNICEF/OLS, 1998d). As explained by the former head of one aid agency:

What we were trying to do was to explain to the Sudanese what we thought was guiding us in our work,

and Levine [the head of HPP at the time] chose the Ground Rules as a handy vehicle to write down what we all meant by what we were doing. We were operating in a knowledge vacuum.... Almost nobody we spoke to really understood the difference between Oxfam and the World Bank or between UNICEF and SCF.... There was a whole area in which [HPP] was telling them what we thought we were doing and how and why and within what parameters.

One conclusion of the joint SPLM/A-OLS Task Force investigating the 1998 famine in Bahr el Ghazal was that the failure of aid agencies to do this during the famine was partly responsible for problems encountered with the diversion of aid (OLS/SPLM/SRRA, 1998).

A common complaint by aid agencies, however, is that the Ground Rules are too broad, the concepts poorly understood, and that they can be reinterpreted at a local level and disregarded by agencies and local authorities.²⁸ Resolving disputes can also be problematic because of the bureaucratic gap between the SRRA in Sudan and in Nairobi and between the SRRA and civil administrations.

Despite this, aid workers who have worked in southern Sudan for some time believe that relations between the agencies and the SPLM/A military have improved since the Ground Rules were introduced. OLS security officers, for example, assert that dissemination of the Ground Rules has had a positive effect on warring party-NGO relations and the security of relief operations. For example, during a six-month period from January to June 1996, there were 25 evacuations of aid personnel from southern Sudan, only two of which were caused by a 'breakdown in relations' between the aid agencies and local authorities (UNICEF/OLS, 1997). In this regard, the donors have tended to be supportive of 'their' aid agencies in disputes with local authorities. They have used the Ground Rules as a basis for negotiation with the SPLM/A when agencies have withdrawn from an area for security reasons, although, as the case of ACF in 1997 indicates (see below), they are not always consistent in this.

One reason for the success of the Ground Rules at this level can be that they are mutually advantageous to the agencies and the rebel movements. This means that NGOs cannot behave as they like. The Ground Rules identify the SRRA, RASS and FRRA as formal counterparts, and in the Agreement they are given the role of approving assistance programmes in areas administered by the movements (Article B1). All project agreements are supposed to be signed with the relief wings. Responding to the OLS 1996 Review, the SPLM/SRRA noted:

...the SPLM/A needed these Ground Rules so as to ensure services to the people in SPLM administered areas because some individual expatriate UN/NGO staff were violating the humanitarian principles which the UN and their respective INGOs have committed themselves to uphold. (SPLM/SRRA, 1996)

The Ground Rules therefore also established a 'benchmark' against which local authorities themselves are able to judge NGOs, although Sudanese in the SRRA complain that they are not enforced equitably and NGOs refuse to be prosecuted.

Dialogue, communication and education are important factors in agency-warring party relations. However, these relations are also a reflection of the state of the war. One long-time aid worker commented, 'In the beginning one had a rough time, because the soldiers did not know the rules.' Importantly, the same individual also recognised that improvements in relations were also linked to the military fortunes of the SPLM/A, noting that 'before things were more difficult when the enemies were closer to each other. Now there are more liberated areas it is more secure.'

4.2.5 Weakening of the framework

As already noted, one of the motivations for revising the first Ground Rules was that they were seen to have become inoperable in the face of the SPLM/A reforms and the establishment of a civil administration. Ironically, while UNICEF/OLS sought to tap into the changes taking place in the SPLM/A, one impact of the civilianisation of the SPLM/A is that the framework under which the Ground Rules work may be breaking down. The SRRA's role has been downgraded as a result of the establishment of civil structures. Although it retains power and influence at the senior levels of the SPLM/A, on the ground its authority is often not respected. The Ground Rules no longer provide a basis for negotiation in some areas, particularly in Western Equatoria where civil administrations are more established.

The Ground Rules have had an advantage for the SPLM/A in terms of the formal control they are able to exert over the aid agencies. Since 1997, however, OLS has been faced with an increasingly assertive SPLM/A whose efforts to restrict and control humanitarian space – especially for NGOs – appear to be increasing. The main mechanism for this is intended to be a new SPLM/A NGO law, which some within the movement claim will replace the Ground Rules. If adopted, this would impose a more restrictive regime on NGOs in southern Sudan. This assertiveness of the SPLM/A should be seen in the context of its military ascendancy.

The expulsion of ACF in January 1998, without prior consultation or notification, was seen by many agencies

as indicative of these changes. In early 1998 ACF, which worked both in northern and southern Sudan, expressed concern at the high levels of malnutrition in Labone camp for displaced persons despite on-going food distributions. The camp is situated next to an SPLM/A garrison. A survey was planned with donor support, but before this could take place, ACF was expelled by the SPLM/A. The accusations against ACF of compromising security were met with counter-charges that the SPLM/A's actions coincided with preparations for a military offensive. Either way, the case revealed tensions among donors over policy towards southern Sudan. Although the donors formally took a joint stand, and in one of the few examples of conditionality refused to support the work of other agencies in the area where ACF had worked, the Europeans were more critical than the Americans. ECHO at one stage considered withdrawing all funding from south Sudan. Similar differences among donors over what their appropriate relationship with the SPLM/A should be were also apparent in relation to the NGO law. USAID is said to look more favourably on it than ECHO. A consequence of such differences, if they persist, will be to hand the SPLM/A more control over the aid programme.

4.3 Security and humanitarian space

The first Ground Rules emanated from a concern for the security of aid workers, following the killing of four expatriates in 1992. Although the 1995 Ground Rules was formulated with an additional premise – the protection of civilians – revision was also precipitated by security concerns. There remains a close link between the Ground Rules and the UNICEF/OLS southern sector security system. This unarmed civilian-based system provides some important insights for other humanitarian operations, especially given current interests in the use of private security forces for the protection of humanitarian operations (Bryans et al., 1999). It is a testament to the system and to the Ground Rules that, in an era when aid workers face increased risks of violence and death in war zones, there have been no security-related expatriate deaths in southern Sudan since 1992, and, compared with other war zones, relatively few deaths of Sudanese relief workers.

4.3.1 The Ground Rules and the security system

The development of the Ground Rules and the security system were closely linked. A key element in the latter is the relationships established between the security office and the military commanders of the movements. The process of establishing these relationships in 1993 provided an opening for the negotiations that led to the revision of the Ground Rules, in which the movements accepted responsibility for the protection and security of aid workers.

There remains a symbiotic relationship between the Ground Rules and the security system. The Ground Rules established the 'rules of engagement', while the

security system establishes the preconditions for operations.²⁹ Any incident affecting the security of OLS member agencies is treated as a 'security incident' until it is found to be a 'Ground Rules violation,' at which point the HPP team will take over. Security officers maintain that regular dissemination of the Ground Rules helps maintain security, and in theory a security pre-condition is that the HPP should disseminate the Ground Rules before agencies begin working in new locations. In 1998, for example, a Ground Rules workshop was held in Yirol before agencies began working there. At the same time, the Ground Rules are only disseminated in areas assessed as secure for agencies to operate in. In this way, the security system while enabling expansion of the southern sector, has also helped to manage the expansion.

Some OLS member agencies argue that the balance between security and the humanitarian imperative is not always correct. For example, some claim that OLS has been more cautious about security in SSIM/A areas than it was during the chronic insecurity in Bahr el Ghazal. The main reason for this is the weaker relations between OLS and SSIM/A counterparts and an ambiguity with regard to SSIM/A following its signing of the Peace Agreement with the government.

The system is managed by retired military officers employed by UNICEF. Its essential elements include a detailed knowledge of the security environment, the ability to predict insecurity and to evacuate agency staff by air, and an integrated radio system. The reliance on air access was a consequence of the killing of the expatriates, and donor funding is essential to maintain this system. Training workshops in Standard Operating Procedures ensure that OLS member agencies are responsive to the system.

The establishment of a security system was a pre-requisite for the relaunch of OLS in 1993 and the expansion of southern sector operations. Since then the numbers of aid agencies operating in southern Sudan have increased hugely. Between 1995 and 1998 international staff increased from 140 to 500. While some of this increase is accounted for by the international response to the 1998 famine in Bahr el Ghazal, even in 'normal times' several hundred international staff and vehicles are operating in southern Sudan at any one time. While non-OLS agencies operate in Sudan without the formal support of the OLS security system, and 'solidarity' with the SPLM/A may provide an alternative security guarantee, the OLS system has undoubtedly reduced the risks to aid workers.

In risk management parlance, aid agencies may respond to security threats in three ways: by establishing 'acceptance' (or consent), by 'protection' (protective procedures and devices), and by 'deterrence' (armed, and legal, economic and political sanctions)(van Brabant, 1998). In Sudan the option of military deterrence was never fully considered. Instead,

the approach has involved establishing consent through negotiation, combined with protection procedures backed by a degree of deterrence in the form of political and economic pressure. The revised Ground Rules, which expressed a 'joint commitment,' signalled a move from consent based on deterrence towards consent based on acceptance.

A critical feature of the OLS southern sector security system is the formal role that counterparts play in the security and protection of aid workers. 'Counterparts' not only refer to the SRRA, but also the military. The responsibility of the armed movements for the protection and security of aid workers was established in the first Ground Rules. Under the revised Ground Rules, local authorities and humanitarian counterparts have responsibility for: alerting relief workers of potential insecurity; facilitating safe relocations as necessary; and protecting relief staff from harassment and threat. The fact that counterparts can call security levels indicates the level of trust required between OLS agencies and their counterparts in the movements, and between the counterparts and the civil and military authorities. A breakdown in these relations can threaten the security of an agency's operation.

Counterparts do fall short of their security responsibilities, and several such incidents have been the subject of Ground Rules violations. The military will often warn agencies of government offensives, although this has been used as an excuse for looting. However, for the most part counterparts are reported to act responsibly, and of the 35 evacuations in the first half of 1996, most were at the instigation of OLS counterparts. Clearly, there is an incentive for local authorities to co-operate with this system to ensure a flow of resources. There is also an added interest in terms of legitimacy. As one SRRA official noted:

Any organisation that signs an agreement with the SRRA knows that they are fighting a war. They [SRRA] will never allow you to be caught by the enemy because this will be used against us for propaganda purposes.

While the Ground Rules are recognised as important for agency security, agency field staff interviewed during this study argued that they cannot replace good 'field craft' and diplomatic skills. Establishing 'good relations' is considered more important. These are defined most readily in terms of respect for customs, language skills, etc., rather than of neutrality or impartiality. They are also measured in terms of an agency's commitment to capacity-building and local recruitment. Agencies such as MSF, for example, which seeks to maintain its independence by relying more on expatriate staff, are often criticised by counterparts and other aid agencies for their 'poor relations'.

4.3.2 Security, neutrality and protection

A critical aspect of the system is the perceived neutrality of the security office. This contrasts with the consistent criticism of OLS's neutrality and independence by the warring parties. The OLS security officers unlike other agency staff (but like the ICRC) are able to cross lines of conflict. The one flight for which the UN reserves the right of exemption from the government ban is the security flight. During the SPLM/A offensive against Torit in September 1998, the security office obtained government and SPLM/A agreement to evacuate OLS northern sector staff from the town; SPLM/A units agreed to cease shelling during the evacuation.

Aid agencies operating in war zones often know very little about those fighting the wars. An effective security system depends on such knowledge. To maintain a neutral and independent programme, or to undertake protection work, requires humanitarian agencies to be informed of the political and military operating environment.

Both the HPP office and the OLS security officer undertake political and military analysis, of a national and regional nature. The HPP has been credited with documenting how the war is being fought (Karim et, 1996). However, the security incident files provide a more comprehensive chronology of the war than the HPP violations file. Security analysis involves developing what is in effect a politico-military early warning system. Recruitment drives, population movements, looting of aid are all indicators of military activity. As projections of humanitarian need are always vulnerable to changes in the military context, security analysis is often used in projecting short and long-term emergency needs.

The OLS security office and the HPP differ, however, in their protection responsibilities. Both are concerned with the protection of OLS member agencies, but only the HPP is concerned with protecting the rights of beneficiaries. In order to maintain access security officers cannot be openly involved in human rights monitoring, or even preventing aid diversion. As already noted, the international community's engagement in Sudan revolves around humanitarian diplomacy, rather than political engagement. There is some irony in the fact that, in order to protect the humanitarian space within which OLS operates, the OLS security system is required to provide the kind of political and military analysis of the war that would normally be the preserve of political diplomacy.

4.4 Managing assistance with principles

The 'Statement of Humanitarian Principles' in the Ground Rules seeks to establish the rights to receive and offer assistance as normative, for all in need. The denial of humanitarian assistance by any party to populations in need, the use of that assistance for non-

humanitarian purposes, and the denial of access to humanitarian agencies threaten such rights. Elaborating the OLS access agreements, the Ground Rules also state that assistance should be delivered in a neutral, impartial, transparent, and accountable manner and in a way that strengthens local capacity and protects civilians and aid workers. An assumption behind the Ground Rules is that adherence by relief agencies and warring parties to these traditional humanitarian principles will protect people's fundamental rights, as well as mitigate the negative impact of aid. This section examines how these principles have been operationalised, and how rights to assistance have been protected and the manipulation of aid prevented. The focus is primarily on food aid which forms the bulk of humanitarian assistance provided to Sudan.

4.4.1 Aid and the war

As elaborated earlier, there is a consensus among the warring parties, international aid agencies, donors and policy analysts, that aid plays a significant role in the Sudanese war. There are, however, few detailed studies to substantiate this analysis (see, for example, Keen, 1994). Empirical information on the contribution of humanitarian aid to the war economy of southern Sudan and the warring parties is limited. If, as is claimed, the government spends \$1 million per day on the war, the annual funds available to OLS are small compared with the total war expenditure of the parties, except in an acute crisis (Human Rights Watch/Africa, 1999a:2). To deny that aid has any influence would be to deny reality. The question is what the reality is.

Aid plays a political role. Since OLS was established, humanitarian assistance has been the main avenue and lever for international engagement in Sudan. For the warring parties acceptance of OLS legitimises their humanitarian credentials. For the SPLM/A, OLS has been a critical avenue for international diplomatic engagement. Although, as one aid worker put it 'OLS is only part of what is happening in the south', it is nevertheless a significant part. OLS is an important element in the SPLM/A's welfare strategy, and management of 'humanitarian space' is an important part of its role as an authority.

The government does not see aid as neutral in its impact. At the very least, it believes that humanitarian assistance provides succour to the armed opposition and affords them diplomatic recognition. As such, OLS is perceived as a threat to its sovereignty. In 1997 the government criticised OLS for delaying relief to Yei until after the town fell to the SPLM/A. In turn, the SPLM/A argues that aid prolongs the government's hold over the garrison towns, and that aid encouraged the Nasir coup and sustained the SSIM/A. However, it is at the level of the subsistence economy and the socio-political and economic structures that make up rural

southern Sudan that the integration of aid into the war, and the notion that 'aid feeds war', is clearest.

4.4.2 Food and war

OLS was conceived as a response to an acute, but temporary, nutritional and mortality crisis, and food aid and its delivery dominated the initial phase of the operation (Karim, et al., 1996). As the war persisted, and as access to southern areas improved and numbers of aid agencies increased, perceptions of the crisis changed. OLS southern sector evolved into a complex operation encompassing a range of sectoral interventions. The transformation of the programme from an emergency life-saving intervention to support for longer-term food security is reflected in the Ground Rules, which state that humanitarian assistance seeks not only to save lives but also to 'promote self-reliance, self-sufficiency and the maintenance of livelihoods' (A1). This change involved a reduction in food aid rations and tighter geographic and socio-economic targeting (ibid: 7). Despite this, food aid continues to dominate OLS. Between 1993 and 1995 no less than 55 per cent of all appeals and receipts by the UN went to emergency food aid (ibid: 239), a percentage that increases if nutritional and household food security programmes are added. And in 1998 the Bahr El Ghazal famine led to the largest airlift of food aid in the history of OLS.

The dominance of food aid in part reflects donor restrictions on funding any assistance that is not construed as strictly humanitarian. The provision of education, for example, is politically sensitive, given the opposing positions of the government and SPLM/A on the teaching of Arabic. More importantly, the dominance of food aid reflects the nature of a war fought on and over a semi-subsistence agricultural economy. The dismantling of the subsistence economy of the south was essential for the expansionist political and economic policies of the north. The agrarian system of rural producers provides the main economic base for the SPLM/A, and its source of military recruits. The subsistence economy, the coping mechanisms of rural producers and their 'way of life' are therefore not incidental victims, but targets for violence. It is at this level that human rights abuses are most prevalent, and that the conditions for the recurrent famines and permanent food insecurity that has characterised the humanitarian crisis in Sudan is created. To paraphrase African Rights (1997), in Sudan 'food is power'. In a war fought to destroy the livelihoods of one's opponents, forms of aid that aim to strengthen them are a strategic commodity subject to manipulation and diversion. The significance of food aid in the Sudanese war is apparent from the various demands made on it by the SPLM/A.

Diversion: The diversion of aid to feed soldiers or to deny the enemy has long been an issue in south Sudan. Prior to the Ground Rules, the international community was criticised for having no policy on aid diversion

(Prendergast, 1997:155). Article A.4.ii of the Ground Rules rectifies this by stating that: 'Diversion of aid from intended beneficiaries is regarded as a breach of humanitarian principles'. OLS and the HPP have been subsequently criticised for failing to address this issue adequately (African Rights, 1995).

The military need to be fed and, as elaborated previously, it is generally acknowledged by aid workers that the rebel army 'feeds on relief'. Food is obtained directly by force, through taxation, voluntary contributions or via eligible family members. As the SPLM/A is dependent on its host communities, it is likely that a proportion of all relief inputs goes to support the military. Its significance, however, is disputed. Officials in WFP, for example, argue that the amount of food they deliver is normally only sufficient to feed about 1.6 per cent of the population of southern Sudan (although it was higher in 1998). Therefore the amount that goes to the military can only be small. While accepting that some food aid will reach soldiers, they argue that the withdrawal of aid may do more harm:

... if the international community or whatever wants people to die just because that's the only way to make sure the soldiers are not fed, that is a decision that has to be taken.³⁰

Some aid workers assert that problems of diversion and manipulation of aid in areas controlled by the SPLM/A have declined. The mass looting and explicit diversion of aid in rebel areas common in the 1980s and early 1990s appears to be less common today in SPLM/A territory. The last big diversion by the SPLM/A is reported to have taken place in Pantau in 1995. Looting of relief and destruction of aid assets have been much more regular in SSIM/A areas and contested areas such as Bahr el Ghazal. During the 1998 famine in Bahr el Ghazal, however, a joint OLS/SPLM/SRRA Task Force investigating targeting and vulnerability, concluded that there was evidence of food aid diversion in the SPLM/A-controlled areas of the region which led to unnecessary deaths (OLS/SPLM/SRRA, 1998). One monitoring report provides evidence of redistributions organised by the SRRA, with 80 per cent going to the military, 15 per cent to the administration and 5 per cent to the SRRA (Jaspars, 1999). Violence and looting accompanied distributions at some sites (Human Rights Watch/Africa, 1999a). Some returnee displaced persons were excluded from distributions because they had not been paying tax to the SPLM/A. However, the Task Force report also argues that this was not merely a military problem, but also involved local chiefs and the civilian authorities.

Taxation: The SPLM/A has always asserted the right to tax civilians within the areas it controls, as set out in its military code (Human Rights Watch/Africa, 1994:181). The tax rate is supposed to be negotiated between the chiefs and SPLA commanders, and based on the

capacity of a population to pay (Prendergast, 1997:56). Among some aid agencies and donors there is an acceptance that the 'de facto' authorities must raise taxes, and that an inevitable result of external pressure for democratisation in the movement and the establishment of civil structures will be an increase in taxation. Senior members of the SRRA explain that as the SPLM/A establishes institutions of governance, local populations will be expected to pay more to support services. Rates of taxation are reported to have increased in Eastern and Western Equatoria since 1994.

It is unclear, however, whether the SPLM/A is reciprocating with services. Instead, pressure is being put on some NGOs and their local staff to pay tax. Aid agencies already pay minimal 'taxes' for SRRA and RASS travel permits, and are forced to change money through the SRRA at extortionate exchange rates in order to pay local staff. Under the proposed SPLM/A NGO law, aid agencies will be subject to higher taxes.

The SPLM/A argues that the *tayeen* on food relief is a continuation of the contribution from the people. While the joint SPLM/SRRA/OLS Task Force recognised *tayeen* as a 'traditionally and socially accepted practice', it also condemned the practice during the Bahr el Ghazal famine as 'unjustifiable' (OLS/SPLM/SRRA, 1998:3-5).

Food and security: The line between 'diversion' and 'taxation' is a thin one. The distinction, perhaps, is that since the separation of the military and civilian wings of the movement, populations are no longer supposed to be taxed by force. The joint Task Force report on the famine in Bahr el Ghazal and other studies of vulnerability suggest that diversion is not just a 'military problem' (OLS/SPLM/SRRA, 1998). Evidence points to a much more complex system of taxation and redistribution, negotiated between the military, civil authorities and the chiefs, in which the politically powerful were benefiting at the expense of the weak.

Taxation is closely linked to security. In locations closest to the frontline the military are able to demand more taxation. This can vary with the season. For example, in Ajiep during the dry season when the river Jur is low and the town is vulnerable to attack from government defence forces or *Murahaliin*, the SPLM/A military are in a strong position to negotiate a high contribution from the population. During the wet season, when government forces are unable to cross the river, they are less able to exact taxes. The military environment therefore enables predation to continue. Not surprisingly, the attitude of many aid agencies is that, if people must pay for their security, then aid agencies can do little about it.

Sustaining the rural economy: Perhaps more important than diversion by the military has been the role that food aid is speculated to have played in retaining the population in the south. In the early 1980s, the SPLM/A was ambiguous about external assistance

and its predatory relationship with civilian populations in the south caused an exodus to the north. The severity of the 1988 Bahr el Ghazal famine meant that the SPLM/A welcomed food aid for the support it gave the rural economy, and its acceptance of OLS in 1989 confirmed a change in policy. By 1994/95, the food security situation in the south had improved considerably (Karim, et al. 1996:163-4).³¹ It is postulated by the 1996 OLS Review that food aid contributed to retaining people in their home areas during cultivation periods and attracting displaced families back to the south. By October 1993, significant numbers of southerners were reported to be returning from displaced settlements in the transition zone and Khartoum to distribution centres in the south. As already noted, after 1991 the loss of bases in Ethiopia and factionalisation required the SPLM/A to establish a different relationship with its population. This was not just born out of a new-found liberal agenda among the leadership, but was a product of a greater reliance on the rural population, and on the aid that supported them.

Little appears to have changed in ten years. The SPLM/A continues to look to external assistance to provide for the welfare of populations in the areas it controls. As one SPLM/A commander explained in the context of the 1998 Bahr el Ghazal famine: 'We do not have the means to rescue people from famine. Our enemy would be happy to see the death of these people'.³² There is an acceptance among aid agencies in the south that pulling out would cause an exodus of Sudanese to the north. If food aid has helped retain the population in the south then this directly benefits the SPLM/A. Without food aid populations would have to provide part of their cultivation as tax (*tayeen*), and without food aid the SPLM/A would not be able to collect contributions from displaced populations.

Food aid and power: OLS is working in an environment where every aid distribution is a negotiated deal. WFP, for example, concedes that the SRRA will take a 'cut' out of every aid delivery. Perhaps the most important conclusion of the joint Task Force on the Bahr el Ghazal famine was to highlight the socio-political dimensions of vulnerability.

During the famine those people without representation – mainly the displaced – were the most vulnerable and most likely to be excluded from food distributions. Humanitarian entitlements are subject to political representation. As one WFP worker explained, 'malnutrition is the physical representation of social marginalisation'. Chiefs and the SRRA determine the allocations of food aid, either directly or through redistributions. A chief is likely to belong to the largest, richest and most powerful family in a clan, and positions of authority in the SRRA and relief committees are also likely to be held by the most powerful clans (Harragin and Chol, 1998). In a crisis they are likely to benefit. Such a finding is not new. The 1995 Review of SEOC noted:

The current unacknowledged reality is that a large proportion of food aid goes to reinforce the local power structures and does not reach the intended beneficiaries. The destitute and displaced frequently have no formal representation. (Duffield et al., 1995: 141–142).

As the SEOC Review also noted, the strategic importance of food aid meant that it had become a locus of power, ‘with its own logic and language which is rapidly learnt by all who want to participate and gain access to it’ (ibid: 136). As food is one of the main external resources going into the south, it follows that whoever controls its distribution will increase their power.

Dependency: Humanitarian aid is commonly criticised for creating dependency, undermining local responsibility and contributing to predatory systems of governance. Reductions in food aid and a shift from emergency food aid provision to support for livelihoods are often rationalised in terms of reducing dependency. As explained by one aid worker:

Relief aid plays a negative role beyond the purpose it was meant to satisfy. It creates mutual dependency, in which harm is done to the recipient if you feed a person for seven years. In Africa by the age of 14 you are supposed to be a surplus producer. One consequence [of relief] is a lack of organisation and structure in the SRRA.

However, ‘dependency’ may be as much a military strategy as a problem of welfare reliance. For example, long-term camps for the displaced such as New Cush, Natinga and Narus in Eastern Equatoria have received food rations since their Dinka residents were displaced from Bor in 1994. Aid agencies rightly argue that it is necessary to maintain the food pipeline as the people only have small farms and if food is stopped they will suffer. These camps on the border with Kenya all have military barracks, however, and many of the women and children in the camps are from soldiers’ families. The following description by one researcher on Sudan suggests that the issue in these camps may not be welfare dependency but the manipulation of food aid for military purposes, something in which not only the SPLM/A but also donors are implicated:

The US has been the principal supplier of food to the NGOs which in turn supply the areas that are the principal garrisons for the SPLA. The SPLA has always kept a very large supply of Dinka displaced civilians near these garrisons, providing itself with a significant food source. There have been constant problems with

monitoring the aid as there is tremendous diversion to the SPLA. From 1991 to 1993, this could be construed as part of the non-military contribution of the US to the SPLA, in the absence of a better-defined policy. Much of this aid has come from outside the OLS framework. (Prendergast, 1997:67)

4.4.3 Implementing a principled approach

As signatories to the Ground Rules, the UN and NGOs are expected to incorporate humanitarian principles into their operations. Specifically, according to Article B2:

All UN/NGO workers are expected to act in accordance with the humanitarian principles previously defined: provision of aid according to need, neutrality, impartiality, accountability and transparency. This includes non-involvement in political/military activity.

In addition, capacity-building and the protection of civilians and aid workers are added as basic principles in the Ground Rules. We examine below how agencies have implemented a principled approach in their assistance programmes, particularly in relation to food.

Neutrality: The principle of neutrality should ensure that humanitarian aid does not influence the direction of the war or confer benefits to one side. Most agencies working in southern Sudan choose to work under UNICEF/OLS because of the neutrality it confers. Some agencies deliberately broaden that neutrality by working in areas controlled by different factions.

Operationalising neutrality, however, is difficult. Humanitarian aid may be non-neutral in its impact, as seen in regard to food aid. Furthermore, as the neutrality of OLS is based on a negotiated deal with the government, working within the restrictions of that deal prevents agencies from responding wherever there is need. Agencies working under OLS southern sector, for example, have no access to the Nuba Mountains.³³ During the 1998 famine in Bahr el Ghazal, proposals to circumvent the government flight ban by channelling food aid through non-OLS agencies were considered by the UN. Contingency plans were drawn up by WFP for this, and USAID increased its support to non-OLS agencies. However, this option was rejected by the UN on the grounds that it would threaten the overall framework of OLS. Capacity-building and a shift from ‘neutrality’ to ‘solidarity’ was proposed as a means of overcoming such restrictions imposed by neutrality (Murphy, 1994). Some of the larger NGOs seek to overcome them by working both within and outside OLS. Three sections in MSF operate in Sudan, for example, two inside OLS and one outside.

Politically informed analysis: Neutrality and impartiality mean that aid agencies should not be politically driven. This requires agencies to be politically informed, and to be attentive to the objectives of the military and the political impact of aid provision.

Relief agencies are often criticised for their lack of socio-political analysis. In OLS, however, there has been investment in the operation's capacity to be politically informed. Part of the function of the HPP is to provide political analysis. Ground Rules workshops for aid workers include sessions on complex emergencies, and there have been 'Do No Harm' workshops for OLS agencies. In addition, there is a large amount written on OLS by academics and practitioners. Consequently, relief agency personnel in Sudan are better informed at both headquarters and field level than they were a few years ago and probably more so than most relief operations.

There is a recognition among agencies of the link between conflict and famine – a fact pointed out to donors in the report of the joint Task Force on the Bahr el Ghazal famine (OLS/SPLM/SRRA, 1998). Cognisant of the need to monitor the military environment, WFP in late 1998 was monitoring security on the northern border of Bahr el Ghazal, the roads from Western Equatoria and the border of the Democratic Republic of Congo to determine future food needs in Bahr el Ghazal.³⁴ Security analysis feeds into contingency planning, in terms of threats to populations and relief agencies, and the impact of insecurity on trade and grazing patterns. Despite this, prediction remains difficult, as does translating analysis into response. Military information necessarily remains confidential. Information on fighting is partial, often unreliable and late. In 1997, for example, while OLS was pre-positioning stocks for the humanitarian consequences of the fall of Juba, Wau was attacked, precipitating displacement and mass starvation in Bahr el Ghazal. Even if it was possible to be more predictive, assessments and responses are limited by access constraints imposed by the warring parties, and by funding constraints. Donors are not prepared to tie money up in something that has not yet happened.

Impartiality and needs assessments: Providing assistance based on humanitarian need alone establishes the impartiality of OLS (Karim, et al. 1996: 112). The allocation of assistance according to objective needs assessments is difficult to operationalise, however. Among aid agencies, between agencies and the authorities, and between agencies and donors there is a lack of consensus on what 'needs' are in southern Sudan. The picture is further complicated by the lack of shared analysis on definitions of 'need' between aid agencies and beneficiary populations.

For OLS, the most important assessment processes are the annual needs assessments. These were initiated in

1992, when access agreements between the UN and the warring parties established the principle that access to war-affected populations should be based on assessed need. Annual needs assessments, however, are politically charged processes, and have been the subject of debate between the UN Humanitarian Envoy and the warring parties at the highest political levels. They inform the CAP and are critical for both the UN and the warring parties in terms of attracting resources. The UN has more control over the assessment process in the south than in the north. Better access enables it to undertake more thorough assessments. As access has improved in the south, assessment methodologies have become more sophisticated, and have changed to reflect changing definitions of the crisis.

The quality of needs assessments is questioned. The 1996 OLS Review concluded that the basis for calculating need was opaque (Karim, et al. 1996:131). Constraints imposed by the operating environment mean that needs are largely defined in terms of what it is 'operationally feasible' to respond to (Karim, et al. 1996:118). Targeting has more to do with access and logistics than with objective need. In 1995, Western Equatoria received more than its assessed need, whereas Bahr el Ghazal received only a fraction (Karim, et al. 1996:136). Despite the increasing sophistication of assessment methodologies, and the fact that aid agencies probably know more about southern Sudanese society than at any time in the past, agencies in OLS continue to highlight lack of adequate information and knowledge (OLS, 1998b). As assessment methods reflect the conceptual understanding of a crisis, the problem lies not so much in a deficit of information, as in the way the crisis is understood.

Since 1994, the Food Economy Approach has provided the common framework for the assessment of food needs in the southern sector. This was intended to improve the geographic targeting of food. However, this model neglects the social and political dimensions of food insecurity. As noted during the Bahr el Ghazal famine, social and political status determines vulnerability, and it was the socially excluded (widows, orphans, elderly) and displaced without representation who were most vulnerable. Protection needs have never been an explicit part of the assessment processes, despite the emphasis in the Ground Rules on protection. The political constraints imposed by undertaking assessments with counterparts work against the feasibility of this happening. Although security analysis does provide one avenue for monitoring protection issues, omitting protection from needs assessments means that there is a failure to assess adequately the causes of food insecurity, malnutrition and mortality. If violence is the main cause of food insecurity, the most vulnerable populations are likely to be those under attack. Such analysis is important for assessing the impact of aid, particularly at the local level where NGOs operate.

A further problem with defining responses based on need arises over cultural definitions of vulnerability. Despite OLS efforts at inducting aid workers into Sudan, and the large amount of literature available, humanitarian aid workers in southern Sudan know very little about the way society operates where they work (Karim, et al. 1996:170). A lack of ethnographic knowledge among aid workers is not unusual. However, anthropological research on vulnerability among the Dinka in southern Sudan reveals different definitions of vulnerability between those claiming the right to give and the recipients (Harragin and Chol, 1998:3). Consequently, the politics of vulnerability and distribution of assistance is little understood by aid workers.

Among the Dinka, the most vulnerable are those without an adequate kinship structure around them to protect them. People help each other according to how they are related, not on a scale of vulnerability (Harragin and Chol, 1998:22). Aid will be redistributed locally whether international agencies like it or not and according to people's own definitions of need. Positively, this can strengthen the socially important practice of giving to the weaker members of the lineage group. Negatively, it can reinforce social exclusion, something identified by the joint SPLM/A -OLS Task Force on the 1998 Bahr el Ghazal famine.

Finally, needs assessments are only meaningful if donor resources are there to back them up. An impending humanitarian crisis in Bahr el Ghazal was identified at the October 1997 OLS planning retreat and in the 1998 CAP. Donors, however, were slow to respond to this warning.

Accountability and monitoring: To ensure the neutrality of assistance there is an obligation on aid agencies to monitor the impact of their assistance. The Ground Rules establish the 'duty' and 'right' of agencies to monitor the end use of the aid provided, to ensure that it is fairly distributed and that beneficiaries are involved in decision-making:

... those rendering humanitarian assistance have a duty to ensure its appropriate end use. This includes a right to monitor and participate in the distribution of humanitarian aid on the ground in partnership with the SRRA. (A4:i)

In OLS southern sector, assessment methodologies have not been matched by procedures for monitoring and assessing the impact of aid. Some aid agencies seek to minimise any negative impact by avoiding handling certain high-risk commodities, such as food aid. CARE in Western Equatoria has used the 'Do No Harm' analysis to decide whether to repair feeder or trunk roads as part of a grain marketing project. On the basis that trunk roads could be used for military purposes it chose to limit its assistance to feeder roads.

The decision had costs, however, as the project does only 'the bare minimum to keep the marketing going'. Repairing trunk roads could have enhanced food security, but the improvements might also have benefited the SPLM/A. There is no relevant calculus for assessing the benefits and costs of such decisions.

Post-distribution monitoring: As already noted, while it is acknowledged that aid, especially food aid, is 'a factor in the war', there is no empirical information on how important aid is to the military, and no studies have been commissioned to investigate this.

Post-distribution monitoring would normally provide some means of assessing the appropriate end use of assistance. However, the 1996 OLS Review and the 1998 joint SPLM/A-OLS Task Force on the Bahr el Ghazal famine two years later concluded that the systems of monitoring and evaluation were inadequate. Although post-distribution monitoring plans have existed in WFP since 1995, according to one report they were not put into practice until June 1998 (Jaspars, 1999). In WFP training in post-distribution monitoring is inadequate, records of diversions are not rigorously maintained, and post-distribution monitoring forms have no space for recording inappropriate uses of aid.

WFP officials argue that there is ultimately no means of assessing how food is distributed beyond the family, and that the responsibilities of aid agencies stop at the household level.³⁵ To understand how households have utilised food requires a quality of information and a level of access which agencies rarely possess. Between 1994 and 1997, 80 percent of WFP's interventions were in Bahr el Ghazal. Because of instability and the targeting of relief, WFP teams were forced to operate as mobile teams, spending only a few days at a time in one place.

WFP's policy of ensuring some independence has involved recruiting expatriate monitors, in the belief that the objectivity of local monitors may be compromised under pressure. However, a study of WFP targeting and distribution systems concluded that short-term expatriate food monitors were unlikely to identify diversions or exclusions of certain groups because of their reliance on the SRRA (ibid). During the 1998 famine, there were a number of instances where WFP monitors were denied access beyond the drop zones, and clear evidence that WFP targeting and distribution strategies had failed (OLS/SPLM/SRRA, 1998). Since the Bahr el Ghazal famine, WFP has agreed to review this policy, and may recruit Sudanese monitors in future because 'too much is lost in translation'.

This study is unable to come to any conclusion as to whether the Ground Rules have had any impact on mitigating the manipulation and diversion of aid, a consequence of the lack of baseline data, monitoring and reporting on aid diversion.

Transparency: It has been argued that one strategy for dealing with problems of diversion and manipulation of aid, is to inform beneficiaries of their entitlements. The 1995 SEOC Review, for example, argued:

It is not enough to say they [displaced] must be included in any distribution; there must be a system for informing them of their rights and for registration and distribution. Only by knowing their rights will they have the necessary information with which to lobby their leaders. (Duffield et al. 1995:141–142)

To ensure the transparency of aid, the Ground Rules stipulate that community representatives should be involved in decision-making, targeting and monitoring (A4.iii). Ground Rules workshops go some way to improving transparency, and working through village relief committees was intended to make the aid programme more transparent. Some aid workers have argued that agencies failed to continue to do this during the 1998 famine.

Standards and principles: Performance and standards in the delivery of humanitarian assistance have become an important issue in the accountability of humanitarian operations since the Rwanda genocide (Eriksson, 1996). As the issue came to the fore after the Ground Rules were revised, it is not specifically addressed. It is unclear how much monitoring of standards occurs, or who monitors consistency across programmes. This is important, because OLS includes many agencies with varied mandates – international agencies, Sudanese NGOs, relief wings, and secular and Christian agencies.³⁶

UNICEF/OLS is supposed to ensure minimum standards across the whole programme and all sectors have standards and protocols which try to maintain global standards. During the 1998 famine the monitoring of NGOs and these protocols was neglected (OLS/SPLM/SRRA, 1998). Feeding centres were said to be of variable quality. The normal admission standards for children to therapeutic feeding centres appear not to have been adhered to. During the famine even some children who were less than 61 per cent weight for height did not qualify for a feeding programme; the accepted admission rate is normally less than 75 per cent weight for height.

Independence and capacity-building: The nature of the OLS agreements is such that OLS must be able to prove its independence. Sustaining independence is difficult while the government persists in being a co-manager of OLS, and while the SPLM/A tries to restrict agency space through a new NGO law. In southern Sudan, the independence of OLS is further compromised by the principle of capacity-building enshrined in the Ground Rules. By signing the Ground Rules, OLS agencies make a commitment to

strengthening the capacity of local organisations, including the relief wings of the rebel movements. The intention was to avoid creating parallel structures. Aid agencies, in fact, form different local partnerships with the SRRA, local NGOs or community relief committees in which the degree of independence varies.

WFP's distribution system after 1994 utilised relief committees to circumvent local power structures, and to improve the targeting of relief to the household level through women. During the 1998 famine the relief committees were found to be ineffective, with no role in decision-making or distribution. Distributions through women made them vulnerable to violence. A study on WFP's targeting and distribution systems in late 1998 concluded that WFP's independence compromised by its reliance on the SRRA (Jaspars, 1999). The SRRA effectively controls access, by identifying the areas which are most vulnerable, acting as key informants in assessments and monitoring, determining allocations with the chiefs, and organising distributions.

Some senior managers within WFP are supportive of the integration of the relief wings in their activities, arguing that it has improved WFP's relationship with the people.³⁷ During the Bahr el Ghazal famine, however, SRRA officials were implicated in diverting aid and taxing the population. In the Ground Rules, local authorities via the SRRA are obliged to ensure that aid is fairly distributed, and any diversion is regarded as a breach of humanitarian principles. In late December 1998, WFP began to suspend distributions in areas of Bahr el Ghazal where the SRRA was unco-operative, or where WFP had evidence of SRRA involvement in diversions (*ibid*).

While many aid agencies express concern about their relationship with the SRRA, they also admit their reliance on it and the dangers of ignoring it. Some argue that the only means of overcoming this is through a long-term presence in an area, as the quality of access improves over time with the quality of the relationship. SCF UK, for example, argues that its long-term involvement with communities in Bahr el Ghazal and its shift from relief to community development have allowed it to develop a relationship that is not feasible through short-term relief interventions. Other agencies such as MSF have chosen to maintain their independence by insisting on external control.

4.4.4 WFP and the Ground Rules

The Ground Rules were a UNICEF initiative. Given the importance of food aid, one weakness of the Ground Rules initiative has been the failure of WFP southern sector to integrate them into its work. It is not involved in dissemination, nor does it actively monitor Ground Rules violations. For WFP officials the primary function of the Ground Rules is as a framework for dialogue and for security. As one official remarked: 'The part of the

Ground Rules we are dealing with mostly is the safety of our staff.’

There is a broad division of labour between WFP and the other food agencies. WFP generally takes responsibility for food aid in areas accessible only by air and furthest from Lokichokio; NGOs concentrate on Equatoria (Karim, et al. 1996:143). However, the lack of contractual agreements between WFP and the other agencies means there is no overall control of food aid provision in southern Sudan and food can be distributed according to different sets of principles (ibid.:152).

Denial of access beyond distribution sites, lack of co-operation or abuse of distribution, and marginalisation of some groups are all violations of the Ground Rules. WFP, however, does not monitor these on a consistent basis. There is a general understanding that monitors should report serious protection issues, such as looting or violence against beneficiaries. However, concern about being declared *persona non grata* means that monitors often fail to report. Importantly, systems have not been established to debrief monitors systematically on what they have seen and how they responded. Any reports of serious incidents are sent ‘upwards’ to WFP or HPP in Nairobi, indicating that for field staff protection is perceived as a political, rather than a field-level, activity.

4.4.5 The politicisation of aid

Since bilateral aid was cut in the early 1990s, OLS has been the main avenue for international political engagement in Sudan. Sophisticated analysis, needs assessment and monitoring procedures count for little when needs are subject to political interests. This is apparent in the channels through which donors choose to disburse assistance. Donors have a choice of three channels for disbursing assistance to southern Sudan: through the UN, through NGOs within OLS, and through NGOs outside OLS. Each of these then has its own distribution channels through local partners.

The channel chosen by the Dutch government, consistently one of the largest contributors of aid to Sudan, is the UN. This reflects the approach of the Dutch Development Ministry, whose Minister Jan Pronk, was a strong supporter of a negotiated settlement under the auspices of IGAD. The US, the largest single donor, has a more diverse strategy, splitting its contributions between the UN and NGOs. On average 75 percent of USAID funds are channelled through NGOs and 25 percent through UNICEF/WFP. ECHO and the British government channel most of their aid through NGOs (UNDHA, 1997).

As already noted, NGOs provide donors with a more flexible policy instrument than the UN. From 1992 humanitarian expenditure increased in southern rebel-held areas of Sudan compared with the north. The change in funding supported an expanded international

NGO presence in rebel areas.³⁸ Between 1993 and 1995, donor contributions to NGOs exceeded those to the UN (Karim, et al. 1996), and in 1996 and 1997 half of the donor humanitarian contributions to Sudan were put through NGOs (UNDHA, 1997). One impact of this, as noted by the 1996 Review of OLS, is the unevenness of agency coverage in southern Sudan (Karim, et al. 1996:79). NGOs have tended to concentrate in areas of greater stability. This does not just reflect the security consciousness of NGOs, and a preponderance of development agencies; it also reflects donor strategic interests.

Donor support to non-OLS NGOs gives the flexibility to provide assistance to areas of need that OLS cannot reach because of government restrictions. The Norwegian government, for example, has pursued low-level engagement with political elites by channelling most of its contributions through Norwegian People’s Aid in SPLM/A areas and Norwegian Church Aid in government areas (Karin et al., 1996:16). During the 1998 famine, USAID got round the government flight ban in Bahr el Ghazal by funding an airlift through NPA.

It has been asserted that the funding of agencies outside OLS has been used in pursuit of explicit foreign policy objectives. It has already been suggested that food aid channelled outside OLS formed part of the US State Department’s non-military contribution to the SPLM/A. This support for the SPLM/A against the government onslaught in 1992 led to increased funding for agencies outside OLS (Brusset, 1998:14). It has been argued that the US has consciously deployed food aid through agencies in Equatoria in order to stabilise certain areas and protect the Ugandan border (ibid:22). Aid agency decisions about where to work are therefore determined as much by donor political interests as by need.

4.4.6 Impact of the Ground Rules: implications of the 1998 Bahr el Ghazal famine

Ten years after the famine that precipitated OLS, Bahr el Ghazal again became the epicentre of famine. In 1998, the deaths were fewer than in 1988, although malnutrition and mortality rates were comparable. The international response to the famine was vast, involving the largest emergency airlift since the Berlin blockade of 1948. The Bahr el Ghazal famine is the subject of an in-depth report by Human Rights Watch/Africa (Human Rights Watch/Africa, 1999b) and several other studies and evaluations, and is beyond the scope of this study. Several issues are relevant, however.

First, there is the ‘integral role’ of human rights abuses in causing the famine. In an echo of its 1994 report, Human Rights Watch/Africa notes: ‘The civil war is waged by means that expressly violate human rights and humanitarian law – the laws of war. (Human Rights Watch/Africa, 1999b:1) As the SPLM/A is identified, along with the government, the *murahaliin*

and Kerubino, as a 'famine agent', this suggests that the Ground Rules have had limited impact in conditioning the behaviour of the SPLM/A.

Secondly, many of the problems confronted during 1998 were direct violations of the Ground Rules. The SPLM/A, the SRRA, local chiefs, OLS, aid agencies and donors all came under criticism from the joint SPLM/SRRA – OLS Task Force (OLS/SPLM/SRRA, 1998); flight suspensions by the government, military indiscipline, taxation of relief food by the SPLM/A, redistribution of food aid by the powerful, marginalisation of the most vulnerable, poor demographic assessment by OLS, lack of co-ordination, incomplete food baskets and below-standard feeding centres. The annual appeal for 1998 predicted widespread food shortages as a result of fighting, displacement and drought, but chronic underfunding by donors meant that WFP was unable, when needed to, target limited food to the worst affected. All of these could be construed as failings (if not violations) by the international community and the SPLM/A to uphold the humanitarian principles contained in the Ground Rules. Taxation, the theft of food aid and the exclusion of certain groups are violations of the Ground Rules, in that distributions are not carried out on the basis of need. Indeed, one agency subsequently accused the UN of abject failure in this respect.

Enormous suffering has continued to recur because of the fundamental weakness in the application of humanitarian principles at the heart of the UN's co-ordination mechanism...[the]...fundamental operating principles were not being respected by local parties or consistently ensured by aid agencies. (MSF, 1999)

The agency's main criticism was the failure of OLS to establish its independence from the SRRA or to place adequate pressure on it to comply with the Ground Rules. It points out the contradiction inherent in the Ground Rules between neutrality and capacity-building and partnerships. Another study on WFP targeting and distribution methods, in late 1998, also argues for mechanisms to enhance the independence and impartiality of WFP in order to minimise diversion and taxation of food. The response of OLS was to criticise MSF for failing to live up to the spirit of the Ground Rules, by its employment practices, inadequate standards of service, etc. Whatever the merits of the argument, it does at least indicate a lack of consensus on the Ground Rules among aid agencies. Equally interesting is the fact that the report of the Joint Task Force makes no reference to the Ground Rules. One overriding lesson from the 1998 famine is that more refined targeting techniques or more rigorous monitoring will not prevent the next famine, nor address the technical failures of the response. Aid agencies are being placed in a position where they have

to resolve what are in effect political problems through technical aid solutions. At the same time, the international community stands accused of prioritising its engagement between complex emergencies. Empirical need does not determine international assistance; rather it is choice of engagement.

A third, and related, issue of interest was the decision to undertake a joint SPLM/SRRA/OLS assessment. Many people considered this a major breakthrough in OLS-SPLM/A relations. The significance of the Task Force is that it was an attempt to find a 'political solution' by engaging with the SPLM/A. OLS needed the SPLM/A to ensure that distribution could occur in safe areas and that the civil administration did not rake off a large amount. The publicity on the famine brought the SPLM/A under pressure. By joining the Task Force the SPLM admitted that something was wrong and that action was needed. Following the Task Force, it is reported that changes were made in military and SRRA personnel in Bahr el Ghazal, and that the situation improved as a result. The position of engagement adopted by OLS was supported by some donors and criticised by others. The only common ground donors found was in deflecting criticism away from themselves.

The problem inherent in this approach of engagement, however, is apparent on the opening page of the Task Force's report. The report quite rightly draws out the following lesson:

In terms of preventing the death and reducing the suffering of the Sudanese people, on-going humanitarian aid is a poor substitute for the genuine, high level political engagement from donor governments and the UN that is required to bring the warring parties to a lasting and peaceful resolution of the conflict. If donor governments are serious about reducing the death and suffering of the Sudanese people, they must become seriously engaged in ending the conflict.

(OLS/SPLM/SRRA, 1998:1)

As a joint statement from the UN and a warring party, it allows the warring party to deflect responsibility for the crisis. Consequently donors are also able to avoid their responsibilities by arguing that they 'cannot stop the war if the parties wish to continue fighting'.³⁹

4.5 Protection and the agreement on Ground Rules

The incorporation of human rights law and protection responsibilities within the revised Ground Rules represented a fundamental change of purpose between the first and second Ground Rules, namely a concern with the protection of civilians rather than solely with the security of aid workers. Human rights and the laws of war are drawn from two different traditions. While 'protection' and 'rights' have always been central to

humanitarianism, humanitarian action is commonly reduced to the provision of material assistance (Slim, 1997; Darcy, 1997). In a war where violations of human rights and humanitarian law form part of military strategies, the integration of human rights with OLS's humanitarian mandate recognises Sudan's crisis to be one of protection as much as of production or material supply. Rather than disregarding human rights as the price to be paid for access, the Ground Rules makes protection an essential reason for securing access.

The Ground Rules confer obligations for protection upon the signatories to the agreements. The stated purpose of the Agreement on Ground Rules is to 'improve the delivery of humanitarian assistance to and protection of civilians in need'. In the preamble the signatories 'express their support for' the CRC and the Geneva Conventions and Additional Protocols. In addition, Article A7 of the 'Statement of Humanitarian Principles' provides that:

The fundamental right of all persons to live in safety and dignity must be affirmed and supported through appropriate measures of protection as well as relief. All those involved in OLS must respect and uphold international humanitarian law and fundamental human rights.⁴⁰

This again commits the relevant authorities to respect international humanitarian law and human rights, and implies that all OLS humanitarian agencies – UN agencies, NGOs, and the relief wings of the factions – have a duty to 'uphold' these principles. On paper at least, all signatories of the Ground Rules take on a clear protection mandate.

This mandate can be interpreted in several ways. First, the duty to 'uphold' implies an obligation to monitor respect for these principles on the part of the responsible authorities or factions, or at least to report violations to an appropriate body charged with supporting compliance with the obligations undertaken. Secondly, it implies that relief agencies should review their activities in terms of their impact on the protection of the populations they seek to assist. The Ground Rules therefore encourages aid agencies to view all their work within a protection framework.

4.6 The protection work of the UNICEF/OLS Humanitarian Principles Programme (HPP)

The HPP, in collaboration with other UNICEF programmes, NGOs and counterparts in the armed movements, has primary responsibility for protection work within OLS southern sector. This has three main elements: dissemination, monitoring, and capacity-building. Dissemination and monitoring are described here. Capacity-building is dealt with later in this section.

4.6.1 Dissemination

The first Ground Rules were not widely disseminated. In contrast, the revised Ground Rules hold the signatories responsible for their dissemination so that the principles and rules are widely understood and adhered to. The HPP was established in UNICEF/OLS with responsibility to oversee their dissemination jointly with the relief wings. Over time its work has expanded, and is now more concerned with putting 'principles into practice' through projects, such as the landmines campaign or diplomatic forums such as the TCHA (OLS/HPP, 1998). Dissemination of the Ground Rules, humanitarian principles, human rights law and the CRC, however, remains central to the work of the HPP.

The Ground Rules and humanitarian principles are disseminated to Sudanese and humanitarian aid workers in various forms, through workshops facilitated jointly with counterparts in the SRRA, RASS or FRRA, and in booklets containing the Ground Rules and leaflets on the CRC in the Dinka and Nuer languages.

- In southern Sudan, public workshops are the main vehicle. Lasting one to two days, they involve a cross section of southern Sudanese society, including civil authorities, chiefs, women, church leaders, youth, SINGOs and the military. The workshops take place mainly at county level, according to HPP schedules or at the invitation of local authorities.
- Disseminations are undertaken in response to Ground Rules violations involving the harassment of, or a security threat to, a relief agency. They may take place as part of dispute resolution processes, or on the recommendation of OLS security officers to mitigate further problems.
- Workshops are held with local authorities and populations when NGOs are going into newly 'liberated' areas for the first time, or returning to them after an evacuation.
- Since 1998, HPP has provided human rights training and Ground Rules dissemination to SPLA military officers, especially with regard to the obligations they have taken on under the Ground Rules.
- Workshops to disseminate the CRC are undertaken by other agencies, such as the NSCC and Save the Children – Sweden (Radda Barnen).
- Workshops are run every few months in Lokichokio for OLS member agencies, providing a practical operational overview of the Ground Rules. Compulsory Security workshops held in Lokichokio deal with relations with counterparts, which under the Ground Rules are responsible for

the security of OLS agency personnel and assets. Cultural Orientation workshops for relief workers also cover the Ground Rules. And in Nairobi one-day workshops are held for agency heads and other policy-makers, providing an overview of the HPP and Ground Rules agreement.

4.6.2 Distribution and content of Ground Rules workshops

The first public Ground Rules workshop was held in southern Sudan in October 1995 in Narus, Eastern Equatoria. Up to January 1998, some 51 workshops had been held in Sudan with an estimated 14,000 people attending (UNDHA, 1998:69).⁴¹ Since 1995 there has been only one workshop jointly facilitated by SRRA, RASS, and FRRA and very few workshops where Nuer and Dinka have jointly participated.

Workshops have been held in all rebel-held regions, but the distribution between those regions has varied. Within SPLM/A-held areas dissemination has been greatest in Eastern and Western Equatoria. An early emphasis on Equatoria reflected the concentration of NGOs there, and the fact that this was where most of the Ground Rules violations affecting agencies were taking place; it was security concerns in this region that sparked a revision of the Ground Rules. Between 1995 and 1997, there was only limited dissemination in Bahr el Ghazal because of chronic insecurity and limited agency presence. There have been no workshops with RASS in SSIM/A areas since December 1997, or with the Fashoda Relief and Rehabilitation Association (FRRA) since April 1997. This, in part reflects ambiguity over the status of RASS following SSIM/A's signing of the Peace Agreement with Khartoum in April 1997. More pragmatically it reflects the increased insecurity and factionalisation in SSIM/A areas and the fact that dissemination is only undertaken in those locations to which OLS has access.

Public dissemination workshops on the Ground Rules in Sudan follow a similar format and include sessions on traditional values, humanitarian principles (Geneva Conventions, CRC, and CEDAW since 1997/8), and mutual obligations and implementation of the Ground Rules.

Traditional values: A feature of the Ground Rules dissemination is the linking of humanitarian principles to traditional rules of war. In public workshops participants are asked to describe traditional values and practices relating to the care and protection of children and civilians in war, and the sharing of resources during times of need. These are then related to universal principles to illustrate the universality of human rights and the programme's cultural relevance, particularly in relation to the protection of children. It was expected that this would enhance a sense of ownership (Levine, 1997:20).⁴²

A feature of contemporary warfare is the direct attacks on the culture and customary institutions of a society, leading to the erosion of authority and codes of discipline, and a breakdown in inter-generational relations. It is not just lives, but ways of life, that are threatened. A distillation of reports on the workshops since 1995 indicates a certain consensus among participants on the impact of war on socio-cultural values (see also Levine, 1997 for a longer list):

- fighting has always existed, but warfare has changed. Past wars were 'social wars' fought over control of natural resources, grazing and fishing rights, and domestic issues such as marriage breakdown;
- women, children and the elderly were protected, because fighting took place at a distance from civilian populations in the *toiches*;
- property was respected;
- there was sharing among kin in hard times.

The causes identified by participants for the breakdown or change in traditional values include:

- the integration of the army with the civilian population means that women, children and the elderly cannot be protected;
- the introduction of guns in the hands of the young people has brought inter-generational disputes, eroding the powers of chiefs;
- as the power of the chiefs has declined, the authority of 'the commander' who fights a war in which traditional values play little part has grown;
- the sheer weight of the on-going disaster strains the traditional reciprocal values of sharing among kin.

The feasibility of reinvigorating values is also discussed, and solutions commonly identified by workshop participants include: peace, a return to the rule of the chiefs, separation of the military and civilian population, and the demobilisation of young undisciplined soldiers. Here it is interesting to note that when the Geneva Conventions were formulated in the nineteenth century they were an attempt to rejuvenate older military traditions (Ignatieff, 1998:114). The approach of investigating traditional laws of war is still used by the ICRC, for example in Somalia and Afghanistan (ICRC/Somali Red Crescent Society, 1998).

Humanitarian principles: Public dissemination of the Ground Rules and humanitarian principles includes an explanation of the commitments made by the movements to uphold the Geneva Conventions and the CRC. Dissemination of the Geneva Conventions covers the distinction between civilians and combatants and the protection of civilians and wounded soldiers, and of non-military property, including infrastructure, cattle and crops, and the protection and free passage of humanitarian relief workers and supplies.

Dissemination of the CRC covers definitions of a child as a person under 18, and the range of children's rights.

Obligations: The obligations of the relief wings and OLS agencies (Part B of the Ground Rules) and procedures for their implementation are normally discussed in smaller groups with local officials and relief agencies.

4.6.3 Dissemination to the military

The initial policy of the HPP was to combine public dissemination of the Ground Rules and humanitarian principles with dissemination to rebel soldiers. The rationale behind this was to publicise the commitments entered into by the leadership, and to make them more accountable to the communities from which they drew support. In 1997, this strategy changed and a decision was made to engage directly with the military by providing human rights training to military officers. It is argued that if one wants to protect and empower civilians oppressed by war, then one needs to engage with the people holding the guns (Murphy, 1997a). The dissemination by OLS to the SPLM/A emulates the role of the ICRC. Under the Geneva Conventions, states are obliged to provide instruction in the laws of war to their armies, in which the ICRC plays a supporting role (Roberts, 1997). In Sudan the ICRC's presence was limited, which led the HPP to undertake the work.

The aim is to improve the human rights environment through education, while avoiding the potential repercussions that public human rights advocacy might have on the humanitarian assistance programme. It took 18 months for the HPP to negotiate an agreement with the SPLM/A for a programme of human rights seminars for each of the SPLM/A military sectors. This involved convincing the military of the advantages to them of knowing more about humanitarian agencies. In contrast to the Ground Rules workshops, the main focus is human rights. The seminars cover the Geneva Conventions and the Additional Protocols, the Universal Declaration of Human Rights, the CRC and CEDAW.

The seminars are organised with the Political and Moral Orientation Branch of the SPLM/A. The first was held in April 1998 in Loka near Yei, and the second in Thiet near Tonj in September. The latter took up the first two days of a two-week seminar for SPLM/A Political Commissars.⁴³ According to the SPLM/A, these political seminars are part of the on-going 'political and military reorganisation of the SPLA', which has been under way since the 1991 Nasir coup attempt. Political Commissars are informed about the draft constitution of the SPLM/A and the resolutions of the 1994 Chukudum Conference and the 1995 Conference on Civil Society. As the Ground Rules were signed by the Commander-in-Chief, they are considered by the military to be part of their 'Standing Orders' and part of the 'reform package' that soldiers need to be aware of.⁴⁴ In these seminars there is an

explicit attempt by the HPP to shape the reform process in the SPLM/A, and to support positive developments for protection, although SPLM/A commanders deny that the Ground Rules have had any impact on the army's restructuring.

Interviews conducted with SPLM/A commanders indicate that they see value in human rights dissemination for improving discipline and professionalism, both of which will help them achieve their 'combat mission – the liberation of Sudan by the use of arms'. In the words of one SPLM/A commander interviewed, 'an undisciplined soldier is a rebel dog'. It is probably significant that the first two seminars with the military took place in Loka and Thiet after the towns of Yei and Tonj had been captured by the SPLM/A. As the SPLM/A gains control of more territory and is taken more seriously by external governments, there is an incentive to be, and to be seen to be, a professional army.

The human rights seminar in Thiet occurred at the tail-end of the famine in Bahr el Ghazal. It followed the joint SPLM/A/SRRA/OLS investigation into the famine which publicly accepted that food diversion was occurring (OLS/SPLM/SRRA, 1998). Seminar participants included Political Commissars from Bahr el Ghazal. For OLS, there was therefore an implicit recognition of the links between military action and famine. As a member of the HPP commented: 'The famine is bad and discipline is bad'. The seminar in Thiet provided an opportunity to address the problem of military discipline, and for this reason was part-supported by WFP with a contribution of food.⁴⁵

4.6.4 Human rights monitoring

The 1996 OLS Review credits the HPP as being 'one of the few programmes that is actually documenting how the war is being fought and attempting to do something about it'. (Karim, et al. 1996:55). This referred to the role of the HPP in the monitoring, documentation and investigation of Ground Rules violations.

The HPP classifies these violations into four types:

- i) action by one movement against another involving violations of the Geneva Conventions and/or the CRC;
- ii) action by one of the movements against its own people involving violations of the CRC or the Ground Rules;
- iii) action by a counterpart violating the Ground Rules;
- iv) action by an OLS person violating the Ground Rules.

Violations falling into the first two categories are clear protection issues. Although the HPP collates reports on violations and produces a summary overview of the protection situation, the potential for maximising

protection by means of monitoring violations is not fully exploited.

Recorded Ground Rules Violations

| Violation Type | Pre-July 1995 | Post-July 1995 | Total |
|----------------|---------------|----------------|-------|
| i | 1 | 8 | 9 |
| ii | 2 | 10 | 12 |
| iii | 25 | 58 | 83 |
| iv | 1 | 4 | 5 |
| Total | 29 | 80 | 109 |

Source: (UNICEF/OLS, 1998b)

Monitoring of violations began in March 1993, after the first Ground Rules were signed. As of June 1998, the HPP had compiled 109 reports of Ground Rules violations (see table). This does not provide a full picture of all violations, as an intention of the Ground Rules was that any disputes should be resolved at a local level, before being raised with Nairobi. However, two points are of interest, most violations reported are against agencies rather than civilians, and very few reports are made by movements against agencies.

4.7 Monitoring adherence by the movements

Although credited with documenting the war, the HPP does not actively monitor the factions' obligations to respect and uphold international humanitarian law and human rights. HPP staff are unequivocal that they are not, in the words of one staff member, 'humanitarian cops'. The reasons for this relate to the nature of the Ground Rules agreement and events that occurred shortly after they were signed.

The Ground Rules represents a critical shift in the approach of OLS to engagement with the southern rebel movements. Rather than being a set of rules imposed by external agencies, the revised Ground Rules are a 'negotiated agreement of humanitarian principles', for which the parties to the agreement are equally responsible (OLS/HPP, 1998). As such the Ground Rules contain no policing mechanism, and instead rely on mutual interest, persuasion, pressure and education to ensure adherence. Shortly after the Ground Rules were signed, OLS rejected both public advocacy and conditionality as strategies for ensuring compliance.

In July 1995, SPLM/A forces were implicated in an attack on civilians in Ganyliel, an area controlled by SSIM/A. Thought to be in reprisal for an SSIM/A attack on civilians in Akot, this was followed a year later by SSIM/A attacks on civilians in Tonj and Yirol. The attacks were brutal, involving the massacre of women

and children. They were investigated by the HPP as breaches of the Ground Rules and detailed reports were compiled by the HPP and with counterparts in the SRRA and RASS. The reports and the handling of them proved controversial. Full versions were given to the parties considered responsible, with abbreviated versions given to the aggrieved sides. Although some individuals within the movements argued that the reports should have been made public, and that sanctions should have been applied by OLS, others in SPLM/A questioned UNICEF's mandate for human rights advocacy. The reports were not made public, although the UN Special Rapporteur on Human Rights and Human Rights Watch later made use of the information. To the SPLM/A's embarrassment the Ganyliel massacre was discussed on the BBC African Service and in the US Congress, and the HPP was accused of leaking the information. In between the first and second reports on the Ganyliel and Tonj massacres, the co-ordinator of OLS southern sector changed and a critical opportunity for a more assertive dialogue with the SPLM/A was thus lost. The decision of the new OLS co-ordinator was not to go public, but to maintain a policy of 'quiet diplomacy' with the movements and do nothing that would jeopardise the humanitarian programme.

The dispute over the Ganyliel massacre was partly responsible for a rift in relations between the SPLM/A and OLS, and contributed to SPLM/A's negative view of the Ground Rules. It appears that, in negotiating the Ground Rules, there was little discussion with the movements on what action would be taken if and when violations occurred, although UNICEF/OLS asserts that it was always clear that it would not go public. The lack of clarity on this point was a significant omission as it weakened the negotiating position of OLS. The SPLM/A objected to the HPP undertaking the investigations. First, it argued that UNICEF/OLS had no mandate for monitoring human rights, only humanitarian principles. Secondly, the Ground Rules had stipulated that monitoring violations would be carried out by the SRRA and the JRRC. It appeared that OLS was dictating terms which went against the purported philosophy of the people taking action locally. This once again contributed to the view in the SPLM/A that the Ground Rules were imposed.

Such detailed investigations of human rights abuses have never been repeated by the HPP. There are several reasons for this. First, the reports appeared to make little impact on the movements, although there is anecdotal evidence that women and children were spared in subsequent SPLM/A raids. The fact that the leadership took no action against those responsible for the massacres suggests that they were not too concerned about their international credibility. The lack of positive response to the reports discouraged the HPP from repeating the exercise when other attacks happened. Attempts by the HPP to investigate child recruitment in Western Equatoria in 1997 were blocked by the SPLM/A forcing it to work instead through

church groups (see below). And donors did not use the leverage that they have to address the issues. For UNICEF/OLS itself, there was no well-defined procedure for public condemnation of such abuses.

Secondly, protection costs money. Such investigations are costly and neither UNICEF/OLS nor the donors have prioritised resources for such work. It is only since the positive critique of the 1996 OLS Review that the HPP has received funds independent of capacity-building. It was only in 1998 that OLS itself prioritised the work of the HPP, giving 'humanitarian principles' a separate budget line in the consolidated appeal for Sudan (UNDHA, 1998).

Thirdly, as this case demonstrated, UNICEF/OLS is not prepared to sacrifice humanitarian access and the security of its staff and its operations by public advocacy or by making humanitarian assistance conditional on respect for human rights. The latter, it is argued, goes against the principle of providing assistance on the basis of need alone. The strategy pursued, therefore, has been one of 'quiet diplomacy and constructive engagement' (OLS/HPP, 1998). The aim has been to influence change in the behaviour of the movements by means of education and developing alliances with civil society groups and interested parties in SPLM/A, such as the Political-Military Officers in the military, and supporting practical projects, such as child reunification or mine clearance.

It is not clear that all in the SPLM/A are reluctant to receive human rights reports. Military commanders interviewed during this study claimed that they were not in principle opposed to human rights monitors, as recommended by UN Special Rapporteur on Sudan, Gaspar Biro, on condition that they also operated in the north. What they object to is unbalanced public reporting. They also reject any notion that OLS has an enforcement role to play, as the SPLM/A considers itself the enforcer of protection standards.

4.8 International NGOs and protection

The Ground Rules confer protection responsibilities on all organisations operating under the UNICEF/OLS umbrella. The LoUs signed by member agencies of OLS oblige them to 'confidentially' inform the UNICEF/OLS Co-ordinator, Security Officer or the Humanitarian Principles Officer of all known Ground Rules violations (UNICEF/OLS, 1998c).

The extent to which OLS member agencies fulfil these responsibilities varies greatly. Most NGOs perceive the primary function of the Ground Rules as to facilitate and protect their operations. As the table in Section 4.6 indicates, the majority of violations reported to the HPP by aid workers are ones that directly affect their operations. While most agencies interviewed for the study accepted some responsibility to raise protection issues with the authorities in their area and some have done so, most view protection and human rights work

as being beyond both their humanitarian mandate and expertise.

One reason for this is that aid agencies receive little support or instruction to develop that expertise. The regular Ground Rules workshops for agency personnel in Lokichokio primarily cover administrative procedures as they relate to agency-counterpart relations. The protection responsibilities of UN and NGO workers are not covered in Ground Rules workshops. Aid workers interviewed in the study did not recollect hearing that they should report human rights violations to the HPP. The HPP confirms that the only references to the rights of the population in Ground Rules workshops are to the beneficiaries' right to receive relief. Standard reporting forms produced by the HPP have fallen into disuse, and aid workers interviewed during the study were not aware of them. Therefore, only certain violations of international humanitarian law, such as access restrictions and diversions, are reported, as evidenced in the Bahr el Ghazal famine. Agencies are also not actively encouraged to evaluate the human rights impact of their own work in order to comply with the Ground Rules. The comment of one newly arrived aid worker is therefore not surprising:

I haven't been into south Sudan yet. I wouldn't know what to do if I saw some kind of human rights or Ground Rules violation. I have not been given any guidelines by [my agency] with regard to monitoring or reporting on these issues, and I would not know how to go about it.⁴⁶

The decision to monitor and document protection issues therefore depends entirely on the individual agency. While the majority of NGOs operating under OLS feel ambiguous about protection and human rights, several do consider that they lie within their mandate and that they have a responsibility to report violations which they witness, both to their own organisations and to the HPP.⁴⁷ The degree to which the rights-based aspect of their work is developed and emphasised varies. The different approaches are reflected in the types of activities implemented, and in the forms of engagement with the rebel authorities

For Médecins sans Frontières *témoignage* is part of its *raison d'être*. The medical mandate of the agency places it in a unique position to witness the consequences of human rights abuses. It speaks of 'populations in danger', rather than 'populations in need'. Founded by dissenters from within the ICRC, MSF rejects the usual operational rule of the ICRC to remain silent, and questions the doctrine of neutrality by suggesting that victims of war are not equal. Its presence enables it to 'bear witness', and this it argues engenders a responsibility to 'speak out' on human rights abuses. While concerns about losing access may sometimes mitigate against this, MSF's approach is generally one of public advocacy. This inevitably leads

to tensions with the warring parties, and with other agencies pursuing 'quiet diplomacy'.⁴⁸ In implementing this approach in southern Sudan, MSF Holland identifies a need for training of staff in protection concerns and information collection methods and for better co-ordination on protection concerns among OLS agencies.

The rights-based approach of Oxfam (GB) is closer to that of the HPP, namely broadly one of 'empowerment', working with grassroots structures to raise people's awareness of their 'entitlements', as well as developing better analysis of the impact of its work on local-level conflict. During the 1998 famine it suggested an approach to protection that involved informing people of their entitlements:

A hundred households may be supposed to benefit from the system, but none of them have an idea about their entitlements. What is of central importance is that everyone at all levels understands the system, who is entitled, who is not, who is answerable and where the buck stops. (Oxfam worker)

Child-rights agencies, such as SCF UK and Radda Barna, have a clear protection mandate for children that is reinforced in the Ground Rules. In signing the Ground Rules, the Sudanese rebels became the first such movements to make a written commitment to uphold the CRC. In signing the Ground Rules, the movements made a commitment to Article 38 of the CRC not to conscript children under 15 years of age. The SSIM/A was initially more responsive, but in early 1997, UNICEF reached agreement with the SPLM/A to start a training programme in child rights, especially for military officers. Although SCF was initially sceptical about the Ground Rules, and continues to differ on matters of capacity-building, the approach of SCF and Radda Barna is closest to the 'critical engagement' of the HPP. SCF Sweden work very closely with UNICEF on the dissemination of the CRC and both agencies support a child rights officer in the SRRA and RASS. SCF Sweden has also printed cards for all children under 18 as a means of protection against mobilisation. Both agencies are assisting the SPLM/A to submit an alternative report to the Committee on the Rights of the Child in keeping with their commitment to the principles of the CRC. While controversial, given the potential legitimacy it lends the SPLM/A, this nevertheless provides a mechanism for the monitoring of the movement's compliance with commitments made in the Ground Rules.

In an interesting contrast to the approach of MSF, SCF argues that the strength of its programme lies in the quality of the relationships developed with local communities and authorities in the areas where it operates. For SCF, it is not just access per se that matters but the quality of access. It argues that its long-

term involvement with communities in Bahr el Ghazal and its shift from 'relief' to 'community development' have allowed it to develop a relationship that is not feasible through short-term relief intervention. The shift to community development has also meant working not with food, but with less strategically valuable inputs, thus reducing problems of diversion. A longer-term relationship it argues enables it to be 'transparent' about the purpose of its work. Significantly it argues that day-to-day engagement at the community level enables it to undertake protection work. For example, when the SPLM/A was in conflict with Kerubino, the SPLM/A commanders sent to contain him also committed abuses against civilian populations. SCF transmitted information on this to higher authorities in the SPLM/A, and was able to discuss its concerns with commanders on the ground. SCF maintains that this had an impact on the discipline of SPLM/A soldiers, although this also needs to be seen in the context of wider changes taking place within the SPLM/A since 1995. A non-confrontational approach and confidential and community-based work with tribal leaders on both sides of the conflict also resulted in 1997 in the return of over 100 children abducted from Bahr el Ghazal.

The agencies discussed are all European, and primarily non-food agencies. However, human rights thinking is evolving among other agencies. CARE, for example, more usually associated with food distribution, is examining ways of integrating human rights and humanitarian law in its operations, and developing a human rights analysis to assess the benefits/harm of its work. CRS, another US-based food agency in southern Sudan, has also supported research on customary law. None of these agencies is considering the public advocacy approach of MSF, because of the threat this poses to humanitarian access. Building up long-term working relationships with communities is seen as the appropriate strategy.⁴⁹

Among all agencies, monitoring and reporting on violations occur on an *ad hoc* basis. Reporting channels between the 'field' and headquarters are poorly defined and field staff lack instructions on what to report, in what form and to whom. Agencies identify a need for further human rights training on how to implement the protection element of the Ground Rules.

4.9 Donors and protection

Donor governments have shown little interest in protection issues in the south, generally proving unwilling to use their influence directly to support the Ground Rules, except in relation to the aid they provide. The HPP has received only limited funding. They have not supported the proposal by Gaspar Biro for human rights monitors to be placed in Sudan. Donors do not require NGOs to plan programmes with protection needs in mind, or to report on protection issues. Some donors do not accept that the Ground Rules have had

any impact on reducing human rights abuses. As one donor representative interviewed lamented:

It is worth trying, but you can sit there with these SPLA commanders and say OK you shouldn't do this and they'll go 'yeah yeah yeah' and it won't make any difference, they go off and do the same thing. When they raid, they loot, they pillage, they rape – their soldiers are not controlled by them – the massacres that happen are because the officers can't control the troops anyway, and at the top you have a leader who couldn't care a stuff about human rights issues...they're not talking about liberating people, they are talking about liberating territory, looting and pillage.

One consequence of this is that dialogue between donors, aid agencies and the SPLM/A on protection issues has been stilted. Donors have proved more supportive of the internally displaced protection programme run by UN/OLS out of Khartoum in the northern sector.

4.10 Impact of the Ground Rules on the human rights environment

Impact monitoring: It is notoriously difficult to assess the impact of protection work. Since its aim is to prevent abuse, results should be invisible, and linking impact to a particular instrument is problematic. The ICRC, which acknowledges the difficulty of assessing the impact of its dissemination work, argues:

If only 10 percent of what we teach is remembered, if a soldier as a reflex action or a senior officer as a function of his rank and command thinks, no matter how briefly, of the law and applies it, then our work will have been worthwhile. (Roberts, 1997).

The HPP acknowledges that it cannot prove the impact of the Ground Rules on the human rights situation and the behaviour of the armed movements. In part, this is due to the lack of baseline data against which to measure progress. The HPP acknowledges its 'failure to establish an effective system for monitoring of violations of child rights and humanitarian principles and law' (OLS, 1997a). The system of monitoring Ground Rules violations is of only limited use for this. Proposals to evaluate the impact of dissemination by a Knowledge, Attitude and Practice survey have not received funding. Interesting in this regard is a proposal that the SPLM/A should report to the Committee on the Rights of the Child, as set down in Article 44 of the CRC, which provides a mechanism for professional monitoring with the movements, and requires UNICEF/OLS to ensure that commitments to

protection are more than a paper pledge. Child protection is one area in which UNICEF and other agencies have invested resources for protection, and where there is some indication of change.

The only human rights baseline data that exist can be extracted from the reports of human rights agencies and the UN Special Envoy on Human Rights. The June 1994 report by Human Rights Watch/Africa is probably the most detailed independent investigation into the human rights environment in rebel-held areas of southern Sudan that has been undertaken. Although there have been subsequent reports on children, the arms trade and, most recently, the 1998 famine, such a broad and comprehensive analysis has not been repeated. This is a pity. As already noted, the timing of the report's publication in 1994 coincided with the revision of the Ground Rules and its focus on violations of the laws of war gives it a particular relevance as a baseline document. The absence of a follow-up report reflects the fact that international human rights groups have no field presence, although Human Rights Watch itself has for some time advocated permanent human rights monitors in Sudan. Although the HPP maintains a relationship with human rights organisations, a more strategic alliance with human rights organisations might have proven useful given the acknowledged weakness in monitoring.

Changes in the human rights environment: In its report on the 1998 famine in Bahr el Ghazal, Human Rights Watch wrote with regard to the Ground Rules and the HPP:

...[the] introduction of human rights language and concepts to a wide spectrum of southern Sudanese society, together with other programmes to aid civil society, has had a positive impact on the conduct of the SPLA, according to Human Rights Watch's own observations. It is too early to say whether these changes are permanent... (Human Rights Watch/ Africa, 1999a: 40).

The report does not elaborate on this. In the absence of an independent and comprehensive assessment of the broader human rights environment, there is no consensus among aid workers, observers and donors on whether there have been improvements in rebel-held areas.

There are some notable incidents where faction leaders have responded directly to protests. In late 1994/early 1995 Machar, for example, demobilised a number of teachers in response to direct lobbying. Some reformers within the SPLM/A point to the mass release of political prisoners in 1992, the greater openness of the movement to criticism, and greater freedoms among the churches to express views opposed to the SPLM/A, as proof of change. Some aid workers suggest that human rights violations at the hands of the SPLM/A

reached their peak in 1994 and have abated since then. According to others, atrocities such as 'people farming', as occurred in the Hunger Triangle, have 'totally stopped'. Since the HPP reports on Ganyliel and Tonj, there have been no further reports of mass atrocities. The investigations may have moderated further assaults, but this cannot be proved. Some agencies report improvements in the behaviour of SPLM/A military commanders in some locations. In the words of one long-term aid worker interviewed:

In OLS, in UNICEF and WFP, there is an attitude that SPLA could not care less. Most people assume that compounds will at some time be looted. It still happens, but between 1993 and 1997 I saw big changes in the attitude of the SRRA and how they worked with communities, in the formalisation of civil administration and the improved relationship between [the agency] and the SPLM/A².

There is, however, evidence of continuing human rights abuses in SPLM/A-administered areas. Some agencies reported witnessing forcible displacement 'quite often'. In general, the situation of the civilian population under SPLM/A administration is more precarious in the non-Dinka areas, such as Equatoria. During the SPLM/A's offensives on Yei and Tonj in 1997, Human Rights Watch reported 'a series of gross abuses of civilians', including the recruitment of children from schools (Human Rights Watch/Africa, 1999b). Although the Khartoum government is held primarily responsible for the 1998 famine in Bahr el Ghazal, the SPLM/A is also identified as one of the 'famine agents', responsible for human rights abuses that caused the famine (Human Rights Watch/Africa, 1999a). It contributed to the creation of famine by its attack on Wau and the looting of civilians fleeing the town, and by generally increasing the costs of relief operations by preventing land and river transport. Its use of landmines and of starvation as a weapon of war in its siege of towns is similarly condemned. At the same time in 1998, the human rights situation was generally assumed to be worse in areas of Eastern and Western Upper Nile that have suffered from fighting between the government-sponsored forces of Machar and Mathip. These are areas where the Ground Rules are effectively no longer operational.

Child protection: One area where there is evidence of improvement is in the protection of children in SPLM/A administered areas. In the late 1980s, there were believed to be up to 20,000 separated minors in Sudan (UNICEF/OLS, 1998a). According to human rights reports, the children had been separated from their families to provide a pool of recruits for the SPLM/A (Human Rights Watch/Africa, 1994). Their plight received much publicity in 1991 and 1992 following the trek of thousands of unaccompanied minors back to Sudan from Ethiopia. Since 1992, UNICEF reports that some 2,000 minors have been

reunited with their families. Before the Ground Rules the SPLM/A was indifferent to the problem refusing to participate in the reunification programme. Machar accepted it much more quickly, and between 1992 and 1995 all reunifications took place from SSIM/A areas.

By signing the Ground Rules, the SPLM/A committed itself to implementing the provisions in the CRC on both reunification and child conscription. UNICEF considers this a 'turning point' in addressing the violations of children's rights in Sudan (UNICEF/OLS, 1998a). Together with other child-rights agencies and the churches, it has continued to use it to press for child protection. Since the Ground Rules were signed around 1,000 children have been reunited in SPLM/A-administered areas (*ibid.*).

SCF Sweden estimates that there remain more than 31,000 child soldiers under the age of 18 in southern Sudan (*ibid.*). The SPLM/A was initially slower to release children than the SSIM/A (Human Rights Watch/Africa, 1994), and action and information on demobilisation have generally been more limited than on reunification (UNICEF/OLS, 1998a). However, there is some evidence that the attitude of the SPLM/A is changing. In 1997, in the wake of the Yei offensive and protests against child recruitment by the New Sudan Council of Churches (NSCC) and others, the SPLM/A stated that 'the issue of demobilisation, rehabilitation and reintegration of children into society is of major concern to the movement' (Kwaje, 1998). However, 'deprivation' rather than recruitment is identified by the SPLM/A leadership as the main cause prompting children to join the armed forces (*ibid.*). Overall, however, Human Rights Watch reports that forced recruitment of children by the SPLM/A has diminished (Human Rights Watch/Africa, 1999b).

Impact on the movements: UNICEF/OLS leaders have stated that they were not naive enough to think that Garang's signature on the Ground Rules would put an end to all human rights abuses. The significant change, they argue, was in creating an opening for dialogue with the movements on contentious issues such as child soldiers. Some have suggested that the 1994 Chukudum Convention was, in part, a response to a 'tidal wave' of internal and external criticisms of the SPLM/A's human rights record (Prendergast, 1997:72). Human rights issues were discussed at the 1996 SPLM/A Civil Society Conference. The significance of this, and the way that OLS was able to tap into the changes taking place in the movement, should not be underestimated, as a description of an early workshop with SPLM/A officers illustrates:

... the commanders had been talking about article 38 of the CRC... I asked if anyone had recruited child soldiers. There was shocked silence, as no-one dared ask that sort of question. One person said if I had asked the question two years ago I would never have set foot in Sudan again. Things had

changed within the SPLM/A and OLS was building on it.

The significance of the changes was seen to be not only in the SPLM/A but also in the 'flame of decency' kindled among civil groups. The Ground Rules gave the civilian part of the movement leverage over the military. Numerous reports on Ground Rules workshops document the anger voiced by civilians against the military. The churches might not have been as active and outspoken on human rights if OLS had not introduced the Ground Rules. Shortly after the 1996 workshop on Christian values and humanitarian principles, the New Sudan Council of Churches (NSCC) criticised the SPLA for the abduction of missionaries in Akot and in 1997 over the recruitment of children. It is also reported that Sudanese NGOs used the Ground Rules to protect their work and staff from diversion by the SPLM/A.

The task of isolating the impact of the Ground Rules from the internal reforms in the SPLM/A is problematic. Any improvements in respect for human rights after 1994, as noted above, could be linked to reforms in the SPLM/A after the Chukudum Convention. Certainly the SPLM/A leadership does not attribute improvements to the Ground Rules or to the work of the HPP, instead presenting human rights concerns as integral to the movement's philosophy. Other supporters of the movement point to internal pressure for reform rather than the Ground Rules or public advocacy as an explanation for the improvement in human rights. A Sudanese lawyer and former facilitator of Ground Rules workshops interviewed explained: 'I have not seen any impact of the humanitarian principles programme. The workshops have had no impact.' Instead, he identified the separation of the military and civilian structures as the real force for change. With the development of civil authorities, the ability of soldiers to wield power has diminished. Some aid workers agree:

However much these developments are cosmetic – and there is an element of bowing to external pressure – these changes are filtering down. Even if the higher levels of the SPLM/A have changed little, there is pressure from below.

Many aid workers and donors, however, remain sceptical about the extent to which there has been a genuine change in the SPLM/A. Some within the movement are critical of Garang's failure to appoint a Chief Justice, to implement the agreements reached at Chukudum, to convene the National Executive Council annually, and to increase political participation. The SPLM/A leadership acknowledges that accepting human rights and humanitarian protocols improves its image in the international community. Some argue that this public acknowledgement of human rights issues has made the SPLM/A vulnerable to public advocacy.

However, the fact that the leaders did not respond to the report on the Ganyiel massacre suggests that they are not so concerned with their international credibility. One human rights activist on Sudan commented:

I think the human rights movement has not had much impact on the SPLA because its top leadership has never considered it to be an important factor in relations with the outside world, patrons, support and relief groups...

Where aid agencies, donors and reformers in the movements do find common ground is in the view that real change can only come from the Sudanese themselves – it cannot be enforced. Despite agreements between the churches and the SPLA on child recruitment, some church leaders argue that '[child] recruitment will continue as a problem for as long as the war continues'. In September 1998, for example, there was a recruitment drive by the SPLM/A among the Acholi in south Sudan and northern Uganda prior to an offensive against Torit. In other words, the combat objective of the movement continues to outweigh any humanitarian objective.

Impact on the military: There is evidence to suggest that the Ground Rules have contributed to an increased awareness among military commanders of human rights issues and humanitarian law. Interviews conducted with commanders and soldiers for this study indicated that the military and local authorities are aware of the Ground Rules and some of their obligations.⁵⁰ As one aid worker acknowledged, the military are probably better able to quote the Ground Rules than most NGOs.

For the military, improving awareness of and respect for the laws of war is part of modernising the army, as well as maintaining and gaining the support of the population. Commanders blame human rights violations on poor discipline, rather than policy. Training to improve such behaviour improves military command and control. The HPP staff argue that soldiers are interested in human rights training because it justifies their cause vis-a-vis Khartoum. As one soldier interviewed in Thiet in September 1998 noted: 'We are talking about human rights but we are also fighting for human rights'. Conscripted children is also perceived as a problem by some in the movement if it leaves no educated youth for the future. As one commander commented 'We welcome the CRC because we were using child soldiers. If we don't have children in schools who will take up the future leadership?'. Some observers argue that the military are more aware now of the need to listen to the people. The chiefs who had little voice in 1993 are said to have a stronger voice now, and a peace meeting of Dinka and Nuer chiefs in Lokichokkio in June 1998 is said to illustrate this.⁵¹

Military commanders interviewed for this study were particularly clear about the importance of the proper treatment of prisoners of war. One reason may be that this draws a clear distinction between themselves and the Sudan government. The SPLM/A keeps prisoners of war and allows the ICRC to visit them, and human rights groups report that most of the government forces captured in battle have been released (Human Rights Watch/Africa, 1999b). The government, on the other hand, rarely reports the capture of prisoners. The SPLM/A claims to have been taking prisoners of war since before the Ground Rules. In 1993 a directive by Garang to his commanders concerning the Ground Rules stressed the treatment of PoWs (Garang, 1993). Commanders explain that this policy lends them a military advantage as enemy soldiers are more likely to surrender than fight to the end. There appears, therefore, to be an awareness among soldiers of the 'laws of war' as they relate to soldiers, if not civilians. This is interesting, given that the Geneva Conventions when formulated were initially concerned with the treatment of soldiers rather than civilians.

The acceptance by soldiers of human rights education in a workshop setting does not ensure that they behave accordingly in combat. One SPLM/A commander interviewed in New Cush, who claimed to have attended an ICRC dissemination workshop in Lokichokio in 1997, stressed the importance of the Geneva Conventions: '...if you are always hostile to the population you will not win the war, and will be termed murderer not liberator'. This same commander, who fought Kerubino in Bahr el Ghazal between 1995 and 1997, was described by one relief worker there as a 'nasty piece of work,' responsible for looting and summary executions. He was eventually transferred by Garang, although apparently he retains his rank. Human rights groups report that, despite the SPLM/A legal codes, SPLM/A troops are rarely disciplined. For example, a commander responsible for falsely detaining missionaries in Mapoudit in 1996 was court-martialed by the SPLM/A. However, this was for mutiny, not for summary executions and child conscription. Among aid workers therefore, there is scepticism about real change within the military. Civilian-military relations are often very dependent on the character of individual officers.

Impact on violence: Dissemination of the Ground Rules did not start in Bahr el Ghazal until 1997, because of insecurity, and there has been no dissemination in the RASS areas since late 1997 for similar reasons. Clearly OLS can only disseminate in those areas where it has access, that is, where aid agencies are able to operate and where there are civil authorities and counterparts to work with. The limitations on dissemination in part reflects the fact that OLS is primarily a humanitarian relief operation. Dissemination is not undertaken where access is denied and humanitarian action is not feasible. Arguably the dissemination of protection messages may be more relevant in non-accessible and insecure areas where levels of violence are higher and human rights abuses more likely. This does, however, accord with the

experience of the ICRC for whom dissemination is a preventative measure: 'It is in peacetime that we have the time to consider the law' (Roberts, 1997).

Impact on Sudanese society and culture: The Ground Rules and the promotion of humanitarian principles are in part an effort to change the 'culture of war' to a 'culture of humanitarianism' (Levine, 1997:23). One of the avenues for effecting this change has been the linking of universalistic philosophies with humanitarianism to local values. As already noted, in this there is a similarity to the dissemination of the Geneva Conventions which originally sought to rejuvenate traditional conventions of warfare. Discussions about the loss and potential revival of traditional values can also be seen as part of efforts to support 'good governance' and the re-establishment of social contracts and rules of restraint in an environment where formal and customary processes of law have been eroded.⁵²

The social impact of contemporary warfare and the overturning and manipulation of traditional values and customs have been the subject of several studies in Sudan and elsewhere.⁵³ The government and the SPLA/M have both been accused of weakening tribal authority (Duffield, 1990:23, Prendergast, 1997:55). It is important to understand these social changes in order to understand the nature of contemporary wars. For example, one SPLA soldier in Thiet in 1998 noted that the aim of contemporary warfare 'is to eliminate the enemy rather than fight a limited war'.

Whether external agencies can and should promote or engineer the revival of tradition is a complex issue. The ethnographic understanding of most aid workers is, not surprisingly, limited, and discussions of these issues in Ground Rules workshops are necessarily superficial. Given the criticisms of the chieftaincy system recorded by the SPLM/A/SRRA/OLS Task Force on the Bahr el Ghazal famine, it is questionable whether such traditional power structures should be strengthened if they were responsible for the exclusion of populations during the famine.

In the human rights seminar attended by the study team in Thiet in 1998, the process of modernisation was in part blamed for the war and the loss of tradition. One soldier commented that 'Education has changed the types of wars we fight, so they are political rather than social'. Another noted that 'There is no possibility of restoring traditional values as children play war games and our children abroad are taking on modern values'. In discussing the passing of traditional codes of warfare, blame is deflected away from the military. The SPLM/A becomes the victim of a complex emergency, rather than its cause. In supporting such local debates there may be a danger of being drawn into assisting in the dissemination of the movements' political messages.

The aim of creating a culture of humanitarianism is not dissimilar from UNESCO's goal of a 'culture of peace'. What both have in common is a preoccupation with internal causes and solutions of wars. For aid agencies, day-to-day problems are of course localised. However, interventions which attempt to affect behavioural change at a local level in effect locate the blame and the solutions there, and ignore wider structural issues. It is questionable whether dissemination, for example, can have a sustainable impact if the key power-brokers, including those external to Sudan, pursue anti-humanitarian activities.

4.10.1 Enforcement

One of the main criticisms levelled at the Ground Rules is that they provide no deterrent and lack an enforcement mechanism. The UN's failure to address violations of human rights to which it has been a witness undermines the credibility of OLS. This has raised questions over the validity of the Ground Rules. African Rights (1995), for example, argues that it may be better to have no rules than rules that are violated with impunity.

The nature of the Ground Rules, however, is a negotiated agreement which the signatories are jointly responsible for implementing. Consequently there is no policing mechanism written into the Agreements. Responsibility for enforcement lies with the SRRA, RASS and FRRA, and with the JRRC for resolving disputes. It was envisaged that an emerging civil society and an independent judiciary would eventually take on this responsibility. Here again there are similarities with the Geneva Conventions. These also have no mechanisms for enforcement or fixed penalties for non-compliance, and rely on the voluntary compliance of states. Given this, expectations that UNICEF/OLS should be able to enforce compliance appear unrealistic.

UNICEF/OLS faces two other constraints to enforcing compliance. First, the Agreement was only signed with the rebels. UNICEF/OLS's ability to regulate the warring parties is weak when the government is not included. It is noticeable that most evacuations of international agencies from the southern sector are in response to fighting between the SPLM/A and government-sponsored factions or government bombings (UNICEF/OLS, 1997). Although the government is a signatory to the Geneva Conventions, mechanisms for holding it accountable and addressing violations are even more diffuse than the Ground Rules.

Secondly, UNICEF/OLS lacks sufficiently strong international political support to enforce compliance. In Sudan the UN has no powers of enforcement over the warring parties. OLS does not have the backing of a UN Security Council resolution, and Chapter VII of the Charter has never been invoked. The basis of humanitarian access in Sudan is negotiation, rather than sanction or military force. Had OLS been able to

enforce the access agreements, the 1998 crisis in Bahr el Ghazal might have been averted. The UN, however, does not even have a formal mandate for monitoring the OLS agreements.

Mechanisms for enforcing compliance with the Ground Rules could include public condemnation, withdrawal of humanitarian assistance or withdrawal of capacity-building support. Fear about losing access inhibits public advocacy. Since humanitarian aid is written into the Agreement as a right, its withdrawal is not feasible. It has only occurred when the security of aid agencies has been compromised. Conditionality was invoked in response to the expulsion of ACF in 1998, when donors refused to support work in the area from which it was expelled. This was only temporary. In December 1998, WFP also suspended aid to areas in Bahr el Ghazal where the SRRA were unco-operative. The OLS Review did recommend making capacity-building conditional on contributions from the movements (Karim, et al. 1996:267). This, however, was rejected for fear of jeopardising established relations. Furthermore, when the SRRA threatened to move its office to Sudan if this happened, OLS concluded for cost reasons that it was cheaper to maintain the capacity-building programme. A refusal to contemplate withholding humanitarian assistance means that the UNICEF/OLS's negotiating position is weak. Its only response is to bring about behavioural change through education and constructive engagement, and to rely on the SPLM/A to enforce the Agreement in areas under its control. Many donors and aid agencies are sceptical that the SPLM/A leadership is concerned or able to do this.

Since 1997, the northern sector of OLS has established a more assertive approach to the protection of humanitarian space and internally displaced persons. This rests on establishing an agreement with the Government, known as Minimum Operating Procedures (MINOPS). While the Ground Rules seek to promote a change of attitude through education and constructive engagement, the protection programme for the displaced relies on active political pressure. As a member of OLS northern sector noted 'Which one works depends on whether you believe you can change behaviour through dissemination or pressure'. Northern and southern Sudan are very different operational environments. Most of Sudan's war displaced are in the north, where the camps provide a more contained environment than the expanse of southern Sudan. In the north, there is a recognised government and body of law to work with; the government may therefore be more susceptible to certain forms of pressure than the SPLM/A leadership. Opportunities for replicating this approach in the south are more difficult and would almost certainly require non-Sudanese staff.

There may be room for more high-level dialogue with the parties on non-respect for humanitarian principles and human rights. The joint Task Force was a step in this direction. A more assertive approach, however,

would signal a major change in the nature of the southern sector operation, and would involve renegotiating the basis for the provision of assistance. It would also require a more coherent position among donors, the UN and NGOs than is currently apparent, and a readiness to use humanitarian aid as a negotiating tool. As this goes against the principle of assistance based on need, there would need to be acceptable and ethical criteria established on which to base any decision for withdrawal.

The issue of enforcement raises an important question about who should have responsibility for protection – the UN, the NGOs, or governments. It is clear that operational relief agencies have problems in combining relief with protection. While human rights organisations play a valuable role, it is limited to one of monitoring and bringing to the attention of governments their responsibilities. Governments cannot abrogate responsibility for protection to NGOs as they have done with humanitarian aid.

4.10.2 Protection or containment?

Ultimately, it is the international regime that defines the mandate, responsibilities and powers of OLS. Sudan has the largest internally displaced population in the world, some 2.5 million, which outnumbers the 400,000 Sudanese refugees in neighbouring countries. It has been argued that the reason why OLS has failed to develop a more assertive protection programme is that protection is not the ‘corporate issue’. As one senior OLS official interviewed in 1998 explained, ‘it is wrong to assume that the humanitarian principles programme is based on protection’. Instead, ‘access’ and the defence of ‘humanitarian space’ are the corporate objectives. Clearly, a protection programme is only possible where there is access. In Sudan, however, the primary concern of the international community is ‘containment’. The defence of humanitarian space, therefore, becomes part of a containment strategy, a concern to establish a ‘safe area’ within a country in crisis, and to provide protection within an on-going conflict rather than asylum outside.

4.11 Capacity-building and governance

Where the Ground Rules work is where there is a stronger institutional structure.⁵⁴

This comment reflects the fact that the Ground Rules operate in secure areas that are mainly administered by the SPLM/A. It also reflects a central predicament with the Ground Rules, namely, that in the absence of institutions to support them the principles enshrined in the Ground Rules have no meaning. To address this, institutional capacity-building was incorporated in the 1995 Agreement. Article A6 of the ‘Statement of Humanitarian Principles’ in the Ground Rules provides that:

All humanitarian actions should be tailored to local circumstances and aim to enhance, not supplant, locally available resources and mechanisms. Strengthening local capacity to prevent future crises and emergencies and to promote greater involvement of Sudanese institutions and individuals in all humanitarian actions is an integral part of OLS’s humanitarian mandate.

The origins of capacity-building as a strategy have already been elaborated on. Its incorporation in the Ground Rules as a ‘humanitarian principle’ represented an evolution in the objectives of the humanitarian programme. Whereas the first Ground Rules set out the minimal operating conditions under which humanitarian assistance will be provided, the revised Ground Rules seek to create, or influence the creation of, those conditions. Capacity-building is a means both to improve the effectiveness of humanitarian assistance by building up local organisations for its delivery, and to influence the way in which the war is fought by promoting good governance and embedding respect for international human rights and humanitarian norms in Sudanese institutions. This is apparent in the formal objectives of institutional capacity-building in the southern sector (UNDHA, 1998):

- to strengthen the institutional capacity of the humanitarian counterparts for effective co-ordination and implementation of relief and rehabilitation programmes;
- to promote active community involvement in the management of humanitarian programmes;
- to support the development of good governance practices;
- to ensure that capacity-building becomes an integral part of all OLS programmes.

4.11.1 Institutionalising rights and principles

Once the emergency in Sudan is redefined as a human rights crisis, rather than purely a material or production crisis, the problem becomes how to actualise protection. Dissemination is one strategy – to educate civilians about their rights and the authorities about their obligations. Human rights and principles, however, are not commodities to be ‘delivered’ like bags of food. They only become real when there are social structures and institutions to uphold those rights and give people protection (African Rights, 1995:2). UNICEF/OLS concluded that, for the HPP to have a sustainable impact on the war, Sudanese institutions needed to take responsibility for promoting the principles and for protecting the rights of women and children (Levine, 1997).

This required reorienting the humanitarian intervention towards an understanding of the institutional and structural dimensions of the crisis, and away from a needs-based interpretation. A recent study on vulnerability in southern Sudan describes how, in Dinka terms, the vulnerable are those without an adequate kinship structure around them to protect them (Harragin and Chol, 1998:iv). In other words, a community's vulnerability arises from organisational and political weakness as much as from material or physical neglect. Through capacity-building, it was argued, the international community could begin to address the institutional malaise in southern Sudan (Murphy, 1994) and close the 'governance gap' that existed between the SPLM/A and the people.

Good governance: The capacity-building programme should be understood within the context of SPLM/A's attempts to develop new institutions of governance. US funding for the 1993 ICBP feasibility study followed shortly on from the SPLM/A's announcement of its first national convention. The Chukudum Convention in March 1994, which proclaimed the New Sudan, established the basis for a decentralised system of government in which the civil administration and social welfare institutions (i.e. the SRRA) were separated from the military. The ICBP study probed questions about whether it was possible to use capacity-building for good governance and for strengthening the civilian part of the movement. The decision in 1994 to revise the Ground Rules was in part an attempt to 'incorporate the new reality of a fledgling civilian structure'. Since the concept of capacity-building was introduced, therefore, it has been linked to efforts to promote 'good governance' among the rebel movements, in particular the SPLM/A.

For USAID specifically, capacity-building and the Agreement on Ground Rules were means of promoting reform in the SPLM/A, by strengthening the civilian part of the movement and civil society in general. Recognition was not considered, but USAID was, as one official interviewed noted, 'interested in and going to build up the capacity of civil society in opposition areas of Sudan'. This emerges clearly in USAID's assessment of the meeting in October 1994 which led to a decision to revise the Ground Rules (Meserve and Wagner, 1994). Its report of that meeting noted that security incidents affecting agencies in Yambio in Western Equatoria in October 1994 had involved the civilian authorities which had been appointed at the Chukudum Convention. It found that the Ground Rules had not been given 'adequate attention' at the Convention and there was, therefore, a need to disseminate them. The report concluded, however, that progress would only be achieved if the principles outlined in USAID's own strategy for Sudan were also institutionalised. These included meeting humanitarian needs and supporting production to reduce dependency, both to be realised through 'a participatory and democratic decision-making process'. The Ground Rules were identified as integral to its approach. The

report noted a 'consensus on the principles/ procedures of USAID and the SPLM/A' following the Convention. It concluded that only through forums like the Convention could USAID 'move forward in fulfilling our own mandated strategy and, perforce, that of the SPLM/A'. Interestingly, the report also introduced ideas of conditionality by proposing that donors withdraw resources from areas 'where negotiations through these structures fail and where flagrant violations of principles continue', as in Yambio. ECHO reportedly agreed with this strategy.

The concern with Yambio in Western Equatoria is of interest, as the emergence of capacity-building as an aid strategy needs to be understood in the context of the military environment. In 1994, aid agencies in Upper Nile and Bahr el Ghazal had wound down their operations because of insecurity and had gravitated southwards to the relatively stable Equatoria. As already noted, dissemination of the revised Ground Rules occurred first in this area where opportunities for longer-term rehabilitative institutional work appeared more feasible.

Empowerment: The readiness of some donors to adopt capacity-building as a tool for liberalising the movements overlooked some of the original thought that went into the institutional capacity-building initiative. This was concerned more with Freirean notions of 'empowerment,' in which the focus was on recognising and supporting indigenous capacities, rather than building liberal democratic institutions. It argued that the relationship between Sudanese and outside agencies needed to be changed and Sudanese given a more pro-active role in the aid programme (Murphy, 1994:58). Aid was seen to have a negative impact by creating dependency. Relief without conditionality was seen to make the SPLM/A less accountable to the civilians from whom it drew support, and to contribute to the continuation of predatory systems of governance. Its lofty ambitions were to promote greater participation of people in deciding their political affairs and to address the relations between the powerful and the weak expressed in the political economy (ibid: 64). It argued that the politically distanced neutrality of humanitarian aid agencies should be replaced by solidarity with the victims of the conflict (ibid: 52). This required an analysis of the processes that targeted the victims of violence and an understanding of how the factions treated their own people. Advocating and protecting rights on behalf of civilians required engagement with the movements.

Critical engagement: Capacity-building sought to tap into and shape the reforms in the SPLM/A. It offered a means of engaging with educated southerners and dissenters within the movements who supported liberalisation, were concerned at military abuses, and were committed to democratisation and human rights. These groups were important allies in negotiating the Ground Rules (Levine, 1997).

Meaningfully protecting and ‘empowering’ civilians oppressed by war, it was argued, required engaging with those holding the guns and changing their predatory relations with vulnerable populations. This view – common to human rights educators, conflict resolution activists, as well as some political economists (e.g., Keen, 1998) – argues that condemning human rights abuses has less impact than understanding and acting on their causes. Serious human rights work demands not only that abuses be identified, but that assistance be given where necessary to the authorities to meet their obligations.⁵⁵ The HPP argues that if it condemns violations no-one listens, but if it offers to educate, then people are receptive. Dissemination needs to be accompanied by practical project support. This view is also expressed by the participants of dissemination workshops when they stress social and economic needs as much as human rights (UNICEF/OLS, 1998d), and when they claim that the most effective action against child recruitment would be to provide constructive alternatives for children.

A civil society project: It was envisaged that the Agreement on Ground Rules would be mediated, managed and ‘owned’ by Sudanese institutions. The challenge of identifying ‘legitimate’ institutions with which to work was considerable, given the ‘state-less’ situation of southern Sudan where authority was contested and abusive, and given what was described as its ‘civil underdevelopment’ and ‘exceptional civil weakness’ of the south (African Rights, 1995:1–2). The legal institutions that might have enforced rights had been dismantled in the war. Politically the UN could not provide direct support to the civil and political administrations of movements to rebuild these.

In the Ground Rules, the nominally independent relief wings and the Joint Relief and Rehabilitation Committees (JRRC) were identified as institutions to promote the principles and monitor compliance with them. Through technical and financial support, it was hoped that Sudanese NGOs, other civil society groups like churches and an independent judiciary would emerge to take responsibility. Support for Sudanese NGOs and civil groups was a strategy to circumvent the SPLM/A’s military and political structures. In this way the Ground Rules became a civil society project and part of the good governance agenda. Over the years the HPP’s partners have included Sudanese NGOs like the South Sudanese Law Society (SSLS), the New Sudan Women’s Federation, and Operation Save Innocent Lives (OSIL) concerned with landmines, and the churches.⁵⁶

4.11.2 Impact of the Ground Rules on Sudanese institutions

Joint Relief and Rehabilitation Committees (JRRC): In the absence of established, representative institutions, it was envisaged that the JRRCs would become the

‘custodians’ of the Ground Rules. The JRRC were one among many examples of community-based committees for the distribution and management of relief that have proliferated in southern Sudan since the early 1990s. The JRRC model is reported to be derived from a committee established in Kaya in Eastern Equatoria in 1991 following the establishment of the SPLM/A administration there (African Rights, 1995:25). Its role was to co-ordinate relief activities and manage disputes between communities, local authorities and relief agencies. Comprising representatives of the local community, churches and humanitarian agencies, it was intended that the JRRC would undertake the monitoring of Ground Rules violations at the local level.

The efficacy of community capacity-building and empowerment through the JRRCs is at best uncertain. Being a Nairobi-instigated and based initiative, the adoption of the Ground Rules is reported to be weak at community level (Murphy, 1997a:41). The JRRCs have not been established uniformly across the SPLM/A-controlled areas, and in places where NGOs have sought closer access to communities, they have not been established at all. In Bhar el Ghazal, WFP has established community based Relief Committees which include village-level representatives (Karim, et al. 1996:83). Where civil administrations are developing, the JRRC are reportedly becoming outmoded. They exist mainly in major relief centres where their role has primarily been confined to facilitating relief distributions (UNDHA, 1998:69). Even here their role is limited. As already noted, during the 1998 famine in Bahr el Ghazal the relief committees made no significant input into decision-making, targeting and distribution, and were subject to the authority of clan chiefs and the SRRA.

The New Sudan Council of Churches: During the 1980s relations between the churches and the SPLM/A were strained by the movement’s communist rhetoric and abuse of clerics (African Rights, 1997). There has, however, been a significant revival of the churches and Christian observance during the course of the war (Duffield et al. 1995:219). SPLM/A relations with the churches improved in the 1990s after the New Sudan Council of Churches (NSCC) was formed, to the extent that it has been called the ‘spiritual wing’ of the SPLM/A. However, the NSCC has been able to maintain a certain critical distance from the SPLM/A. Given its large and growing constituency, this has made it an important ally for the HPP. In August 1996, supported by OLS, the NSCC held a meeting on Christian values and humanitarianism, which served to demonstrate that humanitarianism and human rights were not antithetical to the teachings of the churches. The NSCC currently sees part of its mission as to develop and reinforce respect for human rights among the southern Sudanese. To this end it maintains a human rights dialogue with the movement, and aims to create a chaplaincy in the army, with the duties of teaching human rights along with other pastoral responsibilities. With the support of UNICEF and other

child-rights agencies, the NSCC has been active on child protection. In July 1997, following the SPLM/A recruitment of children for the Yei offensive, a dialogue with the SPLM/A was established in which agreement was reached that recruitment must be voluntary and that chiefs would be involved as a way of tempering the army's demands. The churches have been less successful, however, in areas where the SPLM/A is perceived as an army of occupation.

The South Sudan Law Society: The SSLS, as the first south Sudan human rights group, was identified by the HPP as an important ally in the promotion of humanitarian principles and human rights, and has been a critical voice within the SPLM/A.⁵⁷ Supported by Amnesty International, drew up a human rights charter for the 1996 Civil Society Conference. It has criticised the content of the SPLM/A constitution and the way it was promulgated without debate. It has worked with the HPP to disseminate humanitarian principles, and has undertaken research on traditional law. Although the SSLS aims to undertake human rights monitoring, it does not carry out independent monitoring of Ground Rules violations. Indeed, it has become a critic of the Ground Rules, and has been given the task of drafting the new SPLM/A NGO law.

The SRRA: As the relief wings of the movements that signed the Ground Rules, the SRRA, RASS and FRRA have obligations with regard to civilian protection. The Ground Rules give them specific responsibility for ensuring that local authorities and communities comply with the agreement. They all receive capacity-building support from UNICEF/OLS and other agencies for staff salaries, as well as administrative support. In fact, the SRRA has received financial and technical support from UNICEF since the early 1990s, predating the capacity-building initiative (Prendergast, 1997:59). Since 1995, it has also received funding from the HPP for disseminating the Ground Rules and humanitarian principles. It receives reports of Ground Rules violations, and participates in resolving disputes between the authorities and aid agencies. It has two child-rights officers funded by NGOs. The investigations into the Ganyiel massacre were undertaken jointly by the HPP and the SRRA. Some within the SRRA consider that they could do more to monitor issues such as child recruitment and other violations of the military, but there is little evidence this is undertaken. Consideration is being given to developing an SRRA database for monitoring compliance with the Ground Rules, but this will prove controversial if, as proposed, it is used to monitor the compliance of aid agencies. Despite the investment in capacity-building and its responsibilities for upholding and disseminating humanitarian principles, evidence from the 1998 Bahr el Ghazal famine implicated SRRA officials in diversion and taxation of food.

The judiciary: Given that the Ground Rules are seeking conformity with international laws, a critical constraint to protection work in southern Sudan is the lack of a

functioning legal system. Had an effective judiciary existed there might never have been a need for the Ground Rules. A characteristic of much contemporary warfare is its singular capacity to erode such institutions. Perpetrators of violence thrive on the lack of legal systems, allowing human rights abuses to be perpetrated with impunity. While some commentators credit the SPLM/A with supporting the operations of chiefs courts in regulating civilian-military relations (Alor Kuol, 1997; Johnson, 1998b), human rights organisations remain critical of the movement for failing to institute an effective judicial system in the areas it administers (Human Rights Watch/Africa, 1999b). Traditional courts are said to operate in most rebel-controlled areas, but there is only one functioning civil court in the whole of the south.⁵⁸ The SPLM/A has not appointed a Chief Justice for this system. Implementation of its criminal code, therefore, is largely dependent on local SPLM/A commanders, and mechanisms for civilians to contest their actions are weak and in many places non-existent. The SPLM/A is criticised for failing to discipline officers, or to utilise its code to discipline human rights abusers. While it expends effort on developing a new NGO law and the legalisation of taxation, efforts to implement civil codes are less obvious.

Recognising the problem, the HPP and other organisations have sought to revitalise legal systems, developing links with southern Sudanese lawyers, many of whom have been at the forefront of reforms within the movement. Most of these directly employed by the HPP and working as humanitarian principles officers within the SRRA are trained lawyers and judges. The Ground Rules themselves have been credited by some with introducing a set of rules and laws into a 'lawless environment', or more accurately an environment governed by a rebel movement according to its own laws. The Ground Rules state that relief agencies should respect local laws and custom, and aid agencies are strongly criticised for breaching this. The only recorded case of an aid agency using local courts to prosecute local officials for the theft of agency assets occurred before the Ground Rules were introduced. In 1995 SCF UK in Akon pursued a case against local officials for the 'loss' of agency assets left in their care. The action was successful in recovering some of the assets. More importantly it led to improved agency-community relations. Some have argued from this that OLS has missed an opportunity to integrate the Ground Rules into customary law. However, SCF's action was primarily concerned with protecting agency space rather than civilians. Upholding human rights values may be the responsibility of aid agencies; respecting them is the responsibility of the people and the army.

Any progress that has been achieved in establishing legal institutions in SPLM/A-administered areas, has been due to local initiatives rather than external support. For the HPP and other OLS agencies, the scope for human rights engagement through technical assistance is limited by the principle of neutrality. The

laws of New Sudan are the laws of a rebel movement. To support the development of institutions that would enforce these would compromise the principle of neutrality. This goes to the heart of the dilemma over capacity-building. As a Sudanese lawyer rightly asks:

Can the Ground Rules and the dissemination of human rights have an impact where there is no supportive legal system? Can there be a supportive legal system without a government?

Human rights protection is dependent on the existence of effective, accountable and representative authority structures. As a disciplined army and functioning judicial system and police force are normally crucial for the protection of citizens' rights, human rights protection is therefore normally contingent on there being a state.

4.11.3 Capacity-building and neutrality

Reconciling commitment to the principle of 'neutrality' with a commitment to the principle of 'capacity-building' has been a contradiction at the heart of the Ground Rules. As a principle of humanitarian action, neutrality was devised by warring parties as a precondition for allowing humanitarian assistance to enemy civilians within their power. In this way, no military advantage could accrue to the enemy through the assistance provided. The principle of humanitarian neutrality demands that there be no forms of engagement which could strengthen the structures of the warring parties. As UNICEF/OLS attempts to increase respect for human rights by disseminating international humanitarian and human rights law to the SPLM/A, strengthening the SRRA and SINGOs, or supporting the restoration of the judicial systems within rebel-held areas, it risks compromising its neutrality. Some have gone further, suggesting that such support would require an 'abandonment of neutrality' (Prendergast, 1997:72).

Given this, some donors not surprisingly were suspicious of capacity-building support to the relief wings and southern NGOs. Some NGOs argued that it could strengthen the SPLM/A's capacity to suppress its own people. It was initially objected to by OLS northern sector precisely on the grounds that it would be perceived as support for the rebel movement (Karim, et al. 1996:182). The compromise reached in the 1996 CAP was to seek funding for capacity-building projects for both northern and southern sectors. These complications, in part, stem from undertaking human rights protection in a chronic war. Neutrality is a principle applied in a situation of on-going war, while human rights engagement is typically undertaken in pre-war or post-war recovery situations. The conflict in southern Sudan contains states of both high-intensity warfare and relative stability. The issue of neutrality

reflects the tension between human rights work and humanitarianism.

Neutrality is less of an issue for the United States, which has stated its support for the political objectives of the opposition NDA. The proposed USAID-funded STAR project will include para-legal training in NDA-administered areas, together with administrative and human rights training for civil authorities and grassroots organisations (USAID, 1998). The US bias is apparent when one takes into consideration that the SPLM/A's human rights record should result in the US Congress prohibiting non-humanitarian aid to SPLM/A areas (Prendergast, 1997:77). Neutrality is also not an issue for organisations like African Rights which supports the training of para-legals in the rebel-held areas of the Nuba Mountains. Neither the US government nor this human rights organisation is restricted by the nature of the OLS agreements. For the US and African Rights, if for different reasons, rights transcend state sovereignty.

4.11.4 Capacity-building and social contracts

A review of the capacity-building programme in 1997 concluded that it had had:

'... a profound impact on shaping the development of the OLS programme, and to a much lesser but still significant extent, in reinforcing the process of reform within the warring movement in favour of the civilian population'. (Murphy, 1997a:19).

This supported the findings of the 1996 OLS Review which concluded that capacity-building had been significant in shaping the development of welfare structures in opposition areas (Karim et al., 1996:54).

The constraints imposed by neutrality, however, have, according to some, limited the potential of capacity-building (Murphy, 1997a). When introduced, it was criticised for being understood too narrowly within the confines of relief and efforts to make the SRRA, RASS, and SINGOs more efficient. Although the interpretation has been broadened, support for capacity-building remains largely confined to organisational and human resource development. UNICEF/OLS's definition of capacity-building reflects this: 'to promote the capacity of Sudanese institutions to facilitate, co-ordinate and implement programmes of humanitarian assistance in a participatory manner' (UNDHA, 1998:69). Thus, under the rubric of supporting civil society, capacity-building has largely been about creating an indigenous capacity for the delivery of international aid for projects designed by international agencies.

There has been some positive impact. Capacity-building has pressed the SRRA into organisational

improvements, has provided for greater acceptance of SINGOs by the armed movements and has increased international awareness of and sensitivity to Sudanese participation (Karim et al., 1996:184; Murphy, 1994:20–21). Some SINGOs have proved adept as service delivery organisations, and do provide a counterweight to the military. However, this falls some way short of the ambitions of effecting structural change, promoting good governance, and creating a culture of humanitarianism.

A fundamental question remains as to whether humanitarian aid can, and should, be used for building civil institutions and to fill the ‘governance gap’ between political authorities and the people. Critics of the Ground Rules argue that this is not feasible, partly because definitions of what is ‘legitimate’ are imposed by an external international aid regime that is itself blighted by ‘obfuscation and deception’ (African Rights, 1995:50). Governance premised on NGOs is not government. Civil institutions can only spring from a social contract between political authorities and the people. Institutions built around aid will be weak because they are sponsored and vulnerable to the withdrawal of international support. This analysis seems to be supported by the fact that those institutions that have adopted the Ground Rules more fully than others – or at least are best able to articulate them – are the military and the churches.

End Notes

¹This study is primarily concerned with OLS southern sector, for which the acronym 'OLS' is used. Where reference to the entire OLS operation is intended that will be made clear in the text.

²The 'Agreement on Ground Rules' is referred to in the text as the 'Ground Rules'. The text of the Ground Rules referred to throughout this case study is in Appendix 2. It is also available in Promoting Humanitarian Principles: the southern Sudan experience, RRN Network Paper 21. London: ODI, May 1997.

³This notion has been borrowed and adapted from the idea of the 'framework of consent' in Lautze et al 1998.

⁴Later renamed IGAD (the Inter-Governmental Authority on Development).

⁵Interview, Aid worker, Nairobi, September 1998.

⁶Interview, SRRA official, New Cush, September 1998

⁷Aid worker interviewed in Lokichokio, October 1998.

⁸In the early 1990s it was alleged that the SPLM/A received financial support from Tiny Rowland's Lonhro.

⁹SPLM/A Commander interviewed in Thiet, September 1998.

¹⁰Interview, Yirol, 1998

¹¹Donor representative, interviewed 1998.

¹²Quoted in the Economist, February 1997.

¹³Like the civil war, OLS has been much studied. Indeed, there can be few other humanitarian operations that have generated so much research. This section provides only a partial description of OLS, drawing on a small amount of the documentary evidence available and interviews conducted for this study.

¹⁴Aspects of OLS are said to have been inspired by Operation Salaam in Afghanistan launched in 1988 (Brusset, 1998).

¹⁵The figure is actually small compared to the US\$3 billion expended on UNOSOM in Somalia for 1993.

¹⁶The SPLM/A asserts that the *de facto* division was a result of its military campaign, rather than created by OLS as suggested in the 1996 OLS Review (SPLM/SRRA, 1996).

¹⁷The circumstances behind the deaths have never been clarified. UN investigations revealed nothing. It is

generally accepted, however, that two of the expatriates were killed in an ambush set for William Nyuon by the SPLM/A. The other two are thought to have witnessed the incident and to have been executed to silence them.

¹⁸At this time security systems were not automatically an integral part of humanitarian operations. The murder of a UNICEF worker in Bossaso in Somalia in 1992 revealed a flaw in UN security and insurance systems, and forced the UN to reconsider its security procedures.

¹⁹At the time the SPLM/A was expecting a government offensive and accused MSF-F of spying.

²⁰At the time UN operations in Somalia were also heavily criticised for this.

²¹In 1993 the US was spending much greater sums in support of the military intervention in Somalia.

²²Again, in 1993, the complexities of delivering aid in a war environment were being starkly demonstrated in Somalia.

²³The torture of members of the political elite by the new NIF regime in Khartoum may also have contributed to raising human rights up the international agenda (Rone, pers com, 1999).

²⁴In fact it is not true that there was no 'dialogue' with the SPLM/A on the first Ground Rules. As Garang himself reported to his commanders, the Ground Rules were 'worked out' together by the SRRA and UN/OLS (Garang, 1993). They were subsequently endorsed by Commander Salva Kiir Mayardit and Garang in writing and over the SPLM/A radio by Garang in April 1993.

²⁵See Appendix 2 for the full text.

²⁶Government contractual agreements pertain only in government-held areas.

²⁷A similar function is played by the OLS Relief Co-ordinator in Khartoum.

²⁸Aid worker interviewed in Sudan, September 1998.

²⁹The close link between security and humanitarian assistance should not be surprising. Commentators have noted the 'curious parallel' between the ICRC culture and the military culture, the former an adaptation to working face to face with the latter (Ignatieff, 1998: 122).

³⁰Interviewed in Nairobi, September 1998.

³¹There are no long-term studies of food security. Climate, a reduction in levels of conflict, a resurgence of the SPLM/A, a less predatory relationship with the

population, greater access enjoyed by OLS, a shift towards support for production may have combined to help.

³² Interviewed in Thiet, Sept. 1998

³³ This is also an issue for the ICRC which does not work in the Nuba Mountains.

³⁴ The importance of such analysis is illustrated by the flight ban on Bahr el Ghazal. The ban imposed by the government between February and April 1998 following the SPLM/A attack on Wau precipitated an emergency into a disaster, as OLS was unable to access populations displaced by the fighting. Government denial may have been based on its military assessment that allowing OLS agencies access would provide a military advantage to the SPLM/A, in other words, that assistance would aid the SPLM/A's military objectives. According to one UN observer, the government lifted the ban only when it was convinced that the SPLA had run out of food and fuel and would not attack Wau.

³⁵ Interviewed, Nairobi, 1998

³⁶ Given the politico-religious dimensions of the war, the position of Christian agencies in OLS is important, but monitoring the standards of a Christian agency is difficult. For example, one Sudanese Christian agency active among the Nyamachong claims to have brought development providing education and water to an area which has had no government presence since colonial times. The population was formerly nomadic, lacking permanent water resources. With 'development' the agency argues it no longer needs to be nomadic. Given the history of failed development interventions to settle nomadic populations, one has to question the viability of this programme. However, OLS does not take responsibility for monitoring the activities of its member agencies.

³⁷ Interviewed, Nairobi, Oct. 1998

³⁸ A general expansion and proliferation of NGOs was apparent elsewhere in this period, as in Somalia.

³⁹ Donor representative interviewed in Nairobi, September 1998.

⁴⁰ This is drawn from the UNHHA statement on Respect for Humanitarian Mandates in Conflict Situations.

⁴¹ Some UN reports give a much lower figure, under 6,000.

⁴² This approach drew on the work of Mike McCormack, the Guyana Director of Amnesty International.

⁴³ The study team attended an HPP seminar for the SPLM/A military in Thiet.

⁴⁴ In a communication to his commanders regarding the first Ground Rules, Garang ordered them to brief and re-brief all soldiers under their command to observe the rules and regulations (Garang, 1993). In an addendum Commanders were also notified that the Ground Rules were legally binding on all SPLM/A units and personnel and that punitive measures would be taken against any infringement.

⁴⁵ However, the famine was not explicitly discussed at the meeting.

⁴⁶ Interviewed, Lokichokkio, Sept., 1998

⁴⁷ The agencies described here are only a selected few; some faith-based organisations working outside OLS also claim a rights-based approach to their work..

⁴⁸ This is apparent in the public criticisms of the UN/OLS leadership by MSF in the wake of the 1998 Bahr el Ghazal famine.

⁴⁹ The joint Task Force on Vulnerabilities in Bahr el Ghazal included representatives of the latter NGOs and not MSF.

⁵⁰ This largely anecdotal evidence comes from Thiet and Yirol that were only 'liberated' in 1997 and where dissemination took place as recently as May 1998.

⁵¹ An accord was signed between Nuer and Dinka elders in June 1998.

⁵² In one of the first Ground Rules workshops in 1996, participants are recorded as expressing hope that the 'new laws' (the Ground Rules) will lead to a restoration of the power of the chiefs (Report on Dissemination of Ground Rules in Lankien, 9-10 November 1996).

⁵³ See, for example, Harragin and Chol, 1998 on Sudan.

⁵⁴ Head of HPP, interviewed Nairobi, Sept. 1998

⁵⁵ As studies of the various human rights field operations have noted, human rights monitoring and technical assistance are mutually reinforcing, the whole being far greater than the sum of the parts. See, for example, Henkin, 1995, 1997.

⁵⁶ In 1996, there were 6 SINGOs which had signed LoUs with OLS southern sector, compared with 30 in 1995 in the early period of the capacity-building programme.

⁵⁷ Some of its members initially supported the Nasir coup for the position it took on human rights.

⁵⁸ Under the weight of famine conditions in Bahr el Ghazal traditional 'famine courts' among the Dinka were reported to be ineffective (pers com, Harrigan, 1999).

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Appendix 1: List of Interviewees

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- Alor, M. and Arop, D. 11 September, 1998 Nairobi.
- Andrews, M. 24 September, 1998 Lokichokkio.
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- Mawson, A. 1998 London.
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- Mckensie, K. 24 September, 1998 Nairobi.
- Medley, M. 29 Sept. 1998 Nairobi.
- Meserve, L. 15 September, 1998 Nairobi.
- Michael Makuei Lueth 1 Oct., 1998 Nairobi.
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Southern, N. 1998 Nairobi.

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Appendix 2: The Ground Rules

Reprinted from: Promoting Humanitarian Principles: the southern Sudan experience, RRN Network Paper 21. London: ODI, May 1997.

NB. The example which follows is the agreement signed between the SPLM/OLS. Although signed separately, the content of the agreements with other movements was, to all intents and purposes, the same.

SPLM/OLS AGREEMENT ON GROUND RULES

This agreement is intended to lay out the basic principles upon which Operation Lifeline Sudan (OLS) works and to lay out the rules and regulations resulting from such principles. It seeks to define the minimum acceptable standards of conduct for the activities of OLS agencies and Sudan Relief and Rehabilitation Association (SRRA), as the official counterpart in areas controlled by the Sudan People's Liberation Movement/Army (SPLM/a).

We, the undersigned, enter into this agreement in a spirit of good faith and mutual cooperation in order to improve the delivery of humanitarian assistance to and protection of civilians in need.

In signing this agreement, we express our support for the following international humanitarian conventions and their principles, namely:

- i. Convention on the Rights of the Child 1989
- ii. Geneva Conventions of 1949 and the 1977 Protocols
additional to the Geneva Conventions

a. Statement of Humanitarian Principles.

1. The fundamental objective of OLS and SRRA is the provision of humanitarian assistance to populations in need wherever they may be. Such humanitarian assistance seeks to save life, to ease suffering, to promote self-reliance, self-sufficiency and the maintenance of livelihoods. The right to receive humanitarian assistance and to offer it is a fundamental humanitarian principle.

2. The guiding principle of OLS and SRRA is that of humanitarian neutrality - an independent status for humanitarian work beyond political or military considerations. In other words:

i. Humanitarian aid must be given according to considerations of human need alone. Its granting, or its acceptance must not be made dependent on political factors or upon race, religion, ethnicity or nationality. It must not seek to advance any political agenda. Where humanitarian assistance is inadequate to meet the needs of all, priority must be given to the most vulnerable.

ii. The passage of humanitarian assistance to populations in need should not be denied even if this requires that aid passes through an area controlled by

one party in order to reach the needy in another area, provided that such passage is not used for military advantage.

iii. Relief assistance is provided solely on the basis of need; those providing assistance do not affiliate themselves to any side in the ongoing conflict.

iv. The only constraints on responding to humanitarian need should be those of resources and practicality.

3. All humanitarian assistance provided is for the use of identified civilian beneficiaries. Priority must at all time be given to women and children and other vulnerable groups such as the elderly, disabled and displaced people.

4. Those carrying out relief activities under the auspices of OLS must be accountable to the beneficiaries and their representative structures in first place, and to those who fund the activities. This places the following obligations on the various parties:

i. those rendering humanitarian aid have a duty to ensure its appropriate end use. This includes a right to monitor and participate in the distribution of humanitarian aid on the ground in partnership with SRRA.

ii. local authorities, through the SRRA, must ensure that aid is distributed fairly to civilian beneficiaries. Diversion of aid from intended beneficiaries is regarded as a breach of humanitarian principles.

iii. decision-making on the selection of beneficiaries and the monitoring of the use of inputs and resources must be, and be seen to be, transparent and responsive to broad-based decision-making at the level of affected communities. Local authorities and relief agencies should involve local representatives of communities in the processes of targeting and monitoring of aid. Where possible, this should be done through the Joint Relief and Rehabilitation Committees which include elected community representatives.

5. OLS is based on the complete transparency of all its activities. This means that local authorities have the right to expect that OLS agencies provide full information regarding the resources to be provided. In return, it is expected that local authorities will report honestly and fairly in all their dealings with OLS with respect to needs identified, populations in need, use of resources, etc.

6. All humanitarian actions should be tailored to local circumstances and aim to enhance, not supplant, locally available resources and mechanisms. Strengthening local capacity to prevent future crises and emergencies and to promote greater involvement of Sudanese institutions and individuals in all humanitarian actions is an integral part of OLS's humanitarian mandate.

7. The fundamental human right of all persons to live in safety and dignity must be affirmed and supported through appropriate measures of protection as well as relief. All those involved in OLS must respect and

uphold international humanitarian law and fundamental human rights.

8. Bona fide staff members of OLS agencies and others living, working or travelling in Sudan under the auspices of OLS have the right to go about their business freely and without restraint provided that they adhere to these Ground Rules and to local laws and customs. In all their dealings, relief workers and local authorities must demonstrate mutual respect.

B. Mutual Obligations:

1. All externally supported programmes and projects in SPLM/A-controlled areas, must be approved by the SRRA (both locally and at SRRA heads office) prior to their implementation. NGOs or UN agencies are responsible for ensuring that such approval is obtained in writing. Project implementation should be based upon a letter of understanding between the agency, SRRA and OLS which defines roles, responsibilities and commitments of all sides plus procedures for resolving differences and grievances.

2. All UN/NGO workers are expected to act in accordance with the humanitarian principles previously defined: provision of aid according to need; neutrality, impartiality, accountability and transparency. This includes non-involvement in political/military activity. NGOs and UN agencies must not act or divulge information in a manner that will jeopardise the security of the area.

3. All UN/NGO workers must show respect for cultural sensitivities and for local laws and customs. Relief agencies must ensure that their staff are familiar with these laws and customs.

4. UN agencies and NGOs shall strive to offer the highest possible standards of service to their beneficiaries. This means that all agencies commit themselves to recruiting only those staff judged to have adequate technical and personal skills and experience required for their work.

5. UN agencies and NGOs must ensure that all their staff living, working or visiting Sudan are bearers of valid entry passes from the respective political authorities.

6. The SRRA must commit itself to the humanitarian principles defined above and not allow itself to be motivated by political, military or strategic interests. It should seek to provide an efficient and effective coordinated information and planning service for relief and rehabilitation activities.

7. The SPLM/A recognises and respects the humanitarian and impartial nature of UN agencies and those NGOs who have signed a letter of understanding with UNICEF/OLS and SRRA.

8. The SRRA should facilitate the flow of relief goods and services and provide accurate and timely information regarding the needs and the situation of civilians in their areas.

9. Local authorities assume full responsibility, through the SRRA for the safety and protection of relief workers in areas under their control. This responsibility includes:

- i. providing an immediate alert to relief workers in potentially insecure areas;
- ii. facilitation of safe relocation when necessary;
- iii. protection from any form of threat, harassment or hostility from any source;

Relief staff or agencies are not expected to pay for such protection either of themselves or of their property.

10. UN/NGO compounds should be respected as property of these institutions. Those living in these compounds have the right to privacy and compounds should only be entered with the permission of their residents. No military or political activity should take place in these compounds and no personnel bearing arms may enter them except when the safety of their residents is threatened.

C. Use of relief property and supplies:

1.i. All UN/NGO property, including vehicles and property hired by UN/NGOs, is to be controlled and moved at the discretion of UN/NGOs or their agencies, unless such property is formally donated to another party.

Project agreements between NGOs, SRRA and UN/OLS should clearly define which assets will remain the property of the agency concerned and which are project assets which must remain in Sudan even when the agency concerned leaves temporarily or permanently.

ii. Those assets defined as agency assets remain the effective property of the agency at all times and may be removed whenever a project terminates or an agency withdraws from a location for whatever reason.

iii. Project assets are those which are for direct use by project beneficiaries or are integral to the running and sustainability of the project. These goods remain the property of UN/NGO until formally handed over to the SRRA or local communities and their leaders. Decisions regarding the distribution and use of such items should be made, whenever possible, jointly between NGOs and local authorities, under the auspices of the Joint Relief and Rehabilitation Committee following the humanitarian principles stated above.

2. UN and NGO flags are for exclusive use by these agencies.

3. UN and NGO staff will be allowed unrestricted access to their communication equipment and to exercise normal property rights. Except for emergencies, all messages should be written and recorded. Use of UN/NGO radios or other

communication equipment will be limited to information on relief activities only. All messages will be in the English language. Operation shall be by a locally designated radio operator seconded and selected jointly by the local authorities and relief agencies. Whenever necessary, UN/NGO personnel will be allowed to transmit their own messages.

4. No armed or uniformed personnel is allowed to travel on UN/NGO vehicles: planes, boats or cars. This includes those vehicles contracted by UN/NGOs.

D. Employment of staff:

1. All UN agencies and NGO have the right to hire their own staff as direct employees. These agencies should be encouraged to employ appropriately qualified and experienced Sudanese as part of a capacity building strategy.

2. In the cases of Sudanese staff seconded to an NGO supported project (e.g. health staff), appointments and dismissals are made by the local authority in consultation with the agency which is expected to support payment of that worker's incentives. The number of workers to be supported must be agreed jointly. An NGO or a UN agency may ask the local authorities to withdraw seconded staff considered incompetent, dishonest or otherwise unsuitable for their jobs.

3. Local authorities should ensure that the Sudanese staff of UN/NGOs and, especially, those staff who receive special training programmes to upgrade and improve their skills are exempted, whenever possible, from military or other service so that they can contribute to the welfare of the civilian population.

E. Rents, Taxes, Licences, Protection money:

1. No UN/NGO should be expected to pay rent for buildings or areas which are part of their work, for example, offices or stores when they have built these buildings themselves or where they are donated by the local authority.

2. In the case of public buildings which are being rented by an NGO as living accommodation, a reasonable rent may be paid by the NGO/UN agency to the civil administration. Genuine efforts should be made to make moves towards standardisation of these rents.

3. All OLS agencies shall be exempt from customs duties for supplies (including personal supplies) and equipment brought into Sudan. Any taxes to be paid will be agreed between the agency concerned and the local authority as part of the project agreement.

F. Implementation of this agreement:

1. All signatories to this agreement must accept responsibility for ensuring that it is disseminated to all their officials and staff working in Sudan. It should also be publicised in public places in Sudan to ensure that

local communities and beneficiaries understand its principles and rules.

2. UNICEF/OLS, together with the SRRA will be responsible for ensuring the holding of workshops and meetings in all key locations in which the principles and rules of this agreement are explained and discussed with all relevant personnel.

3. The SRRA is fully responsible for ensuring compliance with this agreement by the local authorities and communities.

4. Joint Relief and Rehabilitation Committees established in all relief centres and involving all relevant actors should meet together on a regular basis to plan, implement and monitor the delivery of humanitarian assistance. These committees will be regarded as the custodians of the principles of this agreement at local level and responsible for ensuring that the rules are upheld and respected by all sides.

G. Mechanisms for resolving alleged violations of Ground Rules:

1. In cases where allegations of non-compliance with this agreement are made, all parties commit themselves to resolving differences as speedily as possible in an attitude of good faith.

2. Where alleged violations of Ground Rules have occurred, the allegation should be documented in writing by the complainant.

3. The issue should then be taken to the local Joint Relief and Rehabilitation Committee where this exists.

4. If unresolved, it should then be discussed at local level with meetings between the area secretary of the SRRA, the county Commissioner and the local head of the UN/NGO, together with the UNICEF/OLS Resident Project Officer, where appropriate.

5. If the issue remains unresolved at local level, it should be referred to central authorities in writing to be dealt with by the senior officials of the agencies concerned, i.e. the SRRA head office, the head of the NGO and, if appropriate, the UNICEF/OLS coordinator.